

## Statham, Victoria

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**From:** Marland Clare <C.Marland@Spelthorne.gov.uk>  
**Sent:** 30 August 2012 16:20  
**To:** malcolm.kempton@kemptoncarr.co.uk  
**Subject:** FW: Kempton Park and lease  
**Attachments:** 182550 - Deed of Surrender.pdf, 182549 - Deed of Rentcharge.pdf

**Categories:** Blue Category

Afternoon Malcolm,

As discussed earlier, I attach Dion's email re: Kempton. I also attach the deeds that contain the overage provisions. I am most interested in your views on the trigger events within the rentcharge (schedule 1). If time is tight, I shall pick up with Dion but I would appreciate your thoughts.

Many thanks

**Clare Marland**  
**Principal Lawyer**

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**From:** Dion Scherer [mailto:dion.scherer@kemptoncarr.co.uk]  
**Sent:** 22 August 2012 13:02  
**To:** Marland Clare  
**Subject:** RE: Kempton Park and lease

Clare,

As you know, Kempton Park has developed an all weather racetrack, floodlit as required, and by re-aligning the previous track. The changes came forward for planning in 2005 (I believe).

Other than in a planning context, this involved Spelthorne Borough Council by virtue of a lease held by Spelthorne which incorporated land that not only ran across part of the new track, but also land where the Racecourse owners will shortly be talking to Heather.

This lease was granted in 1974 to the former Sunbury Urban District Council. All the background to this is a bit vague, but the feeling is that it was an attempt to maintain the integrity of the Green Belt. Anyway, and cutting a long story really short, the lease had a mechanism which theoretically could trigger the Racecourse owners in being obliged to set out a Golf Course and hand it over to SunburyUDC/Spelthorne. The plan of the golf course took it inter alia across the proposed racetrack area, where additionally there was to be provision a clubhouse. There were some areas of detail in the lease such as the suspension of golf on race days, but those terms are not germane to the discussion today. But what is pertinent (and mentioned below) is that the golf course land extended to the land to be under discussion with Heather.

For the Racecourse development to go ahead, the owners had to resolve the lease, hopefully for Spelthorne to surrender it, and to that end detailed negotiations took place during 2005. Terms were agreed, and a consideration of £500,000 was paid to Spelthorne.

But part and parcel of these negotiations was the land that lay outside the racetrack area, but which was part of the golf course site. Here it was felt inappropriate for the Council to walk away giving the Owners a free hand on that land, and so the negotiations extended thereto.

You are, of course, aware of the ransom principles of "Stokes v Cambridge", where someone who controls access to a site, and without that access the site cannot be developed, is entitled to a share of any enhanced value accruing by granting that access. This empirically is 33% of the enhancement.

So it was agreed that this principle be applied as part of the negotiations for the lease surrender, and this has been incorporated in the Deed of Rentcharge entered into in 2005.

The provision is for a period of 25 years, and on the occurrence of a "Trigger Event", eg a development on the land, Spelthorne would be entitled to 33.3% of the enhanced land value. As a simple illustration, as uninteresting Green Belt land it is probably worth £5,000 per acre. If it became a housing scheme, it would be worth, say, £1m per acre. Spelthorne's entitlement, circa £330,000 per acre. There is a mechanism for agreeing the figures.

I have no doubt you can enlarge on the detail in reporting to Heather, but this a simple summary as to how these matters occurred, and why.

The overage provision is extremely straightforward, and give or take the push and shove of negotiation should be easy to compute.

Hope this helps.

Dion

Dion Scherer FRICS

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