RE: LAND TO THE EAST OF FROGHALL ROAD, CHEADLE

ADVICE

1. I am asked to advise Bloor Homes (NW) ("the Applicant") in relation to an application for planning permission for up to 215 dwellings ("the planning application") on a site to the East of Froghall Road, Cheadle ("the site").

2. The planning application is in outline. Details in respect of appearance, landscaping, layout and scale are to be reserved for subsequent determination.

3. In respect of access, details have not been submitted in respect of the internal road layout (including internal cycle, pedestrian and vehicular routes and connections). These are matters that the Applicant considers should be reserved for subsequent approval.

4. However, I am instructed that details have been provided with the application in respect of the proposed vehicular access point from Froghall Road ("means of access"). The Applicant considers that, because details have been provided in respect of the proposed vehicular access, the acceptability of these details should be determined at the outline stage, with the remainder of the (internal) access arrangements to be reserved for future consideration by condition.

5. However, I am instructed that the LPA considers that if access is to be determined at the outline stage, *all* details in respect of access (means of access and internal access arrangements) must be submitted at the outline stage. The Council does not consider that it is possible, as a matter of principle, to approve the details in respect of the vehicular access to the site with the outline application, and reserve other details in respect of access (internal arrangements) for future consideration.

6. I am asked to advise as to whether the LPA's approach is correct as a matter of law.

7. I advise in accordance with the terms of my instructions, and the information provided to me by those that instruct me.

Advice

8. The starting point is Section 92 of the Town and Country Planning Act 1990 ("TCPA"). S92 (1) provides that,

> *"In this section and Section 91 "outline planning permission" means planning permission granted**, in accordance with the provisions of a development order,** with the reservation for subsequent approval by the local planning authority … or the Secretary of State **of matters not particularised in the application ('reserved matters')**."* (Emphasis added)

9. S92 (1) therefore expressly defines "reserved matters" as matters that are *not* particularised in the application. It follows that matters that *are* particularised in the application cannot be "reserved matters" within the meaning of the Act.

10. As set out above, section 92 (1) also defines outline planning permission as permission granted,

> *"in accordance with the provisions of the development order".*

In the case of *R (on the application of Murray) v Hampshire (No 2)* [2003] EWCA Civ 760[1], the Court of Appeal, confirmed that those words mean that the definition of "reserved matters" is to be looked at, not in the abstract, but with specific reference to the relevant development order[2]. The Court therefore rejected the argument that a condition seeking to secure an alternative site for ecological mitigation could be characterised as a reserved matters condition simply because details had not been particularised with the application. This was because the ecological mitigation details in question did not relate to siting, design, external appearance, means of access or

[1] The issue in this case was whether the relevant details were required to submitted within three years (the period for submission of reserved matters set out in Section 92) or were instead subject to the five-year time limit imposed by Section 91.

[2] Paragraph 25

the landscaping of the site, which were the matters specified in the development order then in force[3]. The Court characterised "reserved matters" as follows,

> *"26 **So, the reserved matters are essential components of a building development, which, as a concession, do not need to be particularised at the time of the original application**; but, on the other hand, there is a requirement that those details must be put in within three years of the grant of permission. Those matters, to my mind, have nothing to do with the condition here in issue, which does not relate to a reserved matter as defined, but is concerned with an off-site mitigation measure imposed by the Secretary of State."* (Emphasis added).

11. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) ("DMPO") is the relevant development order currently in force.

12. Article 5 (1) DMPO provides that where an application is made for outline planning permission, the LPA may grant permission subject to a condition specifying reserved matters for the authority's subsequent approval.

13. "Outline planning permission" is defined by Art. 2 of the Order as follows:

> *"'outline planning permission'* means a planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more reserved matters;"

14. Art. 2 DMPO also defines *"reserved matters"* as follows:

> *"'reserved matters' in* relation to an outline planning permission, or an application for such permission, means **any of the following matters in respect of which details have not been given in the application**—
> (a) **access;**
> (b) appearance;
> (c) landscaping;
> (d) layout; and
> (e) scale;"

(Emphasis added).

[3] See paragraph 26

15. Art. 2 DMPO defines “access” as follows:

> *“‘access’* , in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where *“site”* means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made;”.

16. In the present case, details in respect of both the means of access to the site and the internal access arrangements within the site would fall within the definition of “access” in Art. 2 of the Order. In principle, these details are therefore *capable* of constituting reserved matters within the meaning of the DMPO and, therefore, S92 TCPA.

17. However, whether those details fall within the definition of “reserved matters” within the meaning of S92 TCPA and the DMPO then depends upon whether details in respect of those matters have been given in the application. This is because Article 2 is expressly subject to the proviso that the definition of “reserved matters” relates to any of the specified matters,

    “in respect of which details have not been given in the application”.

18. In my opinion, it follows that where details *are* submitted with an outline application, they fall to be determined with the outline application. They are not details that are “reserved matters” within the meaning of DMPO.

19. This is also consistent with Section 92, which, as set out above, defines “reserved matters” as matters that have *not* been particularised in the application.

20. In the present case, the planning application has particularised details in respect of the vehicular access to the site. Accordingly, these details cannot be “reserved matters” (Section 92 and Art. 2 DMPO), and the acceptability of those details falls to be determined with the application for outline permission.

21. As noted in the Planning Statement submitted with the application, this interpretation is consistent with the approach taken in the PPG[4], which states:

> ***"Can details of reserved matters be submitted with an outline application?***
>
> *An applicant can choose to submit details of any of the reserved matters as part of an outline application. Unless the applicant has indicated that those details are submitted "for illustrative purposes only" (or has otherwise indicated that they are not formally part of the application), the local planning authority must treat them as part of the development in respect of which the application is being made; the local planning authority cannot reserve that matter by condition for subsequent approval."*

22. In respect of the internal access arrangements, details have *not* been particularised in the application. Accordingly, these details are "reserved matters" within the meaning of Section 92 and Art.2 DMPO (above). This is because they fall within the definition of "access" in the DMPO (Art. 2), in respect of which details have not been given in the application.

23. I am not sure on what basis the LPA says that it is not possible, as a matter of law, to consider access details that have been particularised with the outline application, but to reserve for subsequent consideration the other details in respect of access that have not been particularised. I would be happy to advise further if the LPA's position on this point becomes clear. However, I cannot see anything on the face of the legislation or in decided authority to support that interpretation.

24. Further, I note that, as confirmed by the Court of Appeal in *Murray* (above), "reserved matters" are simply,

> *"Components of the building operation, which, as a concession,* ***do not need to be particularised*** *at the time of the original application"* (Emphasis added).

25. Whilst details relating to access *"do not need"* to be particularised at the time an application for outline permission is made (and are therefore capable of constituting

[4] Paragraph 14-035

reserved matters within the scheme of legislation), *if* they *are* particularised, the LPA will have sufficient information before it to determine whether the proposal is acceptable in that respect. It is therefore entirely logical that the acceptability of those details should be determined with the outline application, which I consider is the effect of the legislation for the reasons set out above.

26. Of course, there might be circumstances where, *on the specific facts*, the LPA does not consider that it is possible to determine the acceptability of the application without further details in respect of some (or all) of the reserved matters. The legislation allows for this and provides a mechanism for the LPA to seek additional details in such circumstances[5]. However, as I understand it, the LPA's concern in this case is *not* that it requires additional information to determine the application, *but* that *in principle* it cannot determine the acceptability of the Applicant's proposals in respect of means of access if other details relating to access are to be reserved for consideration. For the reasons set out above, I do not agree with that approach.

27. Those instructing me have provided me with several appeal decisions where Inspectors have concluded that certain matters in respect of access can be determined with the outline application, with other details in respect of access reserved for subsequent approval. I summarise them as follows:

(a) <u>Henthorn Road, Clitheroe</u>[6]

At paragraph 3, the Inspector noted that:

"Only details of one vehicular access to the site are submitted so any other access to, and access within the site remain a reserved matter".

[5] Art 5 (2) permits the LPA within 1 month beginning with the date of receipt of the application to notify the applicant that they are unable to determine the application without the submission of further details, and to specify what further details they require.

[6] Ref: APP/T2350/W/19/3221189

This was reflected in Condition (1), where details of access, *other than* those shown on the drawing detailing the vehicular access to the site, were reserved for subsequent consideration.

(b) Coombe Hill, Gloucestershire[7]:

At pages 1 – 2, the Inspector expressly considered that it was appropriate to determine the application on the basis that pedestrian and vehicular access from the A38 into the site should be given detailed consideration, whilst other details of access to and within the site remained reserved matters. This was reflected in Conditions (1) and (4).

(c) Land off Victoria Road, Horwich[8]:

In respect of access, Condition 2 reserved "internal layout only" for subsequent consideration.

28. Whilst I was not involved in any of those appeals, I note that in each, the respective parties were represented by senior Counsel[9]. In any event, it is clear that in each of those appeals, the Inspector was satisfied that it was appropriate to determine access details that had been submitted with the application and reserve the remaining access details for future determination. For the reasons set out above, I consider the approach of those Inspectors to be sound in law.

29. Taking all the above into account, it is therefore my opinion that the LPA should determine the details that have been submitted to it in respect of the means of access to the site when determining the application for outline permission. Other details in respect of access that have not been particularised should be reserved for future consideration by condition. Examples of conditions that might be considered are included in the appeal decisions to which I refer above.

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[7] APP/G1630/W/20/3257625
[8] APP/N4205/W/20/3256381 and 3266030
[9] Clitheroe: David Manley QC (LPA) and Martin Carter (Appellant); Horwich: Giles Cannock QC (Appellant) and Alan Evans (LPA) and Jonathan Easton (Residents); Coombe: Douglas Edwards QC (County Council), Paul Tucker QC (Appellant) and Meyric Lewis (LPA).

30. I advise accordingly. If I can be of any further assistance, those instructing me should not hesitate to contact me.

25th April 2022

Sarah Reid QC

Kings Chambers

Manchester, Leeds, Birmingham.