

**IN THE MATTER OF LAND OFF TENFORD LANE, UPPER TEAN, STOKE ON TRENT
ST10 4EN**

ADVICE

INTRODUCTION

1. I am instructed to advise Marden Homes Ltd (“MH”) in respect of the Land off Tenford Lane, Upper Tean, Stoke on Trent (“the site”). The local planning authority is Staffordshire Moorlands District Council (“the Council”).
2. MH inherited a planning permission for residential development for 40 dwellings (“the outline permission”). The description of development was “*outline planning application with some matters reserved (except access) for a residential development of up to 40 houses (resubmission of SMD/2016/0200)*”. On 17 February 2023, the Council approved the reserved matters application for 40 dwellings which included approved plans which prescribe the nature and extent of the residential development on the site (“the reserved matters approval”).
3. On 12 May 2023, MH’s former planning agent submitted a section 73 application (SMD/2023/0240) to vary the approved plans of the permission (“the section 73 application”). Works subsequently commenced on site in the summer of 2023. These works were not carried out in accordance with the approved plans, but did accord with those submitted under the section 73 application. The retrospective elements of the section 73 application related to changes in the levels of the dwellings under construction at plots 1-10 with the construction of plots 6-9 being significantly advanced and the level of the access road.

4. On 14 December 2023, the section 73 application was refused by Members in the face of an officer recommendation to approve (set out in the officer's report). There was a single reason for refusal:

The application, as submitted for this variation of conditions, proposes substantial and fundamental amendments to the scheme, changing or altering the operative part of the permission concerning:

- Levels of;*
- types of;*
- drainage of (affecting condition 10);*
- and position of*

development in a manner that changes the description of the development to include the provision of a mix of houses and bungalows, contrary to the outline (SMD/2016/0811) which is beyond the powers provided by section 73 of the 1990 Town and Country Planning Act (as amended). The levels, types and positions of proposed dwellings would result in harm to amenity, overlooking of existing and proposed dwellings, harm to the character of the area and would fail to protect and enhance the environment and the setting of the village contrary to policies DC1(2) & (5), DC3(2), and SS1 of the adopted Staffordshire Moorlands Local Plan (2020).

5. The response of those instructing is two-fold: (1) prepare an appeal against the refusal of and (2) submit a revised section 73 application. Following a meeting with officers, it has been agreed that the aforementioned steps will be submitted no later than the 19 January 2024.
6. My advice is sought to confirm whether a section 73 application was and is the appropriate application procedure. I am happy for this advice to be shared with the Council and the Inspector who may be tasked with determining an appeal (if lodged). In providing my advice I have had sight of the Council's decision notice of February 2023, the approved plans, the refused plans, the officer's report, the decision notice of December 2023 together with my instructions.

PLANNING HISTORY

7. The relevant planning history can be summarised in this way:

- a) SMD/2023/0240 – variation of condition 1 of reserved matters approval SMD/2021/0491 for residential development of up to 40 houses – Refused 27 December 2023
- b) NMA/2023/0030 – NMA to vary condition 10 of the reserved matters approval to make it in line with change to the drainage scheme applied for under SMD/2023/0240 – Pending consideration.
- c) SMD/2023/0423 – Full planning application for 87no. dwellings – Pending consideration.
- d) NMA/2023/0020 – NMA to vary condition 1 of the reserved matters approval SMD/2021/0491 to refer to changes in building materials including bricks and tiles – Approved 19 October 2023
- e) DOC/2023/0023 – Discharge of condition application for conditions attached to outline approval – Part discharged – 6 June 2023
- f) DOC/2023/0018 – Discharge of conditions application for conditions 2, 5 and 8 of the reserved matters approval – Approved 16 June 2023
- g) SMD/2021/0491 – Reserved matters application for 40 dwellings – Approved 17 February 2023
- h) SMD/2016/0811 – Outline planning application with some matters reserved (except for access) for a residential development of up to 40 houses (resubmission of SMD/2016/0200) – Approved 2 August 2018

LEGAL AND POLICY CONTEXT

- 8. Article 5 (3) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the DMPO”) provides :

Applications for outline planning permission

5.—(1) Where an application is made to the local planning authority for outline planning permission, the authority may grant permission subject to a condition specifying reserved matters for the authority’s subsequent approval.

(2) Where the authority who are to determine an application for outline planning permission are of the opinion that, in the circumstances of the case, the application ought not to be considered separately from all or any of the reserved matters, the authority must within the period of 1 month beginning with the date of receipt of the application notify the applicant that they are unable to determine it unless further details are submitted, specifying the further details they require.

(3) Where access is a reserved matter, the application for outline planning permission must state the area or areas where access points to the development proposed will be situated.

9. Article 2 of the DMPO provides:

“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 access, appearance, landscaping, layout and scale.

10. It also provides the following definitions:

“flat” means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally

“scale” except in the term ‘identified scale’, means the height, width and length of each building proposed within the development in relation to its surroundings.

11. The NPG provides the following guidance summarising the position:

What are reserved matters?

Reserved matters are those aspects of a proposed development which an applicant can choose not to submit details of with an outline planning application, (ie they can be ‘reserved’ for later determination). These are defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as:

- *‘Access’ – 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.*
- *‘Appearance’ – the aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.*
- *‘Landscaping’ – the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features;*
- *‘Layout’ – the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.*
- *‘Scale’ – the height, width and length of each building proposed within the development in relation to its surroundings.*

Paragraph: 006 Reference ID: 14-006-20140306

Revision date: 06 03 2014

ADVICE

12. The officer’s report (undated) summarises the changes to the approved plans at paras 3.2 to 3.6.
13. The reason for refusal encompasses two elements:
 - a) A legal objection: the application proposes substantial and fundamental amendments to the scheme, changing or altering the operative part of the permission in a manner that changes the description of the development to include the provision of a mix of houses and bungalows, contrary to the outline (SMD/2016/0811) which is beyond the powers provided by section 73 of the 1990 Town and Country Planning Act.
 - b) A planning judgment objection: The levels, types and positions of proposed dwellings would result in harm to amenity, overlooking of existing and proposed dwellings, harm to

the character of the area and would fail to protect and enhance the environment and the setting of the village contrary to policies DC1(2) & (5), DC3(2), and SS1 of the adopted Staffordshire Moorlands Local Plan (2020).

14. I have no quarrel with the planning judgment objection. That is a matter for the decision maker. This advice revolves around the legal objection which I turn to now.

15. In essence, MH seeks to vary the approved plans which the Council adopted in February 2023 by altering the housing types and changing the levels on site. The Council declined to approve the variation of the approved plans on the basis that the scope of the changes would impermissibly change the description of development. Members concluded that the inclusion of bungalows was contrary to the outline permission which expressly referred to “40 houses” on the basis that the description of development did not make the provision for bungalows. Members also referred to the totality of the changes during the debate.

16. What is a bungalow?

17. It is a single-storey house. The word ‘bungalow’ is not a term of art. It does not have a hard-edged meaning. Article 2 of the DMPO provides a lengthy list of definitions. “Dwelling”, “householder”, “address” and “flat” are defined. Bungalow is not (nor is “house” as it happens).

18. I see no conflict or inconsistency between the provision of bungalows and the description of development (“*residential development of up to 40 houses*”). They are both dwellings. They can occupy the same footprint. The key difference is that a non-bungalow house would be more than one storey. Accordingly, usually, a house is taller than a bungalow. There is no merit in the argument, as far as I can see, that a bungalow enjoys a separate and different meaning in planning law to a house. The difference, in planning terms, between a bungalow house and non-bungalow house is a question of scale. Put simply: the former tends to be less imposing than the latter. This issue of scale falls squarely within the scope of a reserved matters application: article 2 of the DMPO (see above).

19. For the sake of argument, had a reserved matters application sought to vary the approved plans by providing 40 flats, this probably would be incompatible with the outline permission which authorises residential development of up to 40 houses. A flat is not a house: see para 10 herein.

CONCLUSION

20. The reserved matters application was “within scope” as it is not contrary to the outline permission. Accordingly, Members were wrong to refuse the application on the basis that the application impermissibly seeks to change the description of the development by altering the mix of houses and bungalows in a way which was contrary to the outline permission and therefore beyond the powers provided by section 73 of the 1990 Town and Country Planning Act. This argument is wrong in law. Whether the provision of bungalows is acceptable or desirable on this site is, of course, a different question for others to answer. In my view, the application does not fall outside the scope of section 73 because of the totality of the changes. The PPG is clear that there is no statutory limit on the degree of change permissible to conditions under section 73 provided that the change relates to conditions only and not to the operative part of the planning permission: reference ID: 17a-013 20230726.

21. A section 73 application was and is the appropriate application procedure for the amendments sought.

22. Nothing else occurs.

23. If I can be of any further assistance, please do not hesitate to contact me in Chambers.

JACK SMYTH

No5 Chambers

15 January 2024