

Land at Park Road, Malmesbury

ADVICE

Introduction

1. I am asked to advise in relation to an application for approval of reserved matters pursuant to planning permission granted by the Planning Inspectorate under reference APP/Y3940/W/21/3286853. I am familiar with the site as I acted on behalf of the Appellant in relation to the appeal. The site is known as Land off Park Road, Malmesbury (“the Site”).
2. Planning permission was granted at the Site for the erection of up to 50 residential units and associated development. The permission is an outline planning permission but with detailed approval in relation to access.
3. The planning permission contained a number of conditions. Conditions of particular relevance are set out as follows:
 - “1. Details of the appearance, layout and scale (hereafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved”.
 - ...
 12. No development hereby permitted shall commence on site until an Flooding Emergency Access and Egress Management Plan (the Management Plan), taking account of guidance in the Planning Practice Guidance on how to ensure safe access and egress to and from the development and including details of any gates or similar between the development and the access egress point on Park Lane and the arrangements for their access by the emergency services, has been submitted to, and approved in writing by, the local planning authority. The

access and egress provisions from the approved management Plan shall be implemented prior to the first occupation of any dwelling on the site and emergency access and egress shall be maintained in accordance with the approved Management Plan.”

4. I am asked to advise as to the scope of the reserved matters application. I am instructed that an application has been made for approval of all of the reserved matters. Separately, an application has also been made to discharge condition 12. I understand that the determination of the reserved matters application has been deferred by the local planning authority due to matters relating to the discharge of condition 12.

The Reserved Matters

5. The scope of reserved matters is set out in article 2 of the Town and Country Planning (Development Management Procedure)(England)(Order) 2015, as follows:
 - ‘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.
6. In the present case, as set out in condition 1 of the planning permission, the reserved matters are appearance, landscaping, layout and scale. The access details for the site access have already been approved.

Discharge of Conditions

7. The discharge of condition 12 is separate from the approval of reserved matters. It is well-recognised that applications for reserved matters have a specific statutory basis which is distinct from applications to discharge conditions (s92 TCPA 1990 and R (Murray) v Hampshire CC [2003] EWCA Civ 760, and article 6 of the Development Management Procedure Order).

Advice

8. For the purposes of the Town and Country Planning Act 1990 the outline planning permission is the grant of planning permission for the development permitted. It establishes the principle of development. In this case permission has been granted subject to conditions for the erection of up to 50 dwellings and the associated development. The scope of any subsequent approvals is determined specifically by the terms of the particular condition imposed.
9. The reserved matters application is defined in its scope by the definition of reserved matters (as set out above). It is subject to specific statutory status, and its own timescales with statutory consequences. An application is made under Article 6 of the Development Management Procedure Order.
10. In my opinion, there is no valid basis on which the reserved matters should be deferred or refused by reference to condition 12. If the reserved matters details are acceptable in terms of appearance, landscaping, layout and scale then they should be approved without delay given the timescales contained within the planning permission.

11. A clear demonstration of the separation of these processes is that if the reserved matters application was appealed, either for refusal or for non-determination, then matters relating to the emergency access management plan would not be before the Inspector for consideration. The application for approval of reserved matters is legally separate and distinct from the application for discharge of condition 12.
12. If there are concerns in relation to the application to discharge condition 12 this may justify seeking further details in relation to the discharge of that condition. The development pursuant to the reserved matters cannot commence in any event unless and until condition 12 is discharged.
13. However, the scope of the discharge of condition 12 is limited by the terms of the condition itself. It relates specifically to provision and management of an emergency access to address concerns as to flood risk (as referred to in paragraph 60 of the decision letter). I further understand that the statutory technical consultees raise no objection to the reserved matters application or the application to discharge condition 12. Condition 12 is not concerned with the layout of the development, which is a matter to be determined under the reserved matters approval. For example, if the internal emergency access was blocked by housing, that would give rise to an objection to the layout – not to the discharge of condition 12. The main site access is also separate, having been approved through the appeal decision.
14. Condition 12 is a negatively worded pre-commencement condition. It has the effect that no development may commence on site until the Management Plan has been submitted and approved.
15. Condition 1 is also a pre-commencement condition, but with a different time period imposed through conditions 2 and 3 which ensure that reserved matters applications are made within one year from the date of the permission.
16. It follows that in my opinion any concern of the Council relating to the Flooding Emergency Access and Management Plan should not delay or affect the determination of the reserved matters application.

17. If I can be of any further assistance those instructing me should not hesitate to contact me in Chambers.

Landmark Chambers,

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