

WALKER
MORRIS

33 Wellington Street, Leeds LS1 4DL Tel +44 (0)113 283 2500
 Fax +44 (0)113 245 9412 Document Exchange 12051 Leeds 24
 Email alison.ogley@walkermorris.co.uk Web: www.walkermorris.co.uk

Mr Scott Robinson
 Technical Director
 Taylor Wimpey North Yorkshire
 Taylor Wimpey House
 Lockheed Court
 Preston Farm Industrial Estate
 Stockton on Tees

Our ref AEO/ /TAY01802.75

Your ref 21/0156/FUL

9 December 2021

Dear Scott

Planning application for 97 dwellings at Land to the West of St Martin's Way, Kirklevington (ref: 21/0156/FUL) ("the Application").

I am instructed to advise Taylor Wimpey North Yorkshire (hereinafter referred to as "TW") in respect of this matter, in particular to consider the question of whether (on the facts of this case) there is any reasonable basis for the Application (made to Stockton Borough Council) to be refused on the grounds that there may be an alternative vehicular access available for construction traffic.

Relevant background

Outline planning permission for 'approximately 90 dwellings' ("the OPP") was granted at appeal on 10 July 2018 (the Appeal Decision). I have had sight of the Decision Letter, which directly addresses the use of adjacent residential roads (The Green and Forest Lane) by construction traffic (see, for example, DL/21 and 22). The Inspector determined that subject to a construction traffic management plan requiring the use of The Green and Forest Lane (as opposed to Strathmore Drive) for construction traffic the development would, "not have a severe impact on current highway conditions or the transport network".

I have had sight of the Transport Assessment for the OPP which confirms (paragraph 4.2) that the assessment, which was accepted by the Inspector at appeal, was based on a developing comprising of up to 100 dwellings.

In January 2021, Taylor Wimpey submitted the Application for 97 dwellings. The proposed access routes for construction traffic are identical as those proposed in the OPP. The Application was supported by its own up to date Transport Assessment and a Construction and Environmental Management Plan (dated April 2021).

I am instructed that during the determination of the Application officers asked if an alternative access could be used for construction traffic, namely to the south via an adjacent development being undertaken by Story Homes, could be explored. In order to be as proactive and collaborative as possible, TW approached the relevant landowner and were informed, at that time, that no access would be afforded to them (I confirm I have had sight of the email correspondence in question).

Importantly however, TW made clear throughout that the principle of development, and the specific issue of construction traffic utilising The Green and Forest Lane, had been determined at appeal, and accordingly, there was no proper basis on which planning permission could be refused.

The Application was reported to the Council's planning committee on 24 November 2021, with a recommendation for approval. However, members decided to defer the determination of the Application and, although (due to some confusion at the meeting itself) it was understood this was due to the construction access issue, TW's planning consultant requested confirmation of the point from the Council's planning officers.

This was indeed confirmed by way of email from Ms Elaine Atkinson, dated 1 December 2021, which states: "The application was deferred to seek clarification about the construction access and whether an agreement could be reached about the use of the existing access used by Storey [sic] Homes".

Following the deferral of the Application, the Council's planning officer approached the landowner directly regarding the possibility of an alternative access for construction traffic use, to which a rather different response was received to that previously issued to TW. The landowner states in that email, dated 8 December 2021, that: "We have had a discussion with the Parish Council where they expressed their concerns regarding the access for construction traffic relating to the Taylor Wimpey site. We fully understand their concerns and are open to the idea of accessing the site via an alternative route eg: the existing Jomast/Storey [sic] approved construction route. We hope this reply allows you to move forward".

Advice

It is well established, as a matter of law, that planning authorities should ensure consistency in the decision-making process¹. Accordingly, an earlier decision in an appeal (or indeed an earlier decision by the Council) on which a similar issue has been deliberated upon and resolved, is an important material consideration to which significant weight should be afforded.

In the present case, the issue of construction traffic utilising The Green and Forest Lane, in connection with the development, was specifically addressed by the Inspector in the Appeal Decision and found to be acceptable and in accordance with relevant planning policy.

There are no material changes between the nature or quantum of the development which was being considered by the Inspector and which is now proposed in the Application. It should be remembered that the Transport Assessment which was considered and accepted as part of the Appeal Decision assessed the impacts which would result from developing up to 100 dwellings. Nothing turns therefore on the fact that the OPP was for 'up to 90' dwellings, whilst the Application seeks permission for 97 dwellings.

Accordingly, the Appeal Decision has plainly resolved the issue regarding the acceptability of the principle of development and the issue of whether it is in accordance with policy for construction traffic to utilise The Green and Forest Lane. The issue being raised has therefore been deliberated and resolved in full.

In accordance with the legal principles already referred to, the Council should therefore proceed on the basis that 'like cases should be determined alike'. There is plainly no material planning harm (that would be capable of justifying the refusal of the Application) which would arise from the development proceeding in this way. The existence or otherwise of an alternative access has no proper bearing on the determination of the Application.

The critical question is whether the Application, as proposed, is acceptable in planning policy terms. Given the similarities between the schemes, and the up to date Transport Assessment which confirms the impacts remain acceptable, it is obvious that the Application would be in full accordance with the key provision of the National Planning Policy Framework² and should not therefore be refused on highway grounds.

¹ See, for example, *North Wiltshire DC v Secretary of State for the Environment* [1993] 65 P&CR 137.

² Now paragraph 111 of the NPPF 2021; in substance this policy has remained entirely unchanged from that which was before the Inspector at the time of the Appeal Decision.

Although I fully understand that TW are at pains to avoid a further appeal, and wish to avoid a dispute with the Council if at all possible, nevertheless, it is appropriate that I go on to consider the potential consequences should the Application be refused.

In my opinion, given the Appeal Decision and the high degree of similarity between the OPP and the Application, an appeal against refusal has a high prospect of success. In addition, it is highly likely that should TW have to appeal, that a successful award of its full costs of the same would be obtained against the Council. Indeed, the NPPG specifically references, when providing guidance on the type of behaviour which may give rise to a substantive award of costs against a local planning authority, that: "acting contrary to, or not following, well-established case law; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; and not determining similar cases in a consistent manner"³. A refusal of the Application on the basis of construction traffic access would fall squarely within all of these categories and accordingly there are high prospects of obtaining a full costs award against the Council.

I should note that the same points on prospects of appeal and costs awards apply with equal force should the Council seek to impose a planning condition to require TW to utilise an alternative access; any such condition would not meet the relevant tests and, if imposed, is likely to be subject to an appeal.

However, I am instructed that TW are willing to: i) accept a condition which requires the submission of an up to date Construction Management Plan; and ii) progress discussions with the landowner regarding the potential for another access. This is subject to the clear understanding that: i) any condition does not delay the commencement of development; and ii) that the completion of negotiations and/or the provision of an alternative access are being progressed on a goodwill basis and are not required as a matter of law, or to make the development acceptable in planning terms. Accordingly, this goodwill offer is, I understand, to be made entirely without prejudice to TW's primary position that permission for the Application cannot reasonably be refused on construction access issues.

TW would of course regret the need to progress any appeal and wishes to take all reasonable steps to assist with the Council's concerns, including entering into discussion with the relevant landowner as a goodwill gesture.

Should it be considered helpful, I confirm that this letter of advice can be shared with the Council.

Kind regards



AO Alison Ogley

Partner
WALKER MORRIS LLP

³ Paragraph: 049 Reference ID: 16-049-20140306; Revision date: 06 03 201.