



Your ref: P2021/1180
Our ref: CP0008

9th December 2022

Planning Dept
Torbay Council
Town Hall
Castle Circus
Torquay
TQ1 3DR

Attention of: W Ormsby

SENT VIA EMAIL ONLY

Dear Wendy,

**RE: DRAFT CONDITIONS FOR RESERVED MATTERS APPLICATION FOR P/2021/1180
LAND OF TOTNES ROAD, COLLATON ST MARY**

Further to the previous correspondence (including my email dated 6th December 2022), we are pleased that Torbay Council is reporting Taylor Wimpey's Reserved Matters application relating to Outline Application P/2019/0604 for approval of appearance, landscaping, layout, and scale (ref P/2021/1180) to planning committee, with a recommendation to approve.

In the face of Torbay's Council lack of a three-year housing land supply and the Government's aspiration to increase housing delivery, the applicant is eager to deliver the homes on site, as well as the significant benefits of open space, downstream flood risk reduction, play area, s106 contributions and economic benefits.

However, as explained in email correspondence the applicant considers that many of the draft conditions suggested in the committee report to be attached to the consent do not align with existing planning guidance and do not follow the relevant tests. The PPG is clear on this:

"Can conditions be attached to reserved matters applications relating to outline planning permissions?"

The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters. Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted."

Paragraph: 025 Reference ID: 21a-025-20140306 (Copperfield emphasis)

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More generally you will know that the PPG and NPPF explain:

“Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- 1. necessary;*
- 2. relevant to planning;*
- 3. relevant to the development to be permitted;*
- 4. enforceable;*
- 5. precise; and*
- 6. reasonable in all other respects.*

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply.”

Paragraph: 003 Reference ID: 21a-003-20190723

The applicant has always sought to work constructively and engage with the authority during the course of the application’s determination. However, despite a request to circulate draft conditions prior to the committee report being finalised and published (email to Scott Jones on 16th November 2022), officers failed to provide draft conditions for review. The first sight the applicant had of draft conditions was when the committee report was published on Torbay Council’s website. This approach is not aligned with the Government’s expectations of LPAs as set out in the PPG.

Following my email of 6th December 2022 and the case officer’s reply of 8th December 2022, we are pleased it is agreed that the conditions relating to **Landscaping, Levels and Under-build** and **Detailed Design** can be removed. Clarification is required on the **Ecological compliance** condition, where the statement was that this “could be removed.”

Conditions relating to Low Carbon 1, Low Carbon 2, Waste Storage and Lighting can be agreed as per the email of the 8th December 2022, provided this does not prevent the achievement of relevant Building Regulations. We are also content with the suggested conditions regarding parking provision, cycle parking and the school link as per the committee report.

However, this still leaves many conditions attached to the Reserved Matters that fail to satisfy the NPPF tests of being necessary and relevant to planning.

Indeed, while the applicant is committed to the timely delivery of the scheme and dwellings within the established five-year supply period, it is unfortunate that it could not form part of the five-year land supply calculation if such conditions are attached to the Reserved Matters. They will delay construction and frustrate the delivery of the scheme.

Within the above context the following changes to the draft conditions are sought:

Electric Parking Provision: (amend) at least one private space per dwelling which is off the adopted highway is provided. The condition could read:

'1 Electric Vehicle Charging Point per dwelling will be provided adjacent to a corresponding private parking bay. The facility shall be completed and made operational and available for use prior to the first occupation of each dwelling and maintained operational and available at all times thereafter.'

Open Space: (Remove) open space maintenance is not a reserved matter.

Materials Schedule: (amend) samples were provided to the case officer in October 2022 and the first we heard about them being unacceptable was when the report was published online. The stone and roof samples reflect Collaton St Mary, being present on properties opposite the development on Totnes Road. The materials do not demonstrably detract from the quality of the scheme, in the face of an authority having policies which are out of date and cannot demonstrate a 3-year supply. We would like to see those referred to in the condition, with an opportunity to amend if they become unavailable at a future date. Condition to read:

'The development shall proceed in full accordance with 'Proposed Material Plan 9986 PL05D' and corresponding house type plan, unless otherwise agreed in writing by the Local Planning Authority.'

Permitted Development Rights: (Remove) is not related to the Reserved Matters and was not accepted at appeal having been suggested to the Inspector by Torbay Council.

Highway Standards: (Remove) this information (i.e. construction standard of the highways) is not a matter to be reserved. In any case, it is included within a Section 38 Agreement so represents a duplication of work.

Adoptable Streets: (Remove)– this information (i.e. standard of the highways) is not a matter to be reserved. In any case, it is included within a Section 38 Agreement so represents a duplication of work.

Management and Maintenance of Estate Roads: (Remove) This is not a Reserved Matter and cannot be a condition.

Secure By Design: (Remove) this application has been subject to consultation with the relevant SBD officer already and is unnecessary.

Section 100ZA of the Town and Country Planning Act 1990 is clear that:

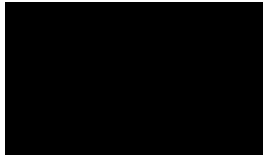
"Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition."

We contend that the Highway Standards, Adoptable Streets and Management and Maintenance of Estate Roads conditions suggested in the committee report, all have the effect of being pre-commencement conditions. These have been listed as "no works shall be carried out for the formation or construction of any road". The roads are naturally the first items to be constructed on a development site, so not being able to start them until satisfaction of a condition is, in effect, a pre-commencement condition. The applicant does not agree to the pre-commencement conditions being suggested as attached to the RM consent, along with a large list of other conditions that fail to satisfy the tests.

The applicant feels that there is still sufficient time for modifications to be provided to conditions and reported to committee on 12th December 2022 via an update paper. We would urge the Council to review the suggested conditions and their implications, removing and amending as per the suggestions aforementioned.

I look forward to hearing from you, so we are able to agree conditions prior to updates being provided to committee.

Your sincerely,



Colin Danks MRTPI
Director
on behalf of Copperfield L&P Ltd

T: [REDACTED]
E: [REDACTED]

Cc.

S Jones, TDC
D Edmondson, TDC
R Harrison Taylor Wimpey