
Housebuilder Top Tip: Phased Development - is your planning permission up to scratch?

Published 31 March 2020

Section 92 of the Town and Country Planning Act 1990 provides that a two part time condition should be imposed on outline planning permissions. One part stating when all reserved matters must be submitted by and one part stating when development must commence. If the first part is not attached as a condition then the default period of three years will apply to the submission of reserved matters for all phases of a scheme. This can have serious implications for a large scheme where the intention was to apply for phases over a long period of time. In those circumstances, unless the local planning authority agrees to add the missing condition as a section 96A non-material minor amendment, developers have no option but to submit reserved matters for all phases and hope that determination can be delayed to allow for negotiation of details nearer the time they are required or to submit a section 73 application subsequently to amend approved details. Failure to submit all reserved matters applications on time means that the planning permission for any phase for which all reserved matters have not been submitted will lapse.

The omission of the time limit condition and the omission of any condition which makes clear that reserved matters can be submitted for individual phases also has implications for CIL liability. The CIL Regulations are very clear - unless a planning permission is on its face a phased permission, CIL cannot be paid as each phase is developed out, but must be paid on the whole when chargeable development commences, subject only to any payment by instalments that may have been agreed beforehand. The recent case of *R. (on the application of Oval Estates (St. Peter's) Ltd) v Bath & North-East Somerset Council* is stark reminder of this. The residential planning permission did not make clear on its face that it was a phased permission and although the planning authority subsequently granted a section 96A application to add a phasing condition, this was done after development had commenced. Consequently, the CIL due was the whole amount rather than for the phase which had started.

Wherever possible, developers should check a draft planning permission before it is issued to ensure that conditions make clear that a phased permission is being granted with extended time periods for the submission of details. If a contract is subject to the grant of a satisfactory planning permission and such conditions are missing, developers should consider seeking amendments to the planning permission before the contract goes unconditional.

Authors



Karen Howe

Bristol

+44 (0)117 918 2168

kahowe@dacbeachcroft.com