

Loxleigh Investments Ltd v Dartford Borough Council [2019] EWHC 1274 (Ch)

The court considers the meaning of the phrase “detailed planning permission” in an overage agreement.

03 July 2019

Facts

Outline planning permission had been granted in 2012 to build five detached houses. The landowner (Dartford Borough Council) then sold the land to a developer (Loxleigh Investments Ltd). Loxleigh agreed to make an overage payment to the Council if “any detailed planning permission” was obtained to build a dwelling or a commercial building with a gross internal area in excess of 3,000 square feet.

In 2013, Loxleigh obtained approval of reserved matters under the 2012 outline planning permission and in 2015 it was granted permission to vary the external design, layout and floor plan of the dwellings. As a result, it was able to build four houses in excess of 3,000 square feet.

The Council claimed that this triggered Loxleigh's liability to pay overage.

Issue

Were the 2013 and 2015 permissions “detailed planning permission[s]” within the meaning of the overage provision?

Decision

The 2013 and 2015 permissions did trigger a liability on Loxleigh to pay overage to the Council. The phrase “detailed planning permission” included an approval or a permission granted pursuant to an outline planning permission and was not restricted (as Loxleigh argued) to a full planning permission granted from the outset.

Points to note/consider

1. Whilst, like most overage cases, this is a decision on its own facts, it is another example of how careful and precise you have to be when drafting and negotiating overage provisions and, in particular, how crucial it is to think through all potential eventualities and to draft accordingly. Although Loxleigh argued that overage was concerned purely with unpredictable future events (which was probably what Loxleigh intended here), the judge ruled that there was no rule to that effect and that was not what the clause actually said.
2. Whilst the phrase “detailed planning permission” is commonly used in overage (and other development) agreements, it is not a term that is defined in any legislation. If the parties intend it to mean just a permission granted pursuant to a full, detailed application where no matters are intended to be left outstanding, it is important to say so expressly.

Contact

David Harris

Professional Development Lawyer



david.harris@brownejacobson.com

+44 (0)115 934 2019

Related expertise