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Dear Matt

Cricklewood - Tepbrook objection

You have asked us to comment on the letter from Pinsent Masons dated 6 November 2020 which forms part of the objection to your planning application that has been submitted by Tepbrook Properties Limited.

We cannot comment on the matter of the extent of the private law matters referred to in paragraphs 1, 2 and 3 of Pinsent Masons' letter, i.e. whether or not the applicant does or does not have the requisite legal rights over the proposed point of access and/or the land on which the footpaths are proposed to be provided.

However, in relation to paragraph 4 of Pinsent Masons' letter, we note that in the case they refer to - British Railways Board v SSoE (1994) JPL 32 - the leading judgement acknowledged that planning legislation contemplated that an application for planning permission could be made by a person who did not own the land to which [part of] an application related and that the owner of any such land could object to it. However, if there were good planning reasons why the development should be allowed, the owner's objections were not necessarily a ground for refusal. There was therefore no absolute rule that the existence of difficulties, even if apparently insuperable, must necessarily lead to the refusal of planning permission. Lord Keith of Kinkel, giving the leading judgement, said:

"A would-be developer may be faced with difficulties of many different kinds, in the way of site assembly or securing the discharge of restrictive covenants. If he considered that it is in his interests to secure planning permission notwithstanding the existence of such difficulties, it is not for the planning authority to refuse it simply on their view of how serious the difficulties are."

This led to the change in the Government's guidance on the imposition of Grampian-style planning conditions which Pinsent Masons identifies. Prior to this case planning guidance used to prevent imposition of Grampian conditions unless there was a reasonable prospect of the condition being satisfied. The way the planning guidance puts it nowadays (following this court decision) is that Grampian conditions should not be used where there are "no prospects at all" of the action in question being performed within the time limit imposed by the planning permission.

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It is for these reasons that planning authorities rarely refuse planning permission based on objections about the “deliverability” of development due to private law issues raised by neighbours.

Insofar as the matters referred to in Pinsent Masons’ letter are concerned, therefore, it would clearly be lawful for a Grampian condition to be imposed preventing the development (or relevant parts of it) from being implemented until any requisite remaining legal rights over the relevant land had been secured. This would also be in accordance with the guidance in the PPG since the local planning authority cannot know whether there are “no prospects at all” of those rights being secured, notwithstanding what Pinsent Masons’ letter says. Commercial parties frequently reach agreement about private law matters on neighbouring sites, as the local planning authority will know.

Yours sincerely

A handwritten signature in black ink that reads "Town Legal LLP". The signature is written in a cursive, slightly stylized font.

Town Legal LLP