Sales of land with the benefit of outline planning permission: common sense prevails in court

A recent case (2019)[1] will have developers breathing a sigh of relief that a common sense approach has been applied to the interpretation of contracts to acquire land with the benefit of outline planning permission.

Mr Cozens-Smith was one of four owners in 2016 who sold land in Cranleigh to Bellway Homes. The contract for sale set out that the land was sold with benefit of outline planning permission 'as the same may be amended or varied from time to time and including any reserved matters thereto'. The land transfer differed in its definition of the planning permission, '... as may be amended or varied from time to time', making no reference to reserved matters.

Mr Cozens-Smith and his co-owners retained a ransom strip along the northern and eastern boundaries of the site. The land transfer contained rights for Bellway to enter onto this land to carry out works that were required to meet its obligations under the planning permission and/or S.106 and/or any infrastructure agreement.

Bellway exercised this right to build a footpath on the ransom strip which ultimately led to the claim being brought by Mr Cozens-Smith. He argued that he was not obliged to permit the construction of the footpath on the basis that the footpath formed part of the reserved matters approval not the original outline planning permission.

The judge found that, notwithstanding the wording in the land transfer, the definition of 'planning permission' included reserved matters approval. The purpose of the transfer was to transfer the site with the benefit of planning permission and in order for Bellway to implement that permission they had to obtain reserved matters approval. The judge commented on the 'absurdity' of Mr Cozens-Smith's position that Bellway could have

purchased the site for £9.65million without the ability to implement the outline planning permission.

Lessons learned

Whilst this decision was one of common sense, it makes abundantly clear that drafting of definitions in both contracts and transfers must leave no ambiguity. Otherwise developers risk having to spend time and money having arguments such as this one in court.

[1] *Cozens-Smith v Bellway Homes Limited [2019] EWHC 3222 (Ch)*