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Lucy Wootton  
The Planning Inspectorate  
3/05 Wing  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Dear Lucy Wootton,

**Appeal by c/o agent Sydney Wharf Ltd**

**Site at 40 Parker Street, London, WC2B 5PQ**

**Planning Practice Guidance 6/3/14 regarding award of costs**

Appeal against the Council's non-determination of planning application for change of use at third floor level from business floorspace (Class B1a) to residential (Class C3) and erection of 2 storey roof extension with terraces, in connection with creation of 6 (2x1, 3x2 & 1x3 bed) flats.

### **Appellant's application for an award of costs**

The appellant's grounds for the costs application can be summarised as follows.

The application is made on grounds that following submission of the appeal against non-determination, the officer report was changed from recommending approval to recommending refusal. This was a procedural error and the behaviour resulted in unnecessary expense in preparation of a rebuttal statement.

### **Summary of the Council's response**

The application was originally presented to the Development Control Committee (DCC) recommended for approval. This procedure accords with the council's delegated powers which provides that proposals for 5 or more residential units that are recommended for approval be determined by the DCC. However, the DCC resolved that the appellant's information was not satisfactory and requested additional justification. However only some information was submitted regarding (design) street views of the roof extension and a document titled 40-42 Parker St (Planning ref.2014/2113/P). The appellants provided explanations why marketing information was not required by the Committee, which broadly repeats earlier statements (section 5 of Planning Statement March 2014); and no information regarding the existing tenants intention to relocate elsewhere was submitted at all. Therefore the application was subsequently refused under delegated powers, in accordance with the Council's adopted procedures.

The following sets out the council's decision making powers and then addresses the appellant's concerns.

### ***Background to powers of decision making***

**1.0** The Council's Local Development Framework Revised Statement of Community Involvement July 2011 (RSCI) (**Appendix 1**) summarises the Council's decision making powers:

1.1 Paragraph 4.3 (*Who makes decisions on planning applications*) "The Council makes decisions on applications, taking into account the advice of planning officers, the development plan and other relevant material considerations. There are two ways in which applications can be determined:

- Delegated Powers; and
- Development Control Committee.

1.2 The RSCI, paragraph 4.4 states "Most smaller-scale proposals where no relevant planning objections have been received and most refusals of permission can be decided by powers delegated by the Council to the Director of Culture and Environment".

1.3 Otherwise applications will be determined by the DCC. These were the circumstances in this case.

1.4 The Council's decision making powers are contained within The Terms of Reference as agreed by Full Council in January 2010, Part 3 – Responsibility for Functions; **TERMS OF REFERENCE FOR DEVELOPMENT CONTROL COMMITTEE AND MATTERS RESERVED TO IT**  
Matters delegated to the Development Control Committee;

1.5 In this document it states, sub-paragraph (iii) of paragraph 3, (Consideration of the following categories of application recommended for approval):

*"(iii) the creation of five or more residential flats from either the erection of a building or the conversion, change of use or extension of an existing building"*.

The description of the appealed application noted above falls within the decision making powers of the Council's DC Committee. (**Appendix 2**)

### **Response to the appellant's application**

**2.0** The appellants have identified 2 principal reasons for the award of cost as under the following headings in the appeal form:

- a] "the unreasonable behaviour which has caused you unnecessary or wasted expense in the appeal"; and
- b] "your unnecessary or wasted expense in the appeal (not the amount, but the kind of expense)"

2.1 The Council's responses to the appellants' reasons for the award of costs are as follows:

**a] “the unreasonable behaviour which has caused you unnecessary or wasted expense in the appeal”**

There is a distinct difference between recommendations for approval as opposed to a grant of planning permission. The former involve Planning Officers making recommendations resulting from an assessment of the appellants’ submission against the Council’s policies and guidelines and other relevant matters; whilst the latter, involve the Council’s elected members (Councillors) to grant planning permission having being satisfied with Officers’ assessment and recommendation.

In this particular instance, the DC Committee requested additional information for their consideration owing to the Committee not being satisfied that all the material information was presented for officers’ consideration; but more particularly, to enable them to arrive at a decision. It should be noted that the DC Committee request for additional information prior to arriving at a decision is not unusual and should not be considered as unreasonable particularly as it addressed matters of employment and business floorspace availability. It is the prerogative of the committee to consider all relevant material information to aid their decision. The committee considered it pertinent to avail itself of information on the existing occupier of the 3<sup>rd</sup> floor business floorspace as set out in the Council’s CPG; which is considered as a reasonable request materially relevant and related to the appealed scheme.

The appellants’ failure to fully comply with the DC Committee request for further clarification and information (as set out in CPG 5, section 6.4, bullet 7 and Section 6.18 in particular regard to bullet 8); and in absence of the full complement of information the only available alternative was for the scheme to be refused in line with its procedures as set out above. The officers’ report was therefore amended as set out in para.1.7 of the Council’s delegated report which was refused planning permission under delegated authority by the Director of Culture and Environment, which is procedurally correct. The background to the recommendation for refusal of the scheme is suitably addressed in the Council’s delegated report, paragraphs 1.1 – 1.7.

The Council contend that the appellants’ request for cost to provide rebuttal statement is unreasonable owing to the need for the appellants’ to submit a rebuttal statement in any event to the inspectorate to demonstrate the degree of perceived unreasonableness by the Council.

**b] “your unnecessary or wasted expense in the appeal (not the amount, but the kind of expense)”**

The Council contends that it did not maliciously delay making a decision in respects of the appellants’ scheme; as set out in the Council’s delegated report para.1.5. The Committee having made an initial assessment of the scheme resolved that it was prudent to consider other material information. The appellant however only submitted information regarding design information; such as the street long views of the 2-storey roof extension plus explanations why marketing information is not required. It is noted that the appellants’ did not oppose this request even though officers raised no objection to the setting, detail design and the appearance of the roof extension as discussed in para.3.26 – 3.28 of the Council’s delegated report or (paras. 6.14 – 6.16 DC Committee report as

submitted by the appellants). However no information was submitted about the marketing of the 3<sup>rd</sup> floor or relating to the existing tenant of the 3<sup>rd</sup> floor.

Given the issues involved, the Council suggests that the appellants' would have submitted rebuttal statement in any event and therefore the application for costs is considered erroneous.

### Conclusion

**3.0** The Council sympathises with the appellants' view and in particular the time it took to consider the scheme. The Council also acknowledged that the appellants' right of appeal. The Council contend however, that procedurally no errors were made and therefore for these reasons outlined above, the Council would urge the Inspector to dismiss the appeal for costs.

Yours sincerely,

Hugh G Miller  
Planning Officer  
Culture and Environment Department.

**Appendix 1 - The Council's Local Development Framework Revised  
Statement of Community Involvement July 2011 (RSCI)**

**Local Development Framework**

**Revised Statement of Community  
Involvement**

**July 2011**



## Contents

1. What is the Statement of Community Involvement?
2. Our principles for involving the community
3. How we will involve the community in preparing planning policies
4. How we will involve the community in planning applications
5. Resources and review
6. Where you can get more help

### Appendices

- Appendix 1 - Statutory consultees for planning applications
- Appendix 2 - Statutory consultees for planning policy documents

## Who makes decisions on planning applications?

- 4.3 The Council makes decisions on applications, taking into account the advice of planning officers, the development plan and other relevant material considerations. There are two ways in which applications can be determined:

- delegated powers; and
  - Development Control Committee.
- 4.4 Most smaller-scale proposals where no relevant planning objections have been received and most refusals of permission can be decided by powers delegated by the Council to the Director of Culture and Environment.
- 4.5 The consultation arrangements and application of planning policy is the same whichever route is chosen.

### Pre-application discussions with applicants

- 4.6 Most applications can benefit from having planning advice before they are submitted. Pre-application discussions provide greater certainty and clarity to an applicant by identifying planning issues and requirements at an early stage, when they can influence the scheme before its submission.
- 4.7 Sometimes pre-application advice is given informally by the Duty Planner but, for larger schemes, applicants are given more formal advice, for which there is a charge. Discussions at the beginning of the process also helps make local consultation clearer and easier for all. As part of this service, the Council informs developers of relevant local amenity and residents groups, key stakeholders and Conservation Area Advisory Committees that the developers ought to contact before the application is submitted.

### Pre-application consultation

- 4.8 We strongly encourage pre-application advice and pre-application consultation for major, or potentially controversial, proposals. Pre-application consultation provides an opportunity for local communities and stakeholders to raise any issues directly with the applicant and influence their proposals.
- 4.9 The suitability of a development for pre-application consultation will normally be identified during pre-application discussions with the Council. It will usually be appropriate for schemes where:
- the proposals are likely to have a significant impact on the environment or on the local community, and
  - the nature of the development is likely to attract significant local interest.

However, we cannot require a developer to undertake pre-application discussions or pre-application consultation.

- 4.10 At the beginning of the pre-application consultation process we expect the applicant / agent to agree the extent and type of pre-application consultation with us to make sure that the consultation process proposed is suitable.
- 4.11 Where pre-application consultation is carried out, applicants should prepare a report summarising the type of consultation carried out, the key issues raised and how the scheme addresses these issues.



## Appendix 2

### Terms of Reference as agreed by Full Council in Jan 2010

#### PART 3 – RESPONSIBILITY FOR FUNCTIONS

#### **TERMS OF REFERENCE FOR DEVELOPMENT CONTROL COMMITTEE AND MATTERS RESERVED TO IT**

Matters delegated to the Development Control Committee

- 1 Authorisation of service of any notice relating to planning, listed building and conservation area and advertisement control which in the view of the Director of Culture and Environment should be considered by Committee
- 2 Authorisation of any legal or other action or proceedings relating to planning control, listed building and conservation area and advertisement control, which in the view of the Director of Culture and Environment should be considered by Committee
- 3 Consideration of the following categories of application recommended for approval:
  - (i) major development involving the construction of more than 10 new dwellings or more than 1000 sq. mtrs of non-residential floorspace;
  - (ii) minor development where this involves the erection of a building containing more than five single dwelling houses or 450 sq. mtrs of non-residential floorspace.
  - (iii) the creation of five or more residential flats from either the erection of a building or the conversion, change of use or extension of an existing building.
  - (iv) involving the change of use, the creation of or significant extension to the floorspace or hours of operation of a Class A3, A4 or A5 use;
  - (v) involving any demolition (other than minor demolition) of any listed building and the total or substantial demolition of any building in a conservation area;
  - (vi) which involve the making of an obligation or agreement under Section 106 of the Town and Country Planning Act 1990 or other legislation (“the obligation”) unless :
    - The terms of the obligation are not materially different from any previous obligation approved by the Committee in relation to the same site;
    - The obligation is required in connection with the presentation of the Council’s case in a planning appeal;
    - The obligation relates to the securing of car-free or car-capped housing within the development; or

- The obligation relates to the submission of a Green Travel Plan in relation to the development;
  - The obligation secures a Construction Management Plan in respect of the development
  - The obligation secures a Servicing Management Plan in respect of the development
  - The obligation secures a “land use swap” that does not raise significant policy issues
  - The obligation secures Local employment and Training provisions in respect of the development
  - The obligation secures payment of an Education Contribution
  - The obligation secures payment of an Open Space Contribution
  - The obligation secures Sustainability and Energy Efficiency measures in the development
  - The obligation secures minor works to the public highway or the provision of minor items of street furniture
  - The obligation secures the carrying out of other minor works of up to an estimated cost of £20,000.
  - The obligation is a Deed of Variation to a previous obligation adding a requirement for a Resident’s Liaison Group
- (vii) involving a significant departure from policy;
- (viii) submitted by or on behalf of a member of the Council (or their spouse or partner) or any Council employee (or their spouse or partner);
- (ix) where the Director of Culture and Environment has referred the application for consideration after briefing members.
- (x) applications submitted by or on behalf of a Council department for Council’s Own Development save for applications for minor development .

4 Consideration of any other application which, in the view of the Director of Culture and Environment, should be considered by the Committee.

5 Decisions on any matter relating to the functions of this Committee referred by the Director of Culture and Environment.

6 Responses to consultation by adjoining authorities on applications with significant cross borough impacts.

7 Consideration and the submission of recommendations to the Executive on the Council's Development Plan review of planning policies, draft Supplementary Guidance, and on proposed responses to consultation on proposed changes to Government Planning Policy affecting development control.

8 To receive performance monitoring information on matters within the remit of the Committee.