45 Welbeck Street
London W1G 8DZ
020 3409 7755
info@hghconsulting.com

hghconsulting.com

Planning Inspectorate
3G Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

20 February 2020

To whom it may concern,

RE: Application for Costs: Planning Appeal by Mr and Ms Munro-Peebles at 5 the Hexagon, Fitzroy Park, N6 6HR (LPA ref: 2019/0508/P)

On behalf of the appellant, Mr and Ms Munro-Peebles, I enclose an application for a full award of costs against Camden Council (CC) in respect of the above appeal against the non-determination of planning application (ref. 2019/0508/P) by CC at 5 the Hexagon, Fitzroy Park, London, N6 6HR.

The National Planning Practice Guidance (Paragraph: 30 Reference ID: 16-030-20140306) advises the circumstances where costs may be awarded. This is where:

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

The National Planning Practice Guidance (Paragraph: 031 Reference ID: 16-031-20140306) states that:

"Unreasonable behaviour in the context of an application for an award of costs may be either:

- *procedural – relating to the process; or*
- *substantive – relating to the issues arising from the merits of the appeal."*

The appellant considers that CC have behaved unreasonably and that this unreasonable behaviour has caused the appellant to incur unnecessary and wasted expense by forcing the appellant to make the appeal and appoint consultants to prepare, submit and deal with all aspects of this planning appeal. The unreasonable behaviour is substantive as it relates to the issues arising from the merits of the appeal. The appellant considers that this appeal could have been avoided had CC agreed to secure the Construction Management Plan (CMP) via a planning condition and not required it to be secured via a planning obligation.

This application for an award for full costs has been prepared on the basis of the guidance within the NPPG relating to applications for the award of costs in appeals.

Substantive unreasonable behaviour which has caused the appellant unnecessary or wasted expense in the appeal

The NPPG (Paragraph: 049 Reference ID: 16-049-20140306) provides examples of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority. The following are considered to be relevant to this application for the award of costs:

- *"preventing or delaying development which should clearly be permitted, having regards to its accordance with the development plan, national policy and any other material considerations;*

- *Requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations."*

In the following sections, each of these relevant issues is dealt with in turn.

Preventing or delaying development which should clearly be permitted, having regards to its accordance with the development plan, national policy and any other material considerations.

As evidenced in Appendix 1 (email from CC dated 5 April 2019) a Planning Officer at CC has confirmed that the authority was satisfied with the application proposals and would approve the planning application as soon as the Design and Access Statement was updated to omit a photo of a neighbouring property upon the request of that property's owner. CC therefore consider that the application proposals are in accordance with policies in the development plan and the National Planning Policy Framework (NPPF) in relation to design, impact on the Highgate Conservation Area, residential amenity and trees. On this basis the development should clearly be permitted.

The email of 5 April (Appendix 1) also made reference to CC requiring the applicant to enter into a S106 agreement to secure the approval and implementation of a CMP. CC sent a further email to the appellant on the 14 August 2019 advising that a S106 planning obligation would be required to secure a CMP and that CC would not be able to issue an approval until this matter was resolved.

Following these emails and when the appellants mortgage lender advised that they would not agree to be a signatory to a S106 agreement for a CMP, the appellant queried the need for the CMP to be secured by a planning obligation. The appellant asked officers at CC if the requirement for a CMP could be dealt with via a planning condition. The Council's solicitor continued to take the view that the only way that the CMP could be secured was via a planning obligation.

As a result, CC withheld approval of the planning application and the appellant could not move forward with the scheme. It was at this stage (November 2019) that hgh Consulting were instructed to assist with securing the planning permission. hgh discussed the matter with CC officers and set out the case that the requirement for a CMP could be dealt with via a planning condition and that a planning obligation was not required. The Council disagreed and as such the appellant has appealed the scheme on the basis of non-determination of the planning application.

As explained in section 7 of the appellants statement of case and evidenced at Appendix 1, it is only the requirement of CC for a CMP to be secured via a S106 obligation that is preventing CC from approving the planning application.

The appellant has already prepared an outline CMP and consulted with the Fitzroy Park Residents Association (FPRA) and demonstrated that they are willing to submit a full CMP using CC's template, secured by a planning condition.

As demonstrated within Section 7 of the appellants statement of case, there is no policy requirement within the adopted development plan that Construction Management Plans must be secured via a legal agreement. Policy A1 of the Local Plan sets out the circumstances when a CMP is likely to be required. The reasoned justification to the policy sets out that a CMP will *"usually be secured via planning obligation"* and that *"..financial contributions and monitoring fees may also be sought if necessary."*

As addressed in Section 7 of the appellants statement of case and below the appellant considers that the requirement for a CMP does not meet the tests for planning obligations in the NPPF (para. 56) and CIL regulations (Regulation 122(2).

The NPPG is a material consideration in the determination of the appeal. Paragraph 023 of the NPPG advises that planning obligations should not be used in the case of residential extensions. This has been confirmed by MHCLG (Appendix 2)

In summary, the appellant considers that CC has prevented a development that should clearly be permitted through requiring the appellant to secure a CMP via a planning obligation, which in the appellants view could be secured via a planning condition. There is no requirement in the statutory development plan for a CMP to be secured via a planning obligation. The requirement for a planning obligation to secure a CMP fails to meet the tests in paragraph 156 of the NPPF and Regulation 122(2) of the CIL Regulations. The NPPG is a material consideration, which the decision maker should consider in the planning balance and this clearly states that planning obligations should not be sought on residential extensions.

If CC had adopted this approach and allowed the draft CMP to be secured by planning condition, it is almost certain that this planning application would have been approved and this planning appeal would not be necessary. The unnecessary cost that our client is having to incur due to the unnecessary delay of issuing the planning permission by CC and forcing them to appeal on the basis of non-determination could have been prevented.

Requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations.

The appellant considers that the requirement for the appellant to enter into a planning obligation to secure a CMP does not accord with law or relevant national policy in the NPPF on planning conditions and obligations.

Paragraph 54 of the NPPF states: *"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."*

Paragraph 55 of the NPPF advises that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Paragraph 56 of the NPPF states that:

> *"Planning obligations must only be sought where they meet all of the following tests:*
>
> *(a) necessary to make the development acceptable in planning terms:*
>
> *(b) directly related to the development; and*
>
> *(c) fairly and reasonably related in scale and kind to the development."*

These tests are also set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010.

As demonstrated above and within the appellants statement of case, paragraph 54 of the NPPF is clear that planning obligations should not be sought where such mitigation can be secured via a planning condition. Paragraphs 7.46 to 7.55 of the appellant's statement of case demonstrate that a CMP can be secured via a planning condition and satisfies all of the criteria for planning conditions as set out in para. 55 of the NPPF.

It is demonstrated in the appellants statement of case that the Council's requirement to secure a S106 agreement for a CMP does not meet all of the three tests set out in paragraph 56 of the NPPF and Regulation 122(2) of the CIL Regulations 2010.

A CMP can be secured by a planning condition, which is not unusual for developments of this scale and would meet all six tests for the imposition of a planning condition set out in paragraph 55 of the NPPF. The requirement for a CMP to be secured by a planning obligation is not therefore necessary to make the development acceptable in planning terms.

The requirement for a planning obligation for the preparation of a CMP and subsequent monitoring is not fairly and reasonably related in scale and kind to the proposed development. As set out in the appellants statement of case the development is a small-scale extension to an existing property that will be constructed in a single phase. No significant or harmful impacts are anticipated from the construction process. It is not normal for a CMP to be required for such a small scale development and there is no need for the Council to monitor any part of the construction process.

It is also considered that a monitoring fee of £3,136 amounting to over 50 hours of officers time would be unnecessary and unjustifiable for a householder scheme comprising 49sqm of new development which is highly unlikely to take more than 16 weeks to construct. It is considered that a monitoring fee for an extension of 49sqm would fail to meet the tests set out at paragraph 56 of the NPPF, namely that the fee would not be necessary to make the development acceptable in planning terms, and that it would not be fairly and reasonably related in scale and kind to the development.

In summary, the appellant considers that CC have sought to require the appellant to enter into a planning obligation for a CMP which does not accord with Regulation 122(2) of the CIL Regulations or paragraphs 54 to 56 of the NPPF, on planning conditions and obligations. CC have in the appellant's view behaved unreasonably in respect of this matter.

Summary and Conclusion

As highlighted above and in section 7 of the appellants statement of case, it is clear from paragraph 023 of the NPPG that a planning obligation should not be sought from the proposed development as it comprises an extension to an existing home.

Paragraph 54 of the NPPF in addition to accompanying text in the Camden Local Plan, CPG and guidance in the NPPG makes clear that planning obligations should not be sought where such mitigation can be secured via a planning condition. The appellant has demonstrated that the requirement to prepare and submit a CMP for approval and to carry out the proposed development in accordance with the CMP satisfies all of the tests for planning conditions set out in the NPPF. A planning condition would satisfactorily overcome any concerns raised by the Council in respect of construction impacts.

The requirement by CC to secure a CMP via a planning obligation fails the tests set out in paragraph 56 of the NPPF and s.122 of the CIL Regulations.

The appellant considers that the Council has behaved unreasonably with respect to the substance of the matter under appeal. Numerous proposals of a similar scale are submitted each year across England and it is uncommon for CMPs to be required for such small scale developments. The appellant has no objection to the principle of providing a CMP however considers that this should be secured via condition and not via a legal agreement.

The unreasonable behaviour of the local planning authority has resulted in unnecessary and unexpected expense to the appellant of employing consultants to prepare, submit and deal with all aspects of this planning appeal. There has also been a prolonged period of concern and uncertainty for the appellant in relation to the appeal site.

For the reasons set out above, it is considered that a full award of costs should be made to the appellant based on the substantive unreasonable behaviour of the local planning authority.

I trust that you have sufficient information to determine this costs application, however if you have any queries or require any further information please let me know.

Yours sincerely

Sarah Ballantyne-Way
Director
hgh Consulting

020 3409 7755

Appendix 1: Email from CC dated 5 April 2019

From: Meynell, Charlotte [mailto:Charlotte.Meynell@camden.gov.uk]
Sent: 05 April 2019 12:09
To: Mathew Witts <mathew.witts@chrisdyson.co.uk>
Subject: RE: 2019/0508/P - 5 The Hexagon, Fitzroy Park

Dear Mathew,

Thank you for your email and apologies for not getting in touch about this application earlier this week.

I am now happy with the revised drawings and ready to recommend the application for approval. However, please note that you will not receive the final decision notice until the s106 Legal Agreement for the required Construction Management Plan has been finalised. I instructed Legal Services to draft the s106 agreement at the start of this week after I received the formal comments from the Transport Planner, and so they should be in contact next week if you haven't heard from them already.

Thank you for sending me the revised drawings. I note that you have included a proposed aerial view drawing as a revision of the originally submitted front rendered elevation. Please can you confirm whether this was intentional to superseded the four proposed rendered elevations, or if you would like to submit revised versions of these.

Please can you also send me a revised Design and Access Statement which includes the revised drawings of the side extension.

I will recommend the application for approval as soon as I receive the amended Design and Access Statement.

Kind regards,

Charlotte Meynell
Planning Officer
Regeneration and Planning
Supporting Communities
London Borough of Camden

Telephone: 020 7974 2598
Web: camden.gov.uk
2nd Floor
5 Pancras Square
London N1C 4AG

Appendix 2: Email from MHCLG November 2019

hgh

Sarah Ballantyne-Way <sballantyneway@hghconsulting.com>

RE: Planning Obligations NPPG

CIL <CIL@communities.gov.uk> 19 November 2019 at 11:13
To: Sarah Ballantyne-Way <sballantyneway@hghconsulting.com>

Hi Sarah

Yes the change was made to ensure consistency across CIL and S106.

Thanks

Harriet

From: Sarah Ballantyne-Way <sballantyneway@hghconsulting.com>
Sent: 14 November 2019 10:23
To: CIL <CIL@communities.gov.uk>
Subject: Re: Planning Obligations NPPG

Dear Harriet,

I have a further query in relation to the below. Was the change made so that it is in line with the CIL regulations? I.e. that extensions/ annexes are not CIL liable (below 100sqm)?

Many thanks

Sarah

On Tue, 12 Nov 2019 at 12:57, CIL <CIL@communities.gov.uk> wrote:

> Hi Sarah
>
> The guidance refers to ‘planning obligations’. It does not specify affordable housing contributions.
>
> Thanks
>
> Harriet
>
> Developer contributions team
>
> Planning Infrastructure Division
>
> Ministry of Housing, Communities & Local Government
>
> 2 Marsham Street

London SW1P 4DF

From: Sarah Ballantyne-Way <sballantyneway@hghconsulting.com>
Sent: 12 November 2019 11:13
To: CIL <CIL@communities.gov.uk>
Subject: Re: Planning Obligations NPPG

Hi there,

Thank you for your response. Please could you confirm whether this applies only to affordable housing contributions, or to all S106 obligations?

Many thanks

Sarah

On Tue, 12 Nov 2019 at 11:00, CIL <CIL@communities.gov.uk> wrote:

> Dear Sarah
>
> The previous guidance has been amended and replaced by the version published 1 September 2019. The version dated 1 September 2019 is the most up to date guidance on this issue and it says:
>
> > *Planning obligations should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.*
>
> Kind regards
>
> Harriet
>
> Developer contributions team
>
> Planning Infrastructure Division
>
> Ministry of Housing, Communities & Local Government
>
> 2 Marsham Street
>
> London SW1P 4DF

From: Sarah Ballantyne-Way <sballantyneway@hghconsulting.com>
Sent: 11 November 2019 11:09
To: CIL <CIL@communities.gov.uk>
Subject: Planning Obligations NPPG

Hi there,

I have a query about the purpose of a recent change to the NPPG at paragraph:023 which was made in September 2019.

Paragraph: 023 Reference ID: 23b-023-20190901 sets out the specific circumstances where contributions through planning obligations should not be sought from developers. This paragraph has recently been amended (1st September 2019) and now states specifically:

"*Planning obligations should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.*"

Previously, this paragraph related only to affordable housing, as follows:

"*Affordable housing contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home."*

I'd be grateful if you could confirm whether this still applies only to affordable housing contributions, or whether it should be read that planning obligations should not be sought from developments consisting of residential annexes or extensions.

I look forward to hearing from you.

Kind regards

Sarah

.--

Sarah Ballantyne-Way

Director

Planning &
Development
Services

45 Welbeck Street, London W1G 8DZ

020 3409 7755 | 07766311513

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.com

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Sarah Ballantyne-Way

Director

Planning &
Development
Services

45 Welbeck Street, London W1G 8DZ

020 3409 7755 | 07766311513

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