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2019/0508/5 The Hexagon - appeal 3247384

1 message

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To: Sarah Ballantyne-Way <sballantyneway@hghconsulting.com>
Cc: "English, Rachel" <Rachel.English@camden.gov.uk>

15 May 2020 at 16:31

Dear Sarah

We have now received counsel advice, which supports the Council's position. I have set out the summary below. Please note that Rachel English is the new case officer (copied in).

The summary of Counsel advice

The relevant policy background:

- Camden Local Plan 2017 and the Camden Planning Guidance, and in particular the Local Plan examples of where a Construction Management Plan (CMP) may be sought, such as "developments with poor or limited access on site" and "developments that are accessed via narrow residential streets" and the Local Plan's paragraph 6.15 stating that the need for a CMP will be assessed on a case by case basis".

The use of planning obligations or conditions for a CMP:

- It would be inappropriate to use a condition (such as a standard condition for Construction Method Statement to manage construction impacts within a construction site), as it is a matter of law that a planning condition cannot seek to control matters outside the applicant's control (including the use of the highway). A Grampian style condition would not get around this restriction as the compliance element of the wording would still clearly be outside the scope of what a condition could lawfully secure and would be unenforceable.
- Planning obligations can address more than a planning condition can achieve (eg. restrict the development or use of land, require sums of money to be paid in order to make the development acceptable in planning terms).
- Most of the development in Camden takes place on constrained sites within heavily built-up areas and as such will generally have off-site impacts on the highways which under Camden's policies need to be managed through a CMP secured under a legal Section 106 Agreement (s106 agreement).
- Camden's s106 CMP wording, which requires an activity to cease on a site owned by a party if an off-site requirement is not complied with, is commonplace in s106 agreements entered into by planning authorities and is in line with Camden's guidance (Amenity CPG).
- The PPG guidance on the use of planning obligations does not change the above, and it is an illustration of the need to take all of the tests into account when considering the use of planning obligations.

Appellant's interpretation of the change that has been made to the National Planning Practice Guidance (PPG) (in Paragraph: 023 Reference ID: 23b-023-20190901):

- Most of the paragraph 023 and the related part of the NPPF deal with affordable housing, so the addition can be read simply as a confirmation that the requirement for a contribution to affordable housing from the development of a new residential annex or extension to an existing home would not normally meet the tests in CIL reg.122;

- There has not been any change in policy – it has always been the case that most small-scale residential additions will not need a planning obligation to make them acceptable in planning terms, and that an obligation must be ‘fairly and reasonably related in scale and kind to the development’. It would be wrong to suggest that the email (12 November 2019) from MHCLG goes further than that.
- As courts have confirmed, the PPG is not a definitive statement of government policy, and is a less formal document than the NPPF. It is intended, as its name suggests, to be a broad statement in national guidance not policy and it must therefore be considered in that light (*R (oao Solo Retail) v Torridge DC* [2019] EWHC 489 (Admin)) and to be applied to local circumstances in the context of the Camden Planning Guidance.

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Past appeal decisions:

- In terms of the Appellant's reliance on three appeal decisions in the Camden area, two of these decisions are old and pre-date the current policy (Local Plan 2017) and all three appeals are confined to their own facts.
- There are a large number of more recent appeal decisions which support the Council's position, which have not been considered. One such example of the Planning Inspectorate's (PINS) positive view of the Council's approach to securing CMPs via s106 obligations, is the recent appeal decision for the development of a single dwelling at [82 Fortune Green Road](#) (ref: APP/X5210/W/19/3225902; 3 July 2019). PINS decision noted that the construction would have impacts beyond the application site in a predominantly residential area and the CMP would require more detail than is normally contained in and controlled by a condition and therefore a planning obligation would provide a better mechanism of control (paragraphs 20-22).

Conclusion

- The local plan context and the point about how far a condition can control the use of land outside the appeal site need to be considered in the context of the specific details of the appeal site (eg. cul-de-sac private road location). To The Council's conclusion to require the CMP to be secured by a planning obligation in light of the off-site impacts of the proposed construction and need to monitor it in this sensitive location is in line with the Local Plan and the relevant Camden Planning Guidance.

Costs

Further to previous correspondence, the Council is looking at preparing a costs application against the Appellant. As noted previously, the Council's costs in relation to the original negotiations which have been completed on 12 September 2019 when the Council issued engrossments as per the Appellant's request have not been paid. Furthermore, the Council then had to incur further costs throughout correspondence with the appellant regarding the mortgage clauses and explaining why the mortgagee should be a party, and later all the correspondence with you and work carried out by officers in providing responses in relation to your comments on the NPPG. Additionally, the Council has incurred further costs in relation to the appeal, including all the additional correspondence with yourself and instructing of counsel.

If the Appellant withdraws the appeal and its costs application against the Council by 25 May 2020, the Council will agree to absorb the costs incurred to date (apart from the £769.08 as to our legal fees and £12.00 for Land Registry Charges in relation to the preparation of the s106 agreement). However, if the appeal will go ahead, the Council will be submitting its costs application when the dates are confirmed by PINS.

Regards

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