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Planning Inspectorate
Temple Quay House
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27 May 2020

Appeal: 5 The Hexagon, Fitzroy Park, London, N6 6HR

APP/X5210/W/20/3247384

Dear Sir/ Madam,

I am writing to provide additional information for the above appeal. I would be grateful if this information is put on the appeal file and brought to the attention of the Inspector. This is following communication between ourselves as agent to the appellant with the local authority in respect of the appeal and our efforts for a continued dialogue to see if the matters of disagreement could be resolved.

Correspondence between both parties is attached.

The most recent correspondence from the Council, dated 15 May 2020 (appendix 3) follows discussions with the Council's solicitor regarding the case both pre and post submission of this planning appeal and sets out a purported summary of the legal advice received by the Council. It also incorporates a request that the appellant withdraws this appeal and their application for costs, otherwise the Council will apply for costs incurred during the application period, and in regard to the appeal.

In the first instance, we wish to respond to the Council's purported summary of their legal advice. This is only claimed to be a summary, and we note that the Council may have 'cherry picked' the advice they have presented. Nevertheless, as this is a householder appeal, there will not be an opportunity to respond to the Council's Statement of Case and we therefore respond, overall, to the points raised below.

Use of Planning Obligations or Condition to secure a Construction Management Plan

The Council appear to be stating that the only way to secure a Construction Management Plan is via a S106 Agreement as a condition cannot control matters outside the applicant's control i.e. the use of the highway.

The appellant considers that a condition would secure a Construction Management Plan, which is entirely in the control of the applicant, in agreement with the Council. The Construction Management Plan details how construction activity will be managed which will include transport to the site by builders and arrangements for delivery of materials. Such Plans have previously been secured via condition in the borough (see appeal decisions at Appendix 9 of Statement of Case) and it is normal practice in other London Boroughs including for major and phased developments that require considerable building activity onsite compared with a householder extension (that would have relatively few deliveries, a short build programme and a small number of builders/trades people on site at any one time) (see Appendix 8 of Statement of Case).

It is difficult to see how a S106 Agreement can result in a more effective method of securing and enforcing a Construction Management Plan than the imposition of a planning condition. To enforce a S106 Agreement, the Council would need to either serve an injunction, which would need to be approved by a judge, or via a contractual remedy. For a modest house extension, both these remedies are considered to be draconian, time consuming and potentially ineffective if a judge decides they are disproportionate.

A condition on the other hand has a whole slew of enforcement remedies at the Council's disposal to ensure compliance, including Stop Notices.

The only matter that a S106 can secure which a condition cannot is a payment. This matter is addressed at paragraphs 7.40 – 7.45 of the Statement of Case.

It appears that the difference between the parties lies in whether a condition provides sufficient certainty to enforce the Construction Management Plan for a modest house extension over a circa 4 month build period or whether this can only be achieved via a S106 Agreement. It remains the appellant's view that the Council is yet to provide any compelling reason as to why the Construction Management Plan cannot be secured via condition.

PPG

All points raised relating to the PPG are already set out in the Statement of Case.

The 1st September 2019 amendment to the PPG makes plain that the Government does not consider it appropriate that residential extensions should be the subject of planning obligations. As set out in the Statement of Case, it is for the decision maker to decide on the weight to be applied to the PPG; nevertheless, the Government's intent is clear, and this is recent policy which post-dates all elements of the statutory development plan. This is a material consideration which the appellant considers should carry significant weight.

Appeal Decisions

The appeal decisions referenced in the appellant's Statement of Case provide examples of where Inspectors have decided that it is unnecessary to secure a Construction Management Plan via S106 Agreement and that a condition would be appropriate. These decisions are contrary to the Council's assertion that it is inappropriate to use a condition for such purposes.

It is acknowledged that each scheme is to be considered on its own merits, and, indeed, the example provided by the Council at 82 Fortune Road would have itself been considered on its own merits. I note that it relates to the demolition of a 125sqm storage/ restaurant building and the erection of a new dwelling – a substantially larger proposal and not a householder scheme.

Costs

The Appeals Guidance (Paragraph: 033 Reference ID: 16-033-20140306) is clear – costs cannot be claimed for the period during the determination of the planning application.

The majority of the Council's complaint relates to discussions which took place during the planning application process. Such discussion is normal practice and is covered by the planning application fee. Negotiations halted following an email from the Council on 19 November advising that they would seek to retrieve costs from the applicant should further queries be raised (see Appendix 1).



Following the submission of the appeal, the appellant sought to re-engage with the Council. The Council requested sight of the appellant's legal advice. The appellant has not referred to this legal advice in their Statement of Case and decided, under client privilege, not to share this as it contained confidential advice outside the scope of this appeal. The Council's response (Appendix 2) once again suggested costs would be sought if the legal advice was not forthcoming.

The most recent email (Appendix 3) also suggests that costs will be sought should the appellant not withdraw both the appeal and costs application.

It is the appellant's case that they have sought to deal with the Council in a positive manner throughout the process, having sought pre-application advice, agreed to the principle of a S106 Agreement, paid the S106 monies in advance, provided a draft Construction Management Plan, and suggested a solution to issues raised in regard to the objection raised by their mortgage provider.

Nevertheless, and despite the aggressive tone employed by the Council in their correspondence, which verges on bullying, the appellant is willing to withdraw their application for costs, as a gesture of goodwill and in their continued spirit of cooperation. They do however reserve the right to re-instate the application should the Council decide to pursue a costs application.

Do not hesitate to contact me should you require any additional information or clarification.

Yours sincerely,

Sarah Ballantyne-Way

Director

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