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Date 15<sup>th</sup> June 2020  
Your Ref: APP/X5210/W/20/3247384  
Our Ref: 2019/0508/P

Dear Ms Day,

**Town and Country Planning Act 1990**  
**Appeal by Miss Rachel Munro-Peebles**

**Site Address:** 5 the Hexagon, Fitzroy Park, London, N6 6HR

**Proposed development:** Erection of single storey front extension, two-storey rear extension, and single storey side and rear extension to replace existing garage; replacement of front, rear and side windows and doors and front cladding; installation of 2 x rooflights to main flat roof.

**1.0 Response to Appellant's application for costs dated 20 February 2020**

1.1 This is the Council's formal response to the Appellant's application for full costs against the Local Planning Authority dated 20 February 2020, having regard to the

further submissions made by the Appellant on 27 May 2020 and the Council's response on 9 June 2020.

1.2 The Appellant alleges that the Local Planning Authority has behaved unreasonably and that unreasonable behaviour has caused the Appellant to incur unnecessary expense by forcing the Appellant to appeal and appoint consultants at cost. The Appellant considers that the unreasonable behaviour is substantive as it relates to issues arising from the merits of the appeal in relation to the Council's request for submission of a Construction Management Plan (CMP), to be secured via Section 106 legal agreement (S106 Agreement).

1.3 In particular, the Appellant considers that the Council's behaviour falls within the following examples of unreasonable behaviour (National Planning Practice Guidance (NPPG), paragraph 049):

- *“preventing or delaying development which should clearly be permitted, having regards to its accordancy 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.”*

1.4 The Council does not accept that it has behaved unreasonably as alleged by the Appellant, or at all or that its conduct has caused the Appellant to incur unnecessary expense. Without prejudice to these contentions, the Council makes the following submissions in relation to both of the interrelated issues (examples of unreasonable behaviour) raised in the Appellant's application for costs.

## **2.0 The Council's conduct during S106 Agreement negotiations**

2.1 The Appellant submitted a planning application (ref. 2019/0508/P) for *“the erection of single storey front extension, two-storey rear extension, and single storey side and rear extension to replace existing garage; replacement of front, rear and side windows and doors and front cladding; installation of 2 x roof lights to main flat roof”*. The Council resolved to grant planning permission conditionally subject to the signing of a S106 Agreement. Whilst the Council considers all other aspects of the planning application to be acceptable and has made a recommendation of approval, a CMP and monitoring fee was considered an essential part of the approval, considering the site constraints.

2.2 The site is located on a private road where various developments have either been approved or are currently being considered and the Council considers it essential

that the cumulative impacts of construction can be properly mitigated. The Council considers that planning permission cannot be granted unless a CMP together with monitoring fee is secured via planning obligation. The Appellant was notified on 5<sup>th</sup> April 2019 via email that a CMP is required, to be secured via S106, and that the Council's legal team had been instructed.

2.3 The Council's Legal team prepared a S106 Agreement requiring the Council's standard CMP pro-forma obligations and payment of the monitoring fees. Planning officers also instructed the Legal team that a due reference needed to be made to consulting the Fitzroy Park Residents Association (FPRA) on a draft CMP prior to any CMP being submitted to the Council for approval. The reference to the FPRA was required to be made as Fitzroy Park is a private road and the Council has used a consistent approach of referring to the FPRA consultation and / or FPRA CMP Protocol in its Section 106 agreements in relation to the previous developments to the other properties located on this road. Accordingly, clause 2.4(vii) was included in addition to the Council's standards CMP clauses in the attached S106 Agreement.

2.4 The Council's Legal Team provided the draft S106 Agreement to the Appellant's agents on 14 August 2019 and after the Appellant provided an undertaking to pay the Council's fees in relation to the preparation of the agreement and confirmed that the agreement was acceptable, the Council issued the engrossments on 13 September 2019.

2.5 On 18 September 2019 the Appellant informed the Council that her lenders were refusing to sign the s106 Agreement. Accordingly, the negotiations had to recommence and the Council engaged in further correspondence with the Appellant to set out its reasoning both for the S106 Agreement and the requirement for the mortgagee to be a party. The Council does not generally negotiate with mortgagees as it is an applicant's responsibility and it would be inappropriate for the Council to engage in negotiations with other parties such as mortgagees on behalf of applicants for planning permissions. However, to assist the Appellant, the Council responded to the queries from the Appellant's mortgagee and suggested solutions, such as new mortgagee, which other applicants in similar situations have previously found helpful (Council's correspondence of 11 October 2019 with attachments is provided with this letter).

2.6 On 31 October 2019, the Appellant's new agent emailed the Council to raise a further issue, in relation to a recent change to the NPPG (Paragraph: 023 Reference

ID: 23b-023-20190901), which in their view meant that no planning obligations could be sought for residential extension or annexes. This has led to further discussions between the Council and the Appellant and further work having to be carried out by the Council's Planning Policy and Legal teams to provide a detailed response to the Appellant on the Council's position in relation to the NPPG issue raised by the Appellant.

2.7 On 16 December 2019, the Appellant's agent requested an extension of time until 9 January 2020, as the statutory expiry date for the planning application was 25 March 2019. The Council agreed to this extension with a view to settling the outstanding issues with the Appellant in January 2020. However, the Appellant did not provide any further comment to the Council until 28 February 2020, when the Appellant's agent informed the Council that an appeal for non-determination was submitted to the Planning Inspectorate on 20 February 2020.

2.8 It should be noted that the Appellant did not dispute the requirement for the securing of a Construction Management Plan via S106 legal agreement, nor did it raise any issues with the Council's standard approach to securing CMPs until the Appellant's mortgage lender advised that they would not agree to be a signatory to a S106. As the Council understands, the Appellant does not object to the principle of providing a CMP but seeks to secure it via condition and not legal agreement.

2.9 In summary and as set out above, the Council has behaved in a reasonable manner and attempted to settle the outstanding issue of securing the CMP and associated monitoring fee as a planning obligation with the Appellant over many months, to try to avoid this appeal.

### **3.0 Material considerations and requirement to enter into the S106 Agreement**

3.1 The Council has had regard to the guidance in the National Planning Practice Guidance (NPPG) regarding the awarding of costs in appeals, in its response to the Appellant's application for costs. Of particular importance for this cost application are paragraphs 030 to 032, 036, 038, 046 to 050 of the NPPG. The Appellant considers that the submission of a CMP should be secured by condition and not a planning obligation, as in their opinion there is no policy requirement within the Local Plan for CMPs to be secured via S106 Agreement.

3.2 The Appellant has submitted email correspondence between its agent and the Ministry of Housing, Communities and Local Government starting from 27<sup>th</sup> November 2019, to support the Appellant's interpretation of paragraph 023 of the NPPG which was amended in September 2019. The Council considers that the paragraph 023 is a broad statement in national guidance, which must be applied having regard to the specific circumstances of this case and the specific policies that apply, in particular paragraph 6.16 of the Camden Local Plan and pages 11 and 12 of Camden Planning Guidance (Transport), which clearly set out the Council's approach to securing CMPs, via planning obligation.

3.3 The Council will set out its substantive arguments in terms of the relevant policies and material considerations in detail in its Statement of Case.

#### **4.0 Summary of the Council's position on the Appellant's application for costs**

4.1 The Council has behaved in a helpful and reasonable manner, both during the determination stage and the appeal stage, which can be evidenced by the following:

- i) the Council gave the Appellant ample opportunity to resolve its issues with its mortgagee, including agreeing to an extension of time;
- ii) the Council provided its detailed reasoning in relation to the NPPG issue raised by the Appellant after the S106 Agreement has already been agreed;
- iii) during the appeal stage, the Council shared the summary of its legal advice as a courtesy with a view of having a more informed discussion, notwithstanding the Appellant's refusal to share its legal advice. The Council was hopeful that this would assist the parties to reach a settlement.

4.2 The Council has also made an offer to absorb any appeal related costs of its own if the Appellant withdrew the appeal. This offer was not accepted and accordingly, the Council will be submitting its own costs application with its Statement of Case.

4.3 The Council has behaved entirely reasonably in exercising its judgement in assessment of the application, in accordance with the Planning Practice Guidance. The Council will substantiate its full position on requiring the planning obligation to be secured under a Section 106 agreement in the forthcoming Statement of Case.

4.4 Consequently, it is submitted that no unreasonable behaviour has been demonstrated and the Inspector is respectfully requested to dismiss the Appellant's application for costs.

If you wish to discuss anything further, please do not hesitate to contact me.

Yours sincerely,

Rachel English

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