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Zoe Day  
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4<sup>th</sup> August 2020

Dear Ms Day,

**5 the Hexagon, Fitzroy Park, Highgate, London, N6 6HR**

**RE: Planning Appeal by Ms Munro-Peebles (PINS Ref. APP/X5210/W20/3247384) - Response to LPA application for costs**

On behalf of the appellant, we are writing to respond to the Council's application for costs in respect of this appeal.

We would re-iterate comments made in the appellant's statement of case and in other correspondence to the Inspector that the appellant is applying for planning permission for a house extension. The appellant is homeowner who simply wants to secure planning permission for what is an uncontentious house extension quickly in order to proceed with the proposed development.

The appellant originally proceeded to progress with a s.106 to agreement to secure a CMP as required by the Council. It was only at the point that her mortgage provider refused to be party to the s.106 agreement that she then sought professional planning advice as she could not agree a way forward with the Council which would satisfy her mortgage provider's requirements.

The advice provided was that the Council's policy is not absolute in terms of requiring that CMPs are secured via s.106 and that, in any event, recent changes to government guidance<sup>1</sup>, which post-dated the Council's Local Plan and CPGs, confirmed that householder applications should not be required to enter into s.106 agreements. Furthermore, it is normal practice in other London Borough's for CMPs to be secured via condition, including for much larger schemes.

The appellant continued to try and negotiate with the Council to secure the CMP via a planning condition making these valid planning arguments as she just wanted secure planning permission and avoid the need to appeal with the associated costs and substantial time delay.

The Council refused to even consider the possibility that a CMP could be secured via a planning condition as is common in all surrounding London boroughs. At this point the appellant had no other choice but to appeal on the basis of non-determination. Even following the submission of this appeal, the appellant continued to seek to negotiate with the Council to see if an appeal could have been avoided. However, the Council refused to consider this

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<sup>1</sup> Paragraph: 023 Reference ID: 23b-023-20190901



approach, and continuously threatened the appellant with costs if she pursued her appeal, even when the appellant offered to retract her costs application.

Had the appellant not made this appeal, the Council would have refused the planning application anyway and the appellant would have had to appeal on the basis of the refusal. It is evident from the officer's report attached to the Council's statement of case that the Council would have refused the application on the basis that a s.106 agreement had not been secured for the CMP.

The Council, in their application for costs, consider that the appellant has behaved unreasonably in respect of the merits of the case which has caused the Council unnecessary and wasted expense. Their reasons appear to be: that the ground of appeal has no reasonable prospect of succeeding; too much reliance has been placed on the guidance in the NPPG; the proposals are not in accordance with the development plan policies that apply to the case; and there are other examples where a CMP has been considered to be necessary.

The appellant will not set out their full grounds of appeal again in this response that are set out in the appellant's statement and subsequent correspondence to the Inspector. However, it is up to the Inspector to determine the appeal and consider the merits of the case. The appellant has prepared a fully justified planning case for securing a CMP for this householder extension via condition, which is not contrary to planning policy, is in accordance with the NPPG, and for which there is precedent both within LB Camden and its surrounding boroughs.

The NPPG clearly advises that planning obligations should not be sought for householder extensions and the interpretation of this part of the policy has been confirmed by a civil servant at MHCLG. Furthermore, it is up to the decision maker to determine the weight to be ascribed to the NPPG. As set out in the response to the Council's Statement of case, none of the policies set out in the Council's suggested reason for refusal require CMP's to be secured via s.106 agreements. The appellants case also explains very clearly the reason why the CMP can be secured via a planning condition in accordance with policy in the NPPF and in line with other London boroughs.

The Council considers that the appeal has involved far more work than would be normal for an appeal of this scale including the costs of seeking Counsel advice. The amount of work that an LPA undertakes for an appeal is the decision of Council officers and has nothing to do with the appellant, neither is it at all relevant to an application for costs. The appellant was very surprised that the Council had appointed a QC for advice on a householder appeal, and to prepare a costs application, which it considers is entirely disproportionate to this householder appeal.

Further points made by the Council's barrister in the application of costs:

Paragraph 9: The letter suggests that the approach of securing a CMP by S106 is supported by the Fitzroy Park Residents Association (FPRA). However, correspondence from the FPRA advised that it was up to the Council to decide whether the CMP should be secured by a planning condition or s.106 Agreement.

## **Summary**

The above demonstrates that the appellant has not behaved unreasonably in the submission of this planning appeal. The appellant has sought to do everything to avoid a planning appeal and just wants planning permission to be granted for this uncontentious householder application. The appeal has been made on sound planning grounds.

The costs incurred by the Council such as the appointment of a QC for such a small scale appeal was the decision of the Council and is not in any way relevant to whether the appellant has behaved unreasonably or not.

On the basis that the appellant has made a sound planning assessment of the proposals against planning policy and other materials considerations, they consider that the application for costs made by the Council is entirely unsubstantiated and should fail.



We trust the above will be taken into consideration.

Yours sincerely,

Sarah Ballantyne-Way

Director  
hgh Consulting