



Costs Decision

Site visit made on 22 August 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2024

Costs application in relation to Appeal Ref: APP/H5960/W/24/3342383 10 Alderbrook Road, Wandsworth, London SW12 8AG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Hopkin for a full award of costs against the Council of the London Borough of Wandsworth.
 - The appeal was against the refusal of planning permission for the demolition of existing two storey property and erection of three storey property with roof and basement accommodation and creation of 5 self-contained flats (2 x 3-bed, 1 x 2-bed, 2 x 1-bed/1-person) with outside amenity space and associated refuse and cycle storage.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council's reason for refusal was clear and specific. It highlighted conflict with a development plan policy relating to housing standards. Those apply to all new residential development, and the proposal did not comply with the standard for private outdoor amenity space, which is expressed as a minimum for four out of the five flats proposed.
4. While the Council's Committee Report stated that the proposal was "considered to achieve a suitable degree of compliance with relevant policies" in respect of outdoor amenity space, it was still the case that the proposal did not achieve the minimum standard for four out of the five flats. The basis for the officer's recommendation was that there were reasons why providing outdoor amenity space for each flat would not be ideal for design and site constraint reasons.
5. The Planning Committee is entitled to disagree with the officer's recommendation so long as those reasons are substantiated. The supporting text to Policy LP27 explains the reasons behind the standard sought by Policy LP27, but the text in the policy box remains key. This formed the basis of the Planning Committee's decision to refuse planning permission, having raised concerns about only one flat meeting the Council's outdoor amenity space standard. In reaching that view, the Planning Committee Minutes outline that officers explained that the proposal did result in a policy failure but that this needed to be assessed in the context of the overall proposal, with all other space and storage space standards met. Officers also outlined that providing outdoor amenity space for the other flats would likely activate the rear

elevation, which could cause harm to neighbouring residents living conditions. Hence, members of the Planning Committee were informed of the competing factors so that could weigh the merits of them and arrive at a judgement. That did not necessarily need to be the same as the Council Officer's.

6. That said, the Planning Committee Minutes also illustrate that they had regard to the development at 8 Alderbrook Road, which was granted planning permission by the Council via the Planning Committee in March 2022. This was a relevant consideration for the Planning Committee to grapple with. Members were informed that the appeal scheme "had lesser amenity impacts" compared to the scheme at No 8, and that "if a similar approach had been accepted by the Council, it was likely that following a comparable route could lead to success." Nevertheless, the minutes state that "homeowners and tenants alike now valued amenity space provision far more than prior to the pandemic."
7. Evidently, the Planning Committee was advised about the proposal, its policy deficiency in terms of outdoor amenity space, the site-specific circumstances why officer's felt that the level of such provision was acceptable in this case, and of the scheme at No 8.
8. To my mind, the value of private outdoor amenity space and outdoor amenity space in general would have been at the forefront of people's minds in March 2022 when planning permission was granted at No 8 given that it was so close to measures and restrictions around the pandemic. I cannot reasonably think the Planning Committee would have been any different to the general population in their experiences and understanding of the value of those spaces for people's wellbeing and standard of living. The decision taken in respect of No 8 must have therefore been reached in that context.
9. While the current development plan was adopted in July 2023 after the decision at No 8, the policy requirements in the current and previous development plans are the same. A change in the name of the document is not enough to say they are materially different; it is the substance of the policy that is relevant.
10. There is a need for consistent decision making so that people have confidence in the planning system. Having drawn the Council's attention to the scheme at No 8 and the outdoor amenity space deficiencies of that scheme, the Council fairly engaged with that, and the Planning Committee took it into account in reaching its decision. However, the reasons why the Planning Committee took a different decision in this case are not adequately explained. The policy requirement for both the appeal scheme and that at No 8 were identical, and the Council has not explained why it has now reached a different decision.
11. There is also a lack of substantive evidence to support the claim that the value of private outdoor amenity space has increased since 2022, despite the value people placed behind private and general amenity space during and shortly after the pandemic. The importance of private outdoor amenity space has not in my experience become even greater since then; it remains as important, despite some giving it less value. But, against this backdrop, the Council has not determined similar cases in a consistent manner and it made vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
12. While the Council did need to determine the proposal in accordance with the development plan, unless the material considerations indicated otherwise, the

Council acted unreasonably in respect of its assessment of the latter, as it has not substantiated the Planning Committee's decision on appeal in this respect. That has led to the applicant incurring unnecessary and wasted expense in the appeal process in pursuing the appeal given that there was a single reason for refusal that hinged on the material considerations given the acknowledged policy conflict.

13. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Wandsworth shall pay to Mr Peter Hopkin, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council of the London Borough of Wandsworth, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR