



Costs Decision

Inquiry held between 29 April and 2 May 2025

Site visit made on 9 May 2025

by D R McCreery BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th June 2025

**Costs application in relation to Appeal Ref: APP/H5960/W/24/3358065
41-49 Battersea Park Road (Booker Cash & Carry) and 49-59 Battersea Park Road
(the former BMW Car Service Garage), London, SW8 5AL**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Watkin Jones Group for a partial award of costs against the Council of the London Borough of Wandsworth.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for phased full planning permission for: demolition of all existing buildings and construction of three new buildings, together comprising residential (Use Class C3) and student accommodation (Sui Generis) along with commercial, business and service (Use Class E) and/or local community and learning (Class F) floorspace. Associated works include hard and soft landscaping, car parking and new vehicular access / servicing, and other ancillary works.
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Decision

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

The submissions for Watkin Jones Group

2. A costs application was submitted in writing ahead of the Inquiry, which was later supplemented in writing.

The response by the Council of the London Borough of Wandsworth

3. Responses were made in writing.

Reasons

4. Parties in planning appeals normally meet their own expenses. 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.

Sunlight/daylight impacts

5. The Council's resistance to the proposal is rooted in the Committee discussion that took place on 14 January 2025. The accuracy of the transcript of that meeting [CDF.05] is undisputed.

6. That discussion was supported by a comprehensive Officer Report [CDF.01 and CDF.02] which the Committee members are assumed to have read. The debate was preceded by a short factual presentation by Officers, who correctly advised that the Committee's task was to consider whether they would have been minded to grant or refuse planning permission had a non-determination appeal not been lodged. The position on costs was set out by Officers for the Committee at the outset.
7. Members asked questions¹ about loss of light in respect of both Viridian Apartments and New Mansion Square during the Committee discussion. Once the Committee chair reminded Members of the need for planning reasons to oppose the scheme, it prompted points about objecting based on daylight impacts, including linked to additional height over and above the Extant Permission, overlooking the amenity spaces of New Mansion Square, and overbearing impacts on the neighbouring site². This concludes with a comment about Officers being able to 'craft words' around 'the increase in height creating and overbearing as overbearing structures, with their impact on reduction in amenity and outlook, and in light'.
8. Post vote, the Chair asked other Members to provide reasons. The outcome of that was recorded and read back to the Committee by the Clerk as 'In terms of the quantitative height and use of buildings, the increase in height and the impact on the adjoining properties, in particular the Peabody, the change of use in effective from the ground floor from residential to predominantly student accommodation, no longer is the balance of land use and housing need, and the housing need in particular', which no Member sought to clarify or refine.
9. I have nothing to say that the subsequent Committee Minutes [CDF.03] were not agreed. They record that impact on New Mansion Square was discussed, in particular due to the loss of light. The vote is recorded with 'minded to' reasons excluding explicit reference to loss of light.
10. A putative reason for refusal was notified to the Planning Inspectorate in a letter dated 29 January reflecting the 'minded to' reasons in the Committee Minutes:

As a result of its height and close proximity to the neighbouring buildings and the amenity space located at New Mansion Square, the proposed development would result in an overbearing impact upon the residential occupiers of the neighbouring buildings, detrimentally affecting their outlook and increasing overlooking opportunities that would reduce the residential amenity experienced by these neighbouring occupants. Furthermore, the predominant student use as proposed is not considered to be the most appropriate use on the site given the greater demand and need for housing (including affordable housing) in the area. For these reasons, the proposal is considered to be contrary to adopted Council policy LP2 and the Wandsworth Housing Needs Assessments dated December 2020 and December 2024.

¹ Including at Page 10 Committee transcript

² Page 27 and 28 Committee transcript

11. When exposed to forensic analysis it is possible to discern uncertainty about whether sunlight and daylight formed part of the Council's objection to the proposal. This arises principally from the Committee transcript, the discussion about living conditions before the vote and a lack of subsequent clarity about which specific effects were included in the 'impact on the adjoining properties' that were recorded by the Clerk. This could have been clarified at the meeting. However, criticising the Council for not doing so in the heat of the moment would be unfair.
12. The Committee Minutes and putative reason for refusal finesse the outcome recorded in the Committee transcript, but they do not distort or unreasonably reflect the Committee outcome. The Appellant was in possession of these documents by 29 January at the latest. While 'loss of amenity' is a vague concept, the Committee Minutes qualify this by referring to aspects of living conditions that do not include sunlight and daylight. Similarly, the putative reason for refusal does not refer to sunlight and daylight.
13. The formal documents recording the Council's reasons would not lead a reasonable person to assume that sunlight and daylight were amongst their objections to the scheme. Uncertainty can only be cast by reference to a forensic assessment of the Committee transcript that, in any event, is not in itself the putative reason for refusal or the endorsed minutes of the meeting.
14. The putative reason for refusal referring to Policy LP2 (Local Plan), but not identifying the specific part of the policy that was said to be offended, is not fatal. A reasonable person reading the putative reason itself in full context provides enough to see where the objection was.
15. Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 applies where a local planning authority is giving notice of a decision or determination where planning permission is refused. While not directly applicable in the present circumstances, the Applicant is fair to apply it. However, the relevant notice comparable to a decision notice here would be the notice of the putative reason for refusal. For the reasons set out above, the assumption that it embraced sunlight and daylight is not a reasonable one.
16. The Council's Statement of Case does not contradict the relevant position in the putative reason for refusal. It clarifies the applicable aspects of Policy LP2 (Local Plan) without including the provision on sunlight and daylight. It refers to Policy D6³ (London Plan), which is not mentioned in the putative reason for refusal but qualifies this by referring to the parts that broadly align with Policy LP2. Again, the part of the policy addressing sunlight and daylight is not mentioned.
17. There is no documented support for the Applicant's claims that the Council intended to call a witness on sunlight and daylight. The note of the Case Management Conference held on 4 March [CDN.01]⁴ shows that they may have called a witness on Planning, rather than an expert on light. This position was consistent with the statement at paragraph 8.1 of their statement of case. The reference to evidence below Paragraph 4.1 in the CMC was my note (agreed with the parties) and encompassed all evidence that may be heard without reference to a specific party. The Council's silence is not compelling evidence challenging the documented points above.

³ Corrected from H6

⁴ Paragraph 2.3

18. The Living Conditions Statement of Common Ground agreed on 20 March records that effects of the appeal development on levels of sunlight and daylight at neighbouring properties were not a matter in dispute.
19. Based on the case put by the Applicant, the Council did not resolve to raise sunlight and daylight as an issue that was subsequently abandoned. Unreasonable behaviour has not been demonstrated.
20. Even if it had, the claimed wasted expense is not demonstrated as sunlight and daylight issues were clearly a live issue for the Inquiry considering the careful balancing act required when looking at living conditions on a large urban site, the outcome of the Applicant's sunlight and daylight work, and the level of public interest in the issue. The suggestion that the Applicant would not have come to the Inquiry ready to defend the issue or bring evidence on the matter in any event is unpersuasive.

Purpose building student accommodation (PBSA) need

21. The planning merits of the Council's case on PBSA need are set out in my Appeal Decision. My conclusions are based on the cases put by both parties, repeated in terms in the costs claim and responses, that I do not need to readdress. A central weakness in the Council's case was that it was based on a flawed premise that it was adequate to focus principally on the needs of the Borough itself. It did not fairly consider and acknowledge the wider strategic planning policy context in the London Plan or engage properly with the dynamic reality of student supply and demand in London.
22. The Council did not bring forward the evidence to support/demonstrate their case as referenced in their statement of case. For reasons explained in my Appeal Decision, they were entitled to not field any witnesses and rely on their statement of case. However, this left the Council's case lacking proper substantiation on the evidence. It was vague and, when a reasonable view is taken of the applicable planning policy context, inaccurate and unsupported by objective analysis.
23. Unreasonable behaviour has been demonstrated, which led to the wasted expense of the Appellant needing to pursue the matter throughout the appeal.
24. The Council's request a few days before the deadline for Proofs of Evidence for the appeal to be decided by written representations is not a limiting/mitigating factor. The Inquiry procedure had been confirmed and altering it was at the discretion of the Inspector. The Council had changed their position regarding their evidence but there had been no material narrowing of the dispute and changing the procedure at that stage would have been unfair on the Applicant other interested parties. The Council could not reasonably assume that their request would be granted on a matter that, in any event, was at the discretion of the Inspector.
25. While I note the Applicant supplemented their costs claim with this additional ground during the Inquiry, and I agree with the Council that there was nothing preventing them from doing so prior to the event in accordance with good practice, this is not of itself a factor that alters my view on the merits of the claim.

Nominations agreement

26. There was no reasonable policy basis for the Councils position that the absence of a Nomination Agreement for the development with a Higher Education Provider at the point of planning permission justified a reason for refusal. It was a matter that was perfectly capable of being addressed in a legal agreement, indeed in this case it was.
27. The Council behaved reasonably by conceding the matter in opening and thereby narrowing the scope of the dispute at that point and the extent of additional wasted expense. However, their initial position was unreasonable and unsubstantiated. Maintaining their position up until the point of conceding amounts to unreasonable behaviour that caused the Applicant wasted expense in having to prepare for the Inquiry expecting to address the matter.

Conclusions

28. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the PBSA need and the nominations agreement issues discussed above, and a partial award of costs is therefore warranted.

Costs Order

29. 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 Watkin Jones Group ,the costs of the appeal proceedings described in the heading of this decision, limited to those costs associated with the PBSA need and the nominations agreement issues discussed above. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

D R McCreery

INSPECTOR