**APP/H5960/W/24/3358065**

**41 – 49 and 49 – 59 Battersea Park Road, London SW8 5AL**

**LONDON BOROUGH OF WANDSWORTH**

**RESPONSE TO COSTS APPICATION**

**Introduction**

1. This is the response of the London Borough of Wandsworth (“the **Council**”) to the costs application made on behalf of the Watkin Jones Group (“the **Appellant**”) on 22 April 2025. By that application, the Appellant seeks a partial award of costs in relation to the costs of:
	1. Preparing evidence to address daylight and sunlight impacts that it perceived to be part of the Council’s putative reason for refusal; and
	2. Preparing evidence in response to paragraph 5.17 of the Council’s Statement of Case in respect of the absence of a nominations agreement.
2. The Council resists the Appellant’s application for a partial award of costs in respect of the first of those matters only.

**Daylight and sunlight impacts**

1. The application for an award of costs in relation to the preparation of evidence on daylight matters is predicated on the Appellant’s perception that the Council’s putative reason for refusal encompassed an allegation of unacceptable sunlight/daylight impacts to the internal conditions of neighbouring buildings.
2. The Council does not accept that its putative reason for refusal included, or could reasonably be read to include, any allegation of unacceptable impacts on the daylight and sunlight enjoyed by neighbouring buildings.
3. The relevant chronology is as follows:
	1. On 14 January 2025, the Council’s Planning Applications Committee met to consider whether they would have been minded to approve or refuse the application. A transcript of that meeting is at **CD F.05**;
	2. The Minutes of the meeting are recorded at **CD F.03**;
	3. On 29 January 2025, the Council wrote to the Appellant and Planning Inspectorate, confirming its putative reasons for refusal. That letter is at **CD F.04**;
	4. On 26 February 2025, the Council submitted its Statement of Case (**CD G.02**);
	5. On 5 March 2025, a Case Management Conference was held.

*Meeting transcript (****CD F.05****)*

1. The Appellant relies on the fact that members are recorded in the transcript of the meeting “*as discussing the sunlight and daylight impacts of the Proposed Development”.*[[1]](#footnote-1)The fact that there was a discussion about daylight and sunlight impacts does not assist with the Council’s reasons for resolving that it would have refused permission. The debate at a planning committee may be broad-ranging. Different members may hold and express differing views and their views may change during the course of the debate. The views expressed by one or more members do not disclose the collective reasoning of the Council. That is why the Courts have recognised that statements made by members during the course of committee debate cannot be treated as the reasons for the final decision reached by the committee (*R v London County Council ex parte London and Provisional Electric Theatres Ltd* [1915] 2 KB 446 at p.490 - 491; *R v Poole BC ex parte Beebee* [1991] 2 PLR 27 at [31]; *R (Midcounties Co-operative Ltd) v Forest of Dean Council* [2017] EWHC 2056 (Admin) at [58 – 61] and [87]).
2. The Planning Applications Committee expresses itself by voting on a resolution and the Minutes form the record of its decision (*R v Carrick DC ex parte Shelley* [1996] Env LR 273; *R (Young) v Oxford City Council* [2002] EWCA Civ 990; *R (Midcounties Co-operative Ltd) v Forest of Dean Council* [2017] EWHC 2056 (Admin) at [88]).
3. In any event, the issue of daylight and sunlight impacts was raised only briefly in the debate. Cllr Govindia noted that comments had been received from members of the public and asked officers to expand on why officers were satisfied as to the “*loss of light.”*[[2]](#footnote-2)In response, the case officer and Head of Strategic Development explained the reductions in daylight and sunlight and why they were considered to be acceptable, having regard to advice they had received from an independent sunlight and daylight expert.[[3]](#footnote-3) Cllr White subsequently asked if the committee could object to the daylight impacts of the development.[[4]](#footnote-4) Cllr Humphries referred to overlooking and the overbearing impact of the development.[[5]](#footnote-5) Others referred to the height and scale, intensification of student bed-spaces, transport impacts and benefits of conventional housing Vs student accommodation. As would be expected, the debate was broad-ranging with different members expressing differing and varied views. It would be entirely inappropriate to seek to discern the reasons for the Council’s decision by fixating upon the observations of one or two contributors given the collective nature of the decision.

*The Minutes (****CD F.03)***

1. The Minutes of the meeting provide the record of the Council’s decision. They record that the Committee resolved that it would have been minded to refuse permission for the following reasons:
	1. *The quantum height, and of the increased height of the proposal was excessive compared to the extant scheme.*
	2. *As a consequence of the increase in height and close proximity there would be an impact on the adjoining properties, in particular the Peabody site. There would be a loss of amenity and outlook for the adjoining blocks, with an impact of overlooking the existing gardens as well in the amenity space on the Peabody site. There would be an overbearing impact on the neighbouring sites, particularly the homes in the Peabody site.*
	3. *Due to the change of use from being wholly residential to being overwhelmingly for student use with some residential. There was a balance between need and demand, and this was the wrong balance for land use, and for this site, given the demand and need for housing, and affordable housing in particular, was greater here.*
2. There is no reference to impacts on daylight and sunlight in the reasons recorded in Minutes. The impacts identified to neighbouring residents in the Peabody site are loss of amenity and outlook, overlooking and the overbearing impact of the development. The loss of amenity in this context plainly means a reduction in the quality or character of the area that contribute to its overall enjoyment. The specific impacts to amenity identified in the Minutes were the loss of outlook, overlooking and overbearing sense of the development.

*Council’s letter to the Planning Inspectorate (****CD F.04****)*

1. On 29 January 2025, the Council informed the Appellant and Planning Inspectorate of the Planning Applications Committee’s resolution that it would have been minded to refuse planning permission on the following grounds:

*“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.”*[[6]](#footnote-6)

1. As is apparent from the reason for refusal, and consistent with the Minutes, the reference to the amenity of neighbouring occupants relates solely to the allegation that the proposed development would result in an overbearing impact, detrimentally affecting the outlook of neighbouring residents and increasing opportunities for overlooking. There was no reference, either implicit or explicit, to unacceptable impacts on the daylight and sunlight in neighbouring buildings.
2. The reference to Local Plan policy LP2 is consistent with the adverse impacts identified by the Council in that policy LP2 provides, *inter alia,* that proposals will be supported where the development “*avoids unacceptable levels of overlooking (or perceived overlooking)…”* and “*is not intrusive or has an overbearing impacts as a result of its height, scale, massing or siting, including through creating a sense of enclosure”.*
3. By 29 January 2025 at the latest, it was therefore entirely clear that the Council was not raising any objection to the impact of the development on the internal daylight and sunlight conditions of neighbouring properties.
4. In light of the putative reason for refusal, there was no basis upon which Mr Fletcher could reasonably have understood that the reference to “*amenity”* in the refusal reason would require him to prepare “*extensive coverage of assessments of the established daylight levels across numerous sites within the Vauxhall, Nine Elms, Battersea Opportunity Area (“VNEB”) area as well as those in longer established residential areas in Central London”.*[[7]](#footnote-7)

*Council’s Statement of Case (****CD G.02****)*

1. Consistent with all of the above, there is no allegation of unacceptable daylight and sunlight impacts to neighbouring properties in the Council’s Statement of Case. Indeed, there is no mention of daylight at all and the only reference to sunlight simply records the Appellant’s own assessment that two amenity spaces in the New Covent Garden Market scheme would fall short of BRE guidelines.[[8]](#footnote-8) Given that there was no dispute as to the Appellant’s technical assessment, there was plainly no need for the Appellant to call technical evidence in response.

*Case Management Conference*

1. At the Case Management Conference held on 5 March 2025, the Council confirmed that it did not intend to call any technical evidence in relation to daylight and sunlight impacts or to contest the technical analysis provided by the Appellant. That was consistent with the resolution recorded in the Minutes of the 14 January 2025 meeting; the letter to the Inspectorate of 29 January 2025 and the Council’s Statement of Case of 26 February 2025. It should have come as no surprise to the Appellant.

**Conclusion**

1. The fact that the Appellant has seen fit to adduce a 72-page proof of evidence on daylight and sunlight matters in the circumstances outlined above is not indicative of any unreasonable behaviour on the part of the Council and does not justify an award of costs.

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**[date]**

1. Appellant’s costs application, paragraph 5 [↑](#footnote-ref-1)
2. **CD F.05,** page 10 [↑](#footnote-ref-2)
3. **CD F.05,** pages 9 -11 [↑](#footnote-ref-3)
4. **CD F.05,** page 27 [↑](#footnote-ref-4)
5. **CD F.05,** pages 27 - 28 [↑](#footnote-ref-5)
6. **CD F.04** [↑](#footnote-ref-6)
7. Mr Fletcher’s proof of evidence, paragraph 2.4, **CD I.07** [↑](#footnote-ref-7)
8. Council’s Statement of Case, paragraph 5.28, **CD G.02** [↑](#footnote-ref-8)