



PLANNING SERVICES

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

HEARINGS APPEAL

REBUTTAL OF APPLICATION FOR COSTS

APPEAL SITE

254 Kilburn High Road, London NW6 2BS

APPELLANT

Kilburn High Road LLP

c/o Tim Gaskell

CMA Planning

113 The Timberyard

Drysdale Street

London N1 6ND

INTRODUCTION

The Appellant makes applications for:

1. A full award of costs; alternatively for
2. A partial award of costs in respect of each of the two reasons for refusal.

GENERAL POINTS (BOTH REASONS)

Much of the appellant's application for costs makes the same arguments as set out in their appeal statement (and discussed at the hearing). The individual reasons for refusal

will be discussed in the sections below. The Council will not restate all of the arguments that are stated already in our appeal statement but has summarised relevant to the rebuttal for the application for costs.

In relation to both reasons for refusals set out in the appellant's application for costs, the Council reiterates that planning committees are entitled to disagree with the officer's recommendation, which is their prerogative as elected members. The planning committee is a fundamental part of a democratic planning process; it is not a rubber-stamping of the officer's recommendation. The appellants are fully aware of this. Members were presented with all of the information and based on this decided to refuse the application. The Members' reasons for refusal are entirely justified.

The appellant makes reference to the subsequent application which is currently being assessed by the Council. The Council considers this to be a fresh application distinct from the appeal proposal with different flat numbers (60 as opposed to 62) and a different tenure mix, as well as incorporating many of the changes to the room layouts, windows and the removal of balconies. This application is being assessed under standard procedures and consulted upon as normal and will be determined in due course. Given the above, this application is not relevant to the appeal, nor to the application for costs.

POOR STANDARD OF DAYLIGHT (REASON 1)

The appellant argues that the Council acted unreasonably by not agreeing to the amendments to the appeal scheme during the appeal process and by not consulting upon them. The Council wrote to the Inspectorate urging the Inspectorate to not accept the revised plans, however, also sought directions from the Inspectorate as to whether the revised plans were to be accepted. The Inspectorate replied stating that it would be the Inspector's decision on the day whether these plans would be accepted. Had the Inspectorate stated that these plans should be accepted, assessed and consulted upon by the Council, then we would have done so. The Council was clear from the start that we would not be assessing these plans before the hearing. On the day of the hearing, the Inspector decided not to accept the revised plans, which vindicates the Council's position on this point and demonstrates that the Council did not act unreasonably procedurally.

The Council has not act unreasonably substantively either in its assessment of the proposal and refusal on daylight grounds. The proposals were assessed against Development Plan policies and refused on the grounds of an unacceptable proportion of flats having a poor standard of daylight amenity, by reason of the design of the proposal. As was discussed at the hearing, the Council agrees with the appellant that the BRE daylight standards are meant to be applied flexibly. However, it was shown at the hearing that a significant proportion of rooms failed to meet minimum BRE standards and that there was no justification for such a large number failing to meet minimum standards.

A summary of some of the failings is as follows:

- 21.4% of rooms failed to meet BRE minimum guidelines
- 35 of the 62 flats have at least 1 substandard room
- 12 single aspect flats have substandard kitchen/living/dining rooms
- 3 single aspect flats have no rooms that pass BRE minimum guidelines

The above clearly shows that the proposal did not provide well-lit rooms. The flats failed as they were not well-designed, with deep narrow floorplates, and not as a result of constraints outside of the site. The proposal did not comply with policy and harm would have been caused to future residents of this scheme in approving the substandard accommodation proposed. The Council have sought to avoid setting a precedent and approval of this development scheme would have opened the way for submissions of other substandard schemes on other similar unconstrained sites in the borough to come forward. Members were justified in refusing this application and offered appropriate reasons for doing so at the time.

The appellant compares the daylight situation with other schemes that were approved; however the Council is required to assess each application on its merits. The other schemes, that were discussed at the hearing, either had much better daylight figures or had significant constraints. The site in question has no constraints, being open on 2 sides to a park and given the distances involved with neighbouring buildings. The proposal is a new build scheme on a large site without significant constraints. Any flats on the site should therefore provide good levels of light in line with the BRE guidelines, rather than a significant number being substandard.

The appellant criticises the Council for not producing objective analysis or evidence on daylight. The Council's refusal was based on the findings of the applicant's submitted Daylight/Sunlight Report. The Council did not contest the findings in the submitted report and therefore there was no need to get an independent assessment done or produce any further evidence regarding day light levels.

The Council has not acted unreasonably substantively for refusing an application which falls significantly short on minimum daylight standards.

LACK OF FAMILY-SIZED AFFORDABLE HOUSING (REASON 2)

The Council agrees that the Dwelling Sizes Priority Table should be interpreted flexibly, taking into account the character of the development, the site and the area. However, the provision of 20% affordable family-sized housing falls significantly short of the 50% requirement, does not meet housing need and does not contribute to a mixed and balanced community. The site is considered suitable for family sized housing given that:

- The site is a brownfield site that would be cleared. There are no constraints such as the re-use of an existing building.
- The site is highly accessible, located adjacent to a Town Centre and adjacent to a large park.

The appellant has failed to justify the lack of family-sized affordable housing. As such, the proposal fails to comply with policies CS6 and DP5 of the Local Development Framework.

The Council has not acted unreasonably for refusing an application which falls significantly short on policy requirements for family-sized affordable housing.

CONCLUSION

The proposal did not accord with policy with regards to the daylight amenity of the proposed flats or family sized affordable housing. There were sound planning reasons for the refusal. The Council was clear from the beginning that we did not consider that revised plans should be accepted and the Inspectorate stated that it would be up to the

Inspector in the day of the hearing. The Council therefore did not assess or consult upon the revised plans. This position was vindicated by the Inspector's correct decision not to accept these amendments at the hearing.

The Council did not act unreasonably either procedurally or substantively and the Inspector is respectfully asked to dismiss the appellant's costs application.