

RESPONSE TO APPELLANT'S COSTS APPLICATION
ON BEHALF OF THE LONDON BOROUGH OF SOUTHWARK

Introduction

1. The Appellant applies for a partial award of costs based on three allegations of unreasonable conduct on the part of the Council:
 - a. That it alleged it had a 7.21 year housing land supply, but failed to call any evidence to support of that allegation;
 - b. That it gave a putative reason for refusal relating to the inadequate quantum of affordable housing;
 - c. That it gave a putative reason for refusal relating to the loss of retail floorspace.
2. The PPG requires those applying for costs to identify their grounds for such an application as soon as possible and to make an application in writing, preferably before the Inquiry starts. The Appellant did not do so. If it had credible grounds for making this application it should, and no doubt would, have made them known in accordance with the PPG. It did not because there were, and are, no credible grounds for an application which has proved wasteful of time and costs for all involved, including the Inspector.

Housing land supply

3. This ground is fundamentally flawed because it supposes that the presence or absence of a five year housing land supply was an issue of importance which was in dispute in the application or appeal; and it runs contrary to the Statement of Common Ground, and the Appellant's written and oral evidence.
4. As the starting point, as explained in Closing Submissions, even *if* the Council cannot demonstrate a five year housing land supply, it makes no odds to the Appellant's case. The Appellant's planning witness agreed that this was not a case which fell to be determined under paragraph 11(d) of the Framework – a point which the Appellant's costs application not only ignores, but now actively seeks to rewrite. The effect of a <5YHLS is that relevant policies may be considered to be out of date. But it is no part of the Appellant's case before, during or after the Inquiry that there are any such policies nor that the planning balance would change if they were out of date. The costs application seems to assume that a <5YHLS automatically means the appeal is determined under paragraph 11(d), but that is simply wrong on the plain words of the paragraph. We are dealing in this appeal with an allocated site where the principle of housing is firmly supported; there is nothing to be gained by the Appellant by arguing for 11(d) to apply, which is why it has never done so.
5. Neither the LPA nor the Appellant treated this as a “tilted balance” case. The first reference to the “tilted balance” in all of the documents was the mention at paragraph 3.23 of Mr Ibbott's Proof (CD8.13.1), simply noting that the balance would not be engaged on the December 2024 Housing Delivery Test results. Mr Alston did not mention the tilted balance in his proof or rebuttal; nor was it mentioned in the Appellant's Statement of Case. The first time the Appellant referred to the tilted balance in any document prepared in the course of the application or appeal was its opening statement on Day 1 of the Inquiry.¹

¹ CD 12.04 para 121

6. The sole relevance of the housing land supply position – as agreed by both Mr Alston and Mr Ibbott – goes to the weight to be given to the benefit of delivering market housing. As Mr Ibbott accepted, more weight could be given to that benefit if the housing supply was lower. That is as far as the point goes on the evidence and as a matter of logic.
7. The Appellant is wrong to contend at paragraph 14 of the Costs Application that it is for an LPA to demonstrate a 5YHLS at “inquiries such as this”. There is no such duty. The paragraphs of the PPG referred to by the Appellant relate to plan-making. It is only where the housing land supply position is in issue that it is necessary to address such points and, as explained below, housing land supply was *not* put in issue by the Appellant until after the exchange of evidence. There are many housing inquiries where there is simply no dispute of 5YHLS issues, either because the position is agreed, or because it does not matter.
8. Further, the Appellant fundamentally misunderstands the way in which such evidence is prepared. The Council maintains a rolling list of deliverable sites to inform its housing land supply position. The NPPF defines “deliverable” sites in a very specific way:

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
 - b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
9. It will be apparent to the Inspector that where a site has detailed planning permission, a local planning authority does not need to seek evidence that homes

will be delivered within five years, and it can properly assume that they will be “unless there is clear evidence” that they will not. That presumption is reversed for sites with outline planning permission for major development or a development plan allocation.

10. With those points in mind, it is necessary to consider the chronology in more detail.

11. First, from the pre-application discussions in autumn 2023 through to October 2025 there was no attempt by the Appellant to (a) challenge the 5YHLS (b) contend that the tilted balance was engaged. This is in the context of numerous meetings with officers, including weekly meetings in the run up to the Inquiry. Council officers report that the first time 5YHLS was mentioned was approximately 2 weeks before the Inquiry, i.e. around the time of Mr Alston’s rebuttal.

12. Second, at all material times the Council’s stated position was that it could demonstrate a 5YHLS. The rolling data held by the Council’s policy team to support that position was available on request.

13. Third, in reporting this application to the Committee, officers did not suggest that the tilted balance was engaged.

14. In this respect, paragraphs 16-18 of the Costs Application are completely wrong. Paragraph 57 of the OR merely notes the terms of paragraph 11(d), and the “significantly and demonstrably” test is not referred to after that. There is no suggestion anywhere in the report of any policies being treated as out of date which is the function of a finding of a lack of 5YHLS. The OR did not deal with the 5YHLS because it was not in issue. Nothing in the supplementary report or the committee debate was concerned with these issues.

15. If there had been a material change in the 5YHLS disclosed through ongoing monitoring, the Council’s policy team (which monitors 5YHLS) would notify development control officers if the “tilted balance” was engaged because of the

5YHLS or the HDT. Officers would then address that matter where relevant in making their recommendations on the proposal. There had been no change, so it was not a material consideration at that point.

16. Fourth, in filing its Statement of Case the Appellant did not suggest either that there was no 5YHLS, or that the “tilted balance” was engaged. It simply stated:

‘Five Year Housing Land Supply Position:

5.16 LBS has not published up to date details regarding its five-year housing land supply position. This will be considered in evidence presented at the inquiry.’

17. Fifth, the Council made clear in its Statement of Case that there was a 5YHLS and that 11(d) *did not* apply (CD 8.02, 4.13). The fact that the data referred to was the earlier data was not unreasonable, since that was the published data. In fact, the rolling information showed a healthier position.

18. Sixth, having received the Council’s Statement of Case, no attempt was made to put the 5YHLS or the “tilted balance” in issue. At the Case Management Conference the Appellant agreed with the Inspector’s main issues, and did not suggest that there was a further issue in respect of the 5YHLS, despite having the clear statement from the Council that there was a 5YHLS and that 11(d) *did not* apply.

19. Seventh, during this period the Appellant and the Council engaged in discussions on a statement of common ground. The content of those discussions is highly material to this costs application but completely disregarded by the Appellant:

- a. The first version of the SOCG was prepared by the Appellant and filed with the appeal and dated 20 May 2025. At 4.14 it stated “LBS has not published up to date details regarding its five-year housing land supply position. The Council and Appellant will seek to agree this prior to the Inquiry”. This was the first mention of the 5YHLS position (contrary to the suggestions at paragraphs 37, 40 and 41 of the Costs Application);

- b. On 5 October 2025, the draft SOCG text was amended to read “LBS has published an up to date five-year housing land supply position in September 2025. This shows that LBS can demonstrate a supply of 7.21 years including the 20% buffer required by virtue of the Housing Delivery Test position”. This was consistent with Mr Ibbott’s evidence and the publication of the AMR;
- c. On 15 October 2025, Mr Alston proposed updated text for the SOCG to read: “The Council’s Annual Monitoring Report (24/25) (September 2025) states that the Council is able to demonstrate a 7.21 year housing land supply.” No additional content was proposed to set out a contrary position from the Appellant;
- d. The final version of the SOCG says exactly the same, see CD 8.04:

Material Considerations

Five Year Housing Land Supply Position

- 4.17 The Council’s Annual Monitoring Report (24/25) (September 2025) states that the Council is able to demonstrate a 7.21 year housing land supply.

Housing Delivery Test

- 4.18 LBS scored 82% in the most recent Housing Delivery Test, published in December 2024.

- e. Like earlier drafts, the final SOCG lists the areas of disagreement by reference to the reasons for refusal. 5YHLS, and the application of the tilted balance are not referred to at all (see section 8);
- f. There has been no express attempt by the Appellant to withdraw from the signed SOCG.

20. Eighth, even in Mr Alston’s proof, he did not make any case regarding the “tilted balance” but contended that it was “not clear whether the Council is able to

demonstrate a 5 Year Housing Land Supply” (9.13(j)). Although he referred to his “investigations” as to the most recent published position, such investigations did not extend to asking the Council for the latest information.

21. Ninth, the first request for any information relating to 5YHLS was made by the Appellant on Friday 3 October 2025, after proofs were exchanged, notwithstanding the detailed history set out above. It is clear that this was a late decision to put a matter in issue which had not been in dispute before that point. The information in the form of the tables was provided 3 working days later on Wednesday 8 October 2025.

22. Tenth, it was not until 14 October that the Appellant first put the 5YHLS in dispute through Mr Alston’s rebuttal. Mr Alston’s rebuttal is worth revisiting on this issue to see how the case was put then (just 2 weeks before the Inquiry). There is no suggestion that the “tilted balance” is relevant or engaged. Having carried out his own assessment, Mr Alston simply states:

2.54 This reinforces the evidence set out in my POE that there is a significant and urgent need to deliver new homes in LBS, and that the provision of homes of all tenures should be treated as a very significant public benefit.

23. Again, and contrary to the Appellant’s closings and costs application, the relevance of the 5YHLS was confined to weight, rather than to the correct test in paragraph 11. Turning then to the substance of the 5YHLS points in rebuttal, many of the sites which were then put in issue by the Appellant were ones which were *presumed to be deliverable* in accordance with the NPPF unless clear evidence to the contrary was provided. For example:

- a. NSP44 – Borough Triangle: full planning permission was granted on 17 June 2025 and therefore by definition “deliverable” until the Appellant produced evidence of their intention not to deliver in Mr Alston’s Rebuttal;

- b. NSP66 – Malt Street and Nye’s Wharf: reserved matters approval for Phase 1 was granted on 18 February 2021 and therefore by definition “deliverable” until the Appellant produced evidence of their intention not to deliver in Mr Alston’s Rebuttal;
- c. NSP66 - Cantium Retail Park – full planning permission granted on 18 February 2021 and implemented, therefore by definition “deliverable” until the Appellant produced evidence that the owner was not intending to deliver in Mr Alston’s Rebuttal.

24. Mr Alston’s further substantial criticism was that a site with a resolution to grant full permission, but no grant, should not be considered deliverable. The Council disagrees, for the reasons set out in CD 8.27 (see below).

25. Eleventh, when Mr Alston’s Rebuttal was received, the Council reconsidered its housing land supply position: CD 8.27. In a clear and concise response, filed 7 working days after the Alston Rebuttal and supported by a detailed table, it explained:

“The Council acknowledges (but is not in a position to verify) specific market intelligence, including regarding sites in the appellant’s control, and accepts that some sites will not be deliverable within the next five years. It is noted that the appellant’s Borough Triangle application included documentation indicating first occupation from 2030 but it has been accepted for now that delivery would be beyond five years.

The Council does not accept the appellant’s approach in all respects, however. The appellant has omitted sites that are pending a decision or with a resolution to grant permission. Sites with a resolution to grant should be considered deliverable: a resolution confirms the local authority’s acceptance of the principle of development and indicates that the site is suitable and available. The absence of a completed s106 agreement is often a procedural matter, not a reflection of viability or intent. Where negotiations are advanced, and there is no evidence of delay or objection, the site should be treated as having a realistic prospect of delivery.”

26. It then set out in a table the areas of disagreement, resulting in a reconsidered housing land supply position of very slightly over 5 years; coincidentally the same level of supply as had been set out in the Statement of Case and not challenged there.
27. Pausing here, the Appellant could at any time have asked the LPA for its housing land supply information and put forward any specific concerns it had about it. No doubt that would have been dealt with promptly, in the same way that the LPA dealt with the evidence when it arrived in Mr Alston's rebuttal. The Council cannot be expected to have predicted the case that Mr Alston would make in his rebuttal, less still anticipate the content of the letters he appended to it. When it received that information, it gave its considered review of the matter within a few days. The contention that this was a breach of the procedural rules is nonsense, since the response could not have been provided *before* Mr Alston's rebuttal.
28. The breach of the procedural rules was the failure of the Appellant to state its full case (by not putting 5YHLS in issue) and/or the introduction of substantial new evidence outside of the appeal timetable.
29. Twelfth, at the Inquiry itself, the Appellant's approach to this issue was unreasonable, and the Council's entirely proper. The sequence was as follows:
- a. The "tilted balance" argument was raised for the first time in the Appellant's opening submissions;
 - b. In Mr Levine's evidence in chief he was asked to give factual evidence about a particular site in the 5YHLS – NSP81 Canada Water Masterplan – despite not having addressed 5YHLS at all in his evidence;
 - c. Mr Ibbott in his evidence fairly explained that (a) he had not prepared the 5YHLS tables but was relying on Council policy officers and (b) that he was not in a position to speak to the detail;

- d. In cross examination, Mr Ibbott was challenged on the basis that not all of the “Berkeley sites” had been excluded, but the reasons for the approach taken by the Council were set out in the written commentary in CD 8.27. Those reasons were entirely ignored by the Appellant;
- e. When Mr Alston came to be cross examined, he once again agreed that the “tilted balance” was not relevant, and that the 5YHLS was relevant only to the weight to be given to the benefit of delivering housing (as per his Rebuttal). It is worth spelling out his oral evidence: see Appendix 1 to these submissions for a full transcript. He agreed that the 5YHLS went only to weight, that it did not go to whether or not particular policies were out of date, and that it was paragraph 11(c) that the “entire planning application is based upon”. In his words: “ultimately, the case rests upon an 11(c) argument”.
- f. In closing submissions, the Appellant completely ignored Mr Alston’s evidence on this point, and made wholly unreasonable submissions in respect of the “tilted balance” which were inconsistent with that evidence: see paragraphs 183-187 of CD 12.25. On issues such as this, advocates should make submissions which are consistent with their witness’s evidence, rather than with their own impression of how the case should be put.

30. In conclusion on this ground, there has been no unreasonable conduct on the part of the Council. The question of whether the Council could demonstrate a 5YHLS was not put in issue until the exchange of evidence. No direct challenge to the Council’s housing land supply position was made until 2 weeks before the Inquiry. There is no freestanding requirement for the Council to address 5YHLS matters at every inquiry. The Council responded promptly and appropriately to both the request for the detailed tables (response in 3 working days) and to the new evidence produced by the Appellant on the deliverability of particular sites (response in 7 working days). Mr Ibbott acted entirely appropriately in deferring to

the written evidence prepared by the Council's policy officers, rather than addressing himself matters which were not within his knowledge. For all those reasons there was no unreasonable conduct on the part of the Council.

Quantum of affordable housing

31. This putative reason for refusal was an entirely reasonable basis upon which to oppose the appeal. The Appellant has consistently overstated the role of its viability evidence, failing to appreciate the basic principle that producing a financial viability appraisal is not the complete answer as to whether a development proposal is acceptable, particularly in a Borough where the majority of housing needs are for affordable tenure types, and where policies require the delivery of mixed and balanced communities. Paragraphs 44-45 of the Costs Application entirely miss the point of this reason for refusal. To suggest that there could never be a case for refusing planning permission on the grounds of affordable housing provision when what is proposed has been supported by a financial viability appraisal goes against clear High Court authority to the contrary: Schneck. It also ignores – as the Appellant did throughout – the clear direction in the NPPF that the weight to be given to a viability appraisal is a matter for the decision maker. This important guidance from paragraph 59 of the NPPF was accurately and appropriately put before members in paragraph 311 of the OR.

32. The advice in the OR was that the low level of affordable housing meant that the heritage harm was not outweighed. It was clear advice (which is not criticised in the Costs Application) that members were entitled to give particular weight to the low level of affordable housing notwithstanding the agreed output of the financial viability appraisal.

33. Members of the Planning Committee well-understand the nature of the challenges facing Southwark, and were entitled to conclude that the provision of just 12% affordable housing on this key strategic site was objectionable in its own right. Members properly sought advice as to the approach to be taken on this issue. At paragraph 1.243 of the transcript, members were advised that in relation

to the quantum of affordable housing, “national guidance states that the relevant weight given should be a matter for the decision taker. So you can entirely reasonably take a different view [to Council Officers]”.

34. On appeal, the reason for refusal was fully substantiated: see Chapter 5 of Mr Ibbott’s Proof, at pp 29-41. As noted in Closing Submissions, Mr Ibbott is an experienced planner with both a local authority and private sector background. All of the points he made in evidence were properly made and plainly not unreasonable.

35. The Council’s detailed case on this reason for refusal is set out in its Closing Submissions and not repeated here. Even if the Inspector disagrees with it, it is a properly reasoned and justified basis for resisting the appeal proposals, made by reference to a detailed analysis of planning policy and material planning considerations. For those reasons there is no basis for an award of costs on this ground.

Loss of retail floorspace

36. A costs application on this issue is totally without merit. A site specific policy requirement is that proposals must provide at least the amount of retail floorspace currently on the site. The Appellant accepts that this mandatory policy requirement is not met by their proposals and that there is conflict with this part of policy NSP74. Paragraph 7.25 of the SOCG states that “The Proposed Development deviates from the Allocation requirement to provide at least the amount of retail floorspace currently on the site”. As explained in the Council’s Closing Submissions, the loss of retail floorspace would be up to 27.7%. To then suggest that it is *unreasonable* to resist proposals on that basis makes a mockery of the terms of the site allocation policy (and the SOCG).

37. The Costs Application does not mention the terms of policy NSP74, which expressly requires the quantum of retail floorspace to be at least re-provided. As noted in the Council’s Closing Submissions, it is not just policy NSP74, but

policies ST2 and AV.14 expressly seek to *increase* the quantum of retail floorspace in Peckham Town Centre, including at the appeal site. For those reasons, and contrary to the Costs Application, the loss of retail floorspace is, on its own, a sufficient basis for the reason for refusal.

38. In any event, the Council's evidence has made clear how the loss of retail floorspace feeds through to a threat to the vitality of the Town Centre. The Council's evidence explained how the loss of retail floorspace coupled with the failure to make appropriate provision for business relocation, and the impact on small shops, would cause material harm to the Town Centre. It is notable that the Appellant radically changed its proposals in respect of existing businesses during the course of the Inquiry, substantially modifying its proposed planning obligations (for example to make provision for hand cart traders and the small businesses trading from Market Place). If retail impacts were really an "unreasonable" basis for resisting the appeal, then the Appellant would no doubt have maintained its position on the terms of the planning obligation.

39. This putative reason for refusal has nothing to do with the introduction of Use Class E, as suggested at paragraph 56 of the Costs Application. Use Class E was introduced in 2020; the Southwark Plan and policy NSP74 were adopted in 2022. The existence of Class E does not mean that planning policies should be read differently, and the Southwark Plan makes specific provision in respect of retail uses (as does the NPPF). The flexibility provided by Class E does not mean that there is no need to regulate the type of uses in important town centre locations.

40. Similarly, the Design Brief is irrelevant to this issue: it does not deal with the quantum of retail floorspace, only with the acceptability in principle of introducing other uses. That remains the Council's position, and is what Mr Ibbott said in cross examination: other main town centre uses are acceptable in this location. It does not follow, however, that the loss of the *retail* floorspace is acceptable. Mr Ibbott's acceptance of the benefits of delivering other main town centre uses was therefore both entirely proper, and also consistent with his evidence that the loss

of *retail* floorspace was unacceptable. Mr Ibbott's Proof of Evidence (Section 6, p 43-52) sets out in detail the planning considerations supporting this putative reason for refusal.

41. As to the advice given members, it was made clear that there was a loss of retail floorspace. Officers considered that this loss would be acceptable. However, members were plainly entitled to consider that the breach of the requirement to replace the lost retail floorspace in this critical town centre site was a good reason to resist the appeal. Again, the Council's Closing Submissions set out the full case for this reason for refusal and make clear that it was properly made.

Conclusion

42. The Costs Application is made extremely late and is without merit.

43. In respect of the 5YHLS issue, the actual facts show that the costs application is hopeless.

44. In respect of the other two claims, there is a strong case for dismissing the appeal on each of the reasons for refusal, as set out in the Council's evidence and submissions. Members were entitled to find that the development should be resisted on a wider basis than that proposed by officers, and their position was supported by Mr Ibbott's independent expert evidence given in accordance with his professional obligations. To seek to infer improper motivation from a short excerpt of a committee debate is the sort of approach that has repeatedly been rejected by the Courts: members are entitled to debate planning applications, using their local knowledge and training, and to depart from the views of their officers on matters of planning judgment.

45. The costs application should be rejected in full.

Richard Turney KC

Louise McCormack

Landmark Chambers

27 November 2025

Appendix 1

Day 7 Aylesham Inquiry.

Transcript of YouTube recording from: 2:15:37

RT: Can you pick up the NPPF please. And again I I'm just trying to understand some points about scope and role of various tests in the NPPF, and I just want to start please with paragraph 11. Now, the mention of a tilted balance in this case, that mention of tilted balance doesn't actually appear in any of your documents does it? Planning statement, statement of case, proof of evidence, rebuttal?

NA: Nope. No. Our case, just to be absolutely clear, sir, is not reliant, excuse me, is not relying on an 11(d) being triggered. Our case in respect to paragraph 11 of the NPPF is very straightforward that the proposed development accords with the development plan.

RT: So you say you're an 11(c) case. Yeah. Okay. That's how I'd understood it. I just wanted to be clear given that we seemed yesterday to go into tilted balance and so on.

NA: Oh, I think what I say in my evidence is that 11(d) could or may be engaged.

RT: Well, but let's then just go on to 11(d) and understand how and why, if at all, it's relevant to this case. So you say we're 11(c), accord with the development plan, approve without delay.

NA: Yes

RT: That's that how you give effect to the presumption in favour of sustainable development. With development plan accordance you just get on grant planning permission.

NA: Yes.

RT: Then 11(d) is dealing with the case where there are no relevant development plan policies, or the most important policies are out of date. Now, do you say that's this case?

NA: I'm saying that on account of the information that's been shared by the Council in respect to its 5-year housing land supply very much at the last minute before we could account for that in in in my proof.

RT: Well, we'll come on to housing land supply

NA: That is suggesting that in this instance 11(d) may be engaged.

RT: Well, let's break it down. Let's break 11(d) down then if we can't go to it directly. You don't say this is a case where there are no relevant development plan policies.

NA: No

RT: there's a site allocation, isn't there?

NA: Yes

RT: So, in terms of looking for relevant development plan policies, this isn't a case where we're searching around, 'oh, what do we do about this proposal under this development plan?' We know: site allocation.

NA: Yes

RT: And then "out of date" has this special meaning, doesn't it, in the NPPF, which we've had in slightly different formulations, but essentially the same for whatever it is, 12 years now, 13 years. Where an application involves the provision of housing, this can include the circumstances where there isn't a 5-year housing land supply or the HDT test applies. Right? So that's the circumstances where something can be out of date. There are other circumstances where something can be out of date. For example, you can still find some authorities that are relying on 1996 local plans and so on. That's note this case. The test that you have to do then is look at the policies which are most important and consider which ones are out of date. Can you help me please? Which of the of the policies do you say are out of date as a result of the putative lack of 5 year supply or failure of the housing delivery test?

NA: I'm not for a second saying that the site allocation is strictly speaking out of date. What I'm saying is in the absence of a 5-year housing land supply part (d) is triggered particularly in respect to the overarching housing policies of the Southwark Plan.

RT: So your position is that the overarching housing policies are out of date?

NA: In the context of the council not having a 5year housing land supply

RT: Which policies specifically?

NA: it would be the strategic policies of the first part of the Southwark Plan.

RT: So you're saying policies SP1 and SP2 are out of date,

NA: *nods*.

RT: Right. And where does that get you in this case?

NA: Doesn't get us a great deal further forward because ultimately, as I said a second ago, the case rests upon an 11(c) argument. What we're saying is the absence of a 5-year housing land supply has a particular bearing on the amount of weight that should be afforded to the provision of housing as part of that plan.

RT: I'll come on to that.

NA: Can I just finish? Yeah. But this is the reason that this information was included in my rebuttal. It was a response specifically, not specifically but particularly to the evidence,

of Mr. Ibbott, sir, where he said that on the basis that the council has a 5-year housing land supply not a great deal of weight - I think he used the term moderate weight - should be given to the provision of housing. And that's the point that I didn't agree with. So I wanted...

RT: Sorry, Mr Alston, I know you want to expand obviously - fine - you've been doing that for several years on the scheme and I understand that, but I am going to ask sequentially a series of quite focused points and to stick within any reasonable time estimate I'm going to have to be a bit shorter. Thank you. Right. So you say there's a point about about Mr. Ibbott and the weight that he gives to the delivery of market housing. Got that. We'll come back to that. But going back to paragraph 11(d), you're not saying to the inspector 'determine this under 11(d)', are you?

NA: I'm asking inspector to determine accordance with development plan, 11(c). That is the case we've put forward.

RT: Thank you. And although you say that the the effect of what you say is a lack of a housing land supply and/or a failure of the housing delivery test, you say the effect is that the strategic policies of the Southwark Plan are out of date. You don't say that that then leads to any different approach to the determination of this application.

NA: I think the key the key point relative to 5 year supply is the weight to be afforded to new homes. That is the key point.

RT: Yeah, that was the first point. The second point is you say that the consequence of this shift turning from 5.03 to 4.92 or whatever it might be, the consequence of that shift...

RHKC: Ah

RT: Can I ask a question?

RHKC: Yes, but the evidence is not to that because this witness's evidence is that it is 3.89. That's the difference.

RT: Right. Ok. I'll ask you Mr. Harris's question. He's already had a chance to ask almost two hours of questions to you, but he's having another chance. Assume that your housing land supply position is what you say it is 3.8 years. In terms of the presumption, in terms of the operation of paragraph 11, it doesn't make any difference to your case, does it, as to whether it's 3.8 years or 5 years?

NA: It does because part of the decision making process is to reach a planning judgment in the context of paragraph 215 where we have a heritage consideration and part of that needs to account for the public benefits. Part of the public benefits are the provision of housing, the weight to be afforded to the provision of housing.

RT: You're back to the weight point. So, let's come off the weight point, because that's how I'd understood it. And then we started having questions yesterday about tilted

balance and about footnotes to paragraph 11 and I don't understand from your case that those are relevant. Hence if you do "control F" on any of the documents you produce you've never mentioned tilted balance and as you know many planning appeals it's mentioned on every single page of every document.

NA: Yeah

RT: So you're not saying that this is a paragraph 11(d) case. So the relevance of failing against the measure that you have set - 5-year housing land supply - is you say one that goes to weight. Yes?

NA: Weight in the planning balance.

RT: Weight in the planning balance and not to, or not relevantly to, whether particular policies of the development plan are out of date or not.

NA: I agree with that. It's about weights.

RT: Thank you. And you see the point in 11(d), the reason the five year housing land supply comes into 11(d) is only to identify which policies are out of date.

NA: Yeah. As I said this is an 11(c) is the one that the entire planning application is based upon, in accords with the development plan.

RT: That that's what I thought until yesterday. Thank you.