

Appellant's Final Response in relation to Costs

A. Introduction and Summary

1. This is the Appellant's response to the Council's submissions dated 27th November 2025.
2. In the context of the Council's submissions, the Appellant restates that it is the purpose of the costs regime to instil a degree of discipline into the planning appeal process and to ensure that planning authorities rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
3. The Planning and Infrastructure Bill (soon to be adopted) restricts the ability of a planning committee to overturn officer recommendations. Until such time as the Bill is in force, the costs regime provides an appropriate tool to sanction inappropriate and unreasonable overruling of clear officer advice on important parts of a case, particularly on an allocated site.¹
4. In this case the Appellant maintains, notwithstanding the content of the Council's response document, that the conduct of the housing land supply part of the Council's case was unreasonable and did not stand up to any scrutiny and the two instances of setting aside officers' advice lacked sound substantive and defensible evidence to support the "overturn".

B. Process and Deadline.

5. In "Claim planning appeal costs" under "**Deadline to claim for costs**" (Appendix 1 to this note) the government provides :
"You can claim costs if someone involved in your planning appeal behaves unreasonably and costs you money..... the deadline depends on whether your appeal will be decided:
-at a hearing or inquiry-apply before it closes
-in writing- no later than the final comments stage.
6. In this case, the appeal was heard by way of an inquiry. The **deadline** to claim costs is thus "**before it closes**". There can be no doubt but that this application is thus duly made.
7. It therefore falls to be determined on its merits and the Inspector has correctly so ruled.

¹ PPG Paragraph: 028 Reference ID: 16-028-20140306 and
Paragraph: 030 Reference ID: 16-030-20140306 for general principles

8. In reply to para 2 of the Council's costs response, the nature of the claims and the circumstances in which they arose are important. The partial award of costs sought relates to the additional costs unreasonably incurred as a result of:
- a. The unreasonable and indefensible allegations of a 7.21 year housing supply (against a 5 year requirement) which was the only reason moderate weight was given to housing delivery of 877 new homes;
 - b. The overturning of an officer recommendation that the proposal provided the reasonable maximum provision of affordable housing and that there was no arguable affordable housing reason for refusal; and
 - c. The overturning of an officer recommendation that there was no harm to the vitality and viability of the relevant centre and thus no retail reason for refusal.
9. On (a) for reasons already set out and understood by the Inspector, the Council's position shifted through the process. Thus in the officer's report to committee the tilted balance test was clearly applied (see Closing para 171 and 5.7 CD 3.1), then in the Rule 6 Statement there was an allegation that the 5YLS was met based on a 2021 Assessment, then in the proof a land supply of 7.21YLS was asserted by way of a new AMR only on the eve of the inquiry by way of an unsigned note for that to be reduced to 5.04YLS, then, in the witness box (but only in cross-examination) the Council's only witness accepted that there was NOT a 5 year land supply only for Mr Turney KC to re-assert in closing that the Inspector (contrary to the evidence) should proceed on the basis that there WAS a 5YLS.
10. In all of these circumstances, the Appellant was entitled to explore and understand the Council's shifting and final position throughout the inquiry before formulating and or applying for costs on the basis of land supply issues.
11. Again, in all the circumstances, the Appellant would have been entitled to await the final "twist" of the Council's 5YLS tale before applying "before [the inquiry] closes" but reasonably and fairly gave notice to the Council even before that final and remarkable twist.
12. For the other two reasons for refusal, the approach to be adopted to "officer overturns" was recently restated in the clearest of terms by PINS and the Secretary of state who agreed with Inspector Young that:

"..[I]t is a fundamental principle of local decision-making that a planning committee is not bound to follow the advice of its officers. Nonetheless, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all

respects.²

13. Implicit in this approach is the ability for the Appellant to consider:
- a. the evidence relied upon by the Council (and its testing through the inquiry process of cross-examination and Inspectors' questions) and also
 - b. as set out in closing submissions
- as part of its consideration as to whether the council had in fact produced "sound substantive and defensible evidence on appeal to support the decision in all respects".
14. So, the application was duly and appropriately made having regard to the appropriate "deadline" and the recent guidance from PINS and the Secretary of State on the approach to officer overturns.

C. The Land Supply head

The requirement to challenge the weight to be given to housing delivery as a result of an alleged 7.21Year HLS.

15. The Council's first 11 points on this matter are responded to compendiously. When looked at accurately having regard to these matters there is no reasonable defence to the claim for costs. But, because of the detail of the Council's response, this matter must be addressed clearly and fully in this response.
16. It should be remembered that this case was primarily but not exclusively about housing and the weight to be given to housing in the context of the Framework's balances (if engaged).
17. It was a formal part of the Council's case set out in its Rule 6 statement (see para 4.13) that it had a 5 YLS. It relied upon a 2021 AMR in support of that assertion.
18. In a case involving housing that is an important and (for reasons set out below) consequential assertion and those drafting the Rule 6 statement would have appreciated this.
19. The Council's Rule 6 Statement followed the Appellant's Rule 6 Statement which had said accurately and appropriately:

"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."

² Appeal Ref: APP/Q1445/W/24/3353409

Brighton Gasworks, land bounded by Roedean Road (B2066), Marina Way and Boundary Road, Brighton and Hove at Para 38 and see Appellants Costs application

20. At exchange of evidence the Appellant, having regard to the Council's Rule 6, said this:

"It is not clear whether the Council is able to demonstrate a 5 Year Housing Land Supply. My investigations indicate that the most recent position published by LBS was in June 2021. Therefore, LBS has not complied with the requirement of para 78 of the NPPF, and there is no evidence currently to demonstrate that LBS has a 5 year housing land supply. I have been unable to identify a recent appeal derived figure."

21. Paragraph 78 of the NPPF states **"local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five year' worth of housing."**

22. The PPG makes clear, building on this paragraph that (emphasis added):

"For decision-taking purposes, an authority will need to be able to demonstrate a 5 year housing land supply when dealing with applications and appeals. They can do this by using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR). (see closing submissions).

23. The LPA was clearly aware of this duty and sought, eventually, to produce and to rely upon a new AMR specifically for the purposes of this inquiry in its proof of evidence.

Mr Ibbot's evidence

24. In Mr Ibbot's proof he identifies the duty set out in para 78 NPPF and states (emphasis added):

"The Planning Policy team has produced a Five-Year Housing Land Supply Update. Past and current delivery on each SP site allocation has been reviewed and compiled into a live land supply table. Real-time projections have been reviewed and adjusted to reflect current delivery timescales for unbuilt sites. (3.21 proof)

And "..Southwark has identified a deliverable supply of 24,217 homes, resulting in a total supply equivalent to 7.21 years above the minimum requirement. This position is summarised in the table at Appendix MI2, and has recently been published on the Council's website."(3.22 proof and Table MI2 (Appendix 2 to this note).)

25. The relevance of this new evidence was NOT lost on Mr Ibbot who was clear that:

The most recent Housing Delivery Test (December 2024) showed that LBS scored 82% – ie requiring a buffer of 20% on its five-year housing supply and an action plan (NPPF paras 78 and 79), but not engaging the “tilted balance” (NPPF para 11 footnote 8). The buffer is accounted for in the five-year housing land supply figure above. (3.23)

26. In short Mr Ibbot and the Council were saying that the tilted balance was not engaged BECAUSE the HDT was at 82% and because the council had a 5YLS even taking into account the 20% buffer on that 5YLS.

27. Such an assertion was unreasonable and incorrect because:

- a. Council officers would have been only too aware in the context of the “perfect storm”(Mr Ibbott chose to adopt these words) that meeting the HDT this year was impossible. This should have been disclosed to the inquiry (see below) but was not, and
- b. The hastily put together allegation of 7.21YLS was palpably and demonstrably inaccurate in the context of the same “perfect storm” and the clear guidance on identifying deliverable sites in the Framework and PPG (see closing).

28. Further, when undertaking his planning balance, Mr Ibbot specifically gave only moderate weight to the housing in the scheme and did not even consider the issue of the “tilted balance” “given that Southwark has a 7.21 year housing supply.” (see para 9.25 et seq).

29. It is worth setting out again the relevant part of the paragraph in full (our emphasis):

9.25. Turning to the planning balance, I note the following matters weigh in favour of allowing the appeal:

- Implementation of a SP site allocation proposal (significant weight)
- The development of brownfield land (significant weight)
- **The provision of housing (moderate weight *given that* Southwark has a 7.21-year housing supply)**

30. In the circumstances this allegation of 7.21 years land supply was central to the Council’s case as made in its proof.

31. This is the case whether or not a tilted balance is or is not engaged. It was a central plank in the Council’s case on weight to be given to the housing element of the proposal “given that Southwark has a 7.21YLS” which, after all ,was clearly one of, if not THE, main controversial elements of the proposal.

32. For this reason alone, the accuracy of the palpably incorrect 7.21 year land supply needed to be addressed by the Appellant. There was, put simply, no option other than for the Appellant (and indeed the Inspector, having regard to the Framework and guidance) to address and test this new land supply assertion.
33. And that is what happened (see below).
34. But of course, if a local planning authority is (as a result of such testing or at all) unable robustly to establish a 5 YLS, then there are inescapable legal consequences for the decision-making process in a case involving housing (see below).

Mr Alston's response

35. Mr Alston's rebuttal thus, as we have said, simply had no choice but to deal with the new allegation of 7.21YLS. Mr Turney KC cannot suggest that the issue of the extent of the housing supply (or lack of it) was not an issue between the parties. On any analysis the existence of 7.21YLS was **central** to the way his own witness was putting his case on the **central** issue of the weight to be given to housing in the relevant balances.
36. Mr Alston chose to address this fundamental allegation in the following way (emphasis is critical and added):

2.31 MI's evidence (para 3.21) identifies that LBS has produced updated information on its Five Year Housing Land Supply (5YHLS). Summary details were set out in the 2024/5 AMR (CD6.41) which are replicated in Table MI2 of MI's POE.

2.32 The schedule of sites that make up the identified supply of deliverable sites is not included in MI's evidence nor published on the Council's website (as part of the AMR or elsewhere). This was requested by the Appellant and was provided by the Council on 8th October 2025. This is enclosed at Appendix B.

2.33 MI's evidence states that the Council is able to demonstrate a 7.21 year supply of deliverable housing land (Table MI2). His evidence identifies at para 9.25 that only moderate weight should be given to the public benefit of providing market housing as a consequence (suggesting a lack of need), inferring that greater weight should be attributed to this if the Council were unable to demonstrate a 5YHLS.

2.34 I have reviewed the summary table MI2 of MI's evidence and the associated schedule of sites. My review concludes that the Council does not have a 7.21 year supply of deliverable housing land. It is significantly less than this.

2.35 I provide an explanation of this below, which considers Table MI2 of MI's POE row by row:.....(see proof for several pages of detailed analysis of the methodology and content of the alleged AMR).

37. Mr Alson had to consider research and identify each component of the alleged 7.21YLS to establish that applying the NPPF appropriately there was a housing supply of no more than 3.9 years. He did so directly by using the PPG's methodology on the calculation of the 5YLS and the definition of "deliverability" for these purposes in the NPPF Glossary.
38. It will be clear that this was a substantial exercise made necessary by the assertion in the late-produced AMR and relied upon by Mr Ibbot in the ways set out above.
39. This was also a time consuming and very costly exercise which should not have been necessary had the Council undertaken its duties in relation to the calculation of a housing land supply reasonably and robustly under para 78 of the NPPF and the PPG set out above.
40. Once the matter of land supply was relied upon and put in issue by the Council there was a duty to calculate the supply accurately and in line with guidance. That guidance was not followed and a transparently incorrect, but consequential, land supply was put before this inquiry without any due care or attention (nor any witness able to speak to it).

The unidentified author note on HLS just before the start of the inquiry.

41. On 24th October, just before the start of the inquiry unidentified officers of the Council produced a note identifying a 5.04 YLS. Its status as a planning document is unknown and unknowable, it did not form part of an AMR as required by para 78 of the Framework.
42. The document purported to react to Mr Alson's evidence but as Mr Ibbott (understandably) confirmed, and as mentioned in the Council's response document, he was NOT in a position to speak to it and could add nothing to it and thus the document could not be tested appropriately under cross examination.
43. It contains four fundamental errors, any one of which would mean that the Council could not establish a 5 YLS (see the Appellant's closing at para 179). No weight should be given to its conclusion that there is a 5.04 year supply of land.
44. Its production in this form and in a way which was NOT testable is itself unreasonable behaviour. The Council's response is simply incorrect in asserting otherwise.

45. The presentation of this new analysis in the new document derives wholly and completely and on its face from the evidence produced by Mr Alston in response to the evidence of Mr Ibbott (and its clear and unambiguous reliance on the 7.21YLS).
46. Mr Turney KC accepts that fact on behalf of the Council (see para 25 et seq of the submissions on costs)
47. In these circumstances alone, Mr Alstons' significant and additional work was necessary and arose from the clearly unreasonable and incompetent and unrealistic AMR produced without due care and attention by the Council. The Council should bear the costs unreasonably incurred in drawing the inaccuracy of the 7.21YLS figure to the inquiry's attention.
48. Mr Turney KC notes that Mr Ibbott "upgraded" the weight he gave to housing overall as a result of the Alston dismantling of the 7.21 YLS.
49. That is true (though he never did recast his overall judgment). But that upgrading was only **because** of the work undertaken by Mr Alston, which in turn was only required as a result of the accepted faulty nature of the AMR.
50. In effect Mr Turney KC is recognising in his costs submission the importance and consequence of the work undertaken by Mr Alston and the fact that that was made necessary by the unreasonable AMR assessment contrary to all relevant guidance.
51. In summary, the extent of the housing land supply was clearly important to the conclusions of the Council at the inquiry. The allegation of 7.21YLS would clearly not have accorded with the advice on calculating a housing land supply and would have been a wholly inappropriate one for the Council to place before the inquiry on the issue of the weight to be given to housing in Southwark. In short, it would have been incorrect and misleading when the duty to set out such matters is for the Council. The Appellant was obliged to do the job properly and incurred significant additional and unnecessary expense in establishing it was a false figure. There was no challenge in cross examination to the exercise undertaken by Mr Alston.

The legal consequence of not being able to demonstrate a 5YLS (or HDT).

52. But, and to deal squarely with the Council's 12th point in its response under this head, the consequences of a failure to demonstrate a 5YLS (or an appropriate Housing Delivery) do not depend on the precise nature of the dispute between the parties at a relevant inquiry. Where decision makers find that (for whatever reason) a Council is unable to demonstrate a 5 year land supply (or an HDT compliance) the wording of the Framework requires as a matter of law a different approach to decision-making.

53. Such failures, as a matter of law, automatically engage the presumption in favour of development or the tilted balance. The decision maker makes an error of law in not applying that presumption if (either or both of) those conditions prevail.
54. This is part of the Government's approach to boosting the supply of housing in circumstances especially where there is a local short term failure in delivery. As an approach it is not discretionary.
55. Mr Alston dealt directly with this in his evidence: he agreed that the Appellant's case was that the proposal was in accordance with the development plan and that therefore it should be granted planning permission under Para 11c of the Framework. But he also reminded the inquiry that if the Council could not robustly demonstrate a 5 year land supply then the tilted balance would apply in addition (see transcript at Appendix 3 to this note).
56. In our closing at footnote 7 we reminded the decision maker of the automatic nature of the operation of Paragraph 11 as explained in *Oxton Farm v Harrogate Borough Council v D Noble Limited* [2020] EWCA Civ 805 where the Court at [31] said "Paragraph 11 (d) of the NPPF provides that the tilted balance is engaged where (a) there are no relevant development plan policies, or (b) the policies which are most important for determining the application are out-of-date. The lack of a 5 year supply of housing land is a policy that is **deemed** to be out of date by virtue of footnote 7."
57. We also mentioned the Court of Appeal decision in *Gladman Developments Ltd v Secretary of State* [2021] EWCA Civ 104 at [3] which said that "In both section 78 appeals the policy for the so-called "tilted balance" under paragraph 11d)ii of the NPPF applied because, in either case, the local planning authority was **unable to demonstrate a five-year supply of deliverable housing sites**, so that the policies most important for determining the application were **deemed** "out-of-date".
58. Both references are also applicable in the context of this costs debate.
59. In this case, the unreasonable assertion (contrary to the provisions of the NPPF and the NPPG) that there was in fact 7.21YLS was required to be addressed by the Appellant, giving rise to unnecessary costs... and one of the consequences of that was that the clear and agreed evidence (from the Council's only witness on the matter) that the Council had failed, and continues to fail, to demonstrate a 5YLS (nor likely a HDT pass either).
60. For this additional reason, it was appropriate for the Inquiry to understand the nature of the housing land supply and its relevance to the decision-making process.

61. And without the intervention of the Appellant correcting the Council's unreasonable assessment on this critical issue, the Inspector would have been potentially proceeding on a false basis.

Conclusion on Land Supply head.

62. The costs occasioned by a palpably and obviously unreasonable assertion that there was a 7.21 YLS are clearly recoverable.
63. The assertion of 7.21 YLS failed to apply the methodology of the Framework for the reasons set out in closing, was inconsistent with the housing delivery trajectory for this year (which will almost certainly result in the tilted balance in its own right - a matter which was within officers' knowledge) and which formed an important part of the Council's overall case on weight to be given to housing overall.
64. The Council closed, and keeps closed, a Nelsonian eye to the consequences of not having a 5YLS (or HDT). The Inspector cannot.
65. And for that reason also, the work undertaken by the Appellant (consistent with the Framework and to a significant degree unchallenged) was necessary to correct a misleading and unreasonable allegation. The costs of so doing are recoverable.

D. The going against elected members on Affordable housing head.

66. The Appellant largely relies on its Closing and its original submission on this ground.
67. In summary only, the approach of the Council (and third party) on this issue was incoherent and contrary to policy guidance and RICS professional standards. It was (though in disguise) a submission that the determination of this application and its contribution to meeting housing needs (including the reasonable maximum provision) should be delayed and for an unknowable time.
68. The Council's reliance on *Schneck* in its Costs reply is misplaced. In that case, the Court while potentially accepting that there **may (not will)** be circumstances where a decision maker theoretically could conclude that it might be legally possible to conclude that where a development "which makes no contribution towards affordable housing is too high a price to pay.. even where the viability evidence demonstrates that none can be afforded." It also critically and further asserts that "the scope for such a conclusion to be reached lawfully depends upon the applicable policy".

69. In this case all parties agreed that the applicable housing development plan policy was entirely up to date and applicable to the circumstances of the case. The “deeming” provisions referred to above do not alter that substantive agreed fact - as the Courts have put it: “where policy 11(d)(ii) is triggered because a 5 year supply of housing land cannot be demonstrated, the decision-maker will still need to assess the weight to be given to development plan policies, including whether or not they are in substance out-of-date and if so for what reasons.”.³
70. Both limbs of the relevant policy H5 and P1.1 are agreed to be up to date and implacably and inescapably require the decision maker to determine the application “subject to viability” and in accordance with an identified viability methodology (see Closing- not repeated here).
71. Neither limb of the up-to-date policy allows a separate or different approach to the identification of the reasonable maximum proportion or any other appropriate proportion of affordable housing. Nor are there rationally other material considerations at play. And, as explained, calculating the relevant proportion of affordable housing by reference to an individual developer’s “tipping point” would be relativistic, inappropriate and unworkable given that planning permissions and s106 obligations run with the land.
72. Officers explained this clearly to elected members. The defence of the incoherent approach by Mr Ibbott didn’t alter its incoherence having regard to policy and the way it has consistently been applied by decision makers having regard to the development plan.
73. With respect to Mr Ibbott (and to Mr Venning) they failed to produce any or any sufficient evidence which **“show(ed) reasonable planning grounds for taking a contrary decision [to officers of the Council and independent expert RICS advisers] and produce sound, substantive and defensible evidence on appeal to support the decision in all respects”**.
74. This reversal of officers’ and the Council’s consultant’s recommendation on this issue is therefore unreasonable and unfounded.
75. Allowing this approach to determining the appropriate proportion of affordable housing or even accepting that it constated reasonable planning grounds for setting aside the conclusions reached by the operation of the up-to-date development plan would set a harmful precedent and delay the provision of much needed housing overall across London.
76. The costs of defending this reason for refusal which were substantial and unnecessary should be awarded.

³ Gladman v Secretary of State and Corby [2020]EWHC 518. Referred to above and in closing submissions following pre-closing notice to other parties.

E. Loss of retail floorspace contrary to officers' advice head.

77. The Appellant's case on the costs application in this ground is set out in the Costs Application and will not be repeated here. There are two points to make in reply to the Council's costs response.

78. First, the Council (see paragraph 38 of the costs response) is trying to bolster the 'reasonableness' of Reason for Refusal 3 by unjustifiably relying on issues which are no part of the reason for refusal. The provision for business relocation and the issue of small shops does not form any part of Reason for Refusal 3.

79. Reason for refusal 3 stated as follows:

*"The proposed development, **owing to the loss of retail floorspace**, would fail to meet the site allocation requirement in NSP74 **to provide at least the existing amount of retail floorspace currently on the site** and **as such** would **cause harm to the vitality and viability of the town centre and would fail to diversify and complement the existing retail offer in the town centre**. This would be contrary to **policy SD6** 'Town centres and high streets' and **E9** 'Retail, markets and hot food takeaways' of the London Plan 2021 and **policy P35** 'Town and Local Centres' [and] **NSP74** of the Southwark Plan (2022)."*

80. The sole issue in this reason for refusal was the failure to re-provide at least the existing amount of retail floorspace currently on the site, and it was on this basis that it was alleged that there would supposedly be harm to the viability and vitality of the town centre and a failure to diversify and complement.

81. As set out in the officer report (see paragraph 112 of CD 3.1), the issue of business relocation and the application of policy P33 was not the subject of a reason for refusal, and Members did not add this issue to any reason for refusal. It was always envisaged that this would be secured as part of a planning obligation. That is exactly what happened in the appeal, and the business relocation strategy has been secured in the planning obligation, as agreed with the Council.

82. As also set out in the officer report (see paragraphs 94-98 of CD 3.1), the issue of small shops and the application of policy P32 was not the subject of a reason for refusal, and Members did not add this issue to any reason for refusal. It was always envisaged that this would be secured by way of a condition or obligation. That is exactly what has happened in the appeal, with the 10% small shops requirement being secured in the planning obligation, as agreed with the Council.

83. The issues of business relocation, provision of small shops and P32 and P33 did not form part of the unreasonable Reason for Refusal 3 imposed by Members.

These were always issues due to be addressed by condition or obligation, and that is what happened at the appeal.

84. It is the costs incurred by the Appellant in responding to the Reason for Refusal 3, which unreasonably alleged that mechanistic loss of retail floorspace caused harm to the vitality and viability of the town centre, that is the subject of this part of the Appellant's costs application. This reason for refusal is unreasonable for the reasons set out in the costs application.
85. Second, the Council is simply wrong to allege that the Design Brief, which was developed in collaboration with officers, is irrelevant to this issue and that it only deals with the acceptability in principle of introducing other uses and does not deal with the quantum of retail floorspace. This is a misreading of the Design Brief (see paragraph 40 of the costs response).
86. The Design Brief in relation to non-residential requirements (see CD 7.17, electronic page 11) says that there will be "*c.10,500sqm GIA total non-residential floorspace*". This is said to include a "*min. 4,549sqm GIA new Morrisons food store*", then "*remaining floorspace can be a mix. of town centre non-residential uses – e.g. leisure, workspace, F&B – in a range of unit sizes*" and "*Dedicated workspace building (Bussey building typology circa 2,500sqm).*" Quite clearly, this deals with quantum and identifies that there will inevitably be a loss of retail floorspace on site, which was agreed with officers as part of the Design Brief.

F. Overall conclusion

87. For the reasons set out above in response to the Council's submissions the award of costs sought should be made. The quantum of the award by head (if granted) will be determined by taxation if not otherwise agreed and is not a matter for this application or determination.

RUSSELL HARRIS KC

ANJOLI FOSTER

LANDMARK CHAMBERS

1st December 2025.

APPENDIX 1

Extract: Claim Planning Appeal Costs

Claim planning appeal costs

Contents

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Overview

You can claim costs if someone involved in your planning appeal [behaves unreasonably](#) and costs you money.

You [make a claim](#) for an 'award of costs' to the Planning Inspectorate. If you're successful, you'll have to reach an agreement with the other party about how much they pay.

You can be asked to pay costs if you behave unreasonably during your own appeal. The Planning Inspectorate can do this even if nobody's claiming costs against you.

Deadline to claim for costs

The deadline depends on whether your appeal will be decided:

- at a hearing or inquiry - apply before it closes
- in writing - apply when you appeal for householder, commercial and tree preservation orders, or no later than the final comments stage for anything else

The deadline is different for claims about:

- a site visit (for example someone did not attend) - apply within 7 days
- a withdrawn appeal or enforcement notice - apply within 4 weeks

APPENDIX 2

Mr Ibbott Proof of Evidence Appendix MI2

MI2: Five-year housing land supply calculation

Supply input		Total	Formulae
Annual target As set in the Southwark Plan	A	2,355	As set out in the Southwark Plan
Southwark plan requirement (for next 5 years) Housing requirement	B	11,775	The basic requirement for the next 5 years (A x 5)
Overall supply of deliverable sites As demonstrated through Appendix 1 of full list of sites deliverable which for Southwark is all site allocations in the Local Plan plus the brownfield register which covers windfall sites and all 'deliverable' sites This year financial year 2025 to 2030.	C	24,217	19,330 – total units on site allocations in the next five years 5-10 in the current 5 and 15 2,272– total windfall sites (sites outside allocations with planning permission) 523 x5– small sites
Deficit Under/Over supply	D	-2209	Under delivery against target since the adoption of the plan
5-year housing requirement Including any accrued deficit	E	13,984	(B + D)
Buffer applied As per the last HDT results	F	2,975	20% - based on the results of the housing delivery test
5-year housing requirement + accrued deficit + 20% buffer	G	16,780	E+F (+20%)
Adjusted annual housing requirement	H	3,356	G/5
Overall years supply (overall supply/annual target)	I	7.21	(C/H)

APPENDIX 3

Aylesham Centre Inquiry Day 7 Transcript

Transcript Aylesham Centre Inquiry Day 7 Re-examination of Nicholas Alston

Start 7:13:23

RH – Can we start with the NPPF please? And you were asked a number of questions about paragraph 11 of the NPPF. You remember those?

NA – I do.

RH – Thank you. I'm not going to ask you questions about the legal meaning of that, but can we look at footnote 8 please?

NA – Yeah

RH – Footnote 8 comes into play um, where policies are most important for determining the application are out of date. Footnote 8 it says this includes for applications involving the provision of housing situations where the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites brackets brackets brackets or where the housing delivery test indicates that the delivery of housing was substantially below the less than 75% of housing requirement over the previous 3 years. Now, by the time of the Inspector's decision in this case, are either or both or none of those situations potentially relevant to the circumstances of the case?

NA – 11D would apply if the housing delivery test gives out a score of less than 75% and equally if the Inspector was minded to agree that the Council doesn't have a 5- year housing land supply, 11D would also apply. In that situation, the decision making framework changes in that it tips the balance in favour of the proposal and requires a balanced judgement to be undertaken.

RH – Okay. Thank you. Next. And separate from that you said to my learned friend, if there's no 5 year land supply, the weight to be given to provision of housing overall would be increased.

NA – absolutely yes.

RH – why'd you say that?

NA – because it's demonstrating the need isn't being met and we need to do more to meet the need moving forwards by identifying and brining forward additional sites and making them deliverable.

RH – now Mr. Ibbott, in his proof of evidence concludes only moderate weight because of the existence of a 5 year land supply. Do you remember that?

NA – Yes.

RH – Were you here when he gave his evidence?

NA – Yes

RH – and where he agreed that he'd need to alter the moderate weight upwards if there were no 5 year land supply.

NA – Yes.

RH- Why do you think he came to that conclusion?

NA – because the need is there sort of what I just said sir, that that there is a much greater need particularly moving forwards. There aren't enough sites that are deliverable to meet the need over the next 5 years. So we need to bring forward more sites. Basically means that anything that does come forward is it has a much greater benefit and much more weight should be placed on that as a consequence.

RH – thank you. We saw from um the PPG that it's for local planning authorities robustly to demonstrate their 5 year land supply.

NA – Yes.

RH – in hearings such as this, inquiries such as this. Um uh first please. Nye's Wharf.

NA – Yeah

RH – on the evidence before the inquiry, is there any prospect of delivery on Nye's Wharf in the next 5 years.

NA – No and that is set out on the planning application documentation that we've submitted, which confirms that Berkeley Homes, the landowner and developer will not be implementing and delivering that planning permission because it's it's not a viable proposition in the current circumstance. A brand new planning application has been submitted to attempt to resolve that. Uh but that will not be delivered within the next 5 years so the the 153 homes that is retained has been included within the Council's 5 year housing land supply in the version that was shared the other day. Uh should be reduced by 153.

RH – thank you. and just if you take that one off, have they got a 5 year land supply?

NA – No

RH – Thank you. The fact that the evidence establishes that there's no prospect of dwelling in the 5 years was uh put to Mr Ibbott yesterday. Could you understand him to challenge that in any way shape or form?

NA – no, he agreed.

RH – Thank you. Next please. Canada Water. Same question. What's the evidence before the inquiry that as to whether uh that site is deliverable in the next 5 years?

NA – there's a s73 application pending determination which confers that that's that development is not fundable. It's not viable and it's not going to be delivered as a consequence. It has stalled. So it's not deliverable in the next 5 years.

RH – any challenge to that from Mr. Ibbott or did he accept it?

NA – no, he accepted.

RH – thank you. And the third thing please. There's an entire category of cases where the local planning authority accepts there's no planning permission.

NA – Yes

RH – where there's no planning permission where does the onus lie to establish that the uh the uh sites will come forward in the 5 year period?

NA – the definition in annex 2 of the NPPF places the onus squarely on the local planning authority to provide the evidence to demonstrate that sites without planning permission are deliverable over the next 5 years. No evidence has been provided uh to to demonstrate their deliverability and in round numbers that's about 2 and a half thousand homes sir sit within that category.

RH – thank you. And is there any consideration of that category selection on a case by case basis either by Mr. Ibbott or by the people who are not before the inquiry in terms of those putting together the uh AMR.

NA – no evidence has been provided on a sort of site by site considered basis to demonstrate deliverability or otherwise.

RH – thank you. That's the end of that case point.

End 7:18:39