



Costs Decision

Inquiry Held on 28-31 October, 4-7 and 17 November 2025, closing in writing 8 December 2025

Site visits made on 2 and 5 November 2025

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2026

Costs application in relation to Appeal Ref: APP/A5840/W/25/3366760 Aylesham Centre, Rye Lane, London SE15 5EW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Berkeley Homes (Capital) Plc for a partial award of costs against London Borough of Southwark Council.
 - The appeal was against the non-determination of a planning application for the demolition of existing buildings and phased redevelopment to provide a replacement supermarket and associated service yard and car parking (Use Class E(a)), flexible retail, leisure (including drinking establishment), and commercial accommodation (Use Class E/Sui Generis), dwellings (Use Class C3), landscaping and associated works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The applicant (the appellant in the main appeal decision) to the costs claim submits that London Borough of Southwark Council (LBSC) has acted unreasonably insofar as: (1) claiming it had a 7.21 years housing land supply (YHLS), without due basis; (2) applied inadequate quantum of affordable housing argument; and (3) sought inappropriate vitality and viability town centre impact reasons to resist the appeal development from proceeding. All of which is alleged to have caused unnecessary expense.
3. National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

In relation to ground (1)

5. The contention of 7.21 YHLS is specifically highlighted as being unreasonable, acknowledging LBSC did revise its calculation downwards to 5.04 years supply

- during the inquiry. The applicant alleges that this was unsubstantiated and an adequate supply cannot be demonstrated in any event.
6. I appreciate that the situation is complicated by rolling data, ongoing viability issues and legal agreement matters. The Borough's housing supply situation is no doubt fluid, finely balanced and subject to rapid circumstantial changes. Indeed, landowners and various applicant's intentions may also be subject to variance relative to market circumstance, other commercial decisions, as well as emerging planning decisions. Therefore, I am cognisant the issue should be treated with a great deal of caution owing to the level of circumstantial variability involved.
 7. Nevertheless, the information regarding Berkeley and Canada Water sites suggests to me that LBSC's revised position is still overly optimistic. Particularly given funding issues referenced. Albeit the full detail behind the overall assertions is not completely clear based on all the evidence provided.
 8. The chronology explained by LBSC from autumn 2023 to October 2025 is material in that it does not feature tilted balance elements. Housing land supply issues becoming more prominent around two weeks before the Inquiry was to open. Moreover, the agreed wording of the Statement of Common Ground (SoCG) is significant. It refers to the Council's Annual Monitoring Report (24/25) (September 2025) as well as a Housing Delivery Test score of 82% as published December 2024.
 9. If the applicant wanted to address housing land supply figures and the associated background in more detail, it has had ample opportunity to do that via all of its submissions leading up to the appeal for the issue not to arise as a bolt from the blue. This includes agreement to the main issues of the appeal following the case management conference held.
 10. That said, I have given some leigh way to both appeal parties given the clear correlation to housing provision weighting to aid any decision outcome. That is because I accept the weighting attributed to housing provision can reasonably be expected to be informed by the most up to date or known circumstances. This extends to accounting for any local changes such as those stemming from viability impacts.
 11. I appreciate that the situation involves supply updates which take time and expertise to produce and verify. Nevertheless, it facilitates necessary and useful connection to the appeal arguments made.
 12. In that regard main party propositions could have been better integrated into the agreed SoCG making clear any technical points of disagreement. Outside of the housing supply disputes which have transpired, housing position statements were a likely aspect of the planning balance exercise expected by the appeal parties which could have been explored more thoroughly in the lead up to the inquiry. But those issues only take the applicant's allegations so far toward an existing allocated housing development site in any event.
 13. Even though I have found there to be non-compliance with the development plan contrary to the applicant's overall appeal case, having regard to the full wording of National Planning Policy Framework paragraph 11(d) relevant heritage, design, town centre and affordable housing related policies in contention most important to the outcome of the appeal are not out of date.

14. Moreover, the overall legislated planning balance is still not favourable to them when assuming adequate housing land supply is not demonstrated in the locality.
15. Bringing all those points together, LBSC's original claim of a far higher housing land supply does not lead me to the conclusion they have acted unreasonably. The evidence implies that LBSC have taken appropriate steps to report its housing position to aid a decision based on the main issues of the case. When they became aware of changing or contested circumstances they have acted accordingly through due revision.
16. Given the interface with the Framework and planning balance exercise expectations triggered and because of the scope of decision makers to apply their own weighting judgments on any given component, I do not find LBSC's actions have resulted in demonstrable wasted expense.

In relation to ground (2)

17. The development plan context as well as the high degree of public objection to the appeal scheme highlight the severity of the housing challenges faced locally. Housing provision is no doubt a crucial issue to Peckham's residents who are subject to the market forces and affordability pressures relevant to the dispute. The adopted policies for the conurbation ultimately seek to serve residents best interests through alleviating known housing challenges.
18. Bearing in mind those considerations, LBSC's rationale to seek to reject the scheme on lack of affordable housing provision is not inappropriate relative to Peckham's specific identified critical housing needs.
19. That is mainly because, there is a clear local policy basis and precedent for seeking higher amounts of affordable housing through a relatively recent adopted Plan. Notionally speaking, LBSC's intentions of seeking the best housing provision possible relative to its approved plan is a rational position to take. Albeit the issue is also tied to viability considerations, overarching planning balance exercise arguments and commercial choices of the claimant in forming its proposals.
20. I have not attributed any harm to the reduced level of affordable housing expected by the appeal development in the main associated appeal decision. Nevertheless, it is reasonable for LBSC to press for specific housing needs and the interests of its residents.
21. All in all, I do not find LBSC's actions have led to unnecessary expense given the localised well-minded intentions evidenced linked to the development plan for the area. And similar to ground (1) also because of the interface with weighting exercises expected for any decision maker on any perceived level of benefit, policy compliant or otherwise.

In relation to ground (3)

22. I agree there are frailties in an overly mechanistic application of adopted retail floor space policy wording. Over and above the wording expressed by relevant policy, consideration is needed as to whether or not there would be an increase or decrease in town centre viability and vitality posed by the scheme.

23. However, to suggest such issues cannot, or should not, be subject to any disagreement following acknowledgment of LBSC officers views based on the application material would be an overly narrow approach. I have no compelling reason to believe elected members were not able to further assess likely retail impacts applying local knowledge when having regard to policy wording and officer advice. Moreover, the proposed use of the bus station and resultant impacts to cart traders and other retail businesses has some overlap with LBSC's overall position. Thus, it is not an opportunistic approach they applied.
24. Accordingly, there is no strong evidence that these issues were not properly considered informed by the committee report. All the evidence points to the conclusion LBSC have applied credible and factual reasoning to plan led matters and other material circumstances when forming judgments on the putative reasoning they provided.
25. Overall, LBSC have given satisfactory evidence both orally and in writing to justify their approach, when having regard to the full provisions of the development plan, national planning policy and other material considerations.
26. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the applicant's costs claim fails.

M Shrigley

INSPECTOR