



Costs Decision

Hearing held on 11 November 2025

by **G Pannell BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

Costs application in relation to Appeal A Ref: APP/A5840/W/25/3361085

Land at the corner of Mandela Way and Pages Walk, London, SE1 4HD

- 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 Shiva Ltd for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against failure of the local planning authority to give notice within the prescribed period of a decision on an application for outline planning permission following the failure to respond to notice served under Article 12(1) of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended) for Outline planning permission (with matter of Landscaping Reserved) for construction of 3x1 bedroom terrace houses
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Costs application in relation to Appeal B Ref: APP/A5840/W/25/3361771

Land at the corner of Mandela Way and Pages Walk, London, SE1 4HD

- 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 Shiva Ltd for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for outline planning permission following the failure to respond to notice served under Article 12(1) of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended) for Outline planning permission (with matter of Landscaping Reserved) for construction of a 4 bedroom terrace house.
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Costs application in relation to Appeal C Ref: APP/A5840/W/25/3368058

Land at the corner of Mandela Way and Pages Walk, 105 Pages Walk, London, SE1 4HD

- 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 Shiva Ltd for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for Outline planning permission (all matters to be determined: scale, access, landscaping, layout and appearance) for construction of a part two-part single storey commercial building; a detached single storey annexe building at rear of 103 Pages Walk, erection of new site boundary enclosure, soft landscaping and parking of a T-34 tank vehicle.
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Decision

1. The application for an award of costs in relation to Appeal A is allowed in the terms set out below.
2. The application for an award of costs in relation to Appeal B is allowed in the terms set out below.

3. The application for an award of costs in relation to Appeal C is allowed in the terms set out below.

The submissions for Shiva Ltd

4. The costs application was made orally at the hearing, with reference to evidence submitted as part of the appellant's appeal statements.
5. The appellant noted a lengthy planning history around the appeal site, including disagreements between themselves and the council. In particular with regard to the current appeals they set out (i) the frustrations connected with seeking to agree the level of archaeological monitoring fee required, which had been set out as an area requiring further justification in an earlier appeal decision; (ii) the council's conduct regarding the use of S70A resulting in the applicant issuing a pre-action protocol letter and time wasted chasing up details of returned fees when the Council had not been requested to return them (iii) the council's failure to identify the habitat that had been lost; and its suggestion that protected species might be present. It was felt that was not fully explained despite repeated requests leading to uncertainty with regard to biodiversity net gain; (iv) the failure of the Council to provide an appeal statement or agree a statement of common ground. Furthermore, in connection with Appeal A and B the failure to respond to the applicant's Article 12 notice in relation to the validity of the applications.

The response by the London Borough of Southwark

6. The response was made orally at the hearing. The Council disputes that the lack of discussion on the archaeological monitoring fee had led to additional cost to the applicant as this matter was resolved on the day before the hearing. It added that correspondence should have been directed through the case officer and not to the borough archaeologist direct.
7. The use of S70A was considered as a means of turning away similar proposals, following the outcome of the earlier appeal. They consider they are a pro-development authority, and it is only due to the need for high quality development which is appropriately mitigated that the proposals were not accepted.
8. The Council also set out that they felt the information provided with regard to the invalidity of Appeal A and B had been adequately communicated and that it missed the requirements for the Council to issue a formal notice in response.
9. With regard to biodiversity net gain, it was considered that this was outlined fully in the Council's communications in relation to Appeal C, where the ecologists comments were shared.
10. The Council offered no defence for its lack of submission of a statement of case, however considered there had been no additional costs associated with the lack of the statement. With regard to the statement of common ground a copy was provided to the applicant but key elements were removed and therefore it could not be agreed.

Reasons

11. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may 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.
12. It states examples of unreasonable behaviour include lack of co-operation with the other party or parties; delay in providing information or other failure to adhere to deadlines; not agreeing a statement of common ground in a timely manner and refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
13. The Council's use of S70A to turn away Appeal A and B resulted in the appellant seeking Counsel advice, which resulted in the Council accepting that their use of S70A was not appropriate and it did allow the appeals to be submitted, if not ultimately validated. It is not within the remit of a costs application to consider whether the Council was correct in its approach, but I accept it adds to the appellant's feelings around the non-cooperation of the Council with regard to its applications.
14. In relation to Appeal A and B, the council then failed to validate the applications citing the need for three additional pieces of evidence, the applicant submitted two of these, leaving the need for an ecological impact assessment to be submitted. However, during the hearing the Council provided a copy of its local validation requirements for outline applications and this did not include the need for an ecological impact assessment. Furthermore, the Council could not confirm where the definition of an ecological impact assessment, provided to the Inspector before the hearing opened, came from and decided it should be disregarded. The Council went on to agree that under Article 11 (2E) of the Town and Country Planning (Development Management Procedure) Order 2015 ('the DMPO'), the Council should not have requested this information as part of its validation requirements.
15. The Council therefore failed to properly apply the requirements of the DMPO when validating both Appeal A and B, and its lack of response to the applicant's notice under Article 12 of the DMPO resulted in a lack of co-operation and a delay in providing information which may have resulted in the appeal being avoided.
16. The Council also failed to recognise in its communications with the applicant in relation to Appeal A and B that the minimum requirements of Article 7(1A) of the DMPO relating to Biodiversity Net Gain had failed to have been met. I accept that in some cases it may not always be obvious at the time of validation, as the application was accompanied by some information.
17. However, noting the detailed history of the site, which the case officer was familiar with, in terms of the loss of the tree on site, it would have been more helpful to the applicant if this failure to consider degradation, had been identified within the numerous correspondence relating to the non-validity of the applications.

18. It was clear that due to the removal of the tree the site could not rely on the small sites metric, but this was not highlighted to the applicant at any point, either during the discussions on non-validity, or upon reviewing the Council's case at the point the appeals were lodged. Again, this demonstrates a lack of co-operation and delay in providing information which may have resulted in the appeal being avoided.
19. In relation to Appeal C, which the Council did validate, following the applicant's submission of an ecological impact assessment, some correspondence was shared with the applicant regarding the unsuitability of the use of the small sites metric. However, it was not clearly set out that this would be part of the minimum requirements, or that this could lead to the applications being considered to be invalidly made.
20. The Council's failure to provide a statement of case, in particular where the appeals were for non-validation and non-determination, meant that the Council's intended approach to the cases was unclear before the hearing. The appeals, therefore, had to be considered by way of an oral event as there were limited written submissions, in the form of an email with bullet points, which gave any indication behind the council's reasons. This was despite extensions of time being given by the Planning Inspectorate in an attempt to encourage the parties to work together in order to ensure that the issues to be considered could be narrowed, thus reducing the expense associated with the appeal.
21. This failure to keep to deadlines was further compounded by the lack of agreement of a statement of common ground, or to clearly provide a list of areas of disagreement.
22. It was also apparent during the hearing that other matters may have been fundamental to the Council's case which had not previously been brought to the attention of the applicant, such as the design of the roof of Appeal B, where the Council's Conservation Officer considered that the scheme as submitted was likely to lead to less than substantial harm to the Conservation Area and during the Council's rebuttal of the applicant's cost claim it stated that the Ivy on the site was a key habitat that should have been considered, the first time in proceedings that this had been raised.
23. If the Council had kept to either the original timetable or that agreed by the Inspector for the submission of its statement of case, these matters could properly have been considered by the applicant and either addressed through the appeal process, or they may have opted to withdraw the appeals, having properly understood the Council's case. However, without the statement it was not possible for the applicant to address these matters on the day of the hearing.
24. Turning to the Council's approach to the requests for confirmation of the required archaeological monitoring fee, this was highlighted by the previous Inspector in their decision¹ whereby it was suggested that further justification as to the level of fee was required. Therefore it is not surprising that the applicant sought to discuss with the Council what the fee would be, in order that they could submit a legal agreement to secure the appropriate amount. The evidence suggests that this discussion was commenced early in the application process but that the Council failed to respond to the requests of the applicant.

¹ APP/A5840/W/23/3323681 3331037 3342742

25. Whilst the Council suggested in their rebuttal that the applicant should have raised their questions directly with the case officer, noting the matter pertained solely to an archaeological monitoring fee it is not unreasonable that the applicant made a direct approach to that individual. In any event, if the County Archaeologist was not comfortable communicating directly with the applicant they could have provided the information to the case officer for them to pass on to the applicant. The Council only confirmed the fee that was necessary the day before the hearing opened and this left the applicant needing to amend their unilateral undertaking at short notice.
26. Whilst the Council considers that this delay would not have lead to unnecessary expense, it is clear that there would have been costs associated with drafting the legal obligations associated with the three appeals and then for those to be redrafted at short notice. The lack of communication from the Council in this regard was unreasonable, given it was aware that it would need to be agreed on the basis of the previous appeal decision.
27. In conclusion, throughout the appeal process, it has been clear that there has been a break down in communications between the applicant and the Local Planning Authority and that this has stemmed from a lengthy planning history of the site and dealings that the applicant has had with the Council in the past.
28. The planning practice guidance makes it clear that it is expected that parties work together to ensure a positive approach to the planning process is followed throughout and in particular during the appeal that opportunities should be taken that would enable either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
29. The Council's failure to provide information, its failure to adhere to deadlines and not agreeing a statement of common ground or provide reasonably requested information in a timely manner are clear examples of unreasonable behaviour. It is clear to me that if the applicant had been fully aware of the Council's concerns it would have taken steps to either address those, or to withdraw the appeals in order for validly made applications to be made.
30. However, the Council's behaviour has resulted in the applicant having to appeal all three applications, as well as the additional expense of drafting and redrafting obligations and attendance at the hearing when the appeals may have been considered under written representations had its case been made clear at the outset.
31. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted for all three appeals.

Costs Order

32. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the London Borough of Southwark shall pay to Shiva Ltd, the costs of the appeal proceedings for Appeal A, B and C described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.

33. The applicant is now invited to submit to the London Borough of Southwark, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G Pannell

INSPECTOR