



Costs Decision

Site visit made on 22 July 2025

by **Katie McDonald MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th August 2025

Costs application in relation to Appeal Ref: APP/A4520/W/25/3365110 Former Whitburn Lodge Public House, Mill Lane, Whitburn SR6 7BF

- 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 Mr Phil Jones (Lovell) for a full award of costs against South Tyneside Council.
 - The appeal was against the refusal of planning permission for the demolition of existing Whitburn Lodge Public House, vacant structures and associated car park and erection of up to 32 dwellings including vehicular access from Mill Lane, associated infrastructure and landscaping.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.
3. A Local Planning Authority (LPA) is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The applicant submits that the LPA have acted unreasonably by:
 - a) Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - b) A failure to produce evidence to substantiate each reason for refusal on appeal.
 - c) Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The Written Ministerial Statement¹ details that "*The overturning of a recommendation made by a professional and specialist officer should be rare and infrequent – such that I have reminded the inspectorate that where it cannot find reasonable grounds for the committee having overturned the officer's recommendation, it should consider awarding costs to the appellant*".
5. The LPA's refusal relies on the proposal having an unacceptable effect on water quality from the waste water discharges from the site. This is because nearby waste water treatment works, under the operation of Northumbrian Water (NW),

¹ Dated 19 December 2023

- have been subject to investigation by Ofwat for unauthorised spilling of raw sewage. Ofwat have also been under investigation from the Office for Environmental Protection (OEP) for their failing to exercise its duty under environmental law to make enforcement orders.
6. For this reason, the LPA did not consider that the pollution control regime governing the handling of wastewater was operating effectively, as detailed by paragraph 201 of the National Planning Policy Framework (the Framework).
 7. The Council's approach is fundamentally at odds with what the Framework is seeking to achieve. Paragraph 201 is there to ensure that developments such as this do not get unduly delayed by matters outside the control of the developer, and by matters unrelated to the land use proposed.
 8. Moreover, the regulator has been investigating NW to ensure that the pollution control regimes are operating effectively. Ofwat has also been investigated, with the OEP acknowledging the draft enforcement orders proposed by Ofwat and awaits the outcome of its consultation process and ongoing investigations. This is exactly why paragraph 201 details that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions.
 9. There were markedly no objections to the proposal from any technical or statutory consultees in relation to drainage matters, such as the Lead Local Flood Authority or NW. NW clearly expressed there is capacity in the system to accommodate the proposal.
 10. The Council's statement poorly defends the decision, quoting lengthily from the reports about investigations of NW, and not dealing with the land use proposed. Whilst there is an attempt to quantify an increase in discharges from the site as harmful, this is incorrect, and of no real material impact. Thus, there is a failure to produce evidence to substantiate the reason for refusal, and there are vague, generalised or inaccurate assertions about the proposal's impact in land use terms.
 11. Additionally, the delays placed upon the applicant were quite frankly, ludicrous. The application was resolved to be approved in May 2024 subject to the signing of a planning obligation. Once the planning obligation was signed, permission should have been issued. However, the Council kept the application in abeyance for 7 months while they were considering the implications of the Ofwat report, and awaiting the final version. After the Council were advised that a timescale could not be provided by Ofwat, the application was then sent back to Planning Committee with another recommendation to approve, but was subsequently refused for the matters discussed above. Whilst the Council may have been waiting for the final Ofwat report, the recommendation did not change, and this means that the delay was wholly unnecessary.
 12. Additionally, the fact that the officer recommendation was consistently to approve, stating that there were very special circumstances for the development in the Green Belt, the decision taken by the Committee to refuse for this very specific reason, unrelated to the acceptable use of land, is completely unreasonable. The Council has prevented and delayed development which should clearly be permitted, which is particularly concerning considering its shortage of market and affordable housing, and the draft allocation of this site for development.

13. Consequently, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is justified.

Katie McDonald

INSPECTOR

COSTS ORDER

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 South Tyneside Council shall pay to Mr Phil Jones (Lovell), the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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