



Costs Decision

Inquiry held on 13, 14 and 29 January 2026

Site visits made on 12 and 15 January 2026

by David M H Rose BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2026

Costs application in relation to Appeal Reference: APP/U2750/W/25/3371863 Highfield Meadows, Land East of Rainbow Lane, Peasey Hills Malton, YO17 7AF

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Commercial Development Projects and Fitzwilliam Trust Corporation for a full/partial award of costs against North Yorkshire Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application, as amended, for '*Application for outline planning permission (with all matters reserved except the main points of access) for the construction of up to 200 no. residential dwellings, open space, landscaping, habitat enhancement, drainage infrastructure and associated works*'.
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Decision

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

The submissions for Commercial Development Projects and Fitzwilliam Trust Corporation

2. The costs application and responses were submitted in writing following the close of the Inquiry as previously agreed during the Inquiry.
3. The Appeal Decision is dated 12 February 2026.
4. The principal points are:
 - a) Substantive: The Council's failure to grant permission within the prescribed time period and its subsequent decision to defend the appeal were unreasonable in light of the unanswerable evidence in favour of granting permission.
 - b) Substantive: The Council's decision to defend the Appeal on the basis of seven reasons for refusal was unreasonable in light of its subsequent decision, before exchange of evidence, to withdraw four of those reasons for refusal.
 - c) Procedural: The Council's withdrawal of four reasons for refusal was unreasonable because it resulted in avoidable wasted work by the Appellant addressing these reasons for refusal.
 - d) Procedural: The Council's failure to engage constructively on the issues in the Appeal was unreasonable because it prevented timely narrowing of the issues, obstructed completion of statements of common ground, necessitated excessive chasing, and resulted in inefficient preparation for the Inquiry.

- e) Procedural: The Council's delays in providing the Inspector and the Appellant with basic information as to witnesses and availability was unreasonable in that it prevented effective co-operation between the parties.

The response by North Yorkshire Council

5. The response was made in writing and is dated 2 March 2026. Its contents, taken fully into account in my consideration below, are a matter of record and are not repeated here.

Reasons

Introduction

6. 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.

Ground 1: Failure to determine the application and decision to defend the appeal

7. The planning application was validated on 3 September 2024 with a target date for determination of 3 December 2024. The fourth agreed extension of time expired on 28 February 2025. The appeal against non-determination is dated 27 August 2025. The Council's Thirsk and Malton Area Planning Committee did not consider the proposal until 16 October 2025.
8. The PPG sets out: *'In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs'*
9. The Officer Report explains that the application had remained undetermined as the parties were continuing to work together to resolve outstanding technical matters. Although the cause of the various delays is unclear, the failure to determine the application within the prescribed time period, and a lengthy hiatus thereafter, is highly regrettable. Nonetheless, at the time the appeal was lodged, there is nothing to suggest that the Council would have been in a position to have granted planning permission irrespective of the recognition of the tilted balance and the subsequent acknowledgment of the benefits of the proposal.
10. In terms of the decision to defend the appeal, the Officer Report undertakes a planning balance. Although it acknowledges the Framework's reference to the tilted balance, harm *'caused by the significant coalescence between the settlements of Malton and Old Malton and alter the character of the VIUA from which the site is formed'* is alleged to outweigh the benefit of adding 200 dwellings to the housing stock.
11. This was a matter of planning judgement, but it is telling that the alleged harm was later abandoned. Moreover, the harm identified was supplemented by resolution of the Committee to include, for example, matters that required further information.
12. None of this was inherently unreasonable, although each putative reason had to be capable of being defended on sound planning grounds. I turn to this below.

Grounds 2 and 3: Defending the Appeal on the basis of Seven Putative Reasons for Refusal and withdrawal of Four of those before Exchange of Evidence

13. It is not unusual for putative reasons for refusal to be refined or withdrawn during the appeal process. The critical considerations in this case are whether there was a failure to produce evidence to substantiate each putative reason for refusal and/or on putative grounds capable of being dealt with by conditions.

Putative Reason for Refusal 1: Heritage

14. On exchange of evidence the Council acknowledged that the heritage putative reason for refusal would not on its own justify the dismissal of the appeal. Accordingly, when all other matters were conceded, or resolved, the heritage reason fell away.
15. The Framework, at paragraph 219, references consideration of the setting of designated heritage assets and Planning Practice Guidance on the Historic Environment confirms that heritage assets may be affected by direct physical change or by change in their setting. Understanding the significance of a heritage asset and its setting is a material consideration.
16. Heritage was clearly a matter to be considered and, on the basis of other primary outstanding issues at the time, it cannot be said that the preparation, calling and hearing expert evidence was unnecessary. It did not amount to unreasonable behaviour.

Putative Reason for Refusal 2: Visually Important Undeveloped Area

17. The Council gave notice, shortly before the exchange of proofs that it would not be offering evidence on this matter. In this regard, it is said that *'the Appellant confirmed for the first time on 16 December 2025 that the Greenspace Masterplan (which controlled the extent to which built form would be contained) could be secured by condition'*.
18. Be that as it may, whilst the application was submitted in outline with all matters, apart from access, reserved for later approval, the entire premise of the proposal, explicitly set out in a range of documents, was that new dwellings would be located within the north-western part of the site with extensive green infrastructure to the east. This is confirmed in the Officer Report and recognised in the Statement of Common Ground, dated 31 October 2025.
19. Resolution of any ambiguity immediately thereafter would have avoided a 'last-minute' concession and, to this extent, the Council's tardiness was unreasonable resulting in the Appellant's abortive work and wasted expense in preparing a comprehensive proof of evidence on landscape and visual matters.
20. Following the submission of proofs, I issued a Pre-Inquiry Note, dated 5 January 2026. Paragraph 6, in relation to character and appearance including the Visually Important Undeveloped Area, stated: *'..... there is now no substantive dispute between the Appellant and the Council – albeit representations from interested parties remain. It will be a matter for the Appellant to decide whether or not it is necessary to call Mr Holliday, given his comprehensive analysis of the matter. The Inspector would be content to accept his proof as a written statement'*.
21. On this basis, as appearance at the Inquiry was of the Appellant's choosing, wasted expense in this regard has not arisen.

Putative Reason for Refusal 3: Highways – Emergency access and Cherry Avenue bus stop

22. The application for planning permission proposed a secondary access to the site from Westgate Lane, towards the north-western corner of the site, for emergency vehicles.
23. The Council subsequently sought a revised location towards the north-eastern boundary as close to the existing adoptable highway as possible and for the intervening section to be made up to adoptable standard. This was identified as condition MHC-07 in the Highway Authority's consultation response dated 9 October 2025.
24. The Statement of Common Ground, dated 31 October 2025, recorded that the acceptability of the suggested revised location and specification of the emergency access was a matter still under discussion with the Highway Authority.
25. It is evident that there was considerable disagreement between the parties in seeking to negotiate a topic specific Highways Statement of Common Ground (dated 6 January 2026) before the Inquiry. Remaining and additional disputes included; the interpretation of the principal Statement of Common Ground; whether the decision maker should determine whether an emergency access was necessary; and, if so, its relevant standards of provision, maintenance and availability.
26. The Council suggested an alternative condition requiring the submission of an emergency access strategy at reserved matters stage and demonstration of safety, baseline assessments and accessibility and lifetime availability and maintenance through an appropriate mechanism.
27. For its part, the Appellant expressed the view that the emergency access route along Westgate Lane did not require substantive changes and street lighting was unnecessary. Further, adoption as public highway was not necessary and the emergency access could be secured by condition or planning obligation.
28. The failure to reach agreement inevitably influenced the respective proofs of evidence with the Appellant expressing the view that a separate access for emergency vehicles was not necessary for the site and, if it were, this should be secured by condition.
29. Nonetheless, it appeared to me that whilst the Appellant did not resile from the principle of providing an emergency access, its necessity was questioned ostensibly on the basis of the standard being sought by the Council through draft condition MHC-07.
30. That standard relied on the Council's Highway Design Guidance (albeit said by the Council to be 'applied pragmatically') which was based on the former Design Bulletin 32 (withdrawn in 2007). Thus, the standard sought had no formal status or justification and appeared to be being pursued as a matter of course without critical consideration and apparent flexibility.
31. Although the Council alleges that it was not evident until the Appellant's clarification on the first day of the Inquiry whether the emergency access was actually being proposed, that is a matter which should and could have been

clarified in advance of the Inquiry. Nonetheless, that preliminary confirmation allowed the Council to negotiate the wording of a revised condition in agreement with the Appellant. Its substance mirrored the principle of the Appellant's position outlined in paragraph 27 above.

32. To my mind, the original condition sought by the Council was excessive in many respects and it lacked firm foundation in either policy or guidance. It is telling that it was not pursued in favour of the condition agreed subsequently. In my opinion, the Council adopted an unsupported and entrenched position which precluded the prospect of earlier resolution.
33. Overall, whilst the Council was always seeking to resolve the highway issue by condition, its approach lacked flexibility and validation, thereby contributing significantly to the impasse up to and including the second day of the Inquiry.
34. Further, I regard the Council's persistence in seeking a financial contribution to the improvement of the Cherry Avenue bus stop to have been largely opportunistic and unrelated to mitigating the impacts of the development. It should have been apparent that it would not meet the relevant statutory and policy tests.
35. The inevitable conclusion is that unreasonable behaviour amounting to wasted expense has occurred.

Putative Reason for Refusal 4: Flood Risk in Old Malton – Surface water runoff volumes

36. It is evident that the Appellant was in consultation with the Lead Local Flood Authority (LLFA) and the Environment Agency (EA) in relation to surface water drainage with various technical notes¹ addressing the respective consultee's requests for further information.
37. The Appellant's Clarification Note (27 August 2025) records that the LLFA requested further clarification in a formal consultation response (11 November 2024) on, amongst other things, volume control. The note confirmed that *'Peak flow volume has been reviewed as part of the reassessment of drainage arrangements*
38. It also recorded the EA's comments (3 April 2025) with particular reference to *'..... a wider issue of flooding within Old Malton.'* and *'the existing systems may be inadequate as they are frequently known to backup due to raised water levels in the River Derwent'*. The Appellant's note confirmed that *'..... further analysis has been undertaken as suggested by the EA to assess the impacts of the River Derwent on the existing and proposed drainage infrastructure.....'*; and *'Given the above it is assessed that the proposed drainage arrangements will not increase flood risk elsewhere*
39. The LLFA's response (23 September 2025²) on 'Volume Control' confirmed *'an outline drainage drawing has been provided Preliminary hydraulic calculations have been provided to support this. **This is acceptable**'*.
40. In turn the EA, responding on 29 September 2025, stated: *'.....high rainfall events show that surcharging in this system can persist for several days or even weeks, so 24 hours of emergency storage may be insufficient. Given this, we recommend: Ensuring at least 24 hours of emergency attenuation storage is included within the basin design (not just freeboard); and Considering provision for multiple days' worth of storage'*.

¹ CD2.15, CD2.18 and CD2.20

² CD3.23

41. This appears to have led to the Council's putative reason for refusal 4 *'harmful impact of surface water run-off and insufficient information on surface water attenuation and management'*.
42. However, the Appellant issued a further technical note on 30 October 2025 incorporating a minor amendment to the design of the attenuation basin so as to include 24 hours of emergency attenuation in addition to freeboard.
43. The EA responded on 24 November 2025³. Whilst welcoming the additional 24 hours storage, it pointed out that *'..... the known capacity issues in the receiving network can last for days we strongly suggest that the LPA seeks re-assurance from the developer that adequate attenuation can be demonstrated within the site to manage the risk'*.
44. This was followed by a response from the LLFA⁴ dated 2 December 2025 which sought further information on runoff destinations and peak flow control and under volume control: *'If there is no free discharge from Riggs Road Drain, any runoff from the site above that of the greenfield volume will likely increase the risk of flooding in Old Malton... The onus is on the applicant to demonstrate that there will be no increase in flood risk in Old Malton when there is no free discharge from the site in a fluvial event on the river for at least 5 days. **Further information required**'*.
45. A technical response was provided in the Appellant's proof of evidence on Flood Risk and Drainage in the form of a revised surface water drainage scheme providing the ability for excess surface water to spill out on to the low lying undeveloped part of the site. The LLFA's proof in conclusion stated *'the flood risk associated with the residual risk of the Malton Pump Plan has not been sufficiently explored as part of the site design or Flood Risk Assessment. In the absence of an adequate flood risk assessment, or until an appropriate solution to the residual flood risk has been proposed, the LLFA stand by their objection to this development'*.
46. The LLFA went on to issue a Rebuttal proof which, despite objection, I resolved to accept subject to a Case Management Direction requiring the parties to meet with a view to submitting a technical Statement of Common Ground.
47. Whilst all of the above is known to the parties, rehearsal in summary form assists wider understanding and brevity in my overall conclusion.
48. Managing flood risk in its widest sense was clearly a fundamental consideration reinforced by national and local policy and guidance. Irrespective of the manner in which the additional information was provided eventually and agreed, the alleged inadequacy of volume control and its wider consequences was raised explicitly for the first time by the LLFA and EA as the appeal progressed and some one year after the submission of the application.
49. Flooding in Old Malton was not a new or unknown phenomenon and the LLFA's eventual expressed wider and explicit concerns should have been raised much earlier in the consideration of the application. Indeed the Appellant's Flood Risk Assessment identifies that consultation was undertaken with the LLFA in February 2024.
50. Despite multi-agency involvement and technical considerations, the Appellant could not have been expected to second guess the Council's evolving and mounting concerns. As a consequence it was pressed to continue to provide supplementary information.

³ CD3.35

⁴ CD3.40

51. Whilst the request for that information may have been ‘reasonable’ the same cannot be said of the timing. There was clear opportunity to seek it earlier so as to avoid the matter being brought to Inquiry. The unavoidable conclusion is that this amounted to unreasonable behaviour on the part of the Council leading to wasted expense.

Putative Reason for Refusal 5: Noise

52. The Statement of Common Ground on Noise Matters is dated 9 December 2025. Having set out the relevant policy, standards and guidance, it concludes that:

‘It is agreed that the noise impact assessment submitted in support of the application ‘..... provides a competent and thorough assessment of the noise impacts on the proposed development and that the outcomes of that assessment demonstrate that a residential development on this site is acceptable and in accordance with both national and local planning policy.

It is agreed that, with respect to noise matters, the planning application can be permitted on this site subject to suitable conditions being attached to a permission’.

53. This position, clearly at odds with the Committee resolution, demonstrates that the putative reason for refusal was unsupportable. Moreover, despite the agreement reached the Council did not inform the Appellant until 19 December 2025 that noise had been removed as a potential reason for refusal. This unreasonable behaviour caused the Appellant wasted expense up to the date of the putative reason being withdrawn.

Putative Reason for Refusal 6: Agricultural Land Classification

54. The need for an assessment of the agricultural land quality of the site arose from consultation with Natural England and its holding objection dated 27 September 2024. The Statement of Common Ground records the submission of an Agricultural Quality Report to the Council on 27 October 2025.

55. Whilst the Council did not give notice of its position until 19 December 2025, it was reasonable to withdraw the putative reason for refusal following further consultation. Despite its lateness, there is no indication of wasted expense.

Putative Reason for Refusal 7: Foul Drainage

56. The Council’s response to the Appellant’s application, at paragraph 13, states ‘.....it should be noted that the Appellant makes no substantive allegation in respect of the sewage capacity RfR under Ground 3’.

57. However, Ground 3 relates to the ‘withdrawal of reasons for refusal Rfr 2 and 7 – VIUA and Foul Drainage’ and reference to withdrawal on the exchange of evidence.

58. In my view, there is sufficient indication of an allegation of unreasonable behaviour for me to address the matter.

59. It was on exchange of proofs that the Appellant learnt that the matter of foul drainage was not being pursued by the Council on the basis that it could be addressed by a suite of conditions, including a Grampian condition. This was consistent with the Officer Report and recommendation to Committee on 16 October 2025, a position not accepted leading to the putative reason for refusal based on the outright objection from Yorkshire Water and the Committee’s concern about Grampian conditions and uncertainty of delivery.

60. Accordingly, the Appellant had to address this in its proof of evidence. The Council's withdrawal of the putative reason for refusal on exchange amounted to unreasonable behaviour resulting in wasted expense compounded by Yorkshire Water withdrawing its objection on 28 January 2026 in favour of conditions previously proposed.

Grounds 4 and 5: Failure to engage constructively and provide basic information

61. The procedural matters relating to the Council's alleged failure to engage constructively on the issues in the appeal; and delays in providing basic information are largely subsumed by the considerations above.
62. In terms of the timing of the Council's announced intention to make an application for costs, the Council's position appears to have been precipitated by events at the Inquiry. As such it did not amount to unreasonable behaviour.

Conclusion

63. For the reasons given above, the Council's protracted catalogue of failings amounts to unreasonable behaviour that has caused the Appellant unnecessary or wasted expense in respect of pursuing the appeal. A partial award of costs in the terms set out is therefore warranted.

Costs Order

64. 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 North Yorkshire Council shall pay to Commercial Development Projects and Fitzwilliam Trust Corporation, the costs of the appeal proceedings described in the heading of this decision limited to:
- (a) responding to putative reason for refusal 2 - Visually Important Undeveloped Area (excluding appearance at the Inquiry);
 - (b) responding to putative reason for refusal 3 - Highways including Emergency Access and Cherry Avenue bus stop;
 - (c) responding to putative reason for refusal 4 - Flood Risk in Old Malton;
 - (d) responding to Putative Reason for refusal 5 - Noise (up to the date of withdrawal of the putative reason); and
 - (e) responding to putative reason for refusal 7 - Foul Drainage;

such costs to be assessed in the Senior Courts Costs Office if not agreed.

The Appellant is now invited to submit to North Yorkshire 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.

David MH Rose

Inspector