



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 North Yorkshire Council for a full award of costs against Commercial Development Projects and Fitzwilliam Trust Corporation.
 - 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 refused.

The submissions for North Yorkshire Council

2. The costs application and responses were submitted in writing following the close of the Inquiry as previously agreed at the Inquiry.
3. The Appeal Decision is dated 12 February 2026.
4. The principal points are:
 - a) At the opening of the Inquiry the Council's case rested on two putative reasons for refusal namely: the failure of the Appellant to agree a condition securing an emergency access from Westgate Lane; and the failure of the Appellant to provide surface water runoff volumes to demonstrate there would not be an increase in flood risk elsewhere arising from the development.
 - b) Those putative reasons for refusal were resolved through the Appellant's change in position during the course of the Inquiry. It is contended that they could and should have both been resolved prior to the Inquiry commencing.

The response by Commercial Development Projects and Fitzwilliam Trust Corporation

5. The response was made in writing and is dated 3 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: Emergency access

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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 and, if it were, this should be secured by condition.
14. 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.

15. 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.
16. 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 12 above.
17. 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. I find nothing unreasonable in the Appellant's approach as a result of what appeared to be the entrenched position adopted by the Council without robust justification.
18. There is also nothing to suggest that the responsibility of attempting to draft a condition anticipating what the Council might accept as an alternative, if anything, should have fallen on the Appellant.
19. 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. The Appellant was thus entitled to question the necessity of providing an emergency access as part of its case in light of the Council's stance.
20. Accordingly, I do not find unreasonable behaviour resulting in wasted expense to have occurred.

Ground 2: Flood Risk in Old Malton - Surface water runoff volumes

21. 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. Although criticism is made about delays in providing the information, this does not go to the nub of the issue as outlined below.
22. 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*
23. 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*

¹ CD2.15, CD2.18 and CD2.20

- existing and proposed drainage infrastructure.....’; and ‘Given the above it is assessed that the proposed drainage arrangements will not increase flood risk elsewhere’.*
24. 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***’.
 25. 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*’.
 26. 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*’.
 27. 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.
 28. 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*’.
 29. 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***’.
 30. 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*’.
 31. 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.
 32. Whilst all of the above is known to the parties, rehearsal in summary form assists wider understanding and brevity in my overall conclusion.

² CD3.23

³ CD3.35

⁴ CD3.40

33. 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.
34. 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.
35. Despite multi-agency involvement and technical considerations, the Appellant could not have been expected to second guess the LLFA's evolving and mounting concerns. As a consequence, it was pressed to continue to provide supplementary information.
36. 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. As such there is nothing to suggest that the Appellant acted unreasonably.
37. Although the Council's application for costs is predicated on published documents requiring information on the volume of surface water runoff, it is telling that the principal criticism arises from the failure to submit such information in response to the LLFA's request for information in its December (2025) consultation response. As indicated above, that request was unambiguously belated and shortly before the preparation and exchange of proofs. Moreover, the Council's overt position only materialised through its own proof of evidence and subsequent rebuttal of the Appellant's evidence.
38. Accordingly, it cannot be said, as alleged, that the Appellant should have provided the technical note much earlier and doing so would have avoided any outstanding dispute on flood risk matters when the Inquiry commenced.
39. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred.

Conclusion

40. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

David MH Rose

Inspector