



Costs Decision

Inquiry held on 21- 24, 28, 29 October and 21 November 2025

Site visit made on 29 October 2025

by **John Dowsett MA DipURP DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23/06/2026

Costs application in relation to Appeal Ref: APP/M4510/W/25/3367599 Newcastle City Heliport, Railway Street, Newcastle upon Tyne NE4 7AD

- 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 the Council of the City of Newcastle upon Tyne for a full award of costs against MB European Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a development described as: Demolition of existing structures on the site and its redevelopment for up to 356 dwellings in a series of 4 to 7 storey high blocks with associated underground car parking, landscaping and engineering works.
-

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 (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.
3. The Council's application for an award of costs is predicated on both procedural and substantive grounds. A full award of costs is sought on the substantive grounds, and a partial award of costs is sought on the procedural grounds.
4. In respect of the procedural grounds, the Council's application is on the basis that new or late information was introduced at the appeal stage that effectively changed elements of the proposal from what they had been when the planning application was determined or diverged from the supporting information submitted with the planning application and on which basis the Council had prepared its evidence. These relate to site drainage, noise, ecology, and the landscape and visual impacts of the scheme.
5. The appeal process should not be used to evolve a scheme or to submit wholly new information in an attempt to overcome the reasons for refusal.
6. In respect of drainage, as part of their evidence the appellant essentially proposed a new drainage arrangement, particularly in respect of surface water. This was not before the Council when the application was determined. With regard to foul water drainage, the original Drainage Assessment merely stated that this would discharge to the Northumbrian Water sewer. Although it was to an extent foreshadowed in the appellant's statement of case that a pumped solution was "anticipated", it was not

- until the proof of evidence stage that this was confirmed. In the appellant's rebuttal proof, it was stated that the foul water connection would either be to the new Forth Yards pumping station once operational, or an interim pumped solution to the combined system.
7. The surface water proposal also changed from the construction of a new outfall to the river to utilising an existing combined sewer that runs beneath Tyneside Road. This was not raised in the appellant's statement of case. The appellant accepts that the drainage strategy was revised considering the Council's statement of case. Whilst this is cast as seeking to co-operate with the Council and address its concerns, this approach does not appear to have been discussed with the Council beforehand, and as a result, would have come as a surprise when the proofs of evidence were exchanged. As the Council had prepared its own evidence based on the drainage strategy in the planning application, taking this approach was unreasonable, as it rendered much of the Council's evidence out of date. As a consequence, the Council's drainage witness not only wasted time and effort in producing the original proof of evidence but was required to produce a rebuttal proof of evidence to address the changes, which would not have been otherwise necessary. This matter also has a bearing on ecological matters and as a result the Council's ecology witness was also required to produce a rebuttal proof addressing that area of overlap.
 8. The appellant had maintained a position that matters relating to ecological mitigation could be addressed by condition, as set out in their statement of case. Whilst the possibility of identifying a site for compensatory habitat in a neighbouring authority was identified in the appellant's proof of evidence, it was not clearly identified until rebuttal proofs were submitted and provided little more certainty. Whilst this was a deficiency, it would not have necessarily required rebuttal evidence from the Council, although the Council had to provide additional ecological input for other reasons.
 9. Although the Council suggest that the Arboricultural Impact Assessment was deliberately withheld by the appellant, there is no evidence to suggest that this was the case. This report is mentioned in the appellant's evidence, and it is more likely an accidental omission from the documents list, which was extensive. Consequently, the appellant did not act unreasonably in this respect.
 10. On landscape and visual matters, it is not unreasonable for an appellant to instruct new experts to act as Inquiry witnesses. It is more unusual for that witness to step away from the original supporting information that the Council had based its decision on. Whilst the submission of a new Townscape and Visual Impact Assessment could be seen as a response to a main issue identified for the appeal, it does, nonetheless, also have the appearance of seeking to alter the facts after the decision on the planning application was made to better suit the case the appellant wished to make.
 11. On its face, this is unreasonable behaviour. This action also provoked a rebuttal proof of evidence from the Council. The Council's rebuttal evidence, whilst briefly summarising the areas where the appellant's witness disagreed with the Landscape and Visual Assessment in the Environmental Statement submitted with the application, did not critique the new assessment in any detail. The Council states that this was due to time constraints. A period of two weeks was set between the exchange of proofs of evidence and the submission of rebuttal proofs if

- required. Whilst this is necessarily a fairly short period of time, someone familiar with the area and the other landscape evidence in this case would have been in a position to provide a fuller rebuttal within this timeframe. I appreciate that there would have been preparation time for the Inquiry itself which would have included considering this new evidence. However, it is difficult to discern the extent of any substantive additional unnecessary expense in respect of landscape matters given that the Council's witness was already attending the Inquiry.
12. In respect of the noise evidence, the Council accepts that it had sight of the two noise reports that ultimately formed part of the appellant's evidence prior to the submission of proofs of evidence. Although the more recent addendum noise report dated 4 September 2025 was not at that time a formal appeal document, the report itself does make it clear that the noise levels measured in August 2025 are representative of those experienced in cooler months and that any changes on the measured noise levels might not necessarily be attributed to the additional attenuation fitted to the building in July 2025.
 13. This has the character of supplementary information rather than wholly new information that would alter the overall conclusions of the appellant's expert witness. Whilst there might be a slight inconsistency between the appellant's planning evidence and the noise evidence, it would not have been essential for the Council to produce rebuttal evidence as it could be dealt with during examination of the evidence. Although the Council had to undertake some further work during the Inquiry in respect of the additional survey carried out in October 2025, both parties were of the view that this would assist the Inquiry.
 14. On the substantive grounds, the Council's application is based on the appeal having been made following a recent appeal decision in respect of a similar, development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period; and that inadequate evidence was put forward in respect of drainage, noise, ecology and land contamination. On this basis the Council contends that the appeal should not have been brought.
 15. The previous appeal decision for residential development on this site was referred to during the Inquiry¹. This appeal was dismissed in November 2016. The Council specifically make reference to the findings of the Inspector with regard to the accessibility of the site and the effects of noise. Although the decision was made some time ago, the appellant does not contest that it is a relevant appeal decision.
 16. In terms of the accessibility of the site, this centres on whether future the occupiers of the site would be inclined to walk or cycle to and from the site due to the character and quality of the built environment in the vicinity of the site.
 17. Since the previous appeal decision, there have been some relatively minor changes in circumstances to restrict parking under the railway bridges and a short section of redundant bridge over Tyneside Road has been removed. The fundamental character of the area, however, remains much as it was at the time of the previous appeal. The previous Inspector was of the opinion that the routes around the site could be improved, although it was not clear to him how that could be brought about.

¹ Appeal Reference APP/M4510/W/15/3139684 dated 24 November 2016

18. The previous Inspector also raised concerns regarding noise but again indicated that this could potentially be addressed but that at the time he did not have sufficient evidence to be certain.
19. The appeal scheme is similar to the previous proposal insofar as it is for a residential use of the site, but it also proposes measures intended to facilitate pedestrian and cyclist access, includes further information regarding noise and proposes a mitigation scheme. The Council did not consider that these sufficiently addressed the concerns around access and noise. However, the purpose of the appeal process is to allow a review of the proposal and the decision. The underlying circumstances may be largely unchanged, but the approach taken by the proposal to addressing these circumstances had evolved. In the above context, it was not unreasonable to appeal the Council's decision.
20. The second substantive ground raised by the Council is in respect of the adequacy of the evidence put forward by the appellant regarding drainage arrangements, the environmental effects of the proposed drainage arrangements, disturbance to birds, and the amounts of potentially contaminated soil that may need to be removed from the site.
21. It must be borne in mind that this is an outline planning application seeking a decision on the general principles of how a site can be developed. Nonetheless, due to the nature of outline planning applications, particularly those where all matters are reserved for future approval, the amount of information that can realistically be provided will vary.
22. With regard to disturbance to birds using the mudflats in the river, the principal concern raised by the Council in respect of adequacy was with regard to noise from potential piling operations. In the absence of a detailed design for the proposed buildings, and a more thorough understanding of the ground conditions, factors such as the number and type of piles and the method of installation are simply not known. However, the practicalities of construction do not go to the heart of the general principle of how a site can be developed. This is a matter that could be addressed through a Construction Environment Management Plan, which could reasonably have formed the subject of a condition had the appeal been allowed.
23. In respect of land contamination, it was not argued that the site could not be suitably remediated. Again, in the absence of a detailed design for the scheme, it is not possible to determine, what amount of material may potentially need to be removed from the site. Similarly to the practicalities of managing noise from piling operations, this does not go the heart of the principle of development on the site, and, as I have found, could reasonably be addressed through planning conditions.
24. With regard to drainage and the potential environmental consequences of the proposed drainage arrangements, the evidence submitted neither demonstrated that suitable drainage arrangements could be made, nor that there would not be an overall adverse effect on the River Tyne Tidal Extent Local Wildlife Site. On this particular matter, the appellant's case was not made out. Nonetheless, this is just one facet of a number of interrelated issues with the site and, given that the Council's costs application on substantive grounds is based on the assertion that the appeal should not have been brought at all, being defective in this limited respect does not render the appeal as a whole unreasonable on substantive grounds.

Conclusions

25. Bringing all of this together, the Council's case on the substantive grounds has not been made out, and in the circumstances, it was not unreasonable for the appellant to have pursued the appeal. On the procedural grounds, I find that it was unreasonable to submit a wholly different drainage strategy at appeal stage when the Council had prepared its evidence based on the original proposal. This clearly resulted in wasted expense for the Council in preparing that part of their case, and additional expense in preparing rebuttal evidence addressing the new drainage proposals.
26. In respect of the landscape and visual evidence, it was unreasonable for the appellant to seek to revise the underlying information on which the application was originally determined at the appeal stage. Nonetheless, the Council did not submit much substantive evidence in response and relied in the main on its original submissions. There is little to indicate either wasted expense or additional unnecessary expense was incurred beyond that would otherwise have been required in advance of the Inquiry.
27. I have not found that the appellant acted unreasonably in any other respects.
28. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the preparation of the Council's original proofs of evidence on drainage, those elements of ecological evidence relating to drainage matters, and the submission of additional rebuttal evidence in relation to drainage. A partial award of costs is therefore warranted.

Costs Order

29. 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 MB European Limited shall pay to the Council of the City of Newcastle upon Tyne, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred by the Council's drainage and ecology witnesses in preparing and presenting evidence and rebuttal evidence in respect of drainage matters related to the development; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to MB European Limited, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Dowsett

INSPECTOR