



Appeal Decision

Hearing held on 15 January 2008
Site visit made on 15 January 2008

by **P F Young MRICS MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
6 February 2008

Appeal Ref: APP/H0738/A/07/2043347

Land north of Blair Avenue, Ingleby Barwick, Stockton-on-Tees TS17 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission together with the detail of the means of access.
- The appeal is made by Messrs Howlett & Nelson against the decision of Stockton-on-Tees Borough Council.
- The application Ref 06/3752/OUT, dated 18 December 2006, was refused by notice dated 16 March 2007.
- The development proposed is a 50 place children's nursery, a 75 bed old peoples home and a 816 square metre Primary Care Trust building with associated car parking.

Application for costs

1. At the Hearing an application for costs was made by Messrs Howlett & Nelson against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant outline planning permission together with the detail of the means of access for the development of a 50 place children's nursery, a 75 bed old peoples home and a 816 square metre Primary Care Trust building with associated car parking at land north of Blair Avenue, Ingleby Barwick, Stockton-on-Tees in accordance with the terms of the application, Ref 06/3752/OUT, dated 18 December 2006, and the plans submitted with it, subject to the following conditions:
 - 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
 - 4) The details of landscaping shall secure that there is no planting above 600mm high within the sight lines of the approved means of access.

- 5) Prior to site works commencing, provision shall be made for the protection of the trees and hedgerows to remain on the site during construction works in accordance with a scheme to be agreed with the local planning authority. Any trees damaged as a result of site works shall be replaced with such a size and species as may be agreed with the local planning authority.
- 6) Construction of the walls and roofs shall not commence until details of the materials to be used in the construction of the external surfaces of the structures hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall be commenced until details of all the means of enclosure on the site, details of hard surfacing treatment, servicing arrangements, pedestrian access routes and linkages have been submitted to and approved by the local planning authority. Such means of enclosure as are agreed shall be erected before the development hereby approved is occupied.
- 8) Construction work on the site shall be restricted to 8.00 am to 6.00pm on weekdays and 8.00am to 1.00pm on Saturdays with no Sunday working.
- 9) No development approved by this permission shall be commenced until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the local planning authority. The drainage works shall be completed in accordance with the details and timetable agreed.
- 10) There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct or via soakaways.

Procedural Matters

3. At the Hearing both the principal parties confirmed that the planning application as originally submitted was for outline planning permission with all details reserved for future approval. However, prior to the decision of the local planning authority, the application was modified to include the detail of the means of access. The local planning authority confirmed, in its decision notice, that this includes the layout of the proposed car parking areas. At the Hearing both principal parties confirmed that the Council's decision was based on drawing Nos IB002 and P_001. I will determine this appeal on that basis.

Main issues

4. The main issues to be decided in this appeal are first, the effect of the proposal on the safe and free flow of traffic and, second, its effect on the character and appearance of the locality.

Reasons

The effect of development on the safe and free flow of traffic

5. The appellants' site is an area of some 0.689ha near to the Myton Way Centre which is the main retail/commercial centre in Ingleby Barwick. The local

planning authority and interested third parties draw attention to the high levels of traffic generated by the existing land uses in the area and the congested nature of the local highway network. They argue that the additional vehicle movements generated by the scheme would result in harm to the safe and free flow of traffic. The local planning authority did not draw my attention to a relevant policy of the adopted development plan which relates to this matter. Both the principal parties rely on the advice of PPG13: Transport.

6. The majority of this site (some 0.505 ha) was, in February 2004, the subject of a grant of outline planning permission (Ref: 03/2212/OUT) for a community centre, a 100 place children's day nursery and associated car parking. This is extant until February 2009 and is a material consideration to which significant weight should be attached.
7. The appellants have commissioned a Transportation Assessment which demonstrates that the traffic flows associated with the scheme which is the subject of this appeal would not differ significantly from those that would arise from implementation of the already approved scheme. I note from the report to committee in relation to the appeal scheme that both the Council's Head of Technical Services (responsible, among other things, for traffic and highway matters) and the Corporate Director of Development and Neighbourhood Services (responsible for town planning matters) agree that the proposal is 'traffic neutral' i.e. a development in which no significant level of additional traffic would be introduced onto the existing road network when it is compared with the already approved scheme of development. They concurred, in that report, that the proposal would not increase predicted future traffic levels and, therefore, not exacerbate traffic congestion. It was also concluded that the development would not give rise to any particular highway safety concerns.
8. At the hearing the local planning authority was represented not by its professional officers but by elected members. Neither these nor the interested third parties were able to present any technical reasons why reliance should not be placed on the recent and unequivocal endorsement of the scheme by the Council's senior professional officers. Instead they limited themselves to expressing generalised concerns about the effect of the scheme on local traffic levels. There is, therefore, no basis for any conclusion other than that the proposal could be implemented without demonstrable harm to the safe and free flow of traffic. It would therefore, conform to the advice of PPG13: Transport.

The effect of development on the character and appearance of the locality

9. Both the local planning authority representatives and interested third parties referred to the location of the site within an area of open space which had been identified as part of the local open space system in the Ingleby Barwick Master Plan (Revised 1991). They argued that it should be kept undeveloped in the interests of visual amenity and to provide a buffer space between adjacent areas of built development. At the Hearing the local planning authority representatives clarified that the Ingleby Barwick Master Plan was not prepared as a statutory local plan nor is it to be given the status of supplementary planning guidance because it is not referenced to the adopted Stockton-on-Tees Local Plan 1997, it was not itself formally adopted by the Local Planning Authority nor was it the subject of public consultation. I conclude that it is

simply an informal planning document which has been superseded by the adoption of the Stockton-on-Tees Local Plan 1997 and the accumulation of planning permissions which are in the course of implementing a major area of development at Ingleby Barwick.

10. The site and the adjacent land within the previously defined open space system is not owned by public sector bodies. It is not allocated in any statutory development plan for any recreational or amenity purpose which would require it to be retained in an undeveloped state. The public has no right of access to it.
11. The grant of outline planning permission (Ref: 03/2212/OUT) in February 2004 confirms that, some 13 years after the most recent revision of the Ingleby Barwick Master Plan, the provisions of that document in relation to open space systems are no longer considered to be material by the local planning authority and that the development of the majority of the site with substantial buildings is considered to be acceptable in terms of visual amenity. No evidence was presented to the Hearing to indicate that the policy framework or the local landscape factors had changed in the period since 2004.
12. The immediate surroundings of the site are characterised by large prominent building groups. The development of the appeal site for the purposes proposed would not render it an incongruous feature in the local landscape. For these reasons I conclude that the development of this land, as proposed by the appellants, would conform to the provisions of policy GP1 of the adopted Stockton-on-Tees Local Plan.

Other considerations

13. Third parties argue that there is no need for all or some of the facilities proposed. That is a matter for commercial judgement, however, and it is not necessary to demonstrate need for these particular uses as an aspect of the planning decision process.
14. Several of the interested third parties refer to what they consider to be the harmful effects of a proposal for a mixed use development of a much larger area of land for what they describe as an eco-park in the vicinity of the appeal site. The merits of such a scheme are not for me to decide. I have limited my considerations to the arguments which relate to the proposal described in the heading to this decision. For the reasons given above, and having regard to all the other matters raised, I conclude that the appeal should be allowed subject to conditions.

Conditions

15. It is necessary, in allowing this appeal and granting outline planning permission, to specify the reserved matters for which additional details must be submitted and approved. In the interests of the safe and free flow of traffic it is necessary to require that the access sight lines are kept free of planting above 600mm and to secure the approval of the details of hard surfaces, servicing arrangements, pedestrian access routes and linkages.
16. The local planning authority seeks to restrict the use of the building which is to be used for Primary Care purposes to only that use and to no other within class

D1 of the Town and Country Planning (Use Classes) Order 1987. Circular 11/95: 'The Use of Conditions in Planning Permissions' advises that the Use Classes Order is designed to confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances conditions should not be imposed which restrict such freedom. The Secretary of State would regard such a condition as unreasonable unless there was clear evidence that the uses excluded would have serious adverse effects on amenity or the environment. No evidence of any kind was presented by the representatives of the local planning authority to support such a view. There is, therefore, no justification for the restriction sought.

17. The local planning authority proposed that a condition be imposed to require the preparation and approval of a site contamination study. The appellants argued that the site has never been in any use other than farmland. There is no history, whatever, of mineral extraction or industrial processes being undertaken on the land. The representatives of the local planning authority did not present any arguments or information to support an alternative view. No information was presented to me to confirm that the suggested condition is necessary or reasonable.
18. In the interests of visual amenity it is necessary to secure by condition the protection of the trees and hedgerows which are to remain on the site, the subsequent approval of the external materials of the walls and roofs of the buildings and the details of the means of enclosure of the site.
19. To protect the living conditions of nearby residents it is necessary to restrict the hours of working during the development of the site. In the interests of satisfactory water management it is necessary to secure, by condition, the approval of the details of the discharge of foul and surface drainage.
20. The local planning authority seeks to secure that motor vehicle parking shall be laid out in conformity to its standards but the Council's decision notice confirms that the details of means of access and car parking were considered by it as part of the outline planning application. The report to committee of the Council's senior technical officers confirms that the submitted details would not give rise to any concerns over highway safety. It is, therefore, sufficient simply to give approval to the submitted details of access and car parking.

Peter Young

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr S Barker	Of Blackett Hart and Pratt, Solicitors, Westgate House, Faverdale, Darlington DL3 0PZ.
Mr S Jobey	Of SAJ Transport Consultants Ltd, Pink Lane Business Centre, Newcastle-upon-Tyne NE1 5DW.
Mr I Howlett	Appellant.
Mr P Nelson	Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Councillor R Patterson	Ward Councillor and member of the Planning Committee, Stockton-on-Tees Borough Council.
Councillor K Dixon	Ward Councillor, Stockton-on-Tees Borough Council.
Councillor A Larkin	Ward Councillor, Stockton-on-Tees Borough Council.

INTERESTED PERSONS:

Councillor W Feldon	Deputy Chairman of Ingleby Town Council and resident of 1 Barberry Close, Ingleby Barwick, Stockton-on-Tees TS17 0TF.
Mr P Boyer	Resident of 12 Rowen Close, Ingleby Barwick, Stockton-on-Tees TS17 5DX.

DOCUMENTS

- 1 List of persons present at the Hearing.
- 2 Letter of notification of the Hearing.
- 3 Letters to the Planning Inspectorate in response to the notification.
- 4 Additional letters from interested persons presented at the Hearing.
- 5 Extract from Circular 11/95 presented by the appellants.

PLANS

- A The application site plan.
- B The proposed layout and visibility splays.



Costs Decision

Hearing held on 15 January 2008
Site visit made on 15 January 2008

by **P F Young MRICS MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
6 February 2008

Costs application in relation to Appeal Ref: **APP/H0738/A/07/2043347** **Land north of Blair Avenue, Ingleby Barwick, Stockton-on-Tees TS17 5BL**

- 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 Messrs Howlett & Nelson for a full award of costs against Stockton-on-Tees Borough Council.
- The hearing was in connection with an appeal against the refusal of outline planning permission, together with the detail of the means of access for the development of a 50 place children's nursery, a 75 bed old peoples home and a 816 square metre Primary Care Trust building with associated car parking.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Messrs Howlett & Nelson

1. The local planning authority has behaved unreasonably. Paragraph 8 of Annex 3 of Circular 8/93 states that the local planning authority's reasons for refusal should be complete, precise, specific and relevant to the application. In any appeal proceedings the local planning authority will be expected to produce evidence to substantiate each reason for refusal. If it cannot do so, costs may be awarded against it.
 2. The application which gives rise to the appeal which is the subject of this Hearing has been refused contrary to the advice of the Council's professional officers. This is in itself not unreasonable. Where members elect to depart from the advice they receive, paragraph 9 of Annex 3 advises that they will be expected to show that they had reasonable grounds for taking a decision contrary to such advice and that they were able to produce relevant evidence to support their decision in all respects.
 3. Evidence at planning application stage was put to the local planning authority by the appellants in the form of a Transport Assessment. This concluded that the proposed development would not generate any more traffic on the local highway network than that associated with an extant outline planning permission for substantially the same site (Ref: 03/2212/OUT). This position was accepted by the qualified engineers within the local highway authority. The evaluation was also supported by the Council's qualified and experienced planning officers. No evidence whatsoever was put forward at the Hearing to suggest that either the original study or the subsequent evaluation were in error.
-

4. In opposing the scheme on the grounds of its effect on the character and appearance of the locality the local planning authority did not give necessary weight to the extant outline planning permission under the terms of which the majority of the appeal site could be developed with substantial structures comparable to those now proposed.
5. The local planning authority has not put forward any evidence of substance to demonstrate the harm which would be caused by the proposed development. Because it should not have been necessary for the appellants to have the application determined on appeal, all costs necessarily and reasonably incurred by them in making this appeal should be awarded against the local planning authority.

The Response by Stockton on Tees Borough Council

6. The earlier outline planning permission (Ref: 03/2212/OUT) was granted at a time when no elected members for the Ingleby Barwick area were serving on the relevant committee. Such councillors were serving on that committee at the time of the decision upon the planning application which is the subject of this appeal. They believed that, in refusing to grant outline planning permission, they were acting in the interests of their electors.

Conclusions

7. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
8. At the Hearing the local planning authority did not present any evidence of substance to challenge the arguments of the appellants. No cogent reasons were presented to justify the reasons for refusal of planning permission or a decision which was contrary to the recommendation of the Council's professional officers that the planning application should be approved. The local planning authority has, therefore, behaved in an unreasonable way. The appellants were put to unnecessary expense in pursuing their appeal. The application for a full award of costs is, therefore, justified.

Formal Decision and Costs Order

9. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Stockton-on-Tees Borough Council shall pay to Messrs Howlett & Nelson, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of outline planning permission together with the detail of the means of access for the development of a 50 place children's nursery, a 75 bed old peoples home and a 816 square metre Primary Care Trust building with associated car parking on land north of Blair Avenue, Ingleby Barwick, Stockton on Tees TS17 5BL.

10. The applicants are now invited to submit to Stockton-on-Tees Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Peter Young

Inspector