



Appeal Decisions

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

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Decision date:
6 February 2008

Appeal A: APP/H0738/A/07/2043481

Land off 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 consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr P Nelson against the decision of Stockton-on-Tees Borough Council.
- The application Ref: 07/0492/REM, dated 19 January 2007, sought approval of details pursuant to condition No 03 of a planning permission Ref: 03/2212/OUT, granted on 3 February 2004.
- The application was refused by notice dated 16 March 2007.
- The development proposed is the erection of a community centre, children's day nursery and associated car parking.
- The details for which approval is sought are: layout, scale, external appearance, means of access and landscaping.

Appeal B: APP/H0738/A/07/2047869

Land off 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 consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr P Nelson against the decision of Stockton-on-Tees Borough Council.
- The application Ref: 07/1136/REM, dated 13 April 2007, sought approval of details pursuant to condition No 03 of a planning permission Ref: 03/2212/OUT, granted on 3 February 2004.
- The application was refused by notice dated 8 June 2007.
- The development proposed is the erection of a community centre, children's day nursery and associated car parking.
- The details for which approval is sought are: siting, design, external appearance, means of access and landscaping.

Application for costs

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

2. I allow both appeals and approve the details submitted pursuant to condition No 03 attached to planning permission Ref: 03/2212/OUT granted on 3 February 2004 in accordance with the applications dated 19 January 2007 and 13 April 2007 and the plans submitted with them subject to the condition that the visibility splays associated with the vehicular access shall be maintained free from objects or structures above 600mm in height.

Procedural Matters

3. These appeals derive from two applications for the approval of the details of reserved matters required by condition 03 of outline planning permission Ref:03/2212/OUT dated 3 February 2004. The approval of reserved matters expressed in this decision does not discharge the other conditions in that planning permission including condition 04 which relates to landscaping.

Main issue

4. The main issue to be decided in these appeals is the effect of the proposals on the character and appearance of the locality.

Reasons

5. Both appeals relate to submitted details which are identical except in respect of the siting of the proposed children's nursery building. In respect of appeal Ref: APP/H0738/A/07/2043481 the west elevation is proposed to be some 1.79m from the west site boundary and the north elevation a minimum of 10.5m from the north site boundary. In respect of appeal Ref: APP/H0738/A/07/2047869 the distances are a minimum of 3.3m and a minimum of 8.2m respectively.
6. The local planning authority is concerned that, in respect of both appeal schemes, the proposed position of the nursery building would not allow sufficient space around it to enable a satisfactory landscaping scheme to be installed. As a consequence it fears that the development as a whole would be harmful to the visual amenities of the locality.
7. Outline planning permission Ref: 03/2212/OUT, in condition 04, requires the submission of a detailed scheme of landscaping for this site which would specify, among other things, types and species of planting. The appellant, in discussion with the Council's officers, understood that the imposition of this condition, in addition to the reference to landscaping in condition 03, was to be interpreted to the effect that only indications of the location of landscaping were required to satisfy condition 03. The full details would be submitted to fulfil the requirements of condition 04. At the Hearing the representatives of the local planning authority did not demur from this approach, nor did they present any technical or aesthetic arguments to support its reason for refusal. They limited themselves to generalised arguments in opposition to the principle of the development of the site for any purpose, neglecting entirely the fact that it is the subject of an extant outline planning permission for significant built development.
8. I observed at my site inspection the nature of the landscaping of the many new buildings which have been erected in both the immediate and the wider locality of the appeal site. These schemes do not seek to conceal the buildings but

simply to soften their appearance. They consist of low, narrow and visually permeable belts of planting and some low earth mounding. In my view it would be perfectly possible to establish comparable schemes of landscaping on the west and north sides of the proposed nursery building within the defined site boundaries in conformity with either of the details of siting which are presented in these applications. For these reasons I conclude that both the appeals conform to the provisions of policy GP1 of the adopted Stockton on Tees Local Plan and should be allowed.

Conditions

9. The local planning authority suggests that, if these appeals are allowed, a condition should be imposed which would restrict the hours during which works of construction are to be carried out. Such a condition, if thought desirable, should have been imposed at outline stage and cannot now be introduced via the approval of reserved matters.
10. The local planning authority suggests that the visibility splays should be maintained free from objects or structures above 600mm in height in order to secure the safe and free flow of traffic. Since this is an aspect of the control of landscaping introduced by condition 03 and condition 04 of outline planning permission Ref: 03/2212/OUT it is reasonable to impose it at reserved matters stage.

Peter Young

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr S Barker	Of Blackett Hart and Pratt, Solicitors, Westgate House, Faverdale, Darlington DL3 0PZ.
Mr S Jobey	Of SAJ Transport Consultants, Pink Lane Business Centre, Newcastle-upon-Tyne NE1 5DW.
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 on 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 notification.
- 4 Additional letters from interested persons presented at the Hearing.
- 5 Extract from Circular 11/95 presented by the appellant.

PLANS

- A The set of application plans relating to appeal Ref: APP/H0738/A/07/2047869.
- B The set of application plans relating to appeal Ref: APP/H0738/A/07/2043481.



Costs Decisions

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Decision date:
6 February 2008

Costs application in relation to Appeal Ref: APP/H0738/A/07/2043481 Land off 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 Mr P Nelson for a full award of costs against Stockton-on-Tees Borough Council.
- The hearing was in connection with an appeal against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission for the erection of a community centre, children's day nursery and associated car parking.

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

Costs application in relation to Appeal Ref: APP/H0738/A/07/2047869 Land off 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 Mr P Nelson for a full award of costs against Stockton-on-Tees Borough Council.
- The hearing was in connection with an appeal against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission for the erection of a community centre, children's day nursery and 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 Mr P 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 applications were refused contrary to the advice of the Council's professional officers. This in itself is not unreasonable. However, where members elect to depart from the advice they receive, paragraph 9 of Annex 3 notes 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 decisions in all respects.
 3. Members did not have legitimate grounds for considering that the proposed buildings were not capable of being adequately screened. No technical or
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aesthetic arguments to support that view were presented at the Hearing. Members were clearly advised by officers in both cases that the appellant owned additional land at the relevant side of the application site and that a condition (No 04) on the relevant outline planning permission (Ref: 03/2212/OUT) which has not been discharged, retained control over the landscaping of the development.

4. Because it should not have been necessary for the appellant to have the applications determined on appeal, all costs necessarily and reasonably incurred by him in making this appeal should be awarded against the local planning authority.

The Response by Stockton Borough Council

5. 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 decisions on the reserved matters applications which are the subject of these appeals. They believed that local public opinion was against the development of this land in principle, and reflected this in their decision.

Conclusions

6. 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.
7. At the Hearing the local planning authority did not present any evidence of substance to challenge the arguments of the appellant. No cogent reasons were presented to justify the reasons for the refusal to approve the reserved matters or a decision which was contrary to the recommendation of the Council's professional officers that the applications should be approved. The view of the representatives of the local planning authority, expressed at the Hearing, that an in-principle opposition to the development of the land should result in the refusal of details of reserved matters of an extant outline planning permission confirms that this body has behaved in an unreasonable manner. The appellant has been put to unnecessary expense in pursuing these appeals. The application for a full award of costs is, therefore, justified.

Formal Decision and Costs Order

8. 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 Mr P Nelson, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned two appeals under section 78 of the Town and Country Planning Act 1990 as amended against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission on land off Blair Avenue, Ingleby Barwick, Stockton-on-Tees TS17 5BL.

9. The applicant is 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