

**08/2977/FUL**  
**Land North of Blair Avenue, Ingleby Barwick, Stockton-on-Tees**  
**Appendix ref. 9**

**Appeal Costs Decision 06/3752/OUT**





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## 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  
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Decision date:  
6 February 2008

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### **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.**

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#### **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.
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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