



## The Planning Inspectorate

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Simon Grundy - Senior Planning Officer  
Development & Neighbourhood Services Your Ref: 09/0074/OUT  
Stockton-on-Tees Borough Council  
Gloucester House  
Church Road Our Ref: APP/H0738/A/09/2102926  
Stockton-On-Tees TS18 1TW  
Date: 23 March 2010

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Dear Sir

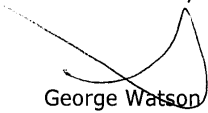
**Local Government Act 1972 – Section 250(5)**  
**Town and Country Planning Act 1990 – Sections 78 & 322**  
**Appeal by Mr Nasser Din**  
**Site at Supreme Knitwear, New Street, Thornaby, Stockton-on-Tees**  
**Application for Costs**

I refer to the above and enclose a copy of the Inspectorate's letter giving the decision of the Secretary of State on the application for an award of costs by the appellant

You will see that an award of costs is justified, and England & Lyle have been invited to submit details of those costs to you.

I also enclose a copy of the guidance note on the Detailed Assessment procedure.

Yours faithfully

  
George Watson  
Costs and Decisions Team

AM/SC





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Mr Jeremy Good  
England & Lyle  
Morton House  
Morton Road  
DARLINGTON  
DL1 4PT

Your Ref: 49/09/JG

Our Ref: APP/H0738/A/09/2102926

Date: 23 March 2010

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Dear Sir

**LOCAL GOVERNMENT ACT 1972 – SECTION 250 (5)  
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 & 322  
SITE AT SUPREME KNITWEAR, NEW STREET, THORNABY, STOCKTON-  
ON-TEES  
APPEAL BY MR NASSER DIN: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Inspector's decision on the appeal by Mr Nasser Din against the decision of Stockton-on-Tees Borough Council dated 9 April 2009 to refuse planning permission for revised "*outline application for a mixed use development comprising of training facilities for young persons with related commercial and student housing accommodation*" at Former Supreme Knitwear, Middleway, Thornaby, Stockton-on-Tees.
2. This letter deals with your client's application for an award of costs against the Council as made in your letter of 5 June 2009. The Council replied on 21 February 2009. As these representations have been made available to the parties, it is not proposed to summarise them. They have been carefully considered.

**Summary of decision**

3. The formal decision and costs order are set out in paragraphs 15 and 16 below. The application succeeds and a full award of costs is being made against the Council.

**Basis for determining the costs application**

4. In planning appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.
5. Published policy guidance is in CLG Circular 03/09 (referred to below as the Costs Circular). The application for costs has been considered in the light of



this guidance, the appeal papers, the parties' correspondence on costs and all relevant circumstances.

### **Reasons for decision**

6. All the available evidence in this case has been carefully considered. The decisive issue is considered to be whether the Council acted unreasonably by refusing planning permission for the reason given and then offering an inadequate defence of their decision on appeal resulting in unnecessary delay to development and causing the appellant to incur unnecessary or wasted expense in making and pursuing the appeal. Particular regard has been paid to the policy guidance in paragraphs B15 and B16 of the Costs Circular.

7. The sequence of events leading to the Inspector's decision on the appeal has been carefully examined. A revised outline planning application, the subject of this appeal, was submitted to the Council on 15 January 2009 and refused permission on 9 April 2009. The appeal was received on 21 April 2009, the appellant indicating that he wished to proceed by way of an exchange of written representations. The Inspectorate confirmed the procedure by letters of 28 April 2009. The Inspectorate's letters set out the timetable for the submission of the appeal documents and advised that costs can be awarded in planning appeals.

8. The Council's questionnaire and documents were received on 11 May and their statement was received on 5 June 2009. The appellant's statement was also received on 5 June. This included a costs application which was not exchanged at the time by the Inspectorate's case officer. The appellant's final comments followed on 23 June 2009. A site visit was made by the Inspector on 2 November and the Inspector's decision dismissing the appeal was sent out on 12 November 2009. You then wrote querying the progress of your client's costs application and this was belatedly copied to the Council for comment.

9. Your application is on the basis that, contrary to the advice in the Costs Circular and elsewhere, the Council by unreasonably refusing planning permission have delayed development. They then failed to support their reasons for refusal on appeal. The appeal had been unnecessary and clearly avoidable. The Council had not presented adequate reasons for refusal and had failed to establish the specific harm which the development would cause. Furthermore, they had not taken into account the development's benefits. The Council's informal policy on student accommodation stood outside the local plan framework and was contrary to national planning policy. Planning authorities are expected to produce evidence at the appeal stage to substantiate each reason for refusal. The Council have failed to do this and an award of costs should be made.

10. The Council responded by stating that they had acted reasonably by refusing planning permission. They felt they had acted prudently when they considered the development, to use their interim student guidance policy. Especially in view of the number of applications for student accommodation being dealt with in the area and the acknowledged stagnant state of the student accommodation market. Although the appellant set out a case for need it was not considered sufficiently robust to support the creation of 260 student bedrooms. The Council was and remains concerned that if the uptake of these student flats on relaxed standards fails to materialise there will be problems converting them into alternative uses leading to neglect and damage to visual

amenity. In the circumstances the Council had acted reasonably and no award of costs should be made.

### **Conclusions**

11. The Secretary of State has identified, in paragraph 6 above, what he considers to be the decisive issue in this case. The appellant contends that the Council's reason for refusal was inadequate and they were unable to defend it on appeal. In deciding the application for the proposed development the Council refused planning permission on the grounds that the applicant/appellant had failed to satisfactorily demonstrate there was a proven need for the development; contrary to the Council's adopted interim student accommodation policy document (ISAPD)<sup>1</sup>. Only the principle of development was under consideration and the Council were concerned that the need for further student accommodation had not been established by the appellant. Given that the application includes the proposal to provide 260 student bedrooms the Secretary of State acknowledges that this was a legitimate consideration.

12. Nevertheless, the Secretary of State notes that the Inspector, in his decision takes the view that the evidence provided by the Council in the ISAPD *"cannot be relied upon to support the statement that: '...future students are unlikely to require further accommodation.'"*<sup>2</sup> Nor does he accept the conclusion that the proposal would lead to an over-supply of student accommodation. The ISAPD, which is neither a development plan document (DPD) nor a supplementary planning document (SPD), lies outside the development plan system without the necessary consultation and without complying with the Council's own Statement of Community Involvement or meeting the requirements for Strategic Environmental Assessment. In recognising this, the Inspector gives it little weight and notes that the Council's approach was contrary to government advice and the development plan. Although the Inspector dismissed the appeal he considered that the Council's reason for refusal carried little weight and was misplaced in the context of this planning application. He concluded that *"the proposed development would be in accordance with the provisions of the development plan."*

13. In terms of the advice in paragraphs B.15 and B.16 of the Costs Circular the Secretary of State concludes that the Council have delayed the development process and did not produce evidence to show clearly why the development could not be permitted having regard to the development plan. Therefore, in the particular circumstances of this case, the Secretary of State concludes that the costs of the appeal were wasted due to the unreasonable behaviour of the Council. A full award of the appellant's costs will therefore be made.

14. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the relevant proceedings. The Secretary of State does not determine the amount payable. That will be for the parties to resolve by agreement on the evidence of expense actually incurred or failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

<sup>1</sup> The full reason for refusal is given in an Annex at the foot of this decision letter.

<sup>2</sup> Inspector's decision letter of 12 November 2009, paragraph 20.

**FORMAL DECISION**

15. For these reasons, the Secretary of State has concluded that a full award of the appellant's costs, on grounds of 'unreasonable' behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

**COSTS ORDER**

16. Accordingly, the Secretary of State for Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that Stockton-on-Tees Borough Council shall pay to Mr Nasser Din his costs of the appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal by Nasser Din against the Council's decision to refuse planning permission, more particularly described in paragraph 1 of this letter.

17. You are now invited to submit to Simon Grundy, Senior Planning Officer at Stockton-on-Tees Borough Council, details of those costs with a view to reaching agreement on the amount. A copy of this letter has been sent to him. 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 Senior Courts Costs Office is enclosed.

18. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

Yours faithfully



ANDREW DAVENPORT  
Authorised by the Secretary of State  
to sign in that behalf

**Annex** - Reason for Refusal of appeal application 09/0074/OUT on 9 April 2009:

1. In the opinion of the Local Planning Authority the applicant has failed to satisfactorily demonstrate there is a proven need for development; contrary to the Council's adopted interim student accommodation policy guidance document.

# The Planning Inspectorate

## Award of appeal costs:

### Local Government Act 1972 - section 250(5)

#### How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment<sup>1</sup>. This is handled by:

The Senior Courts Costs Office<sup>2</sup>  
Clifford's Inn  
Fetter Lane  
London EC4A 1DQ  
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court<sup>3</sup>. This is done by writing to:

The Administrative Court Office  
Royal Courts of Justice  
Strand  
London WC2A 2LL.

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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<sup>1</sup> The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at [http://www.justice.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm)

You can also buy the Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

<sup>2</sup> Formerly named the Supreme Court Costs Office

<sup>3</sup> Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.