

AGENDA ITEM: 5

PLANNING & DEVELOPMENT COMMITTEE

19 MARCH 2010

TITLE OF THE REPORT: PLANNING APPEALS

**RICHARD LONG
DIRECTOR OF LEGAL & DEMOCRATIC SERVICES**

PURPOSE OF THE REPORT

1. To report the findings of the Inspector appointed by the Secretary of State for the Environment, Transport and the Regions in regard to the following planning appeals.

BACKGROUND – SITE AT 10 COURT ROAD, GROVE HILL, MIDDLESBROUGH - M/FP/0539/09/P

2. The application for the erection of a detached two-bedroom bungalow with integral garage was submitted to Planning & Development Committee on 12 June 2009.

Officers recommended that the application be refused because (i) the proposal would result in the intensification of use of a substandard access which would be to the detriment of the amenity of the occupiers of the adjacent properties. (ii) The proposal also had limited capacity due to its size and layout, an additional dwelling in this location would increase congestion on the highway to the detriment of the amenity of nearby residents and (iii) the proposal was contrary to policy DC1 of the Local Development Plan

Neighbourhood consultations had taken place and 10 letters of objections had been received from the occupiers of Nos. 1, 4, 5, 6, 8, 9, and 12 Court Road and No. 345, Marton Road. In summary their objections were based on traffic flow and congestion, parking on the highway, problems with refuse collection, road safety, inadequate access to site, poor access for construction vehicles, loss of privacy and disturbance to tenants of Nos. 10 and 12 Court Road, proposed dwelling out of character with the area, pressure on local drainage system, trees and shrubs would have to be removed, proposed dwelling would be located close to the premises at 345 Marton Road, loss of privacy to gardens and that there was a restrictive covenant relating to the property. A letter received from the solicitor of the resident as 12 Court Road was also presented to the committee and this

stated that there was a condition in the deeds that the shared driveway should be for the use of two properties only. The Ward Councillors for Beechwood had also made representations objecting to the application.

After consideration of the application and taking into account the representations received, the decision of Members was to refuse the application.

The applicant submitted an appeal to the Planning Inspectorate, which was determined by written representations.

The decision of the Planning Inspector was to dismiss the appeal (See copy of decision notice (Appendix A)).

A copy of the decision notice has been placed in the Members' Resource Centre for information.

RECOMMENDATION

3. That the report be noted.

BACKGROUND PAPERS

4. Planning & Development Committee – 12 June 2009
Decision letter from the Planning Inspectorate dated 26 February 2010.

BACKGROUND – GARDEN AREA TO FRONT OF 53 THE GROVE, MARTON, MIDDLESBROUGH - M/FP/0573/09/P

5. The application for the erection of a detached house was submitted to Planning & Development Committee on 3 July 2009.

A Site Visit had been carried out prior to consideration of the application.

Neighbourhood consultations have taken place and objections were received from the occupiers of Nos. 54A, 54, 91 and 52 The Grove, the full details of which were included in the report. Comments were also received from the resident of 1 Roseland Drive who did not object but had concerns regarding the beck that traversed both properties and the possible effect building work may have upon it and asked that the Committee consider this when making their decision.

Marton Community Council objected to the proposed development as it was felt that the road was a unique conservation area and the proposal would put further weight on the amenities and also more traffic onto Stokesley Road.

The Council's Conservation Officer objected as the proposed detached dwelling situated at the front of the plot at No. 53 The Grove would have a significant negative impact on the character of the Marton Grove conservation area.

The applicant's agent was present and elected to address the committee. Councillor Mawston was present, as Ward Councillor, and spoke in opposition to this application.

Officers recommended that the application be refused because it would result in the sub division of the historic building plot and would introduce a built form, which obviated the setting of the original building. The proposal would also alter the plot layout of The Grove and was in conflict with the Marton and The Grove Conservation Area Management Plan. The application was also detrimental to the visual amenities of the area and the streetscene. It was in conflict with the following policies of the Councils Local Development Framework: (i) DC1 (test b – layout and test c – amenity), (ii) CS4 (test k – historic heritage and townscape character) and (iii) CS5 (test h – appearance of Conservation Areas). After consideration of the application the decision of Members was to refuse the application.

The applicant submitted an appeal to the Planning Inspectorate, which was determined by written representations.

**The decision of the Planning Inspector was dismiss the appeal.
(See copy of decision notice (Appendix B).**

A copy of the decision notice has been placed in the Members' Resource Centre for information.

RECOMMENDATION

6. That the report be noted.

BACKGROUND PAPERS

7. Planning & Development Committee – 3 July 2009
Decision letter from the Planning Inspectorate dated 26 February 2010.

BACKGROUND – 41 CROFT AVENUE , MIDDLESBROUGH - M/FP/0825/09/P

8. The application for a change of use from pet shop (A1) to hot food take-away (A5) was submitted to Planning & Development Committee on 14 August 2009.

A Site Visit was held prior to the meeting to enable Members to view the site. Neighbourhood consultations had taken place and objections were received from the occupiers at Nos. 54, 43, 37, 56, 48, 40, 46, and 42 Croft Avenue. The full details of which were included in Appendix 1 of the report.

The applicant was present at the meeting and elected to address the Committee.

Officers recommended that the application be refused because the proposal would have a detrimental effect upon the vitality and viability of the nearby local centres and the parade. It would have a detrimental impact upon its retail character and

function, which would be contrary to the aim of safeguarding the retail character and function of such area. The proposed use would also contribute to the undesirable odour and noise emanating from the ventilation system in the existing hot food shops in the parade and would therefore be detrimental to nearby residents enjoyment of their home. The proposal would also be in conflict with Policy DC1(test c) of the Council's Local Development Framework.

After consideration of the application the decision of Members was to refuse the application.

The applicant submitted an appeal to the Planning Inspectorate, which was determined by written representations.

**The decision of the Planning Inspector was to dismiss the appeal, but to award full costs to the applicant.
(See copy of decision notice (Appendix C).**

COSTS DECISION

9. An application for a full award of costs against the Council was submitted by the appellant.

The Inspector stated that he had considered the application for costs in the light of Circular 3/2009 and all the relevant circumstances which stated that costs may only 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.

The claim was that the Council failed to adequately substantiate either of the reasons for refusal. The Inspector commended the fact that representations from local people were reported to the Committee, that Councillors carried out a Site Visit and that much of the Planning Officers report accurately incorporated planning policy. However, he commented that the reasons for refusal were not precise, sufficiently specific or relevant to the application or could be substantiated with reference to the Development Plan and other material considerations.

The Inspector's decision was that Middlesbrough Council pay to the appellant, the full costs of the appeal proceedings. The appellant must now submit to the Council details of those costs with a view to reaching agreement as to the amount.

A copy of the decision notice has been placed in the Members' Resource Centre for information.

RECOMMENDATION

10. That the report be noted.

BACKGROUND PAPERS

11. Planning & Development Committee – 14 August 2009
Decision letter from the Planning Inspectorate dated 5 March 2010.

RICHARD LONG
DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

Contact Officer : Bernie Carr
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Appeal Decision

Site visit made on 9 February 2010

by Christopher Checkley
BA(Hons) MRTPI

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

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Decision date:
26 February 2010

Appeal Ref: APP/W0734/A/09/2114155

Land adjacent to 10 Court Road, Grove Hill, Middlesbrough, TS4 3AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Leon White against the decision of Middlesbrough Borough Council.
- The application Ref M/FP/0539/09/P, dated 22 April 2009, was refused by notice dated 16 June 2009.
- The development proposed is the erection of a detached two-bedroom bungalow with integral garage.

Decision

1. I dismiss the appeal.

Main issues

2. There are 2 main issues regarding the effects of the proposed bungalow. First, the effect upon the living conditions of future residents and neighbouring occupants with particular regard to access and car parking, privacy and outlook levels. Second, the effect upon the appearance and character of the area.

Reasons

Living conditions

3. No 10 Court Road is a 2-storey house facing onto the head of a short and narrow cul-de-sac of semi-detached and terraced houses of similar design. It has a relatively large rear corner garden that fans out rearwards from a narrow plot frontage. There is a pinched single-width shared drive between the corners of the houses at No 10 and No 12 that provides access for to a parking area between both dwellings. The proposed detached dwelling would be built to the side and rear of No 10 within its sub-divided garden, sharing the existing driveway. A boundary fence had already been erected at the time of the site visit.
4. Court Road and its dwellings were not designed to cater for modern-day levels of vehicle use and car ownership. A number of the houses have no on-site parking spaces and no potential to create such provision. I am persuaded by what I saw on my visit and the submitted evidence that there is already a significant problem arising from the high level of on-street parking in this narrow cul-de-sac, especially in the evenings. Vehicles parked along the road habitually impede the narrow entrance drives, the public footways and the passage of vehicles along the road and the use of the constricted turning head.

Refuse vehicles are frequently unable to pass along the road to empty wheelie bins.

5. I accept that the scheme would enable the retention of 2 on-site parking spaces for both Nos 10 and 12 and would include the provision of 2 on-site spaces for the new dwelling. However, there would inevitably be times when visitors and deliveries to the new dwelling would add to the already problematic levels of on-street parking, harming the amenity of the area and possibly causing detriment to public safety if emergency vehicles could not gain access.
6. Third parties have additionally pointed to other amenity problems not raised by the Council.
7. The dwellings at No 10 and No 12, standing close together at right angles, would both experience additional noise disturbance and loss of privacy from the additional vehicles to the new dwelling passing directly in front of their respective lounge windows, also causing headlight glare at night and manoeuvring noise to the rear windows of No 10. This would be a worsening of the existing situation through intensification of use of the pinchpoint access.
8. Also, the future occupants of the new dwelling would have a very restricted outlook northwards from the rear lounge and kitchen windows onto the nearby boundary planting/fencing. Furthermore, despite the angled viewpoint, there would also be potential for loss of privacy within some of the rear rooms of No 10 and part of its rear garden through overlooking at relatively close quarters from the most easterly first floor front dormer window of the new dwelling.
9. Therefore, I conclude that the new dwelling would not result in acceptable living conditions for existing residents of Court Road and future occupants of the new dwelling, contrary to criteria (c) and (d) of Policy DC1 of the adopted Middlesbrough Local Development Framework Core Strategy (LDF).

Appearance and character of the area

10. Although the Council have not raised the matter as an objection, I agree with the thrust of some third party representations regarding the harmful visual effect on the area. The detached dwelling with its rear and side walls set very close to the enclosing boundaries would look rather cramped on its site. It would also look out of place, having a different design including dormer windows and integral garage and standing to the rear of the frontage development of 2-storey houses of similar design.
11. I conclude, therefore, that the detached dwelling proposed would harm the appearance and character of the area, contrary to the provisions of criterion (b) of LDF Policy DC1.

Other matters

12. None of the other matters raised, including the burden of garden maintenance experienced by the current owner, are sufficient individually or in combination to outweigh the clear-cut objections. Therefore, the appeal must fail.

C J Checkley
INSPECTOR



Appeal Decision

Site visit made on 9 February 2010

by **Christopher Checkley**
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Decision date:
26 February 2010

Appeal Ref: APP/W0734/A/09/2114466

Garden area to front of 53 The Grove, Marton, Middlesbrough, TS7 8AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mark Ramsdale against the decision of Middlesbrough Borough Council.
- The application Ref M/FP/0573/09/P, dated 30 March 2009, was refused by notice dated 6 July 2009.
- The development proposed is the erection of a detached house.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect of the proposed dormer bungalow upon the appearance and character of the Marton Village and The Grove Conservation Area within which the site lies.

Reasons

3. The appeal site lies within the Marton Village and The Grove Conservation Area (CA). The draft Character Appraisal and Management Plan (CAMP) indicates that The Grove is a residential suburb of distinctive and attractive character. Its eclectic mix of dwellings generally comprises large detached or semi-detached villas of individual design illustrating a variety of influences from the early 20th century, set within large semi-wooded plots and arranged in a linear pattern. The plots are typically very deep so that individual dwellings have both long front and rear gardens. The CAMP seeks to resist recent pressures for the harmful sub-division of gardens and to preserve the historic pattern of deep plots that gives the CA its special low-density, green and spacious character.
 4. The appeal site is the forward section of the large front garden of a substantial two-storey detached Edwardian villa that stands within its original generously deep plot. In common with the 4 dwellings to the north that share a similar front building line, the dwellinghouse stands very well back within its plot, overlooking the long mature front garden that provides an attractive setting to it. A gated entrance through the tree-lined frontage leads to a drive that encircles the extensive front lawned area that is bordered by mature trees and shrubs. The proposed detached house would be erected on the front section of the lawned area.
-

5. The visual importance of the mixed deciduous and conifer trees within the curtilage and the gardens of the similarly set back houses is recognised by an area tree preservation order, with several trees on the frontage also having individual protection. The house is glimpsed from the road through the partial screen provided by the well-established landscaping.
6. The greenery and spaciousness of the front gardens of this series of 5 neighbouring villas is evident from the public road and is a feature of local distinctiveness within the CA. This element contrasts with the more recent higher-density development to the immediate south on Roseland Drive which is excluded from the CA.
7. Although it would generally reflect the traditional architectural themes of the host dwellinghouse, the proposed substantial new house standing so far forward of the building line of the series of neighbouring villas would result in a prominent built intrusion into the spacious open front garden area that is an important feature of the CA. Neither existing nor new planting would be able to conceal its presence.
8. The sub-division would harm the setting of the host villa and leave it with an uncharacteristically shallow front garden. Although the 2 resulting plots would not be small in absolute terms, they would be out of keeping with the large scale plots that form the dominant and special local context. The historic plot layout, linear pattern and spaciousness which are key features of The Grove would all be compromised.
9. My attention was directed to several dwellings nearby constructed within the front curtilages of original dwellings. However, the Council indicates that these were permitted prior to the designation of the CA in 2006, since when more stringent planning policies have been applied. I also saw that these developments have generally been damaging to the objectives of the CA. Harmful developments arising from unfortunate past decisions under different policies is not a valid reason for permitting a further piecemeal erosion of the appearance and character of this special area.
10. I conclude that the substantial detached house proposed would fail to preserve or enhance the appearance or the character of the CA. The harmful effects would be contrary to the provisions of policies CS4, CS5 and DC1 of the adopted Middlesbrough Local Development Framework Core Strategy (2008) and the guidelines of the CAMP and relevant national guidance in PPG15, PPS1 and PPS3. In combination these seek development that protects and enhances townscape character and local distinctiveness, is well integrated with and related to its local context and preserves or enhances the character or appearance of conservation areas.
11. None of the other matters raised - including the compliance with privacy separation guidelines, the lack of objection to the house design in itself, the making use of previously-developed land and the burden of garden maintenance experienced by the current owner - are sufficient individually or in combination to outweigh the clear-cut objections. Therefore, the appeal fails.

C J Checkley
INSPECTOR



Appeal Decision

Site visit made on 15 February 2010

by **D R Cullingford BA MPhil MRTPI**

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**Decision date:
5 March 2010**

Appeal Ref: APP/W0734/A/09/2118340

41 Croft Avenue, Middlesbrough, TS5 8AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is by Mr B Khan against the decision of the Middlesbrough Council.
- The application (ref: M/FP/0825/09/P and dated 3 June 2009) was refused by notice dated 17 August 2009.
- The development is described as a 'change of use from pet shop (A1) to hot-food take-away (A5)'.

Application for costs

1. An application is made for a partial award of costs in connection with this appeal. This is the subject of a separate letter.

Decision

2. For the reasons given below, and in exercise of the powers transferred to me, I dismiss the appeal.

Reasons

3. The appeal property is an empty shuttered shop at the end of a small parade of 5 retail units; there is an off-licence, a fish and chip shop, a Chinese take-away and a small supermarket (Londis). Neat bay-windowed semi-detached dwellings surround the parade, No.43 being adjacent, and there are flats above the shops. The parade stands behind an empty expanse of asphalt, protected by concrete bollards, so that any parking for car-borne customers must take place on the street. The proposal is simply to use the end unit as a hot-food take-away, to which the Council object citing the impact of the scheme on the additional noise and odour likely to be inflicted on nearby residents and retail grounds. I consider those issues below.
4. On the first issue, it is clear from the submissions made by local people (including the petition) that the operation of the existing hot-food take-away shops can cause problems here. Residents describe discarded meals being thrown into their gardens, inconsiderate parking on pavements and in driveways and the noise of customers coming to collect their meals or standing on the expanse of asphalt to eat them. The occurrence of inappropriate parking is also a concern expressed by the transportation section. And, it seems to me that, in the absence of any off-street parking provision, customers might well risk parking for a short time on pavements or blocking driveways while they collect their meals. The addition of yet another hot-food take-away, and the concentration of such uses in this small parade, would

almost inevitably exacerbate all those problems. Given the prevalence and proximity of dwellings here, I think that the proposal would detract from the amenities residents might reasonably expect to enjoy. And, although previous policies were plainer, I consider that such harmful effects would not be 'minimal'. The proposal would thus fail to comply with at least part of policy DC1, as set out in the adopted Core Strategy.

5. I appreciate that the relevant reason for refusal appears to be addressing different concerns. It indicates that the proposal would be unacceptable because it would *'further contribute to the undesirable levels of odour and noise emanating from the existing ventilation systems in the existing hot food shops'*, which seems to imply a concern with the ventilation system to be installed at the appeal premises. I think that that must be wrong, as I indicate elsewhere. However, the fact that the second reason for refusal appears to side-step the substance of the concerns set out (quite carefully) in the planning officer's report, as well as in the submissions from local people and consultees, does not invalidate the concerns themselves.
6. Turning to the second issue, I note that the first reason for refusal alleges that this proposal would detract from the vitality and viability of nearby local centres, as well as this parade, and have a detrimental impact upon the retail character and function of the latter (I think), contrary to the aim of safeguarding the retail character and function of such areas (I assume). Since there is no policy (or aim) that would serve to safeguard either the retail character and function or the vitality and viability of this parade, those particular alleged consequences of the scheme (even if likely) cannot be massaged into being important planning policy considerations. The parade falls below the scope of policy CS13 and there does not seem to be any other policy in the adopted hierarchy of DPDs (including REG30) that relates to the role of such small parades or corner shops. No doubt, given the status of those DPDs, such an omission is 'sound'.
7. As for the assertion that the proposal would detract from the vitality and viability of nearby local centres, I can find no supportive evidence of any kind. The nearest 'local centres' are in Acklam Road about 800m northwards and 600m to the south east of this parade. Both contain A5 uses. But it would be remarkable, given the distances involved and the size of the appeal premises, that the proposal would result in a significant diversion of trade or, even if it did, that the effects would be sufficient to affect the vitality of either centre. No contrary evidence is adduced. Instead it is suggested that policy CS13 could be interpreted as seeking to direct this proposal to one of the recognised local centres nearby. But there is nothing to show that that would help to safeguard the retail character and function of those centres or even that such a sequentially preferable opportunity might actually exist. And, of course, the same argument could equally well serve to prevent all commercial development (that is schemes requiring planning permission) at the appeal premises. I am not sure that that is the intention.
8. Taking all those matter into account, I consider that the scheme would impair the amenities residents might reasonably expect to enjoy here and so contravene policy DC1. Although the retail function of this parade is not obviously protected by the current version of the LDF and, on the evidence available, the scheme would be very unlikely to have any influence on the local

centres nearby, I consider that the potential impact on the living conditions of local residents warrants the prevention of this project. I realise that these vacant premises might remain so for a further period. However, it is not claimed that an A5 use would be the only viable form of enterprise that might occupy this shop. Hence, I find neither that, nor any other matter raised, sufficiently compelling to alter my conclusion that this appeal should be dismissed.



INSPECTOR



Costs Decision

Site visit made on 15 February 2010

by **D R Cullingford BA MPhil MRTPI**

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

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Decision date:
5 March 2010

Costs application in relation to Appeal Ref: APP/W0734/A/09/2118340 41 Croft Avenue, Middlesbrough, TS5 8AU

- This 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 B Khan for a full award of costs against Middlesbrough Council
- The site visit was in connection with an appeal against the decision of the Council to refuse to grant planning permission for development described as a 'change of use from pet shop (A1) to hot-food take-away (A5)'.

Decision

1. I allow this application for costs in the terms set out below.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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 claim is that the Council have behaved unreasonably in failing to adequately substantiate either of the reasons for refusal. The Council respond by indicating that the application was processed in their usual comprehensive and inclusive manner. I am sure that that was the case. Indeed, it is commendable that representations from local people were reported to the committee, that counsellors visited the site and that much of the planning officer's report accurately incorporates planning policy. But, I am afraid that the reasons for refusal, and their justification, do not reflect all that effort. They are not precise, sufficiently specific or relevant to the application; nor can they be properly substantiated with reference to the Development Plan and other material considerations.
4. The first reason for refusal alleges, in part, that the proposal would detract from the vitality and viability of this small parade of shops and have a detrimental impact upon its retail character and function. It might. But, as this parade falls well below the scope of policy CS13 in the Core Strategy (and any other related retail policy), it must be the intention of the adopted DPDs that such consequences do not constitute important planning considerations. In my view, the reason for refusal implies the opposite and so completely fails to reflect the adopted policy.
5. The same reason for refusal also asserts that a hot-food take-away here would detract from the vitality and viability of nearby local centres. Apart from

explaining that both the nearest 'local centres' on Acklam Road contain A5 uses, this assertion is completely unsubstantiated. I give some indication in my decision letter of the sort of evidence that might be required. It is absent.

6. Aspects of the second reason for refusal could be supported by policy DC1, as I explain in my decision letter. The trouble is that, as set out, this reason for refusal appears to focus wholly on concerns about the installation of ventilation systems. It states that the proposal would be unacceptable because it would *'further contribute to the undesirable levels of odour and noise emanating from the existing ventilation systems in the existing hot food shops'*. That can only imply a concern with the ventilation system to be installed at the appeal premises rather than any noise or odour emanating from other aspects of the proposal. In the circumstances that pertain here, that is bizarre. It is contrary to the advice received from Environmental Health officers, though no obvious reason for disagreeing with such expert opinion is indicated: it ignores the opportunity to impose suitable planning conditions (and the existence of other legislation) to adequately address such concerns in relation to the appeal premises: and, it focuses on a matter that does not appear to feature significantly in the planning officer's report. In relation to that last defect, although generalised reference is made to additional cooking smells and unsightly ventilation systems, the adequacy and appearance of a specific system in a particular position (both amenable to control) in connection with the appeal proposal is ignored.
7. I appreciate that, in my decision letter, I indicate that the potential increase in noise and parking problems due to this scheme would contravene policy DC1. But, the second reason for refusal does not address that issue. It thus fails to be sufficiently precise or specific and is left unsubstantiated by any cogent evidence.
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has been demonstrated and that a full award of costs is justified.

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 Middlesbrough Council shall pay to Mr B Khan the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

10. The applicant is now invited to submit to Middlesbrough 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 Senior Courts Costs Office is enclosed.



INSPECTOR

