

Planning Statement: 131 Ashton Old Road Manchester

Change of use from car rental place to children's day nursery

The location is 131 Ashton Old Road Manchester. The previous use was as an office and car park associated with a care hire business. The site was in use for many years and the established use, as a car hire place, would fall within sui generis categorisation. As such there is no deemed change of use. If the premises had been in B1 office there would have been an automatic change of use within use class E.

The property is quite prominent on the junction of Ashton Old Road and Viaduct Street as can be seen in the images below:



Proposal

The change of use of the office building, siting of a temporary building and change of use of the land for use as a children's day nursery. Total number of children will be 65. The applicant considers there will be 13 staff members employed. The opening hours are intended to be 7am to 6pm.

Policies and Appraisal

The local plan is made up of the saved UDP, Core Strategy and NPPF.

The Manchester Saved UDP allocates the site as being with an arterial route where policy E3.3 applies: "E3.3 The Council will upgrade the appearance of the City's major radial and orbital roads and rail routes. This will include improvements to the appearance of adjacent premises; encouraging new development of the highest quality; and ensuring that landscape schemes are designed to minimise litter problems. Objective: To enhance the City's environment." The proposed development will enhance the radial route by improving the appearance of site and encouraging linked trips.

The Manchester Core Strategy includes policy EC2 which seeks retention of employment use but concludes: "An alternative use would bring more benefits to the City, either because the employment use is not the optimum use for the site or because any harm is outweighed by the benefits of the new use. Judgements on the net value of such benefits will be based on the key strategic objectives in the Core Strategy." The proposed Nursery use will both provide employment – new jobs created by entrepreneurial initiative. Additionally the nursery gym will provide a social function through assisting parents to go to work whilst their children are cared for.

Policy SP1 identifies the City Council's Core Development Principles and states that development in all parts of the City should make a positive contribution to neighbourhoods:

- Creating well designed places that enhance or create character
- Making a positive contribution to the health, safety and wellbeing of residents
- Considering the needs of all members of the community regardless of age, gender, disability, sexuality, religion, culture, ethnicity or income.
- Protect and enhance the built and natural environment
- Improve access to jobs, services, education and open space by being located to reduce the need to travel and provide good access to sustainable transport provision." (Policy SP1 Core Strategy)

The proposal will make efficient use of space and provides employment within a location on Ashton Old road that is accessible to all in society. The radial route is served by several high frequency bus routes. Employment opportunities are to be increased.

The NPPF focuses policies and strategies toward sustainable development. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role, contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role, supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the communities needs and support its health, social and cultural well-being; and
- an environmental role, contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

The applicants intend to create employment running a Nursery at this vacant site. This is a significant investment in the local area and otherwise the building could remain empty. We suggest that the NPPF should carry a considerable amount of weight in assessing the proposal especially given the advice within quoted below:

“Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances” (Para 83, NPPF).

The Planning Inspectorate (PINS) have considered appeals relating to vacant former employment uses for the re-use. PINS have allowed appeals and placed great weight on stimulating the economy by utilising employment space for leisure uses. We have provided two appeal examples one from South Wales and one from Devon; both cases relate to soft play centres where change of use from employment was granted. In both cases the Inspectorate considered the positive impact of the employment generated by the leisure uses as having significant weight; without the intended leisure uses that employment would not be generated. The planning balance can be noted to be the same in this instance.

Conclusion

The proposal will be sustainable development, offering a local service to people which will assist, and is essential, in the wider economy. The proposal should be considered favourably when assessed against the Core Planning Principles of the NPPF. Furthermore paragraph 11 of NPPF advises: "At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking..... For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

We consider that the proposed development is acceptable in principle. The proposed use would bring into use and regenerate an underused site. The proposal would have a beneficial impact on the character of the surrounding area. It would be an advantageous use in an allocated arterial route location. The proposed development would not be detrimental to highway safety as noted in the findings of Alan Davies of DTPC.

We consider there are no other material considerations that outweigh this finding. We trust the Council will be able to recommend the application favourably as the proposal is sustainable development that accords with the Local Plan.



Appeal Decision

Site visit made on 24 January 2008

**by Stephen Amos MA(Cantab) MCD
MRTPI**

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

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**Decision date:
14 February 2008**

Appeal Ref: APP/U1105/A/07/2056318

**Unit 5, Gloucester Crescent, Heathpark Industrial Estate, Honiton, Devon
EX14 1DB**

- 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 Mrs April Edwards against the decision of East Devon District Council.
- The application Ref 07/1672/COU, dated 11/06/07, was refused by notice dated 02/10/07.
- The development proposed is change of use to soft play based family entertainment centre (D2).

Decision

1. I allow the appeal, and grant planning permission for change of use to soft play based family entertainment centre (D2) at Unit 5, Gloucester Crescent, Heathpark Industrial Estate, Honiton, Devon EX14 1DB, in accordance with the terms of the application, Ref 07/1672/COU, dated 11/06/07, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The premises shall be used as a soft play based entertainment centre and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 3) The use hereby permitted shall not be commenced until the 23 car parking spaces shown on the approved 1:500 scale Block Plan (rev a) have been provided and marked out.

Main issue

2. This is the effect on business and employment opportunities in the area.

Reasons

3. The appeal relates to a vacant purpose built business/storage and distribution unit (Classes B1/B8). It lies on an industrial estate close to the A30 trunk road, and is towards the western edge of Honiton. The site is identified as an existing employment area in the East Devon Local Plan (LP).

4. LP policy E3 restricts the change of use of current employment premises where it would harm business and employment opportunities in the area. The exceptions include where options for the retention of the premises for employment uses have been fully explored without success, and there is a clear demonstration of surplus supply of employment land in the locality.
5. The appeal premises have been vacant for over a year, and are said to have been marketed since about September 2006. The available evidence about that marketing is limited. For example, I have not been provided with any sale or letting particulars, or with details of the form and dates of any advertising, or with any information about the realism of the price or rent sought for the unit. I have noted that while 2 expressions of interest reached the stage of contracts being issued neither was completed, and that one of those interests was for investment rather than occupation. I have also noted the professional opinion of the marketing agent that the unit is too large for current demand. However, given the lack of some information as detailed above, I am not convinced on the available evidence that in the terms of LP policy E3 all options for retention of the premises in the permitted uses have been fully explored without success. As one example, there is nothing to show that the subdivision of the premises to create units in the size range which is in demand has been explored. While the appellant states that this would not be viable, there is no evidence of substance to support that contention.
6. Nevertheless, it is also necessary to consider the objectives which underlie LP policy E3 in terms of the encouragement of business activity and job creation. The use proposed in this appeal is a business. Moreover, although the use does not fall within Part B of the Town and Country Planning (Use Classes) Order 1987, as amended, it would provide employment. The appellant's evidence indicates that 13 full and part time jobs would be created, which is apparently more than could arise from some uses currently permitted for the unit, such as a warehouse. The benefits of this employment creation must be weighed in the balance in determining the appeal.
7. The evidence indicates that the appellant has conducted a lengthy search for suitable premises, including undertaking a sequential search within Honiton. The Council has not suggested that there is any sequentially preferable site available for the proposed use, or indeed that any alternative site or premises would be available at all. Consequently, I must also weigh in the balance that the likely consequence of a decision to dismiss this appeal is that the proposed development will not take place elsewhere, and that the potential advantages in terms of job creation would be lost.
8. Bringing these points together, I do not consider the proposal would be in conflict with the objectives of LP policy E3. Although it would represent a change of use of current employment premises, it would not harm business and employment opportunities in the area. That is because it would represent the introduction of a new business activity which would be beneficial in providing employment opportunities in the town, and there is no evidence to demonstrate that any other potential employment generating uses would be thwarted in finding suitable premises if this change of use were to be allowed.
9. The Economic Development Officer has expressed concern about the precedent that the proposal might set, with the context of other major employment sites

where higher value alternative uses have progressively replaced B Class uses. However, evidence submitted by the appellant indicates that the proposed use is not one which pushes up capital or rental values of property. That evidence has not been challenged. In the light of that evidence, a decision to allow the appeal would not be likely to set a harmful precedent or to take other nearby properties outside the scope of affordability for Class B users. Any future proposals for alternative uses would need to be considered on their own planning merits. On the merits of this case, I have concluded that on balance the proposal would have a beneficial rather than a harmful effect on business and employment opportunities in the area.

10. In reaching that conclusion I have taken into account that the local Chamber of Commerce and Industry supports the proposal. I have also taken into account that the LP suggests that sufficient employment land provision exists in East Devon to meet the requirements of the Devon Structure Plan for the period to 2011, and that the *East Devon District Council Employment Land Review 2006* indicates that there is a substantial level of vacant employment floorspace in Honiton, which would seem to be available should other demands arise which were not engaged by the marketing of the appeal premises. While the Council has referred to a number of reasons why vacancies might occur, such as mismatches of required and available forms of tenure, transitional vacancies between occupations, and the age and relative unattractiveness of some available premises, no evidence has been advanced to show that there are any known alternative potential occupiers available for the appeal premises.
11. I have taken account of all other matters drawn to my attention. There is support for the proposal from local schools and the Early Years and Childcare Service of Devon County Council as providing facilities for local children which are needed. That support weighs in favour of the proposal in the balance of considerations. The local highway authority is now satisfied that sufficient parking spaces would be provided. Noting that Honiton is a relatively compact town, that there is public transport access relatively close by, and that there is a housing area adjacent to the site, I find the proposal to be a reasonably sustainable one in terms of potential to use modes of transport other than the car. I have found nothing in any of the other matters raised that overrides the factors detailed above which have led to my decision to allow the appeal.
12. I have considered the suggested conditions. As some Class D2 uses would have different implications for the industrial estate location, and might not provide the same employment, it is reasonable and necessary to restrict the approved use to a soft play based entertainment centre. A condition relating to parking is also necessary. However, a satisfactory layout has been submitted, and so the condition I am attaching requires implementation of that layout rather than the submission of a scheme.

Stephen Amos

Inspector



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 06/08/13
Ymweliad â safle a wnaed ar 06/08/13

**gan Robert Gardener BSc (TownPlan)
MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 21/08/13**

Appeal Decision

Hearing held on 06/08/13
Site visit made on 06/08/13

**by Robert Gardener BSc (TownPlan)
MRTPI**

**an Inspector appointed by the Welsh Ministers
Date: 21/08/13**

Appeal Ref: APP/V6945/C/13/2195941

Site address: 107A Springvale Industrial Estate, Cwmbran NP44 5BG

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Tina Howarth against an enforcement notice issued by Torfaen County Borough Council.
- The Council's reference is 12/ENF/212.
- The notice was issued on 12/03/13.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use from industrial to a tanning centre and beauticians.
- The requirements of the notice are to (i) cease the use of the land for a tanning centre and beauticians and (ii) remove from the land all items/materials/equipment used in connection with the unauthorised use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds (a) and (g) set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Summary of decision: Planning permission is granted for a temporary period and the notice is quashed.

Ground (a) – that planning permission should be granted for what is alleged

Main Issues

1. There are 2 issues to be determined in this case. The first is the implications the proposal for the maintenance of choice and variety of industrial land and buildings in Torfaen. The second is whether the tanning centre and beauticians is in an appropriately sustainable location.

Reasons

2. The Springvale Industrial Estate lies to the west of the town centre. It occupies a large area with a wide variety of unit sizes. There is variety also in the activities carried on in the units. Although the planning permission or permissions under which the estate has been constructed were not available, the Council explained that the approved uses were likely to have been Classes B1(Light Industrial), B2 (General Industrial) and B8 (Storage/ Warehousing).

3. The appeal unit is small, some 44m², one of a group of similar units positioned close to the estate entrance. However, it is a later addition to the group, having been granted planning permission in 2008 (Council Ref: 08/P/00554(W)). The Council explained that it was to replace a storage container which had been placed on the land adjacent to Unit 7, one of the original units, and was intended to provide replacement storage for the glazing business then occupying it.
4. Policy ED8 of the adopted Torfaen Local Plan¹ states that the development of existing industrial land and buildings for any other purpose will not be permitted. Although exceptions may be made for any of 3 categories, the use as a tanning centre and beauticians does not satisfy any of them. It is clear from the policy and its reasoned justification that the overriding purpose is to maintain a choice and variety of industrial land in order to promote employment growth. The plan also recognises that other activities, notably retail and leisure, into which sectors the proposal may be considered to fall, are increasingly significant contributors to employment growth. Despite the age of the Local Plan, there was nothing to suggest that that is not still the case. However, land is allocated in the plan for those purposes, and I accept that such uses would normally be located in town, district or other local centres where they could also contribute to their vitality.
5. The development plan policy objection would appear clear-cut. However, there are other factors in this case. Policy ED8 consistently identifies that it applies to industrial land and buildings (my emphasis). Whatever the understanding may have been over the intended purpose of Unit 107A, the permission granted was for a storage unit. Its use was not further defined nor was it restricted to being used only in connection with Unit 107. Although the approved scheme showed the removal of an internal wall to create a single larger unit, it is readily apparent from inside that it was never carried out. The evidence is that the 2 were constructed as, and have remained, separate units, both physically and in their occupation. Unit 107A was used for storage before the appellant took it over in 2012 in accordance with, it seems to me, the permission granted. It is a storage, not industrial building, and in strict terms, Policy ED8 has limited, if any, relevance to the change of use which has occurred.
6. Policy R2 would appear to offer some guidance in that it resists proposals for new retail and leisure development in non-centre locations such as this in order to safeguard the functioning of such centres. However, since it applies only to units over 235m², far in excess of Unit 107A, the proposal also falls outside that policy.
7. There are no other policies of the plan which apply to this particular situation and so the proposal is to be considered on its merits. In so doing it is nevertheless appropriate to still have regard to the overarching objectives of both Policy ED8 and Policy R2, even if they cannot be applied wholesale. For instance, while the appellant was unable to find suitable and affordable premises within any of the local centres and considers that there are drawbacks to a central location for her sort of business, I see no overriding need for the proposal to be where it is in land use terms. Moreover, Unit 107A clearly has potential to be used as an industrial unit and so help generate the employment growth which the local plan intends.
8. Indeed, the Council considers the loss of the unit's employment potential to be the main consideration here and that Policy ED8 still offers the best guidance. The plan

¹ Local Plan for the County Borough of Torfaen adopted 27 July 2000

explains that the choice and variety the Council seeks to maintain is where industrial land is in short supply. Conversely, such land may be considered for development for retail and leisure activities where there is a surplus. The Council accepts that a significantly high proportion of the units on Silverdale Industrial Estate are vacant, thereby indicating that floorspace is not in short supply and that there is, at this point in time at least, a surplus. As such, the ban imposed by the policy, even if applicable in principle, is not absolute. Moreover, I share the appellant's view that her use of the unit offers not only economic activity where otherwise there may have been none but also full- or part-time employment for 4 or 5 people, a proportionately high number for such a small unit. This is a powerful consideration.

9. I accept the Council's proposition that the seemingly high level of vacancy reflects the current economic situation and that it would be harmful if units were to be lost now which would not then be available to respond to demand when matters improve. I find that particularly relevant for, as here, small units such as this which offer the potential for small businesses starting out. It also seems that, as in the group of units here where there already appears to be a high proportion of commercial activities, such units are vulnerable to being taken over for other non-industrial purposes and need to be safeguarded.
10. I find that there is a case, on this issue, to allow the use to continue in the interim pending the resurgence of the economy that the Council anticipates, to which I return.
11. As to the second issue, despite the size of the industrial estate, it is not well-served by public transport. The Council points out that the nearest bus-stop is some 400m. distant and is on a route which serves only one part of Cwmbran. Although it was explained that walking from and to the town centre itself, where various bus routes converge, was manageable the indications are that most visits to the business are by car. Indeed, 31 out of 38 of customers who completed a questionnaire for the appellant confirmed that that is how they travel. As such, the use is not well-located to encourage trips by other than private vehicle and conflicts with Policy G5(F), which requires that development should be easily serviced by public transport, and Policy G1(B)(i) in not being consistent with the principles of sustainable development. Conversely, the use is suited to, for instance, a town or district centre where it could not only contribute to its vitality but also be part of a shared trip and so meet sustainability principles.
12. While sustainability is clearly a Welsh Government objective and a significant consideration here, both policies only identify matters which are to be considered when making decisions on planning proposals. They are not prescribed. Policy G5 is designed to avoid highway issues, for instance, and in this case there is no suggestion that the use gives rise to such problems. In this case, there are some mitigating features. The site is within the built-up area of Cwmbran where the appellant says the bulk of her customers are based. This is not a remote location without any alternative possible travel option which may for instance be the case in rural areas within the Borough also subject to the same policy considerations. The questionnaire survey revealed a substantial level of car sharing and walking while the customer base also includes employees on the industrial estate. These do not overcome the policy objection but do help reduce the degree of harm it might cause.
13. Both issues need to be considered in the round. The degree to which the use of this modest unit undermines the Council's sustainability strategy as set out in the Local Plan is not substantial. Nor would the use of the unit significantly reduce the choice and variety of floorspace available while there is such a high incidence of vacancy.

However, that hopefully will not always be the case and the permanent loss of such units could impede economic recovery. I have concluded therefore that a temporary planning permission is justified which would (a) safeguard the contribution that the unit could make to employment growth in the medium term, (b) provide the opportunity for the Council to review the situation and (c) allow the appellant to continue to develop the business and find suitable premises in a more appropriate location and so generate economic activity.

14. As to conditions, before I turn to the temporary period, the appellant felt that a full but personal permission should be granted. I appreciate the considerable investment that has been incurred in converting, decorating, furnishing and equipping the unit. I also understand the considerable commitment entered into, not the least the contractual obligations over the sun-beds and so on. Nevertheless, a personal permission as requested would not meet the advice given in the conditions circular² and is not justified. As to a temporary period, the appellant felt that 5 years would give her the certainty she needed to develop the business while the Council considered that 2 years should be the maximum. I agree that 5 years would be likely to impede the overarching objective of employment growth. The lesser period coincides with the contractual commitment entered into. I feel a further short period should be allowed for relocation and consider 3 years would be reasonable.
15. The Council is additionally concerned that a precedent should not be set. The use of other similar units for unauthorised commercial activity to which I have referred gives substance to that concern. However, I have outlined a number of factors here, including the fact that the unit has a storage, not industrial, use, and that the business has a high employment to floorspace ratio. Unless the same set of circumstances re-occur, I see no reason why my decision here should demand repetition elsewhere.
16. I shall therefore grant planning permission for the limited period explained.

Ground (g)

17. In view of the above, it is not necessary for me to consider this ground of appeal. However, the Council's preference is, if the use is to be allowed to remain for a longer period, that it should be achieved by extending the period for compliance with the notice requirements rather than a grant of temporary planning permission. That would send a more appropriate message to others who breach planning control and who then expect to receive retrospective planning permission. It would also avoid having to serve a further notice if the temporary period is exceeded.
18. There is some support for that approach in TAN9³. Even so, in this case I consider that the period involved, 3 years, exceeds what would normally be considered reasonable as a period for compliance, particularly since the notice would have become effective and be registered on the property while the justification may have changed before the end of the compliance period. In my view, since planning permission can be granted, albeit subject to the condition mentioned, it should be granted.

² Circular 35/95 The Use of Conditions in Planning Permissions

³ Technical Advice Note 9 Enforcement of Planning Control

Formal decision

19. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of 107A Springvale Industrial Estate, Cwmbran NP44 5BG, as shown on the plan attached to the notice, as a tanning centre and beauticians subject to the following condition:

- 1) The use of the premises as a tanning centre and beauticians hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. When the premises cease to be used as a tanning centre and beauticians or at the end of 3 years, whichever shall first occur, all materials, equipment and works installed or undertaken in connection with the use shall be removed and the premises restored to their condition before the development took place.

R G Gardener

Inspector

Appearances

For the appellant:

Miss Tina Howarth Appellant

Mrs Pamela Howarth Relative

For the Local Planning Authority:

Mrs Gemma Evans Enforcement Team Leader

Documents submitted at the hearing

- 1 Notification of the hearing and list of those notified
- 2 Extract, Torfaen Local Plan: Chapter 5 Retail