



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