



Appeal Decisions

Site visit made on 7 July 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2020

Appeal A Ref: APP/C3240/C/20/3249115

Appeal B Ref: APP/C3240/C/20/3248560

Land at Units C5 & C6 Stafford Park 15, Stafford Park, Telford TF3 3BB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Simon Anderson and Appeal B is made by Grammont Properties LTD against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land comprising of the sub-division of the existing B1, B2 & B8 unit in order to create a retail unit (A1).
- The requirements of the notice are:
 - Cease the use of the premises shown hatched blue on the plan, for A1 Retail and return to its previous use B1, B2 & B8
 - Remove all items associated to the A1 retail use from the building to include display cabinets and counters
 - Remove all signage advertising the retail use from the building.
- The period for compliance with the requirements is one month.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: Appeal A is dismissed, and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision. Appeal B succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. I have noted, as had the appellant what appears to be a typographical error in Policy EC1 of the Telford and Wrekin Local Plan 2011 – 2031 Adopted January 2018 (the Local Plan) in respect of the word *expect*, which the appellant also agreed should be *except*. Accordingly, I have considered the policy and appeal on this basis.

The Notice

2. There is a right under Section 57(2) of the Act to revert to the last lawful use following the issue of an enforcement notice. The positive requirement to revert to use for B1, B2 & B8 purposes is therefore excessive, and I shall correct the notice by deleting that part of the requirement. I am satisfied that this correction will not cause injustice to the parties, and I shall therefore use my powers under Section 176(1).

Appeal A on ground (a) and the deemed planning application

3. The main issue is the effect of the development on the availability of employment space in the area.
4. The appeal site forms part of an industrial building located within a complex of industrial units, within the Central Area Strategic Employment Area designated by Policy EC1 of the Local Plan.
5. Policy EC1 of the Local Plan states that the Strategic Employment Areas are expected to deliver B Use Classes along with sui generis uses associated with B Use Class activity such as waste management and ancillary uses that support the Strategic Employment Area. Within the Central Area Strategic Employment Area, main town centre uses (expect retail development) will also be encouraged on sites within the Telford Town Centre as shown in Policy EC5.
6. The explanatory text to Policy EC1 states that applications to use land allocated for employment for other uses will be strictly controlled to ensure that there is a continued supply of land for business, general industrial and storage/distribution uses. Applications will be expected to demonstrate that other sites have been assessed and provide evidence as to why these sites are not appropriate or available. The developer will be expected to demonstrate that the site has been actively marketed for the proposed employment use.
7. Policy EC8 states that the Council will only support proposals for retail development (Use Class A1) in Telford town centre located outside or on the edge of the Primary Shopping Area, where suitable sites cannot be identified through a sequential test. The purpose of the policy being to support the viability and vitality of the borough's centres.
8. There is no dispute that the appeal development is characteristic of uses falling within class A1¹. However, the appellant contended that the economic, social and environmental benefits associated with the use outweigh the loss of employment space.
9. I acknowledge that at around 34sqm the use constitutes only a small part of the overall employment space occupied by the appellant, that the space was vacant and the use mainly serves customers employed on Stafford Park. Nevertheless, whilst there may be a market for the service within Stafford Park, in the absence of substantive detailed evidence or explanation, I do not consider that the use constitutes a supporting ancillary service which meets the *needs* of on-site employees and businesses and supports the Strategic Employment Area.
10. The appellant has not suggested that they marketed the building for employment use and argued that there is sufficient capacity for industrial renting. In this regard they provided details of various employment spaces available to either buy or rent however, these relate to premises of greater scale than the appeal site and as such are not directly comparable and of limited weight in my assessment.
11. The appellant stated that they did not carry out a sequential test as they had no desire to open a shop elsewhere, as they were using vacant floorspace and there are already two vaping shops in the town centre.

¹ Schedule to The Town and Country Planning (Use Classes) Order 1987 as amended.

12. There are some economic benefits associated with the employment of three people. However, there is no substantive evidence that an employment use would not have generated a similar number of employees and as such, whilst acknowledging the contribution that the employment makes, the economic benefits of the development are limited.
13. Whether or not vaping is a healthier choice than tobacco, as the appellant pointed out there are already two vaping shops in the town centre and consequently any social benefits associated with the use are negligible.
14. The presence of the shop may reduce the need for some working in Stafford Park to travel however, in the absence of details regarding customer numbers and as the appellant stated that the shop does not attract a large number of people, overall the environmental benefits are limited.
15. The appellant referred to various non-employment uses falling within the D Use Class, occupying premises in Stafford Park 15. However, they acknowledged that these were given permission under a previous local plan. Consequently, and as I do not know the circumstances of those developments being permitted their existence is a matter of limited weight.
16. In the absence of substantive evidence which demonstrates that other sites have been assessed and explanation why these are not appropriate or available, that the site has been marketed for employment purposes and the sequential test has been carried out, the development is contrary to Policies EC1 and EC8 of the Local Plan. It also conflicts with The National Planning Policy Framework which states that main town centre uses should be located in town centres and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
17. I acknowledge that the development has provided an economic use for what was vacant floorspace and provides employment opportunities. However, these benefits do not outweigh the harm caused by the loss of employment space and, in the absence of contrary evidence, harm to the viability and vitality of Telford town centre, to which I attach substantial weight. Consequently, the advanced considerations do not indicate that the appeal should be determined other than in accordance with the development plan.
18. A condition only allowing the business to be owned by the appellant would not overcome the identified harm. Further, that if vaping trends decline the site could be easily returned to its former use is a neutral matter which cannot outweigh the identified harm.

Other Matters

19. The appellant's misgivings about the Council's approach to their investigation including not inviting the submission of a retrospective planning application and the appellant first finding out about the enforcement notice from the local press, are separate from the planning merits of the development and as such have no bearing on my assessment.
20. For the reasons given above, having regard to all matters raised, I conclude that the appeal on ground (a) should not succeed.

The appeals on ground (g)

21. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
22. The appellant, in respect of Appeal A, requested that in the event the appeal is dismissed the use is permitted to continue for a longer period so that those employees who are made redundant are given longer to find alternative employment. Additionally, that given the uncertainty associated with the COVID-19 pandemic that any extension should last three months beyond the end of the current emergency. However, there is no definition of when the emergency is considered to have 'ended' therefore it is not possible to derive a 'period' from this and consequently this would not comply with s173(9).
23. In cases involving business uses, it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice.
24. The use enforced against is occupying part of a designated employment site and weight must be attached to this harm. Such harm should not be permitted to continue for any longer than absolutely necessary. Nevertheless, the business employs a number of people and undoubtedly the closure of the business will have some impact on them.
25. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development. I conclude, however, that even if account is taken of the need to remedy the harm, the notice does not afford the appellant reasonable time to look for alternative premises or for employees to find alternative employment. Looking at the case in the round, the requirement to cease the use within one month would place a disproportionate burden on the appellant in respect of Appeal A, and their employees.
26. Taking all these matters into account I conclude that the period for compliance should be extended to three months. A period of three months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to bring this harmful development to an end and the interests of the appellant, in respect of Appeal A and their employees. To this extent, the appeals on ground (g) succeed.

Formal Decision

27. It is directed that the enforcement notice is corrected and varied by:
 - (1) The deletion from section 5, what you are required to do, of the words *and return to its previous use B1, B2 & B8*.
 - (2) The deletion of one month and the substitution of three months as the period for compliance.
28. Subject to the above correction and variation, I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR