



Appeal Decision

Site visit made on 9 May 2024

By Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 28th May 2024

**Appeal Refs: APP/J4525/C/23/3327783 (Appeal A) &
APP/J4525/C/23/3327784 (Appeal B)**

Garage Units at 1-4 Warwick Terrace West, Sunderland SR3 1AZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Jasbir Khaira (Appeal A) and Mr Peter Stubbs (Appeal B) against an enforcement notice issued by Sunderland City Council.
 - The notice was issued on 19 July 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from use for storage purposes (lock up garages) to use for retail purposes (currently a garden centre).
 - The requirements of the notice are to:
 - (i) Cease the use of the land for retail purposes.
 - (ii) Remove from the land all items connected with the use of the land for retail purposes.
 - The period for compliance with the requirements is: 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Since the enforcement notice was issued, the Government published a revised National Planning Policy Framework (NPPF) on 19 December 2023 and updated it on 20 December 2023. Those parts of the NPPF most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised NPPF, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Ground (a) and the deemed planning application

Main Issues

3. The main issues are:
 - whether the development is in an appropriate location for such a use, when assessed against the relevant local and national policies; and
 - the effect of the development on highway safety in the area.

Reasons

Whether an appropriate location for the use

4. The appeal scheme was previously the subject of planning application ref: 23/01019/FUL (the 2023 application). The application was not made valid on receipt, but I note that the Council used it as the basis for the consideration of the development that is the subject of the enforcement notice.
5. The appeal site is a unit occupying a corner location on the junction of Warwick Terrace West and Lincoln Avenue. The unit was previously a row of garage units used for storage. Directly behind the site is a Lonsdale supermarket, and the surrounding area is predominantly residential in character.
6. I note that the appellant disputes the term 'garden centre' used in the description of the development in the enforcement notice. Instead, he says that the appeal site is a flower and plant shop. However, the notice primarily attacks the material change of use of the appeal site to retail, which would reasonably include the sale of flowers and plants.
7. Policy VC1 of the Sunderland City Council Core Strategy and Development Plan 2015-2033 (CS) identifies the city, town, district and local centres whose vitality and viability are to be maintained and enhanced. The policy allows for neighbourhood shops, services and community facilities located outside of the designated centres to be protected where they are important in meeting day-to-day needs. However, there is no suggestion from the parties that flowers and plants are a day-to-day need, and so the development would not fall within this exception.
8. Main town centre uses are to be focused within designated centres. The NPPF glossary, at Annex 2, includes retail development in its definition of main town centre uses. Outside the centres, these uses will only be supported where they can demonstrate that they have satisfactorily met the sequential test and would not have a significant adverse impact on the vitality and viability of designated centres.
9. The NPPF explains, at paragraphs 91 and 92, that authorities should apply a sequential test to schemes for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When edge of centre and out of centre proposals are being considered, preference should be given to accessible sites which are well connected to the town centre. Parties should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
10. The appeal site is located outside any designated centre in the retail hierarchy, and so a sequential test is required. Nonetheless, the appellant did not submit a sequential test with the 2023 application, and there is no evidence that the test has been carried out since that time. He does not explain how the location of the retail use at the appeal site meets the relevant policies, or provide evidence that would justify the setting aside of these policy requirements.
11. For those reasons, I find that it has not adequately been demonstrated that the development is in an appropriate location. In the absence of such information, it is not possible to satisfactorily conclude whether the development has or will have a harmful effect on the vitality and viability of the centres identified in the

development plan. Accordingly, the development unacceptably conflicts with CS Policy VC1 and the guidance contained in the NPPF.

Highway safety

12. Amongst other things, CS Policy ST3 requires development to provide safe and convenient access for all road users, in a way which would not: compromise the free flow of traffic on the public highway, pedestrians or any other transport mode, including public transport and cycling; or exacerbate traffic congestion on the existing highway network or increase the risk of accidents or endanger the safety of road users including pedestrians, cyclists and other vulnerable road users.
13. The main question is whether the development that is the subject of the appeal is materially more harmful to highway safety than the previous use at the site. The appellant argues that the change of use from garages to a flower and plant shop has significantly mitigated the influx of people to the site, and the disruption caused by vehicles. However, he offers little detailed or quantified evidence to demonstrate this assertion.
14. The Council describe the previous use of the site as 'storage purposes (lock up garages)', which the appellant does not dispute. There is little information available about the pattern of use of the storage facility, or the degree of customer activity associated with it. However, generally speaking, storage uses rely less on customer attendance at their location, and so tend to generate fewer trips to and from the premises. Retail shops, on the other hand, usually rely on higher footfall and regular attendance by customers to buy goods.
15. On that basis alone, it is reasonable to assume that the number of trips to and from the appeal site will have increased, in comparison to the previous storage use. As a result, there is likely to have been a subsequent increase in demand for parking in the area, and implications for road safety, particularly so close to the junction. The Council's concerns over this matter are echoed in the representations of objection to the scheme from neighbouring residents.
16. Therefore, in order to comply with Policy CS Policy ST3, it would be reasonable for the appellant to provide evidence of the number of trips that the new business typically generates. Since the unauthorised change of use was reported in November 2022, there has been ample time for such information to have been gathered.
17. Furthermore, in response to the consultation on the 2023 application, Network Management commented that the appellant should set out the parking arrangements for staff and customers at the shop, and also the servicing and delivery requirements of the business, as these have the potential to generate traffic to and from the site.
18. The appellant confirms that he owns the designated parking space in front of the appeal site. He states that this area accommodates both parking at and deliveries to the shop, and has served its purposes for over 30 years without any untoward incidents or complications. The appellant goes on to say that on-street parking has consistently occurred on Warwick Terrace and Lincoln Avenue without any undue disturbance.

19. Nonetheless, a change of use has occurred that is likely to generate more traffic associated with the site than the previous use. The text beneath CS Policy ST3 states that, where additional trips are generated, it is important that the impacts of the development are understood and that any necessary improvements are identified and implemented. The scope of transport evidence is to be discussed and agreed with the Local Highway Authority, with specific requirements based on the scale of development. There is little evidence before me to show that these requirements have been addressed.
20. In recognition of the Council's concerns, the appellant now indicates that he would be willing to create a new access point to the rear of the appeal site, which would connect it to the Londis car park. He also proposes to erect signage restricting parking in the existing space, and directing customers to the area at the rear. However, the Londis car parking area is limited, comprising only the area immediately outside the shop. There is little information to show the level of usage of the Londis parking area, and so I cannot be certain that this would be an acceptable solution.
21. The appellant also proposes to adapt the opening hours of the shop to take into account peak morning periods for traffic flow. Bins would be stored in the building, and would only be put outside on collection days. Finally, all product displays would be kept inside the building, leaving the forecourt and footpath clear of obstruction. Whilst all these helpful measures could be conditioned were the development to be found otherwise acceptable, they are insufficient to address the policy requirements above.
22. I note the appellant's concern that his case has been treated less favourably than a number of businesses on Blind Lane and Silksworth Road, where he says there is a tendency for customers to park indiscriminately. However, in the absence of any planning history for these developments, or details of any highways problems associated with them, I cannot draw any meaningful parallels with the case before me.
23. Drawing these factors together, I conclude that it has not been satisfactorily demonstrated that the development is or can be made acceptable in terms of its effect on highway safety in the area. It therefore conflicts with CS Policy ST3, CS Policy ST2, which seeks to ensure that development has no unacceptable adverse impact on the Local Road Network, and the NPPF, which indicates that development should be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Conclusion on ground (a)

24. For those reasons, the appeal scheme conflicts with the development plan as a whole. As a result, the appeal on ground (a) fails, and the deemed planning application is refused.

Ground (f)

25. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
26. The starting point in a ground (f) appeal is to identify the purposes of the notice, as set out in section 173 of the Act. They are either to remedy the breach of planning control or to remedy injury to amenity. Since the notice

requires the cessation of the unauthorised use and removal of associated items, the purpose is to remedy the breach.

27. The next step is to consider whether there is any obvious alternative or lesser step that would achieve this purpose. I have taken into account the changes the appellants suggest to make the business more acceptable, but these are not sufficient to overcome the policy conflicts.
28. In the absence of any other obvious lesser steps that might achieve the aim, I am therefore satisfied that the requirements are necessary, and commensurate with the purpose of the notice.
29. The appeal on ground (f) fails.

Overall Conclusion

30. For the reasons above, the appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR