



Appeal Decision

hearing held on Tuesday, November 23, 1999

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

by Felix Bourne BA(Hons) Solicitor Legal Associate RTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

20 DEC 1999

Appeal 1: T/APP/C1950/A/99/1025798

- 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 brought by K Cars against Welwyn Hatfield District Council.
- The site is located at 9 Southfield, Welwyn Garden City.
- The application (ref:N6/1006/98/FP), dated 3 November 1998, was refused on 15 January 1999.
- The development for which planning permission was sought was the use of land for the display and sale of motor vehicles with ancillary office accommodation.

Decision: The appeal is dismissed.

Appeal 2: T/APP/C1950/C/99/1025799

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by K Cars against Welwyn Hatfield District Council.
- The site is located to the side and rear of 9 Southfield, Welwyn Garden City.
- The Council's reference is A993/N6/1006/98/FP.
- The notice was issued on 11 June 1999.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the land from the authorised use as part of a warehouse/industrial unit to use for sale or display for sale of motor vehicles with ancillary office accommodation in a portable building situated on the land.
- The requirements of the notice are (i) cease using the land for the sale or display of motor vehicles; (ii) remove all motor vehicles stored on the land connected with the sale or display for sale of motor vehicles; (iii) remove the portable building from the land.
- The period for compliance with the requirements is, in relation to (i), forthwith after the notice takes effect and; in relation to (ii) and (iii), fourteen days after the notice takes effect.
- The appeal was made on the grounds set out in section 174(2)(a) and (g) of the 1990 Act.

Decision: I direct that the enforcement notice be varied by the deletion of the existing periods for compliance, within paragraph 5 of the notice, and the substitution therefor of the following, namely: under paragraph 5(i): Time for compliance: six months;

Under paragraph 5 (ii); Time for compliance: six months; and

Under paragraph 5 (iii) Time for compliance: six months and fourteen days.

Subject thereto, the appeal is dismissed and the enforcement notice is upheld. I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the amended Act.

Procedural matters.

1. Section 173(9) of the 1990 Act states, amongst other things, that an enforcement notice must specify the period at the end of which any steps are required to be taken. The word

“forthwith”, used by the Council in relation to one of the requirements of the notice, does not, in my opinion, represent a period within the meaning of this section. However, the Council have, in any event, suggested revised periods in relation to the various steps required by the notice and this drafting deficiency is resolved by my decision on the ground (g) appeal, and the resulting variations to the terms of the enforcement notice.

Section 174 appeal on ground (a) and the Section 78 appeal.

ISSUES.

2. From all that I have seen, heard and read, I consider that there are two main issues in this case. The first is whether the development would result in a significant loss of land for business, industrial or storage use, contrary to development plan policy; the second main issue is the effect of the development upon parking and servicing arrangements in Southfield.

THE FIRST MAIN ISSUE.

The development plan.

3. The development plan for the area consists of the Hertfordshire Structure Plan Review 1991-2011, and the Welwyn Hatfield District Plan Alterations No 1, (the Local Plan), both adopted in 1998.
4. Structure Plan Policy 14 seeks to foster economic growth and provides, amongst other things, that employment development (normally that categorised as B1, B2 and B8 within Part B in the Schedule to the Town and Country Planning (Use Classes) Order 1987) will be permitted, subject to other policies of the Plan and their detailed expression in Local Plans.
5. The Local Plan recognises that development is constrained by the Green Belt designation of the whole district and adopts an overall objective of ensuring that sufficient land is reserved to meet the current and future employment needs of the District whilst not generating excessive demands for new housing or long distance commuting. Policy EMP1 identifies Burrowfields, the area within which the appeal site is located, as an employment area whilst Policy EMP2 indicates that, subject to certain specified exceptions, planning permission will not be granted, in the defined employment areas, for proposals resulting in the loss of land available for the purposes of Use Class B.

Approach to the development plan.

6. The development plan therefore contains policies with regard to the appeal site, but there are no policies directly relating to the development undertaken by the appellants. This led the appellant's agent, in his statement, to suggest that the application should be determined on its merits in the light of all material considerations, in line with the advice contained in paragraph 55 of Planning Policy Guidance: General Policy and Principles (PPG1). Alternatively, if the development plan was taken as the starting point, it was argued that the Council had completely failed to look at other material considerations.
7. At the hearing the appellant's agent accepted that the development plan contained policies which were material to the development plan but suggested that, where there were no policies directly relating to the development under scrutiny, the other material considerations should be given greater weight. However, as it is accepted, in my view correctly, that the development plan contains policies material to the application (and

therefore to the ground (a) appeal and deemed application) my approach to the determination of the appeal must be consistent with the statutory provisions contained in Section 70(2) and Section 54A of the 1990 Act, as amended. My determination must, therefore, be in accordance with the development plan unless material considerations indicate otherwise.

8. Looking, at the development plan itself, the appellants' use of the site is accepted as being a sui generis use and as such it does not fall within Use Class B of the Use Classes Order. The development is therefore in conflict with Structure and Local Plan policy.

Other material considerations.

9. Turning to the other material considerations, the questions of employment generation, of the site's history and potential, of the demand for sites for the motor trade as well as for Use Class B, were all raised, and I consider these in turn.
10. The appellant's use provides full-time employment for the two partners of K Cars and more or less full-time employment for a mobile mechanic. In addition a cleaner is employed on two mornings a week, and on Sundays. Whilst I have no specific use with which to compare I accept that this level of employment might be comparable to that generated by a B1 or B2 use of the site and might be greater than that arising from a Class B8 use.
11. Looking at the site's history, it is accepted by the parties that the appeal site has formed part of the planning unit of No 9 Southfields, which has been occupied by Stratton Plastics for some years and operates as the company's headquarters. (The building is also currently used as a retail warehouse occupied by Stratton reproduction furniture, though this element is the subject of other enforcement action). There is some dispute as to the extent that the appeal site has, in fact, been used in connection with the building. However, at times, for example when the 1990 aerial photograph was taken, such use would appear to have been minimal. At present Stratton Plastic's servicing takes place at the front of the building, with car-parking both at the front and in the communal car-park. In addition, the fact that Stratton Plastics have allowed the appeal site to be used for the sale of motor vehicles, albeit that the arrangement is largely oral, suggests that they have no immediate need for the site.
12. Nevertheless, I am mindful of the close relationship of the appeal site to the building at No 9. The appeal site is, effectively, "wrapped around" the side and rear of the building, which also has a fire door opening directly onto the site. The loss of the appeal site to some other use would, in my view, inevitably result in a loss of flexibility that could be disadvantageous to the current, or to future, occupiers of the unit. I am aware that extensions to Unit 9 have, in the past, been considered uneconomic because of land conditions. However, these are conditions common to the whole of Southfield and they have not precluded a recent development elsewhere on the estate. In any event I believe that, notwithstanding the restricted access to the appeal site, the land could be of value in its open state, depending on the business undertaken by, and the modus operandi of, the occupiers of Unit 9. Alternatively, if separation of the site from the remainder of Unit 9 was considered acceptable, the site could be suitable for some independent Class B use.
13. The Council accept that there is demand for uses such as that undertaken by the appellants, and that the development plan does not make specific provision for car sales. In particular, the Council's non-statutory Consultation Draft Economic Development Strategy 2000-2005 refers to there being inadequate space for a range of car trades, car show-rooms, builders yards and garaging for coaches and van fleets.

14. The Council have addressed this, to some extent, by permitting the motor trade to enter employment areas where the use includes a substantial element of "Class B type" use in the form of repair or servicing facilities, and this approach is now reflected in the emerging Welwyn Hatfield District Plan Review to 2011, Key Issues for Public Consultation, published in September 1999. However, even this does not address the needs of those who, like the appellants, wish to sell cars but without a significant repair or servicing facility. Indeed, the Council accepted that they would have difficulty if asked to direct such a user to an appropriate location.
15. On the other hand, there is also a continuing demand for land for uses which would satisfy the employment policies contained in the development plan. The appeal site, if considered on its own, could play only a small part in meeting such demand. However, and having regard to the approach advocated in *Poundstretcher Ltd v Secretary of State for the Environment* [1988]3 PLR 69, I am concerned that, bearing in mind the demand for land for uses such as that carried on by the appellant, the grant of planning permission in this case could make it difficult for the Council to resist similar developments on other employment land. Cumulatively this could, I believe, seriously undermine development plan policy.
16. On balance, therefore, I conclude that the development would result in a significant loss of land for business use class occupation and, whilst I have had regard to all the material considerations raised with me I also conclude, on balance, that these are not, either individually or collectively, of sufficient weight to indicate that my conclusion on this issue should be other than in accordance with the development plan.

THE SECOND MAIN ISSUE.

17. The site lies at the end of a cul-de-sac within an industrial estate. Whilst that estate has a communal car park, with four or five vacant spaces at the time of my visit, there nevertheless appeared to be some parking pressure within the estate as a whole. The appellants have been operating from the site for some time but it seems to me that, without readily accessible on-site parking, the use is likely to give rise to on-street parking, particularly around the head of the cul-de-sac in the vicinity of the site, and that this is likely to disrupt parking and servicing arrangements in Southfield.
18. At the hearing it was accepted that the site could accommodate off-street parking by employees and customers. However, to be effective the public would need to know that such provision existed, and would have to find the facility safe and convenient to use.
19. On the first point, as the site lies at the end of a cul-de-sac there is no passing trade to speak of, the business relying in advertising to attract custom. Whilst it could not be required by condition, I have no reason to doubt that the appellants would, as indicated, advertise the existence of on-site parking within such advertisements.
20. On the second point, the existing access is not ideal but, in the absence of a more comprehensive redevelopment, this would be equally true for any other use of the land, whether operating in connection with or independently of, Unit 9. However, access to the appeal site relies on passage across land which is not public highway and which not under the control of the appellants notwithstanding that, at the time of my site inspection, there were two cars displayed for sale there. Whilst the appellants might well be willing to remove cars from this area their rights of access, again based on an oral agreement, might not be sufficient to prevent obstruction by others. This absence of control means that I cannot impose a condition to ensure that the access is kept clear, which I consider is

necessary if it is to be sufficiently attractive to, and safe for, members of the public, so to encourage on-site parking and thus to prevent parking on the highway outside.

21. Hence, although there may be no insuperable highway objections, the scheme before me has an inherent weakness which, in my view, means that I cannot satisfactorily safeguard from disruption the parking and servicing arrangements in Southfield.

OVERALL CONCLUSIONS ON THE SECTION 174 APPEAL ON GROUND (a) AND THE SECTION 78 APPEAL

22. In the light of the above I conclude, on balance, that the development results in a significant loss of land for business use class occupation, contrary to development plan policy, and that it is detrimental to the parking and servicing arrangements in Southfield. The Section 174 appeal on ground (a), and the Section 78 appeal, must therefore fail.

Ground (g).

23. The Council have considered the appellants' arguments on this ground, and are also mindful of a shortcoming within the wording of the notice. They have therefore suggested a two month compliance period. This compares to the 6 months (6 months + 14 days for the portacabin) sought by the appellants.
24. Paragraph 16 of Planning Policy Guidance: Enforcing Planning Control (PPG18) advises that if formal enforcement action is likely to compel a small business to relocate their trading activities, the Local Planning Authority should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. Whilst the Council allowed the appellants the opportunity to apply, retrospectively, for planning permission, it does not seem that any formal discussions of such a timetable have occurred.
25. It is difficult to assess, with accuracy, how long it might take to find a mutually acceptable alternative site, assuming that one can be identified, because of the relative scarcity of such land within the district. However, I consider that the appellants deserve a reasonable opportunity to relocate their business. I therefore propose to extend the period for compliance to those sought by the appellants. The ground (g) appeal therefore succeeds.

Overall conclusions and Rights of Appeal against decision.

26. In the light of the above I conclude that the period for compliance should be extended, but that, subject to that variation, the enforcement notice should be upheld and planning permission refused.
27. In reaching these conclusions I have had regard to all the other matters raised with me, including other development plan policies, the appeal decisions cited by the Council, other Planning Policy Guidance, Circulars 10/97 and 11/95, and the Town and Country Planning (General Permitted Development) Order 1995. However, I can identify no factors which outweigh the considerations to which I have already referred and which have led me to my decision.
28. This decision is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decision, to the High Court, are enclosed for those concerned.


FELIX BOURNE

APPEAL DECISION

APPEARANCES

FOR THE APPELLANT:

Mr M J Ledger ARICS	Joint Principal of Prospect Planning, agents for the appellant
Mr Hyden	K Cars
Mr J Berry	K Cars

FOR THE LOCAL PLANNING AUTHORITY:

Mr M J Derbyshire BA(Hons) MRTPI	Principal Planning Officer with the Council
Mr S T McKee MSc	Civil Engineer with Mouchel Consulting, agents to Hertfordshire County Council, currently on secondment to Welwyn Hatfield District Council as Acting Traffic and Development Engineer.

DOCUMENTS

- | | | |
|----------|---|--|
| Document | 1 | List of persons present at the hearing |
| Document | 2 | Extract from Welwyn Hatfield Key Issues for Public Consultation September 1999 |
| Document | 3 | Economic Development Strategy 2000-2005 Consultation Draft |
| Document | 4 | Complete copy of decision letter reference T/APP/C1950/A/98/298233/P9 |
| Document | 5 | Schedule of enquiries re business uses |