



Appeal Decisions

Site visit made on 6 November 2007

by **Karl P Moxon BA (Hons) MRTPI**
Solicitor & Notary Public

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
16 November 2007

Appeal Ref: APP/B3410/A/07/2049296

No 80 Uxbridge Street, Burton upon Trent, Staffordshire DE14 3JX

- This appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mr J Aslam against a decision of East Staffordshire Borough Council.
- The application (referenced CU02162/005, and dated 4 January 2007) was refused by notice dated 14 February 2007.
- The development proposed is the change of the ground floor of the premises from residential use to use as a jewellery shop.

Summary of Decision: The appeal is allowed, and planning permission is granted subject to the conditions set out in the Formal Decision below.

Appeal Ref: APP/B3410/C/07/2049213

No 80 Uxbridge Street, Burton upon Trent, Staffordshire DE14 3JX

- This appeal is made under section 174 of the Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Rukhsana Aslam against an enforcement notice issued by East Staffordshire Borough Council.
- The Council's reference is EN/02162/004.
- The notice was issued on 1 June 2007.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from use as a dwelling house to use as a jeweller's shop.
- The requirement of the notice is to stop using any part of the land as a jeweller's shop.
- The period for compliance with the requirement is thirty days.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Act as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

1. Both appellants have a common interest in the outcome of these appeals. It is therefore appropriate for them to be considered and determined together.
 2. Although it does not expressly say so, the application leading to the section 78 appeal was retrospective.
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3. The application site was the ground floor of No 80 Uxbridge Street. It was however pointed out to me when I was there that the jewellery business in fact operates only from the premises' ground floor front room.
4. That the Council have raised no objection to the business on amenity grounds will, one can reasonably assume, have been in material part based on the level of intensity at which it currently operates. In order both to maintain consistency and - perhaps more importantly - to ensure that wider ranging amenity concerns do not fall to be taken into account, I shall approach these appeals on the same basis. In the remainder of these decisions, therefore, the expression "the appeal premises" means solely the ground floor front room of No 80 Uxbridge Street.

The Section 78 Appeal

Assessment

5. Subject to other matters to which I shall return later, both parties have approached this appeal on the assumption that the appeal premises are a shop. It is common ground that if that were so, Policies R1 and R14 of the adopted East Staffordshire Local Plan would apply to the appellants' proposal that the premises' use as a jeweller's shop be allowed to be retained.

6. Insofar as is material here, Policy R1 (Retail Areas and Town Centres) provides

Applications for retail development outside the defined town centre areas will not be permitted unless a need can be demonstrated for the proposed development, and the criteria below are satisfied:

(d) for a proposal on an out of centre site, it must be demonstrated that no suitable town centre or edge-of-centre sites are available; and

(e) all of the criteria of Policy R14 are satisfied.

Amongst other things, Policy R14 (Local Convenience Shopping) informs that the Council will approve the provision of local convenience shopping in existing residential areas, provided the scale of such provision is to meet local needs only.

7. I appreciate that because it is located at the heart of an Asian community, the appeal business is in practical terms conveniently situated for the majority of its customers. That matter does not, however, mean that it falls within the ambit of convenience shopping in the sense that the phrase is used in Policy R14: as I read it, those words are intended to restrict retail development to the shops to which people need to have resort to satisfy their everyday requirements. Purchasing jewellery is not in that category.
8. Neither (and notwithstanding the strong contrary submissions elsewhere in the appellants' representations) am I persuaded that save for *de minimis* exceptions the business caters only for (as Policy R14 requires) customers who live in the locality. Given that the business is (in the appellants' words) "a bespoke jewellery manufacturing service", and that "the nearest alternative, specialist Asian jewellers are located in Derby, Leicester and Birmingham", I believe that their assertion that it "serves the broad Asian community" is probably closer to the mark.

9. That other shops in the Uxbridge Street area may not comply with Policies R1 and R14 is not particularly relevant to these appeals. Nor is the fact that the appellants could relocate their business to another shop in the area without reference to the Council. In both cases, this is because the policies are directed at (as in this appeal) the establishment of new shopping facilities, and not at the control of existing ones.
10. Other than for a bald denial (which from a but cursory look around Burton town centre I find difficult to accept) the appellants have not, furthermore, complied with the requirement in criterion (d) of Policy R1.
11. Were my decision to rest there, I would for those reasons dismiss this appeal. But as already indicated, there are further matters to take into account.
12. Within the appeal premises, Mr Aslam both manufactures and sells jewellery. He does not sell jewellery which anyone else has manufactured. In those circumstances, it could in my opinion not reasonably be held either that his selling is ancillary to his manufacturing, or that his manufacturing is ancillary to his selling; on the contrary, each of the two aspects of the business is wholly dependant on the success of the other. I therefore consider that the true use of the appeal premises is not simply as a shop, but is, as a matter of fact and degree, a mixed use comprising the manufacture and retail sale of jewellery.
13. For that reason it is not appropriate to judge the business solely by reference to Policies R1 and R14. Also relevant are that its proposed retention would appear to comply with Policy R16 (Quasi-Retail Uses) and to, my mind at least, is without doubt supported by Policy E17 (Employment Use in Residential Areas).
14. Where plan policies pull in opposite directions, the application or appeal should be determined on its merits in the light of all material considerations. By far the most significant consideration in this case, I believe, is what would be the effect on the subject business of compelling it to relocate to the town centre.
15. Under that head, the appellants raise security considerations. This business would however be no more likely to be burgled than would any other town centre jewellery shop; I therefore attach little weight to that aspect of the submission. Vulnerability to robbery could, on the other hand, be highly relevant if Mr Aslam were at work in the evening, when all of the other nearby shops were closed.
16. It is clear from his resistance to the Council's suggested hours of use condition that, in line with common practice among Asian businesses, Mr Aslam does wish to work in the evenings. In a town centre location, security considerations would, as just discussed, militate against that. So too might a covenant - which in my experience is not uncommon in leased, town centre shops - whereby a closing time of, say, 1830 or 1900 hours was mandatory. Losing evening trade would doubtless also have adverse financial implications.
17. These considerations thus cast significant doubt on the Council's allegation that a town centre location would be appropriate for the appellants' business, and from that it follows that it would be unreasonable to hold that Policies R1 and R14 should carry determinative weight. I shall therefore allow the appeal in consequence of the business's compliance with Policies R16 and E17.

Other Matters

18. Reducing the size of an application or appeal site rarely prejudices third party interests. It would not do so in this case; in that regard, therefore, no harm would arise from my limiting planning permission to the appeal premises.
19. The absence of amenity objections to the appellants' business at means that an hours of use condition would not be necessary in the public interest. Conditions are however necessary
 - to limit business use of No 80 Uxbridge Street to the appeal premises, so that the business does not expand and as a result raise considerations of which I have not taken account; and
 - to prohibit the sale of bought-in jewellery, in order to ensure that the appeal premises remain in their current, mixed use.
20. No other matter raised during the course of this appeal carries sufficient weight to override any of the foregoing. I therefore make my decision accordingly.

The Section 174 Appeal and The Enforcement Notice

21. Because the section 174 appeal is limited to Ground (g), the enforcement notice will remain extant whatever my decision under that head. To the extent that the planning permission granted by virtue of the section 78 appeal is inconsistent with the terms of the notice, section 180 of the Act will however ensure that the former prevails.
22. As to Ground (g), the likelihood is that if and when the compliance period again becomes a live issue different considerations to those which the parties have put forward now will apply. On balance, therefore, my view is that whatever would at that stage constitute a reasonable compliance period should be left for the Council to determine. I shall in consequence not vary the terms of the notice.
23. That said, one Ground (g) point should nevertheless be dealt with now. It is settled law that any appellant is entitled to assume that his appeal will in due course succeed, and in the meantime (and albeit, of course, at his own risk) to act accordingly. The fact that as long ago as October 2005 the Council told Mr Aslam that planning permission for his business was unlikely to be forthcoming is not, therefore, a tenable ground for resisting an extension of the notice's compliance period.

Formal Decisions

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24. I hereby allow the appeal and grant planning permission for the continued use of the ground floor of No 80 Uxbridge Street, Burton upon Trent, Staffordshire DE14 3JX for the manufacture and retail sale of jewellery in accordance with the terms of the application referenced CU02162/005 and dated 4 January 2007, and the plans submitted with it, subject to the following conditions:
 - 1) The use hereby permitted shall not be carried on otherwise than within the room shown marked "shop" on application drawing number 100 (the room).

- 2) No jewellery shall be sold from the room unless previously manufactured therein.

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25. I hereby dismiss the appeal and uphold the enforcement notice.

K P Moxon

INSPECTOR