



Appeal Decisions

Hearing held on 22 July 2009

Site visit made on 22 July 2009

by **Chris Hoult BA BPhil MRTPI MIQ**

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

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Decision date:
21 August 2009

Appeal Ref: **APP/H0738/C/09/2097291**

Suiteworld, Lustrum Avenue, North Tees Industrial Estate, Stockton-on-Tees, TS18 2RB

- 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 Eurosuites (NE) Limited against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The Council's reference is 17.0.1.5.
- The notice was issued on 12 January 2009.
- The breach of planning control as alleged in the notice is the material change of use from general industrial use (within class B2 of the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order) to a use for retail within class A1 of the Use Classes Order without planning permission.
- The requirements of the notice are to cease using the land for retail use and associated storage of retail goods.
- The period for compliance with the requirements is 9 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").

Appeal Ref: **APP/H0738/A/09/2097083**

Suiteworld, Lustrum Avenue, North Tees Industrial Estate, Stockton-on-Tees, TS18 2RB

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Eurosuites (NE) Limited against the decision of Stockton-on-Tees Borough Council.
- The application Ref 08/1482/COU, dated 4 June 2008, was refused by notice dated 17 October 2008.
- The development proposed is a change of use from general industrial use (B2) to retail use (A1).

Decision

1. I allow the appeals, and direct that the enforcement notice be quashed. I grant planning permission on the s78 appeal and on the application deemed to have been made under s177(5) of the 1990 Act for the development already carried out, namely, the change of use of land at Suiteworld, Lustrum Avenue, North Tees Industrial Estate, Stockton-on-Tees, TS18 2RB, as shown on the plan attached to the notice, from general industrial use within class B2 of the Town and Country Planning (Use Classes) Order 1987 ("the Use Classes Order") to retail use within class A1 of the Use Classes Order, subject to the following conditions:

- 1) The premises shall be used for the sale of furniture and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 2) The gross floorspace available for retail use hereby permitted shall not exceed 2,250 sq m.
- 3) The floorspace hereby permitted shall not be sub-divided in any way, either horizontally or vertically, so as to create two or more separate retail units.

Ground (a) appeal and s78 appeal

Background and main issues

2. The industrial estate is on the outskirts of Stockton on the north bank of the river, close to the main A19 north-south route through Teesside. The appellants have been trading from within it since 1997, initially from adjacent premises and, since 2003, from those they presently occupy. There is a retail park on the other side of Portrack Lane and large-scale retail units straddle the road for some distance towards the town centre. Teesside Park is a major out of town retail and leisure development on the opposite south bank. Units fronting the road within the estate have over the years become occupied by retail uses and the site was granted permission for such a use in 1999, which was not implemented. The estate is out of the town centre for purposes of planning policy in respect of retail uses and a shift in national, regional and local planning policy towards such areas has occurred since that time.
3. An alteration to the Stockton-on-Tees Local Plan (Alteration No. 1) was adopted in 2006 to reflect the change in national policy towards town centres, as set out in Planning Policy Statement 6 (PPS6): *Planning for Town Centres*. Policy S2 deals with proposals for new major retail development outside the defined hierarchy of shopping centres established under Policy S1. The policy does not permit new development unless it meets tests which reflect those in PPS6 applying to the assessment of proposals not supported by a development plan strategy. The appellants have been trading from a site which does not have the benefit of planning permission, therefore, it is appropriate to regard any continued use as amounting to the creation of new retail floorspace for purposes of applying the policy tests. Though it falls just below a threshold of 2,500 sq m, it is appropriate to regard it as amounting to major development.
4. The main issues are therefore as follows:
 - (a) whether there is a need for the continued use of the site for retail purposes in the catchment area that it would serve;
 - (b) whether there is a sequentially preferable site or premises to accommodate the use;
 - (c) the effect of the continued use on the vitality and viability of Stockton-on-Tees town centre; and

- (d) whether the site is accessible by a choice of means of transport and the continued use would assist in reducing the need to travel by car.

Need

5. The Stockton and Middlesbrough Joint Retail Study (JRS), published in 2008, represents the most up-to-date assessment of need within the wider Sub-Region. It underpins Policy CS5 of the Council's published draft Core Strategy in relation to town centres, which is to be submitted for examination in September 2009. At the hearing, the parties were agreed that it should inform any assessment of the need for, and the application of the tests in Policy S2 to the continuing use. The parties were also agreed, in the light of the JRS's findings and the "Springs" appeal decision, that the catchment area that the site would continue to serve extends to both Stockton and Middlesbrough.
6. With regard to quantitative need, the Portrack Lane area has seen a concentration of retail warehouses trading in bulky comparison goods evolve over the years, particularly for the sale of furniture. Notwithstanding this, the JRS estimates that the projected growth in expenditure on all comparison goods over the period from 2007 to 2021 provides the capacity to support substantial additional across-the-board floorspace. Focusing on the period to 2011, which is broadly in line with the guidance in PPS6 that assessments should normally look no more than 5 years ahead, existing commitments would provide for only 30% of total expenditure. The JRS indicates that the degree of overtrading as at 2007 in existing facilities (mainly in Middlesbrough) combined with the growth in expenditure would translate as a requirement for just under 47,000 sq m of additional floorspace in 2011 (see tables 4.4 – 4.6).
7. The appellants' statement includes a breakdown of these figures related to furniture sales. Expenditure is projected to increase by £35m from 2007 to 2011 (see Appendix 3). The appellants' evidence indicates that their yearly turnover, based on the position in 2008, is £1.56m. This amounts to a small percentage of likely expenditure on all comparison goods. With regard to furniture, the appellants' turnover would, on my estimation, account for around 17% of an assumed year-on-year increase of around £9m in expenditure over the period – not 4%, as is suggested. Nevertheless, this demonstrates that, purely in relation to furniture, there is a projected increase in expenditure for which the additional floorspace could provide.
8. I accept that the JRS points squarely to a need for Middlesbrough to make greater provision for bulky goods retail warehousing, to address an imbalance in the distribution of provision between it and Stockton. However, the JRS views this as a qualitative need issue. The finding in paragraph 5.14 that there is no need for further retail warehousing in Stockton should, as is made clear, be viewed in this context i.e. that there is already an extensive choice of provision which meets the needs of the community. My attaching little weight to the appellants' claim that the continued use would add to the choice available does not mean that they have not demonstrated a quantitative need. The earlier finding of the 2004 retail study that most of the capacity for comparison goods to 2011 can be met by existing commitments appears to have been overtaken by the more up-to-date findings of the JRS.

9. I accept that the more recent economic downturn might require projections of expenditure growth to be depressed somewhat but I had no evidence in relation to this to counter the projections derived from the JRS. The projections are based on 2005 prices whereas the appellants' turnover figure relates to three years later, which would tend to over-estimate the proportion of expenditure capacity for which it would provide. The JRS points to a quantitative need for additional comparison goods floorspace and an application of its findings to furniture translates as a likely demand for additional floorspace for which the appellants could provide. I conclude that the evidence demonstrates a quantitative need for the continued retail use of the site in the catchment area and that it meets the requirements of Policy S2(i).

Sequentially preferable sites

10. Policy S2 reflects the preferred approach in PPS6 in terms of the order in which possibly sequentially preferable sites should be assessed. The appellants' assessment is in line with this requirement. They indicate that any search should be restricted to existing premises rather than land only, given that it would not be commercially viable for them to erect a unit. Paragraph 3.15 of PPS6 requires operators to be flexible with regard to various planning considerations. The appellants have looked flexibly at their likely floorspace needs but consider that a showroom display area of a minimum of 1,850 sq m is an essential requirement. PPS6 requires authorities to be realistic in considering whether sites are suitable, available and viable, though requires operators to give clear evidence to demonstrate why alternatives should be dismissed when considered against these factors.
11. The appellants' evidence deals with alternatives both in Stockton town centre and on the edge of the town centre. Possible sites in the district centres of Billingham, Thornaby and Yarm are also considered. Two sites in Middlesbrough town centre are considered as well as vacant units within Cannon Park and in the district centres of Coulby Newham and Berwick Hills. No suitable sites are identified. The appellants indicate that it is not appropriate to consider sites in out of town centre locations. However, while such sites would not be sequentially preferable, to allow the continued use would add to the overall stock of retail floorspace in such locations. In the circumstances, I take the same view as the Inspector who dealt with the "Springs" appeal that to disregard premises with already consented retail space would run contrary to the spirit of PPS6.
12. The Council's submitted evidence does not deal in detail with any of these alternatives nor does the Council identify other alternative sites or units. It might have been helpful to have had representatives from Middlesbrough Council attend the hearing to explain the position regarding Cannon Park. Although it was part of the Council's case that new retail warehouse development should be directed to this area, there was little evidence as to what sites might be available and how the area might accommodate such uses in the future. At the hearing, the Council focused on town centre and edge of centre sites in Stockton, in particular, vacant units at Woolworths, Chandlers Wharf and the Parkfield Road Retail Park.
13. The former Woolworths store could be sub-divided to provide suitable floorspace and occupies a prime location in the Castlegate shopping centre.

However, the evidence indicates that the likely yearly rent would amount to a sizeable proportion of the appellants' turnover, in spite of the availability of incentives. The Council does not dispute their assertion that it would be a significant increase upon that which they currently pay. While use could be made of redundant floorspace, and other furniture stores trade in the centre, I am not persuaded that it is likely to be a viable alternative.

14. While I noted other vacant units along High Street, there was no evidence as to whether any of them would be of a sufficient size. The other furniture stores in the Castlegate centre and on High Street typically occupied much smaller units. While the Council drew my attention to the possible use of upper floors, there was no evidence as to whether this would produce a single unit of a suitable size. There appears to be only one other furniture store in the town centre operating at a broadly similar scale to that of the appellants.
15. The sites at Chandlers Wharf and Parkfield Road are close to each other on the southern edge of the town centre. However, they are dislocated from it by the various busy roads which converge on the roundabout at the southern end of Riverside. Pedestrian links to these sites from the town centre are far from obvious and they are laid out primarily to facilitate access by car. Even if the sites are available and leases are capable of being re-negotiated, I question whether they are suitable in terms of their connection to the town centre. In my view, the road layout is such that people would be disinclined to visit them on foot as part of a town centre shopping trip and would, even if in the town centre, tend to visit them separately by car. Chandlers Wharf appears to cater mainly for leisure uses, dominated, as it is, by the bingo club and I would question the likely viability of a retail use in this development.
16. Of other sites on Portrack Lane with consent for retail use, the only unit to which my attention was drawn by the Council is the former "Big W" premises. However, while vacant, this would appear to be too large for the appellants' requirements. As regards Cannon Park, it has the appearance of a transitional area with a predominantly industrial character in which units in employment uses were interspersed with vacant land and a small number of large retail units, with other retail uses flanking the road into Middlesbrough. The vacant unit to which the appellants refer in their evidence is located along a side street off this road behind a large Royal Mail office building. The building is in a run down condition and there are no details of its marketing on the site nor are there any clear indications, on the evidence, as to its future.
17. The appellants' requirements regarding the scale and layout of an alternative unit are not in my view unreasonable, given the nature and style of their business. Surprising though it may seem in a severe economic downturn, the evidence has not been able to make a persuasive case for such an alternative in terms of its availability, suitability or viability. In the light of this, I am drawn to conclude that it has been adequately demonstrated that there are no sequentially preferable premises which could accommodate the continued use and that the requirements of Policy S2(ii) are satisfied.

Vitality and viability of town centre

18. In assessing the retail impact of the continued use, it should be borne in mind that it is a use which has been established for some 12 years, albeit unlawfully

for about half of this period. Therefore, it will have formed part of the background to any assessment by the JRS of the vitality and viability of the town centre and any effect on it of introducing additional retail floorspace in out of town centre locations. The evidence indicates that, when they re-located in 2003, the appellants moved from premises with a gross floorspace of around 700 sq m to the present building, which offers around three times this space. Realistically, any diversion of trade will have occurred at around that time and, given the number of similar furniture outlets in close proximity, it is likely that trade will have been drawn primarily from these outlets.

19. At the hearing, the Council clarified that its concerns on this issue were principally related to High Street. In spite of the fact that this is a fine, wide, mainly pedestrianised street which provides a vibrant shopping environment, there is evidence of vacant units and the occupation of units on prime shopping frontages by charity shops. The JRS identifies under-trading in comparison goods in Stockton town centre, the clear indication being that it is losing out to Middlesbrough (see Table 4.4 and paragraph 4.34). However, the decline in its market share is viewed as concerning primarily non-bulky comparison goods. The comments and recommendations in paragraphs 5.11 and 7.16 of the JRS focus on improvements to the town centre to strengthen the retail offer in this respect, in relation to that in Middlesbrough and Teesside Park.
20. Therefore, while the evidence before me indicates that the town centre may, in spite of recent new developments, be undergoing a continuing decline in terms of its vitality and viability, it seems to me that this is primarily an issue which is concerned with non-bulky, rather than bulky comparison goods. To that extent, it is competing with Middlesbrough and Teesside Park, rather than with units on Portrack Lane. In the light of this, and in the circumstances of the site, I find no basis on which to conclude that the continued use would have a harmful effect on its vitality and viability. Nor would it necessarily give rise to harm to the emerging strategy for the town centre as set out in Policy CS5, notwithstanding that that proposes that no additional retail development should be permitted at Portrack Lane. The requirements of Policy S2(iii) are satisfied.

Accessibility

21. The main access to the industrial estate is from the primary road network just to the west of the interchange of the A19 with roads leading to Stockton, Middlesbrough and Haverton Hill. I note references to the frequency of bus services and the location of pedestrian crossings in the locality in the submitted sustainability assessment. However, I saw no bus stops or crossings in the immediate vicinity of the site and attempting to access it by bus and on foot would, it seems to me, be both awkward and potentially hazardous. Therefore, while the premises could be accessed by alternative means of transport, it is likely that most, if not all, people will choose to visit them by car.
22. While, on any realistic view, the continued use would therefore fail to meet the requirements of Policy S2(v), the concentration of stores selling furniture and related goods (such as beds and carpets) in the area would nevertheless facilitate linked trips in relation to shopping for these major household items. Retaining the use in this location, as opposed to a dispersed location, say, on the southern edge of the town centre, would therefore assist in reducing the

need to travel by car in that it would help minimise the length of journeys when undertaking comparison shopping in relation to these items.

23. PPS6 recognises that retail warehouses are likely to cater mainly for car-borne customers, and the display and sale of furniture is, by its nature, typically likely to occur in such premises. In practice, and since buying furniture entails major expense for most households, people will tend to carefully compare a range of products and may travel considerable distances in order to do so. I accept the principle that any retail site should seek to achieve a reduction in the need to travel by car and be capable of being accessed by a choice of transport modes. However, in the circumstances of this site and the nature of its business, this is not a matter to which I attach great weight. The extent to which any continued use may meet the requirements of Policy S2(vi), while failing to meet those of Policy S2(v), is not therefore decisive to my overall conclusions.

Other issues

24. Policy S2(iv) requires that proposals should be appropriate in scale and function to the centre to which they relate. The use would be located within a concentration of similar retail warehouse uses so would be appropriate in terms of its function. The appellants' evidence indicates that the floorspace sits within a range of retail provision on the estate from 380 sq m up to over 4,000 sq m. While it is at the top end of the range, there are nevertheless 11 further units that occupy floorspace ranging between 1,000 and 1,500 sq m. It does not look out of place in the locality on account of its size. I have had regard to the various appeal decisions to which I have been referred by both parties. For the reasons I have given, I have reached a different decision from those Inspectors in the "Collectables", "Plasterpiece" and "Springs" appeals.

Conditions

25. With regard to the Council's suggested conditions, and since I grant permission in respect of the site shown on the plan attached to the notice, it is not necessary to require that the use be carried out in accordance with the submitted plans. They do not, in any event, do any more than identify the site. However, given that my conclusions are premised on the continued use for the sale of furniture from a defined floorspace, I consider it necessary and reasonable to restrict sales to furniture and to limit the floorspace to that which is currently available (rounded up). The premises appear to be capable of accommodating an additional floor. I also consider it necessary and reasonable to impose a condition preventing any sub-division of it to create two or more units of a size which could harm the vitality and viability of the town centre.

Conclusions

26. In the light of the foregoing, I conclude that the appeal on ground (a) and the s78 appeal should succeed and planning permission will be granted.

C M Hoult

INSPECTOR

DOCUMENTS

- 1 Extract from The North East of England Plan Regional Spatial Strategy
- 2 Extract from Stockton-on-Tees Local Plan: Policy IN 10 – other uses for industrial land and buildings.
- 3 Stockton-on-Tees BC: Core Strategy Development Plan Document Publication Draft (October 2008)
- 4 Summary rating valuations for retail premises (including appeal premises) submitted by Council

PLANS

- A Untitled/unnumbered “red line” location plan
- B Untitled unnumbered site plan