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## Appeal Decision

Site visit made on 31 July 2012

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

Decision date: 17 August 2012

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**Appeal Ref: APP/H0738/C/12/2172372**

**Furniture Outlet Stores, Portrack Lane, Stockton TS18 2NR**

- 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 Ifaquar Shah against an enforcement notice issued by Stockton-on-Tees Borough Council.
  - The Council's reference is 11/0018/EUSE
  - The notice was issued on 10 February 2012.
  - The breach of planning control as alleged in the notice is the change of use of a former car showroom with workshop and storage (Sui Generis) to a furniture shop (Use Class A1 -Retail).
  - The requirements of the notice are as follows:
    - (i) Cease using the land for Retail use.
    - (ii) Remove from the land all associated retail goods/equipment and signage in connection with the unauthorised use of the land.
  - The period for compliance with the requirements is 9 (nine) months.
  - The appeal is proceeding on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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### Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### The Main Issues

2. The main issues in this case are whether the location of this retail use is sustainable and accessible in relation to the development plan and national planning policy; and secondly whether the proposal accords with local and national retail policy regarding the sequential test for out of centre proposals.

### Reasons

3. The appeal buildings are around 897m<sup>2</sup> overall and are located on Portrack Lane, a dual carriageway, which links the town centre with the A19. There is an established area of out of town warehouse shopping close to the A19 and this comprises older developments on either side of the road interspersed with newer purpose built warehouses with some small retail parks and associated parking. The former car showroom had previously been refurbished and converted to suit furniture retailing which has been taking place since January 2011. However, at the time of my visit the building was being used for the sale of caravans and there was no sign of a furniture retailing use. Despite this I must still deal with the notice as issued.

4. Since the previous appeal decision (relating to retrospective permission for this change of use) and the issuing of the enforcement notice, the National Planning Policy Framework (the Framework) has replaced Planning Policy Statement 4 (PPS4) – ‘Planning for Sustainable Economic Growth’ and its associated PPS4 guidance, ‘Planning for Town Centres’.

5. The Framework now introduces a ‘presumption in favour of sustainable development’; seeks to always ensure sustainable development and requires the planning system to perform economic, social and environmental roles in relation to this achievement. I have given significant weight to the Framework policies as material considerations in this appeal and particularly those relating to economic growth and employment opportunities.

6. However, these policies need to be balanced against others in the Framework which seek to ensure that new developments (change of use in this case) are sustainable and meet the sequential test for out of centre proposals. With regard to changes of use such as this the Framework indicates that: *‘local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and... should require applications for main town centre uses to be located in town centres rather than in edge of centre locations and only if suitable sites are not available should out of centre sites be considered’.*

7. The most relevant development plan policies are CS2 and CS5 of the Stockton-on-Tees Core Strategy Development Plan Document 2010 (CS). Policy CS2 seeks to improve accessibility and widen transport choice by ensuring that new developments are well serviced by an attractive choice of transport modes. Policy CS5 requires applications for main town centre uses to be determined in accordance with the sequential test in PPS4. The sequential approach is now covered within the Framework policies and, therefore, the CS policies accord with national policy in this respect. Policy CS5 of the CS also specifically records that Portrack Lane is an out-of-centre site with an existing recognised role, but that no additional retail development will be encouraged there and this includes changes of use such as this change from Car Sales as a sui generis use to retail Class A1 use.

8. From the previous appeal decision and my own visit to the appeal site and surrounding area it is evident that, when compared with the town centre sites referred to by the Council, the Portrack Lane facilities are less sustainable in relation to transport and accessibility. The facilities are some 1.5km from the town centre and bus services are limited and, as indicated by the previous Inspector, it is realistic to expect the majority of customers to arrive by car. When compared with town centre sites, where there is better choice and access to public transport, the appeal site is not in a highly accessible location. The location does not, therefore, fully accord with the aims of both national and local plan policy. I agree with the previous Inspector that the site is not in a highly accessible location and that, when tested against both national and local plan policies, its location does not weigh strongly in its favour.

9. On the second issue, both the appellant and the Council had previously provided information relating to alternative sites within the town centre. Although the appellant contended that some of the sites were too small, it would appear that the Council identified at least 4 units which would have been suitable in terms of overall size. These sites were not a comprehensive list and the Council is still of the view that there are others available. Since the previous appeal, the Council’s Regeneration Team has identified further sites in the Town Centre including two in the High Street itself which are in excess of 800m<sup>2</sup>. The appellant has not provided any further conclusive evidence to indicate that the sequential test has been met. Again, therefore, I agree with the previous Inspector that it has not been

demonstrated that that the proposal is compliant in relation to the sequential assessment of sites. I consider that the proposed change of use is contrary to the policy within the Framework and to Policy CS5 of the CS and the appeal on ground (a) must fail.

10. In reaching my conclusion I have taken into account all other matters raised by the appellant. These include the full site history and the evidence relating to the previous appeal; the matters relating to other similar furniture outlets in the locality and the question of the sale of 'bulky goods' only. However, as indicated by the Council, the existing permissions are historic and since these were granted there have been significant shifts in both local and national planning policies (within the Core Strategy and the Framework), relating to sustainable development, social inclusion and the enhancement and vitality of defined centres.

11. I have also given significant weight to the matters relating to relative rental costs; economic growth generally and employment in relation to this particular proposal. I have also noted the points raised about the future of the existing premises. However, none of these matters carries sufficient weight to change my conclusion on the main points at issue and nor is any other factor of such significance so as to alter my decision.

12. For the above reasons the appeal under ground (a) fails and the appeal is dismissed.

*Anthony J Wharton*

Inspector