

# **STRATEGIC PLANNING BOARD**

## **APPEAL SUMMARIES**

**Application Number:** 08/1037/CPE

**Appellant:** Mr E J Poole

**Site Address:** Bank Farm, Audley Road, Alsager

**Proposal:** Application for a certificate of lawful existing use or development for use for general industry (Use Class B2).

**Level of Decision:** Delegated

**Recommendation:** Refuse. 10<sup>th</sup> October 2008.

**Decision:** Refused. 15<sup>th</sup> October 2008.

**Appeal Decision:** Dismissed

#### **MAIN ISSUES:**

Whether the evidence was sufficient to prove on the balance of probabilities that the land had been used for general industry for 10 years prior to the date of the application.

#### **INSPECTOR'S REASONS:**

The appellant's evidence is imprecise and ambiguous and is, in part, contradicted by his own witnesses' evidence. Their corroborating evidence and that of others is also lacking in precision and there is a general lack of any written evidence. The site has not, on the balance of probabilities, been in sole use for vehicle servicing and repairs during the 10 year period prior to the date of the application. A certificate of lawful existing use or development for vehicle servicing or repairs or for use for general industry cannot therefore be granted.

#### **IMPLICATIONS FOR THE COUNCIL:**

This decision supports the Council's stance towards such applications in particular the need to examine carefully, and where necessary challenge, the supporting evidence. In particular, as the appeal was dismissed, it will now be necessary to consider whether or not it is expedient to take enforcement action against the unauthorised use of the land for general industry.

**Application No:** 09/0289P

**Appellant:** Mr F Pelle

**Site Address:** Robins Cob, Fanshawe Lane, Henbury, Macclesfield.

**Proposal:** Appeal against the refusal of planning permission by Macclesfield Borough Council for the retention of existing single storey building for purposes incidental to the enjoyment of the dwelling-house (excluding garaging).

**Level of decision:** Delegated – former Macclesfield Borough Council

**Decision:** Refused: 16/04/09

**Appeal Decision:** Dismissed: 08/10/09

## **MAIN ISSUES**

- a. Whether the building is inappropriate development in the green belt
- b. The effect of the development on the openness, character and appearance of the green belt
- c. If inappropriate, are there any very special circumstances which would justify the development in the green belt.

## **INSPECTOR'S REASONS**

The appeal building is the subject of a valid enforcement notice which should have been complied with in Jan 2008, which had already been determined to be inappropriate development by a previous Inspector. The Inspector acknowledged the additional planting along the roadside that had grown since the previous enforcement appeal decision, however, she gave little weight to this additional screening given the substantial scale of the building and the fact that in terms of openness in the green belt, it is the absence of structures and buildings which is of greater importance than any additional growth of screen planting. This was detrimental to rural character and openness.

The Inspector considered the building to be neither limited nor proportionate to the dwelling. She found the building, which even if reduced in height to 4m and claimed as a potential permitted development by the Appellant, would still have a discernable impact upon the open character of the countryside. On this basis, she found the building to be an inappropriate development in the green belt.

The Appellant sought to demonstrate very special circumstances by utilising changes in the permitted development regime and that the requirements to remove the structure would interfere with the Appellants Human Rights under Article 1 of the First Protocol and Article 8 of the Convention. The Inspector considered these cumulatively and individually to not be the very special

circumstances necessary to justify inappropriate development in the Green Belt.

### **IMPLICATIONS FOR THE COUNCIL**

This building is in situ and in breach of a valid enforcement notice that should have been complied with in January 2009. Legal action is now necessary.

**Application Number:** EA831

**Appellant:** Serdar Topal

**Site Address:** 56 Crewe Road, Alsager

**Proposal:** Enforcement Notice alleging failure to comply with condition no. 1 of planning permission ref. 8/34261/3 restricting the opening hours of the premises to:  
Mondays to Fridays 1100 to 2330 hours  
Saturdays 1100 to midnight  
Sundays 1100 to 2330 hours.

**Level of Decision:** Delegated.

**Recommendation:** That enforcement action be taken. 27<sup>th</sup> August 2008.

**Decision:** That enforcement action be taken. 1<sup>st</sup> September 2008.

**Appeal Decision:** Dismissed. Enforcement Notice upheld and the deemed planning application refused.

#### **MAIN ISSUES:**

The effect of late night opening on the living conditions of the occupiers of nearby residential properties.

#### **INSPECTOR'S REASONS:**

The existing opening hours permitted by the condition represent an appropriate balance between the business objectives of the appellant and the need to safeguard the living conditions of the occupiers of nearby residential properties. The extension of opening hours beyond midnight on Fridays and Saturdays would increase the likelihood of disturbance in the early hours of the morning from customers arriving/leaving the premises both by car and on foot and congregating around the premises at a time when there should be a reasonable expectation that levels of background noise would be low contrary to policy GR6 of the Congleton Borough Local Plan First Review.

Different considerations apply to the separate controls under planning and licensing powers. This appeal was considered on its planning merits.

**IMPLICATIONS FOR THE COUNCIL:**

This decision further supports the Council's approach to restricting the opening hours of takeaway premises where appropriate to safeguard the living conditions of nearby residents in accordance with Congleton Local Plan policy GR6. It should assist with the enforcement of other such conditions in Alsager and elsewhere within the Borough

**Application Number:** 08/1296/FUL and EA832

**Appellant:** Mr Robert Kimber and Mrs Eva Kimber

**Site Address:** 4 Niddderdale Close, Congleton

**Proposal:** Appeals (A) against an enforcement notice relating to the erection of decking and additional fencing within the rear garden and adjacent to the boundary with a public bridleway and (B) against the refusal of planning permission for an amended scheme incorporating a planting trough to soften the effect of the structure.

**Level of Decision:** Delegated.

**Recommendation:** To take enforcement action. 29<sup>th</sup> October 2008.

**Decision:** To take enforcement action. 30<sup>th</sup> October 2008.

**Appeal Decision:** Dismissed. Enforcement Notice upheld and planning permission refused. 10<sup>th</sup> August 2009.

#### **MAIN ISSUES:**

The effect of the development on the amenity of the adjacent public bridleway.

#### **INSPECTOR'S REASONS:**

The close boarded fencing provides a harsh vertical boundary treatment that, by reason of its overall height, is over bearing and over dominant when viewed from the bridleway.

Substantial planting would be necessary to screen the fencing. The proposed planting trough would not provide a sustainable long term solution. It would be unreasonable to require the appellant or any subsequent occupier to replace the planting indefinitely if any of the trees were to die.

If the fence is removed then the use of the decking platform and associated domestic paraphernalia would appear unacceptable from the bridleway and result in unacceptable degrees of overlooking to nearby properties.

The development is therefore in conflict with policies GR1 and GR2 of the adopted Congleton Borough Local Plan First Review.

#### **IMPLICATIONS FOR THE COUNCIL:**

This decision supports the action of the former Congleton Borough Council and now Cheshire East Council to safeguard the visual amenity of the 'street

scene' along the public bridleway at the rear of the appellant's property and the privacy of adjoining residential properties.



**Application Number:** 08/2675P

**Appellant:** Perlada Properties Ltd

**Site Address:** 51/51A London Rd & 7 Stevens Street, Alderley Edge

**Proposal:** Two-storey rear extension providing retail/office space & change of use from office to retail on ground floor

**Level of Decision:** Committee

**Recommendation:** Grant conditional permission

**Decision:** Refused 16/03/2009

**Appeal Decision:** Allowed 25/08/2009

**MAIN ISSUES:**

The application site is located within Alderley Edge Town Centre and currently comprises two ground floor retail units fronting London Road and a vacant office building above and facing onto Stevens Street. The application site is adjacent to a residential area and the Trafford Road Conservation Area. Following a Committee site visit, Members overturned the recommendation of approval due to concerns that the proposed extension to the rear of the property would be detrimental to the amenity of neighbouring residential properties.

**INSPECTOR'S REASONS:**

The Inspector considered that the proposed extension would have a negligible effect on sunlight or daylight to the windows of No. 53A London Road as the extension would be below eye-level when viewed from the living room window and consequently would not be overbearing or unduly dominant, and even less so from the bedroom above. In respect of 'Aldersyde' the extension would be outside a line drawn at 45-degrees from the centre of the habitable rooms and therefore the relationship between the extension and adjoining house would be satisfactory. The extension would be seen over the fence and behind a screen of trees and shrubs when viewed from 'Aldersyde' and therefore the Inspector did not consider that it would be unreasonably overbearing. Any effect on the outlook from the houses in The Avenue would be limited. The application site is in a town centre location with housing interspersed with commercial uses. In this situation and in general compliance with Policy DC38, the Inspector considered that the extension would not significantly affect the living conditions of neighbouring properties with regard to outlook and available light or conflict with Policy DC3.

Local residents raised concerns regarding the lack of on site car parking in which none is provided. The Inspector concluded however that this accords with current policies regarding development in a centre served by public car parks and public transport. Generally servicing in the surrounding area is done on the street and therefore the Inspector did not consider that the appellant was required to contribute to a TRO should servicing interrupt the flow of traffic on Stevens Street.

#### **IMPLICATIONS FOR THE COUNCIL:**

The application was refused against Macclesfield Borough Local Plan Policies DC3 & DC38 relating to impact on neighbouring amenity. The first policy is subjective and therefore can be interpreted in different ways and the distances in the second policy can be rigidly applied or more flexible depending on the characteristics of the area.

**Application Number:** EA833

**Appellant:** Talib Arhman

**Site Address:** 86 Crewe Road, Alsager

**Proposal:** Enforcement Notice alleging failure to comply with condition no. 3 of planning permission ref. 8/26436/3 stating that the premises shall not be open for business between 2330 hours and 0800 hours

**Level of Decision:** Delegated.

**Recommendation:** That enforcement action be taken. 20<sup>th</sup> February 2009.

**Decision:** That enforcement action be taken. 24<sup>th</sup> February 2009.

**Appeal Decision:** Dismissed. Enforcement Notice upheld and the deemed planning application refused.

#### **MAIN ISSUES:**

Whether allowing the premises to remain open later would cause undue disturbance to those living nearby.

#### **INSPECTOR'S REASONS:**

The Inspector considered that hot food take-away shops which stay open late at night make poor neighbours of nearby housing. If approval were granted for this business to remain open later that would encourage more late night noise and cause excessive disturbance to those living nearby. At these times customers might be more careless of the reasonable wishes of others living nearby not to be disturbed. Local residents would be more adversely affected by unwanted noise at times when they might expect to enjoy more quietness. The likely disturbance would be contrary to policies S5 and GR6 of the Congleton Borough Local Plan First Review which seeks to safeguard local amenity.

The appellant argued that the business could not operate viably unless permitted to remain open later but the Inspector concluded that the need to protect neighbours' amenity must take precedence. However the Inspector extended the compliance period from 7 days to 3 months.

The inspector also made an award of costs against the appellant on the grounds that this appeal against the enforcement notice was an almost exact rehearsal of his earlier appeal against the refusal of planning permission

(save for the issue of the compliance period). This constituted unreasonable behaviour as it caused the Council to incur or waste expense unnecessarily.

**IMPLICATIONS FOR THE COUNCIL:**

This decision further supports the Council's approach to restricting the opening hours of takeaway premises where appropriate to safeguard the living conditions of nearby residents in accordance with Local Plan policy GR6. It should assist with the enforcement of other such conditions in Alsager and elsewhere within the Borough.