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# Appeal Decision

Site visit made on 13 July 2022

**by John Whalley**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 July 2022**

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**Appeal ref: APP/E5900/C/22/3291782**

**Land south-west side of Purdy Street, London E3 3PD**

- The appeal is made by MK Motors Ltd under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Tower Hamlets Council.
- The notice was issued on 14 December 2021; reference No. ENF/21/00198.
- The breach of planning control was: Without planning permission, the material change of use of the land, shown outlined in red on the Ordnance Map Plan 1A of Appendix 1 attached to the notice, for the storage, repair, and sale of motor vehicles, together with the erection of a single storey office building and garage/workshop structures.
- The requirements of the notice are:
  1. Cease the use of the land shown outlined in red on the Ordnance Map - Plan 1A in Appendix 1 and in photographs 2A, 2B, 2F, 2G and 2H in Appendix 2 for motor vehicle storage, repairs, and sales business.
  2. Remove the single storey office building and the garage/workshop structures shown in photographs 2A to 2E in Appendix 2.
  3. Remove all debris that results from compliance with steps 1 and 2 above.
- The period for compliance with the requirements is three months.
- The appeal was made on grounds (a), (f) and (g) as set out in the amended Act. As the fee for the application for planning permission deemed to have been made in respect of the ground (a) appeal was paid, the application falls to be considered.

**Summary of decision: The enforcement notice is corrected, varied and upheld. The period for compliance with the notice's requirements is increased.**

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## Procedural matter

1. This enforcement notice, (ENF/21/00198), was the subject of appeals by 2 parties, Network Rail Infrastructure Ltd, (NRIL), owners of the land and by MK Motors Ltd, the land's tenants. The appeal made by NRIL is the subject of a separate decision, issued simultaneously under ref: APP/E5900/C/22/3291800. There is a further explanatory note at the end of this decision.

## Appeal site

2. The appeal notice site is an 'L' shaped piece of land just to the west of Purdy Street, with the Docklands Light Railway on its western boundary, the overhead District and Hammersmith Tube and main line railway just to the north with part

of the site extending under that 4 track railway. Purdy Street is a pleasant residential road of mostly 2 storey family homes.

3. There were 2 workshops under the railway bridge said to be for minor works and maintenance including oil and tyre changes. Another lightweight structure stands alongside. There was a new office and reception building close to the site entrance. At the time of my site inspection, there were about 35 cars on site for sale to the public. The site has a good concrete surface, bounded by a high fence to the south separating the site from the rear gardens to housing in a short cul-de-sac. The frontage of the appeal site onto the end of Purdy Street is bounded by another high solid fence with 2m high gates, cutting off views into the site when closed.
4. There is housing to the south of the site and a long line of garden allotments to the east adjoining the southern edge of the main line railway. There is extensive residential development immediately north of the Tube and main line railways. A pedestrian access under the railway at the northern end of Purdy Street links to Rainhill Way, but there is no vehicular way through.

### **The Appellants: MK Motors Ltd - use of the appeal site**

5. MK Motors Ltd described their business as a bespoke online used car dealership. Their focus was said to be on quality rather than quantity. They carried a stock of around 30 cars on site. They sold about 2 to 3 cars a week.
6. MK Motors Ltd said the appeal site was gated, had no signage and was not open to the public. Potential buyers were required to shop online where they could browse and select cars. To make a purchase, customers either came to the site to collect the vehicle or had it delivered to their address. MK Motors was signed up to the AA dealer promise scheme. Physical viewing and test driving was not necessarily required.
7. All cars were sold cleaned, serviced and provided with a new MOT where applicable. MK Motors carried out servicing and cleaned the cars on site. Larger repairs or MOTs were done by other garages. The site was only used for light servicing and cleaning of cars. The business employed 5 staff including the directors. At any one time there were likely to be 2-3 people on site; one in the office, others servicing or cleaning cars. The site was occupied during the hours of business 10 - 6pm Mon-Sat.

### **Alleged breach of planning control**

8. The description of the use of the appeal land - *for the storage, repair, and sale of motor vehicles* – that includes the words “*storage, repair*” imply that the Appellants, MK Motors, operate a mixed use business, combining the storage of motor vehicles, the provision of MOTs, servicing and repairs and in some cases paint work and accident repairs to customers cars as well as selling used cars from their Purdy Street premises. But cars parked on the appeal site are part of the stock available for sale. They are not on the land for the purpose of being stored. Cars for sale cannot reasonably be said to comprise a storage use of the land. Nor do owners bring their cars to MK Motors for servicing or repairs.

9. The Appellants' use of the land and buildings is for the sale of used cars. Use for the sale or display for sale of motor vehicles is classed as a sui generis use, (of its own kind and which in this instance does not fall into any Use Class), in Article 3(6)(d) of The Town and Country Planning (Use Classes) Order 1987 as amended.
10. MOTs and any significant repairs are carried out by others elsewhere. Such work as MK Motors carry out on their stock of cars, washing, cleaning, occasional tyre changing and the general tidying up of the cars that might include light repairs prior to sale appear to me to be no more than activities ancillary to the sales use. No evidence to the contrary was shown.
11. There is a duty on me to get the notice in order if I can, (*Hammersmith and Fulham LBC v SSE & Sandra* [1975] 30 P&CR 19), in this instance by deleting references to storage and repair of motor vehicles as parts of an alleged unlawful mixed use of the land in the notice's allegation.
12. The alleged breach of planning control should therefore be described as the use of the land for the sale of motor vehicles, together with the erection of a single storey office building and garage/workshop structures. The enforcement notice allegation is corrected, as is requirement 1.

### **The appeal on ground (a)**

13. The enforcement notice sets out 4 reasons for finding it expedient to issue the notice. In brief:
  1. *Use of the land for the storage, repair, and sale of motor vehicles was unacceptable. It did not accord with Policies S.EMP1 and D.EMP2 regarding appropriate locations for industrial uses.*
  2. *The unauthorised use gave rise to unacceptable amenity impacts upon neighbouring residential properties, contrary to Policies D.DH8 and D.ES9 of the Tower Hamlets Local Plan 2031 (2020), which seek to safeguard the amenity of adjoining residents and building occupiers.*
  3. *The unauthorised use had a negative impact on the surrounding highways through increased trip generation to and from the site. The use failed to adhere to the waste management hierarchy of reduce, reuse, and recycle. That was contrary to Policies S.TR1 and D.TR2 which promote sustainable travel and limit impacts on the transport network and Policies S.MW1 and D.MW3 which seek to promote sustainable waste management.*
  4. *The utilitarian design of the garage/workshop structures failed to recognise the prevailing residential character of the area. They failed to promote good design principles or integrate well into their surroundings, contrary to Policy S.DH1 of the Tower Hamlets Local Plan 2031 {2020}.*
14. I deal with those reasons in turn:
15. 1. *Land use* – The Development Plan comprises The London Plan (2021) and the Tower Hamlets Local Plan 2031 (2020). The Council said local policies S.EMP1 and D.EMP2 seek to ensure that expansion of existing and new or intensified employment floorspace will be supported within designated employment locations, the Tower Hamlets Activity Areas and identified site allocations. They said that outside designated employment locations or site allocations employment space is to be directed to town centres and accessible locations along major transport routes.
16. The Council said the appeal site was not within a designated employment location area. The unauthorised use, whilst normally found in railway arches or

near such locations, was not appropriate in a largely residential setting such as in Purdy Street.

17. The Appellants' response was that the policy did not specify that employment uses are only allowed in designated and identified locations. It was simply guidance on the location of sites suitable for employment uses. Where the Appellants were using a site which would otherwise be vacant, it surely did not conflict with policies S.EMP1 and D.EMP2. Also, the NPPF, The London Plan and Local Tower Hamlets Policy all encouraged the sustainable use of land, the Council having acknowledged that the site had no other specified use.
18. I agree with the Council that the Appellants' business is not supported by local policies S.EMP1 and D.EMP2 which seek to encourage employment uses within designated employment locations, the Tower Hamlets Activity Areas and identified site allocations. But I do not read those policies as precluding new employment businesses at other suitable locations, as acknowledged in para. 3 of policy D.EMP2.
19. What is of most concern to me in terms of locational suitability, and it links with aspects of amenity impact and the effect on local highways dealt with below, is the inharmonious siting of a car sales site at the cul-de-sac end of a residential road of what appeared to be attractive family homes.
20. *2. Amenity impact* – Policies D.DH8 and D.ES9 of the Tower Hamlets Local Plan 2031 (2020) seek to ensure that developments safeguard the amenity of adjoining residents and building occupiers.
21. The Council said the unauthorised activities within the site were likely to generate noise and emissions adversely affecting neighbouring amenity. I consider that to be of limited effect. The noise from the intensive train services above and alongside the appeal site so dominates the immediate area that any emanating from the Appellants' car sales business is likely to be scarcely noticeable. That would be especially so if the Appellant company continued to operate their car sales business in the limited manner they described. It seems there have been no noise complaints from those in Purdy Street living close to the site. It is uncertain that the complaint from a person living on the northern side of the railway correctly identified the MK Motors site as the source of disturbing noise.
22. A noise impact assessment had been carried on behalf of the Appellants. It showed that with mitigation measures applied, existing garage-related activities would operate at what appeared to me to be an acceptable 24dB below the measured daytime average ambient noise level.
23. Emissions from the appeal site are likely to be low, the engines of most cars on site rarely run. The small workshops carry out only minor repair and maintenance tasks, again unlikely to cause disturbance to nearest residential neighbours. I do not agree with the Council that MK Motors' activities within the appeal site give rise to unacceptable amenity impacts upon neighbouring residential properties.
24. However, the appeal site's location at the end of the cul-de-sac Purdy Street residential road suggests its use as a car sales site is not appropriate. It seems that MK Motors Ltd's operation is less intrusive and generates less vehicular traffic than that which may be expected from most car dealerships. But the

deemed planning application before me is not particular to that operator. It would not be fitting to limit the use to one person or company. Nor would it be practical to impose such restrictive conditions to control the use that might negate the benefit a permission. Without severe limitations, non-residential vehicular traffic to and from a car sales use of the site would be likely to unacceptably harm the amenity of the otherwise pleasant Purdy Street residential road because of extra traffic noise and possible fumes.

25. *3. Effect on local highways* – the Council said the unauthorised use of the land for the sale of motor vehicles together with the erection of a single storey office building, as well as garage/workshop structures had a negative impact on the surrounding highways through increased trip generation to and from the site. Concerns had been expressed about the use of large car transporter vehicles used for delivering cars in Purdy Street. But the Appellants said those transporter deliveries were made to car traders in Purdy Street and nearby Reeves Road. The Appellants did not allow cars to be delivered to their premises in such vehicles.
26. I consider that a car sales use by most such businesses would bring more non-residential vehicular traffic to and from the appeal site. Such traffic could raise congestion and road safety concerns for local residents.
27. The Council were also concerned that the unauthorised car sales use of the appeal site failed to adhere to the waste management hierarchy of reduce, reuse, and recycle. That was contrary to local policies S.TR1 and D.TR2 which promote sustainable travel and limit impacts on the transport network and policies S.MW1 and D.MW3 which seek to promote sustainable waste management.
28. Although possible waste problems may not have been addressed by the Appellants to the satisfaction of the Council, such matters should more reasonably be dealt with by the imposition of suitable conditions, rather than amounting to a cogent reason to refuse planning permission.
29. *4. Office, workshop design* – the Council said the utilitarian design of the garage/workshop structures did not recognise the predominantly residential character of the area. The unauthorised structures did not promote good design principles and did not integrate well into their surroundings. That was contrary to local plan policy S.DH1.
30. I find little in this objection. The appeal site is hidden from public view by high boundary fencing. The office building at the site's entrance is new, attractive and well designed, yet still hidden from public view, unless the entrance gates are open during business hours. The workshops are certainly utilitarian and of sombre appearance. But they are well hidden underneath the railway bridge.
31. *Conclusion* – Planning permission is not granted on the application deemed to have been made for use of the land for the sale of motor vehicles, together with the erection of a single storey office building and garage/workshop structures at the end of Purdy Street. The appeal on ground (a) fails.

### **The appeal on ground (f)**

32. The Appellants said the lawful use of the appeal site was for car storage, a Class B8 use, (The Town and Country (Use Classes) Order 1987 as amended). Removal of

the workshops building would eliminate the unlawful sui generis element and return the site to its permitted storage use. Only demolition of the workshops was required. The steps required were excessive.

33. The Council sought the cessation of the car sales use at the end of Purdy Street. The steps required went no further than necessary to remedy the breach.
34. It is somewhat unclear as to what the Appellants seek for their ground (f) appeal, other than that part of the requirements of the notice to remove the office building is deleted. I have no information on the lawful use of the appeal land, other than the assertion made by the Appellants that it is a B8 storage use. The notice's requirements go to the purpose of remedying the breach of planning control. That reasonably requires cessation of the unlawful use and removal of any building or operational development that facilitate that use. That is whether or not that associated development was in isolation acceptable or not or whether that facilitating development itself required permission.
35. I consider that all the requirements of the enforcement notice are pertinent, reasonable and necessary. The appeal on ground (f) fails.

### **The appeal on ground (g)**

36. An appeal on ground (g) asks that more time is given to meet the requirements of the enforcement notice. The Appellants said the period for compliance with the notice was unreasonably short. MK Motors was an established business. If they had to move, they expected it would take 6 to 12 months to set up the business in new premises. I agree that more time should be given for new premises to be found. Although a period for compliance of 12 months would appear to be tantamount to the grant of a temporary planning permission, particularly as the MK Motors method of operating their business produces less traffic to and from their premises than might be expected at typical car sales businesses, I consider that appropriate. The appeal on ground (g) succeeds.

**Note:** I simultaneously determined appeal ref: APP/E5900/C/22/3291800 made by NRIL, owners of the appeal site land. Their appeal was made on ground (g) only. In that, I accepted that the period for compliance with the requirements of the notice should be increased from 3 months to 6 months. The Council concurred. But as for my conclusion on this MK Motors Ltd ground (g) appeal, that the period for compliance with the notice's requirements be increased to 12 months, the period for compliance in the NRIL appeal decision is also increased to 12 months.

### **FORMAL DECISION**

37. The enforcement notice is corrected by the deletion of the words "storage, repair and" in line 5 in para. 3 on page 1 of the notice. It is varied by the deletion of the words "storage, repair and" in line 3 of para. 5.1. on page 2 of the enforcement notice. It is also varied by the deletion of the words "THREE (3) months" in para. 6.(i) on page 3 of the enforcement notice and the substitution therefor of the words: "Twelve months". Subject to those matters, the corrected and varied enforcement notice is upheld.

*John Whalley*

INSPECTOR