The Planning Inspectorate

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

Appeal ref: APP/E5900/C/22/3291800
Land south-west side of Purdy Street, London E3 3PD

- The appeal is made by Network Rail Infrastructure Ltd, (NRIL), 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 to the notice 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 of the notice.
    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 ground (g) as set out in the amended Act.

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

Procedural matter

1. This enforcement notice was the subject of appeals by 2 parties, Network Rail Infrastructure Ltd, owners of the land and by MK Motors Ltd, the land's tenants. The appeal made by MK Motors Ltd is the subject of a separate decision, issued simultaneously under reference APP/E5900/C/22/3291782. There is a further reference to that appeal relating to the ground (g) appeal at the end of this decision.

Alleged breach of planning control

2. The description of the use of the appeal land - *for the storage, repair, and sale of motor vehicles* – that includes the word "repair" implies that site's tenants, MK Motors, operate like most car garages that provide common services to

customers such as MOTs, servicing and repairs and in some cases paint work and accident repairs. But owners do not bring their cars to MK Motors for servicing or repairs. MOTs and any significant repairs are carried out by others elsewhere. Mk Motors use of the land and buildings is for the sale of used cars. Such work as they 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. I also consider the use of the word "storage" in the allegation to be incorrect. 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.

3. There is a duty on me to get the notice in order if I can, (*Hammersmith and Fulham LBC v SSE & Sandral* [1975] 30 P&CR 19), in this instance by deleting references to storage and repair in the notice's allegation.

4. 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 ground (g) appeal

5. An appeal on ground (g) asks for more time in which to comply with the requirements of the notice.

6. NRIL were owners of the appeal site. It was let on a 99 year lease to MK Motors Limited. NRIL had taken steps to forfeit the lease by issuing the tenants with a notice pursuant to s.146 of the Law of Property Act 1925. However, the tenants might appeal against forfeiture of the lease. That could delay the owners lawfully taking possession of the land. Because of the proximity of the land to the operational railway, demolition works to comply with parts of the notice could require clearance approvals prior to works being carried out. That could take more time, as would the works. Three months was not enough for NRIL to take the steps required by the notice. A more reasonable period of time to comply with the requirements of the notice would be 6 months.

7. Having considered the NRIL appellant's submissions, the Council said they were willing to accept the suggested extension of the period from 3 months to 6 months to allow for more time to comply with steps 1. 2. and 3. of the enforcement notice.

8. I find no reason not to concur. The harm to local amenity is not so serious that an increased period of time for compliance should not be imposed. The appeal on ground (g) succeeds.

9. On the merits of this NRIL ground (g) appeal in isolation I would have increased the period compliance with the enforcement notice to 6 months. However, I have simultaneously determined appeal ref: APP/E5900/C/22/3291782 made by MK Motors Ltd, the tenants of the appeal site land. For their appeal on ground (g), I increased the period for compliance with the notice's requirements to 12 months. As the 2 decisions deal with the same enforcement notice, that period must also apply to this NRIL appeal decision.

FORMAL DECISION

10. 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