Appeal Decision

Site visit made on 17 October 2018

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 07 November 2018

Appeal Ref: APP/Z5060/C/18/3193963
Land and premises at the former Bull Inn, Rainham Road, South Dagenham, Essex RM10 8AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 by Serv Group London Ltd, trading as Tyre Serv, against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham on 19 December 2017 (ref: 18/00035/ENF).
- The breach of planning control alleged in the notice is “the unauthorised erection of containers being used for commercial purposes (A1 use”).
- The requirements of the notice are as follows:
  - “● Cease the use as A1 business use operating from the containers
  - ● Remove the unauthorised containers from the site
  - ● Remove all waste material from the site”.
- The period for compliance with these requirements is two weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g).

Application for costs

1. The appellants’ application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. It is directed that the enforcement notice be varied (i) by adding after the word “plan” in paragraph 2 the words “(hereinafter referred to as “the site”)”, (ii) by deleting from paragraph 5 “● Cease the use as A1 business use operating from the containers” and “● Remove all waste material from the site” and (iii) by replacing “2 weeks” in paragraph 6 by “1 month”.

3. Subject to these directions, the appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the appeal decision

Ground (a)

4. The main issue in deciding whether planning permission should be granted for the containers concerns their effect on the appearance and amenity of the site and its surroundings.
5. Policies BP8 and BP11 of the Barking and Dagenham Borough Wide Development Policies Development Plan Document are relevant to this issue. Policy BP8 seeks to protect residential amenity. It states that all developments are expected to have regard to the local character of the area and help to create a sense of local identity, distinctiveness and place. Policy BP11 deals with urban design. It states that, having regard to their layout and function, the design of buildings and layout of new development should comply with a set of principles. These include the protection or enhancement of the character and amenity of the area and the maintenance of residential amenity.

6. The containers are large, both in length and height. They are positioned side by side towards the rear of the parking and servicing area on the site. One of them has a side facing this area and the road; the other has a side facing residential properties. Other parts of the parking and servicing area are being used as a public car park and for vehicle hire. The former public house building is now in use for various retail purposes. The surroundings as a whole contain a mixture of residential, commercial and retail premises in a main road location near to a roundabout.

7. This is clearly not a location where it is normal to find containers of this size and positioning. They seriously detract from the appearance of the former public house building and its current retail function, from the view from the road and from the outlook from residential properties. As a result, they are very much in conflict with Policies BP8 and BP11. They are also in conflict with principles set out in section 12 of the National Planning Policy Framework, relating to achieving well-designed places, and there is no support for them elsewhere in the Framework.

8. In my opinion, the harmful appearance of the containers could not be masked by any acceptable means of landscaping or screening. I have considered the suggestion that a temporary planning permission might be granted for the containers, but I do not consider that this would be appropriate: it would not reduce the impact of the containers, except by limiting its duration, and that would not be a sufficient benefit to outweigh the serious continuing harm to the appearance and amenity of the site and its surroundings that would take place during the temporary period.

9. I have also considered all other matters raised by the appellants on ground (a), but there is nothing that indicates that my decision should not be in accordance with the policies to which I have referred. The appeal has therefore failed on ground (a) and planning permission for the containers has been refused.

Grounds (c) and (f)

10. These grounds have both been put forward on the same basis and as a precaution. Concern is raised about the requirement in the notice to cease the A1 use of the containers because, it is maintained, it could be construed as limiting lawful retail use of the site.

11. I do not consider that it would have this effect, but I have in any event deleted the requirement because it exceeds what is necessary to remedy the breach of planning control and the injury to amenity. The notice is directed at the unauthorised erection of the containers and the reasons for its issue relate to their effect on appearance and amenity, not their retail use. The breach and
the injury to amenity will be remedied simply by the removal of the containers from the site. I have made it clear when varying the notice that “the site” means the area shown edged red on the plan attached to the notice, namely the whole of the former Bull Inn land and premises.

12. I have also given consideration to the requirement in the notice to “Remove all waste material from the site”. It is not clear what waste material this is intended to refer to. There is a small amount of waste material in the vicinity of the containers, but it does not appear to arise from the appellants’ activities, which have ceased in compliance with the stop notice served in December 2017. The breach relates to the erection of the containers, not to waste material on the site, and no waste material will arise as a result of the removal of the containers from the site. I have therefore deleted this requirement, since it is excessive as well.

13. The appeal has therefore succeeded in part on ground (f).

*Ground (g)*

14. The appellants seek an extension of the compliance period to three months at least, in order to give them more time to find alternative A1 premises and to sell the containers or move them to an authorised location. The stop notice served in December 2017 required the A1 use to cease and I do not consider that the appellants should be allowed more time to find alternative premises. Nor do I consider that it would be reasonable to extend the compliance period to assist with a sale, in view of the harm to amenity that the containers are causing. Two weeks is, however, too short a time to allow for the necessary arrangements to be made for the removal of the containers from the site. One month is a reasonable period to allow for this to take place and I have varied the notice accordingly. The appeal has therefore succeeded on ground (g) to this extent.

*D.A.Hainsworth*

INSPECTOR