

Appeal Decision

Site visit made on 10 August 2016

by K R Seward Solicitor

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

Decision date: 20 September 2016

Appeal Ref: APP/W1525/C/16/3145564

55 Duke Street, Chelmsford, Essex CM1 1JA

- 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 Mrs Felicia Otobo-Martins against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 1 February 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a shop front roller shutter.
 - The requirements of the notice are:-
 - (i) Remove the unauthorised roller shutter and its housing.
 - (ii) Restore those sections of shop front affected by the works undertaken at step (i).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 23 August 2016

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

2. No 55 Duke Street is a shop located within a conservation area. The enforcement notice concerns a roller shutter fitted to the shop front. The appellant submits that the roller shutter was installed to protect the glazed shop front. The reason for its installation is not relevant to a ground (d) appeal. This ground is that at the time the notice was issued it was too late to take enforcement action.
 3. Therefore, the issue is whether the roller shutter was installed more than 4 years before the issue of the enforcement notice (i.e. before 1 February 2012), so as to be immune from enforcement. The burden of proving relevant facts lies with the appellant, and the relevant test of the evidence is the balance of probability.
 4. In her Appeal Form, the appellant refers to the renovation period for the shop being between August 2014 and November 2014. Furthermore, when asked by the Council in a planning contravention notice what date the works to install the shutter were commenced and completed the appellant replied "November 2014". Clearly this is within the 4 year period.
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5. The appellant says she was unaware that the premises are within a conservation area. At no point was this mentioned by Council officers at two visits undertaken during the renovation works. The Council also failed to mention the need for planning permission when the appellant sought advice.
6. An unintentional breach does not negate the need for planning permission. Nor does it make the installation immune from enforcement action. If the appellant is aggrieved with the Council's handling of the matter then that is a separate matter to be taken up with them.
7. From the evidence before me, the roller shutter enforced against was not installed more than 4 years before the issue of the enforcement notice and it is not immune from enforcement. The appeal on ground (d) therefore fails, and the enforcement notice is upheld.

KR Seward

INSPECTOR