
Appeal Decision

Site visit made on 27 November 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 5 December 2019

Appeal Ref: APP/Z0116/C/19/3224078

37 Stokes Croft, Bristol BS1 3PY

- 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 Ms Lydia Bartlett, Almedina Group Limited, against an enforcement notice issued by Bristol City Council.
 - The enforcement notice, numbered DJM/IA3.1387, was issued on 30 January 2019.
 - The breach of planning control as alleged in the notice is: the installation of roller shutters and shutter housing structures to the front of the property.
 - The requirements of the notice are to remove the unauthorised external roller shutters and associated shutter housing structures from the front of the property.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on ground (c) only, as set out in section 174(2) of the Town and Country Planning Act 1990, as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. The appeal is dismissed.

Matters of clarification

2. The appeal was made of ground (c) only. However, the case put forward on behalf of the appellant relates more specifically to an appeal on ground (d). I have, therefore dealt with the appeal on the basis of both grounds (c) and (d). From the submissions I am satisfied that this will not result in any injustice.

3. Although the appeal building is listed in Grade II, the Council did not issue a listed building enforcement notice (LBEN). Instead a planning enforcement notice (PEN) was issued. Although the notice only related to No 37 it is evident that the property comprises Nos 35 and 37. I have dealt with the appeal accordingly.

Background information

4. The appeal building(s) is listed in Grade II and is an end of terrace property, made up of the two units. It is located on the western side of Stokes Croft (Nos 35 and 37). This is a major route into the city centre and the site lies within the Stokes Croft Conservation Area (SCCA).

5. A planning application (14/06161/F) for a new shop front, with flats above and houses to the rear was granted approval and implemented. The approval also covered the conversion of the ground floor to a restaurant use. The roller shutters and housings were not part of that approval for the shop front and a complaint was initially made to the Council in March 2015. There had been no record of the roller shutters being in place before that date.

6. In February 2018 the appellant company had been advised by the Council to remove the unauthorised works. Despite further requests from the Council the shutters remained in place and the notice was issued in January 2015.

The appeal on ground (c)

7. To be successful on this ground it must be shown that either there is a planning permission in place for the development carried out (the installation of the roller shutters and shutter housings) or that one is not required because, for example, the works constitute permitted development. The merits of the case do not fall to be considered under this ground and the onus is upon the appellant to show that there has not been a breach of planning control.

8. It is evident that the planning permission for the change of use to a restaurant and conversion did not include the roller shutter works. Nor can the works constitute permitted development because the appeal building is a listed building. It follows, in the absence of both, that the appeal must fail on ground (c).

The appeal on ground (d)

9. The notice was issued on 30 January 2019. For the works to be immune from planning enforcement action and for the appeal to be successful on ground (d), the onus is upon the appellant company to conclusively show, on the balance of probabilities, that the roller shutters had been in place since 30 January 2015. Planning Practice Guidance (PPG) makes it clear that an appellant is responsible for providing sufficient evidence to substantiate their claim and that the evidence should be precise and unambiguous.

10. In support of the appellant's case it is stated that the shutters have been in place since 2012 and as such should be considered permitted development. It is also indicated that the shutters were essential in maintaining the security of the building which had previously been in use as a 'squat' and to prevent defacement and damage due to graffiti and vandalism. I have already referred to the situation regarding permitted development and the appellant's arguments are made on the basis that the LPA could not take enforcement action due to the 4 year rule.

11. However, other than a simple statement that the shutters were in place in 2012 there is no other substantial evidence submitted. As indicated by the Council (and an interested person) it is also the case that historic Google street images show clearly that there were no shutters applied to the face of the building in May and October 2012. There is independent evidence from the interested person to state that the shutters were not in place in May 2014 and that they first appear on street images in June 2015. That would appear to tie in with the evidence relating to the date of the complaint to the Council by the same person, which was made in May 2015.

12. From all of the evidence I do not consider that the appellant has shown, on the balance of probability that the roller shutter works have been in place for the necessary four year period. It has not been demonstrated by the appellant that there is precise and unambiguous evidence to indicate that the works had been in place for the relevant period. That is, from 30 January 2015 until 30 January 2019. It follows that the appeal cannot succeed on ground (d).

Other Matters

13. I have referred above to the fact that the Council chose not to issue a LBEN but instead issued a PEN. The Council could have issued a LBEN since, unlike with a PEN, there is no time limit with regard to issuing the former notice. Thus, even if

the shutters had been in place for a relevant 4 year period, the Council could have taken listed building enforcement action for removal of the unauthorised shutters and shutter housings.

14. In reaching my conclusions in this Appeal, I have taken into account all of the other matters raised on behalf of the appellant, by the Council and by the interested person. These include the full planning history; the initial submissions; the grounds of appeal arguments; the photographic evidence and any later submissions. However, none of these alters my conclusion on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

15. The appeal is dismissed.

Anthony J Wharton

Inspector