



Appeal Decision

Site visit made on 3 November 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Appeal Ref: APP/X5990/X/21/3275220

117 Praed Street, London, W2 1RL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Asim Zahur against the decision of City of Westminster Council.
 - The application Ref 21/00460/CLUED, dated 26 January 2021, was refused by notice dated 25 March 2021.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is A1 Shop – retention of existing roller shutter.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. An application under s191(1)(b) of the Town and Country Planning Act 1990, as amended (the 1990 Act), seeks to establish whether, at the time of the application, any operations which have been carried out are lawful. S191(2)(a) of the 1990 Act explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired.
3. Whilst I note the appellant's submissions on matters relating to security need and precedent, planning merits can form no part of my assessment of an application for a LDC, which must be considered in the light of the facts and the law.
4. The main issue therefore is whether the Council's decision to refuse to issue a LDC for the roller shutter was well-founded. That turns on whether the operational development was substantially completed four years before the date of the LDC application. The material date in this case is 26 January 2017¹.
5. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities' (that it is more probable than not). If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.

¹ s171B(1) of the Town and Country Planning Act 1990

Reasons

6. It is the appellant's case that the roller shutter to the ground floor shopfront at No 117 Praed Street has been present since at least 2008. A letter from the previous landlord also states that there has been a shutter outside the shopfront for the last 12 years. However, the Google Street View images of January and November 2018 show an internal roller shutter behind the shopfront. The same arrangement is also shown in the existing elevation drawing provided from 2016 (drawing number EN 02 06 16 Rev A). In contrast the photograph from July 2020 shows an external roller shutter as well as external guide rails which cannot be seen in the 2018 and earlier photographs.
7. I note that the appellant's explanation that the shutter broke in 2018/2019 and the previous owner hired a tradesman who implemented a short-term solution and pulled the shutters inside to enable the business to be run without incurring the reparation costs. However, no evidence is provided to that effect and none of the numerous photographs provided for the period prior to 2018/2019 show an external roller shutter. Moreover, the aforementioned 2018 photographs appear to show that the frame for the pre-existing retractable canopy would have precluded a roller shutter in the plane/position of the roller shutter shown in the 2020 photograph.
8. I've noted the additional representation received from neighbours and other businesses supporting the appellant's position. However, they are not sufficiently precise on matters relating to the nature of the shutters and the time they have been in place or observed in place, so as to outweigh the above photographic evidence. In any case, the representation is contradicted by that submitted by the South East Bayswater Residents Association.
9. Having regard to the above, I therefore find that roller shutter shown in the 2018 photographs is materially different to that shown in the 2020 photograph, even if both are perforated, rather than solid. Accordingly, the appellant has not shown, on the balance of probabilities, that the roller shutter in place when the LDC application was made, was substantially complete four years prior to the date of the application.
10. Photographic evidence shows that box housing was in place prior to the material date. Evidence also shows that the shutter does not extend beyond the width of the shopfront. Nevertheless, the fascia in front of the box housing, as shown in the 2020 photographs, does extend in a single continuous form across both the shopfront and residential entrance, whereas it clearly did not in 2018. It has not been shown that what is behind that fascia is the same as that in place in 2018 and more importantly, the material date.

Conclusion

11. I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR