The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2023

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/W2465/C/22/3295328
68 Cedar Road, Leicester, Leicestershire LE2 1FF

- 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 Om Properties Investment Co Ltd against an enforcement notice issued by Leicester City Council.
- The enforcement notice is dated 1 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised alterations to single storey storage building for creation of an opening to Cedar Road elevation and installation of a roller shutter door at the property.
- The requirements of the notice are: Step 1 Remove from the front of the property the large roller shutter door nearest to 66 Cedar Road. Step 2 Reinstate a pedestrian door of similar appearance and size at ground floor level as shown in the photograph attached to the enforcement notice. Reconstruct the resulting aperture with materials to match the external surface and make good. Step 3 Remove and dispose of all resulting debris from Steps 1 and 2 above.
- The period for compliance with the requirements is 12 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

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

Ground (d)

2. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof lies on the appellant and the standard of proof is the balance of probabilities.

3. For operational works, the time period for enforcement action to be taken is four years from the substantial completion of the development. As the enforcement notice is dated 1 March 2022, the development attacked by the notice needs to have been substantially complete on or before 1 March 2018 to be immune from enforcement action.

4. The Council confirm that a planning application was submitted on 11 December 2018 for 'Change of use from storage (Class B8) to garage with MOT station (sui generis); installation of roller shutter to front elevation; alterations.' They have provided the existing and proposed front elevation drawings that accompanied that application. The Council visited the site on 25th January 2019 to assess the proposal, and they have submitted the photographs that were taken of the appeal site on that date. There is no sign of the

unauthorised roller shutter or internal works in these documents. I note that the application was refused on 14 March 2019.

5. The Council submit a further photograph that was taken on 24 April 2019. It is their case that the unauthorised works had still not taken place and were not evident in the photographs. Instead, on the Council's visit of 21 September 2021, they saw that the second roller shutter had been installed, as shown in the photograph of that date.

6. The appellant's case is that the property is leased to a tenant, and it is the tenant who is responsible for any breaches of planning control. The appellant does not dispute the Council's evidence or submit evidence of their own that would contradict that of the Council. That being the case, there is no compelling evidence before me to show that the unauthorised development was substantially complete by 1 March 2018, and thus immune.

7. The appellant has not satisfactorily demonstrated that it was too late to take enforcement action on the date that the notice was issued. Accordingly, the appeal on ground (d) must fail.

Conclusion

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

Elaine Gray

INSPECTOR