The Planning Inspectorate

Appeal Decision

Site visit made on 24 May 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Appeal Ref: APP/V5570/C/22/3306863
277 Caledonian Road, Islington, London N1 1EF

- 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 Mr Diego Caltagirone against an enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice was issued on 3 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a metal roller shutter. In addition, associated fixings and shutter box to the ground floor frontage of the property.
- The requirements of the notice are: Remove the unauthorised roller shutter and housing boxes, associated guides and fittings from the land, and repair any damage to the building.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision

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

Reasons

Ground (b)

2. An appeal on ground (b) is that the matters stated in the notice have not occurred as a matter of fact. In a ground (b) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

3. At my site visit I saw that a metal roller shutter and associated fixings and shutter box have been affixed to the shopfront at the front of the building. This is consistent with the Council's evidence. No evidence has been provided which satisfies me that the matters stated in the notice have not occurred.

4. I conclude the appeal on ground (b) fails.

Ground (c)

5. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because what is alleged complies with the terms and conditions of a planning permission or because what is alleged is not 'development' as defined by section 55 of the 1990 Act. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

6. Under section 55(1) of the 1990 Act, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

7. Section 55(1A) of the same Act clarifies that building operations include operations normally undertaken by a person carrying on a business as a builder.

8. There is no evidence in this case that the matters stated in the notice do not constitute a building operation. The roller shutter which has been installed (and its associated fixings and shutter box) materially affect the external appearance of the building. So it is development for the purposes of section 55. There is no evidence that any planning permission exists for the roller shutter.

9. The appellant states that there was no formal requirement at the time the shutter was installed for shop front shutters to be placed in the shop behind the shop front glass window. Be this as it may, this does not mean that planning permission is not required for the roller shutter, in light of section 55.

10. I conclude the appeal on ground (c) fails.

Ground (d)

11. An appeal on ground (d) is that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act. In a ground (d) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. The decision must be made on the evidence provided and that evidence must be precise and unambiguous.

12. Section 171B(1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, as is the case here, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

13. The appellant states that the shutter has been in place, as far as he is aware, for more than 4 years. However, the Council has provided a photograph dated April 2019 which shows that the roller shutter was not installed by that date. On this basis, the appeal development cannot possibly have been substantially completed for 4 years by the date the notice was issued.

14. I conclude the appeal on ground (d) fails.

Other Matters

15. The appellant considers that the metal roller shutter, associated guides and shutter box are 'standard' for shutters in the area. He has drawn my attention to the number of other properties in the area that have roller shutters. He also states that the Council have overlooked a clause in commercial leases that require a tenant to insure plate glass shop front windows from being broken.

16. But these are all planning merits arguments that I am not able to consider as there is no ground (a) appeal before me. For the same reason, the Council's reasons for issuing the enforcement notice are not before me either.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

L Perkins

INSPECTOR