



Appeal Decision

Site visit made on 16 October 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

Appeal Ref: APP/X4725/C/23/3324601

Southgate Indian Restaurant and Takeaway, Southgate, Pontefract

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr James Moran against an enforcement notice issued by City of Wakefield Metropolitan District Council.
 - The enforcement notice was issued on 18 May 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the material alteration of the principal elevation of the building by replacing a window with a shopfront and door on the Land.
 - The requirements of the notice are:
 - a) Restore the principal elevation to its previous condition by removing the new shopfront door and window.
 - b) Close the hole with materials to match the facing materials of the building, and
 - c) Install a ground-floor window to match the design and location of the previous window.
 - 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.
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Decision

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

The appeal on ground (d)

2. An appeal on ground (d) is made on the basis that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated in the notice as constituting a breach of planning control. Matters of planning merit have no relevance to an appeal on ground (d), they are to be considered under an appeal on ground (a) which the appellant has not advanced.
3. S171B(1) of the 1990 Act states that, where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
4. Thus, in order for the appeal to succeed, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the replacement of the window in the principal elevation of the building with a shopfront and door was substantially completed on or before 18 May 2019.

5. The appellant has provided an image which shows the shop front in its substantially complete form with the timber frame, the boarding colourfully painted and a door opening created within it. The image is taken from May 2023 and reflects what I was able to see on my site visit.
6. The appellant states that the development has been present since 2016. A still image from a video is provided which appears to show the outside of the building. Although somewhat blurred, it shows the beginnings of the creation of the shopfront with a gap in the exterior of the building which is boarded up. There is no evidence, however, of the frame of the shopfront, the door or the paintwork having been done at that time. Moreover, whilst the file name of the document says 2016, there is nothing on the image which indicates when it was taken. There are also submissions from the appellant that they have proof of purchase for materials used in 2017. However, no such evidence is before me. There is therefore little evidence before me which shows the substantially complete form of the shopfront on or before 18 May 2019.
7. Indeed, the appellant has provided a picture which is dated June 2019. In that image, the timber frame of the new shop front is shown, however, the gap is entirely boarded up and no door has been created. As a result, it appears on the balance of probabilities that the shop front and door was not substantially complete until June 2019 at least. Consequently, it has not been demonstrated, on the balance of probabilities, that the development was substantially complete four or more years before the enforcement notice was issued.
8. I conclude, therefore, that the development was not immune from enforcement action at the date the enforcement notice was issued.
9. The appeal on ground (d) therefore fails.

J Whitfield

INSPECTOR