



Appeal Decision

Site visit not required

by **D Hartley BA(Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 JUNE 2025

Appeal Ref: APP/V4250/C/24/3356230

Land at 71 Bradshawgate, Leigh, WN7 4NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Mohammed Elahi of FARS FOOD LTD against an enforcement notice issued by Wigan Metropolitan Borough Council.
 - The notice was issued on 23 October 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a metal roller shutter above the entrance door of the building, located on the Land.
 - The requirements of the notice are to remove the metal roller shutter.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended) (the Act).
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Decision

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

Ground (d) appeal

2. The appeal made on ground (d) is that at the date when 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. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
3. The only evidence submitted by the appellant in respect of the ground (d) appeal is included in the appeal form. The appellant states that prior to the installation of the metal roller shutter he telephoned the Council to ask it if planning permission or any other consent was needed and that he was told that it was not because it was *'not a Council building and advised me to confirm with my landlord'*. I do not have any objective evidence before me to support the appellant's claim about this matter, and, in any event, it is not relevant to the consideration of an appeal made on ground (d) of section 174(2) of the Act.
4. The onus is on the appellant to make his case in respect of the ground (d) appeal. There is an absence of precise and unambiguous evidence to demonstrate that the installed metal roller shutter was substantially completed for the specified period outlined in section 171B(1)(a) of the Act. Consequently, I find, on the balance of probability, that at the date when the notice was issued it was not too late to take enforcement action. I therefore conclude that the ground (d) appeal fails.

Overall Conclusion

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

D Hartley

INSPECTOR