



## Appeal Decision

Site visit made on 2 December 2025

**by R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 January 2026

### Appeal Ref: APP/J2373/C/25/3365726

#### 465 and 467 Promenade, Blackpool, FY4 1AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Stuart O'Neill against an enforcement notice issued by Blackpool Council.
- The notice was issued on 11 April 2025.
- The breach of planning control as alleged in the notice is 'Without planning permission, the erection of external enclosed seating areas/outdoor bar, decking and stage area, glass balustrade to forecourt and food catering kiosk/food catering van'.
- The requirements of the notice are: The removal of all external enclosed seating areas / pods, huts and associated fixtures and fittings. The removal of the outdoor bar and associated fixtures and fittings. The removal of the decking and stage area in full. The removal of the glass balustrade to forecourt. The removal of the food catering kiosk / food catering van.
- The period for compliance with the requirements is: Two months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

### Decision

1. It is directed that Section 3 of the enforcement notice is corrected by:  
  
the deletion of the words "glass balustrade" and their substitution with the words "windbreaker".
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

### Ground (b)

3. An appeal on this ground is that the alleged development hasn't occurred. It is the appellant's case that no glass balustrade to the forecourt has been erected at the site. To succeed on ground (b) he must demonstrate that, at the time the Notice was served, no such structure was present. The burden of proof lies with the appellant, and the test of the evidence is on the balance of probability.
4. The appellant highlights that what the Council refer to as a glass balustrade is a series of posts with linking cross-members capable of incorporating Perspex sheets to provide a degree of wind protection to users of the forecourt. This is in two sections and set behind the frontage boundary walls.
5. The Notice's description of the feature follows from a recent planning application (ref. 23/0304) for elements of the forecourt development. A subsequent appeal decision<sup>1</sup> confirms that the 'balustrade' did not then form part of the appellant's proposal but was added to the description by the Council as a boundary structure because it appeared on the submitted plans. The Inspector in that appeal alternatively described it as a 'windbreaker'.

<sup>1</sup> APP/J2373/W/24/3348065

6. The appellant asserts that it was omitted from the application because the structure had been erected some time ago and was beyond the time limits for enforcement such that planning permission was not required. This is a hidden ground (d) claim which I consider below. However, it is clear from the appellant's description of the boundary treatment and the recent planning history that the parties are referring to the same development.
7. As representation has been made by the appellant on the status of the structure, I find that no injustice would arise to the main parties in the appeal if I were to correct the Notice pursuant to the provisions of s176 of the Act.
8. For the above reasons, the appeal on ground (b) succeeds to the extent that the misdescription in the Notice is corrected.

#### **Ground (d)**

9. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any such breach. To be successful on this ground it would be necessary for the appellant to demonstrate that any relevant period of immunity has been achieved. The test is on the balance of probability – whether the claim is more likely than not to have occurred.
10. The appellant asserts that the windbreaker had been erected four years or more prior to the issue of the Notice on 11 April 2025. In support of that claim, the appellant has provided a Google Earth image showing the posts and rails along the frontage casting a shadow across the adjacent pavement. However, the image is undated.
11. The appellant's contention that the image dates from 2021 is unsupported and unspecific as to whether it was before or after the relevant date of 11 April 2021. Although not determinative, when compared to the Council's image of January 2021, significant works including the resurfacing of the forecourt, removal of signage and revision to the frontage layout appear to have taken place by the date of the appellant's image. The evidence supporting the appellant's claim is not sufficiently precise and unambiguous to demonstrate that the structure was beyond the time limits for enforcement. Accordingly, I find that the appellant's claim ground (d) claim should fail.

#### **Ground (f)**

12. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
13. The appellant contends that pursuant to an earlier appeal decision made under s78 of the Act, an Inspector only found certain elements of the alleged development to result in harm. However, the Notice alleges that operational development has occurred and requires its removal. The notice does not seek to 'under-enforce'; the purpose of the Notice must therefore be to remedy the breach of planning control.
14. For that reason, and because the appellant was unable to appeal the Notice on ground (a) so that I could consider planning merits, I have no scope to consider whether the requirements of the notice are excessive to remedy any injury to amenity. The only case the appellant can make for ground (f) is that lesser steps

would suffice to remedy the breach. As retention of any element of the breach would not achieve that aim, the appeal on ground (f) must fail.

**Ground (g)**

15. This ground of appeal is that the period for compliance specified in the Notice falls short of what should reasonably be allowed.
16. The appellant contends that a period of 6 months or a period beyond the end of November would be more appropriate to avoid the peak tourist season. Given the timing of this decision, and that there is no claim that the works required by the Notice would require additional time to complete, I find the time specified in the Notice is reasonable and would provide a suitable balance between the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject of it. Accordingly, the appeal on ground (g) fails.

**Conclusion**

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

*R Hitchcock*

INSPECTOR