



Costs Decisions

Inquiry held on 2, 3 & 5 June 2026

Site visit made on 2 June 2026

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2026

Costs application in relation to Appeal Refs: APP/W4325/C/26/3377350 (Appeal A) & 3377351 (Appeal B)

Land at 63 Marlowe Road, Liscard, Wallasey, Wirral CH44 3DE

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Mr Jamal Clayton and Ms Julie Clayton for a full award of costs against Wirral Metropolitan Borough Council and by Wirral Metropolitan Borough Council for a partial award of costs against Mr Jamal Clayton and Ms Julie Clayton.
- The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a single storey rear extension to the rear of the property.

Decisions

1. The applications for an award of costs are refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Awards of costs may be either procedural or substantive.
3. The term “unreasonable” is used in its ordinary meaning, and not in the stricter public law definition of “Wednesbury” unreasonable¹. The PPG advises that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

The Appellants’ Costs Application

4. The appellants submit that the Council has advanced an entirely unevidenced allegation, applied a severe double standard to baseline structures, actively denied documented administrative fact, ignored intermediate procedural reminders of fairness and maintained a fluid case. Their application is both procedural and substantive.
5. The appellants submitted a planning application, reference, APPH/23/01434 for demolition of existing conservatory Single storey rear extension, dated 13 September 2023. Planning permission was refused on 14 December 2023. The appellants assert that the Council unreasonably refused planning permission for the works and that the Council provided incorrect information regarding dates, so that an appeal against the refusal was not possible.

¹ Wednesbury unreasonableness is a decision that is so unreasonable that no reasonable authority would ever consider taking it.

6. Concerns have also been raised regarding the Council's conduct during determination of that application and whether the officer's initial recommendation was changed. However, it seems, despite the appellants alleging that the Council never formally served a refusal letter on the appellants, the decision to turn away their appeal was not challenged. I have no jurisdiction to review that decision, nor does it constitute unreasonable behaviour in **this** appeal.
7. The PPG sets out that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include: lack of co-operation with the other party, delay in providing information or other failure to adhere to deadlines, not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties.
8. The appellants raise concern regarding the provision of documentation and have referred to a point made by me during the Case Management Conference (CMC) regarding missing documentation. The Council suggests that the Core Documents Bundle may not have been received by the Planning Inspectorate (Pins) or appellants due to the size of the file. Following the CMC the Council provided the documentation to both Pins and the appellants. This, in my view, is not unreasonable behaviour, nor does it constitute administrative neglect but rather is an unfortunate issue that was swiftly resolved by the Council when brought to its attention. Even if this resulted in delay, it is not clear how it resulted in extra work for the appellants or wasted expense.
9. With respect to the production of the Statement of Common Ground (SoCG), both parties sought to agree a draft in advance of the Inquiry. During the CMC I specifically requested that the SoCG includes a copy of the plans marked up clearly by each party, showing what the differences are, if any, between the extension as proposed and the extension as built. While I had not expressly directed that a site visit should be made by the Council, in order for the Council to understand why there were differences in the measurements, it seems reasonable to me for the Council to seek to attend the appeal property with the appellants in attendance.
10. The Council suggests the late preparation of the SoCG was due, in part, because the appellants had been uncooperative about arranging a site visit. Mr Clayton wrote to the Council on Wednesday 13 May 2026, confirming he was only available 'this week on Thursday at 1.00 PM.'. Mr Clayton sought clarity in that email as to whether a physical meeting at the appeal site is a mandatory and absolutely necessary requirement for the Statement of Common Ground as he will have to arrange cover at work. The Council responded on 13 May 2026 and advised that it would be necessary for the appellants to be in attendance as they will need to agree/disagree with things like measurements, site plans, what parts of the existing build (conservatory) remains etc.
11. Despite me having asked the parties to mark up plans, Mr Clayton then proceeded to question the taking of measurements on site, as, he suggests, it won't resolve a legal disagreement that is already evidenced. The Council made it clear to the appellants that it considered a site visit was required, in light of my request to mark up plans. Mr Clayton then offered a meeting at his place of work. The address for the proposed meeting does not appear to have been provided until 11:09am on 14 May 2026, less than two hours before the meeting was due to convene.

12. While the appellants suggest the Council simply failed to attend, offering no explanation or the basic professional courtesy of a cancellation message, the evidence suggests otherwise. It seems the Council wrote back shortly afterwards at 11:25am and advised a meeting at this venue was not appropriate. The Council's behaviour in this respect was not unreasonable. While the Council provided a draft SoCG to Pins shortly after sending it to the appellants, it was confirmed that the document was in draft form and not agreed.
13. The appellants have criticised the Council for failing to acquire measurements prior to the Inquiry. However, the evidence provided shows that the Council *has* made attempts to visit the site in advance of the Inquiry. It seems its ability to take measurements were actually hampered by the appellants. The provision of a draft SoCG was not unreasonable in light of the difficulties encountered by the Council. While I ruled that measurements could be taken once the Inquiry had opened, even if the Council had been able to measure the extension prior to the Inquiry, it is unlikely that this would have avoided the need for the Inquiry.
14. The appellants raise concerns regarding the Council's references to a potential application for costs in relation to the Council's position that it considered the grounds (c) and (d) to be without merit and therefore whether an inquiry was necessary and during the Inquiry, in relation to the late introduction of an appeal under ground (f). It is not unreasonable, in my view, for a party to advise the other party that they may make an application for costs, or for a party to advise the Planning Inspectorate that they intend to make an application for costs.
15. The PPG advises that an application for costs should be made as soon as possible and, if the application relates to behaviour at a hearing or inquiry, the applicant should tell the Inspector before the inquiry is closed that they are going to make a costs application. Indeed, I reminded the parties during the Inquiry about the procedure for costs, as well as my power to initiate an award of costs. While I note the appellants have spent time researching the costs regime as a result, I do not believe that the Council was unreasonable in raising the matter of costs during the appeal process.
16. The PPG advises that, for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
17. The appellants suggest that the Council has failed to substantiate the breach and that the Council has failed to obtain or produce any direct evidence of complete demolition. The appellants state that the Council has ignored clear evidence, despite being repeatedly informed about the historic conservatory. However, it is clear from the evidence that the Council has taken into account the fact that there was a conservatory *in situ* prior to the breach taking place. The Council's case is that the conservatory has been substantially demolished and that the alleged extension comprises new development for which planning permission is required.
18. While the Council has not provided photographs of demolition, eyewitnesses who observed a cleared site, contractor evidence or material waste records, the burden of proof in a legal ground of appeal is firmly on the appellants to make their case, to the civil standard, which is the balance of probabilities. The appellants' case has

been predicated on the basis that every inch of the structure must have been demolished in order for the Council to succeed. This line of argument became clear during the Inquiry and so the Council introduced case law to show why this approach is not correct and was not unreasonable in doing so.

19. Furthermore, the Council did provide evidence, in the form of Building Control notes. While the Building Control regime is separate to the Planning regime, the notes provided detail the works which were carried out in respect of the extension being enforced against. It was perfectly reasonable for the Council to provide such documentation in support of its case, including documentation submitted in support of a planning application.
20. The appellants suggest that the enforcement notice was punitive and an excessive remedy. However, where an enforcement notice alleges development without planning permission, an enforcement notice may require that the land is restored to its condition before the breach took place. Doing so is not unreasonable behaviour, it simply accords with the provisions of the Act.
21. The appellants make reference to a 1m by 1m splay, however, during the Inquiry the Council confirmed that such a splay would not address the Council's concerns regarding the harm to amenity. Any suggestion by Council officers prior to the enforcement notice being issued that such a splay might address its concerns does not fetter the Council in terms of its decision to take enforcement action, or oblige it to include it as an alternative step. Its decision not to include it is not unreasonable behaviour.
22. The Council sought to suggest potential ways in which the notice could be corrected to address my concerns regarding Requirement 2. During the course of the Inquiry, the Council provided a plan, which the appellants describe as 'a brand-new architectural plan with non-matching terminology'. In reality, the Council used a plan which had been submitted by the appellants in support of a previous planning application, which (it suggested) could be inserted to the Notice to provide clarity regarding Requirement 2.
23. It is not unusual during the course of an appeal, for amendments to a Notice to be suggested. This was a plan which the appellants themselves had submitted to the Council and which they were familiar with. The annotations made by the Council were explained briefly and the appellants given the opportunity to provide comment. The Council's behaviour in this regard was not unreasonable but reflected the discussions which were had during the course of the Inquiry.
24. During the Inquiry I asked the parties for their views on striking out Requirement 2. The Council provided its initial response, which was followed up with a revised response following further consideration and discussion on the matter. The Council was not unreasonable in doing so, nor does it indicate the Council treated the enforcement notice as an 'unstable interactive draft'. The Council's position is that the notice is valid: it has nonetheless, sought to assist in addressing concerns raised by me during the course of the Appeal.
25. Although I have found that the notice is invalid beyond correction, the Council included Requirement 2 because it recognised that the property would benefit from permitted development rights once the Notice had been complied with and sought to give the appellants the option to reduce the extension, rather than demolish it in its entirety. While there are difficulties which arise from the wording of the

requirement and which have ultimately led to the Notice being quashed, this approach is not, in my view, unreasonable, particularly since the validity of a notice is a matter of judgement for the decision maker.

26. The appellants raise concern regarding 'witness contradictions under affirmation'. Two concessions are advanced in this respect: Firstly, that Mr Shaw conceded that the Building Control description of "alterations" was correct and subsequently implied that would mean the structure had not been demolished and secondly, that Mr Shaw could not see the subterranean structural elements. The concessions made by Mr Shaw during the course of the Inquiry are not unreasonable, nor have they undermined the Council's case.
27. The appellants appear to have misunderstood the Council's case, which is that development requiring planning permission has been carried out, without that planning permission being obtained and due to the timing of the works in 2022, less than four years before the notice was issued, the structure is not immune from enforcement action. Although I have not had to consider the appeals under grounds (c) or (d), as set out in my decision letter, I have found that the allegation accurately describes the works which have been carried out. A more diligent investigation is unlikely to have avoided the need to serve the notice in the first place.
28. The appellants raise concern that the enforcement officer took photographs of their property from the neighbouring property. However, as the Council points out, Mr Shaw is an authorised enforcement officer with right of entry powers under section 196A of the Act. Moreover, it is not clear why this constitutes unreasonable behaviour which has resulted in unnecessary cost or expense during the appeal process.
29. In my view, unreasonable behaviour by the Council resulting in unnecessary or wasted expense has not occurred and so an award of costs against the Council is not warranted.

The Council's Costs Application

30. The Council is seeking a partial award of costs on the basis that Mr Clayton's refusal to comply with my request at the CMC to indicate, by way of a marked up plan, those elements of the retrospective application plans which were said to be inaccurate. In the CMC notes, I confirmed that if there are difficulties in taking measurements prior to the opening of the Inquiry, measurements can be taken during my site visit. This was intended as a pragmatic way forward in light of the apparent difficulties experienced by the Council.
31. From the email trail discussed above, Mr Clayton appears to have been resistant to providing access to the site and so the Council has relied upon plans submitted to the Council in determining the measurements. However, it was open to the Council to make further attempts to access the property prior to the Inquiry. Had the appellants continued to refuse to cooperate, this would have been unreasonable. While I agree that Inquiry time could have been saved had the parties done what I asked in advance of the event, given my suggestion that measurements could be taken during my site visit, the appellants were not unreasonable in failing to provide a marked up plan.
32. The appellants introduced an appeal under ground (f) during the course of the Inquiry. Although I sought clarification as to whether arguments being advanced by

- the appellants during the Inquiry constituted an appeal under ground (f), this is usual procedure, since I do not have the power to introduce new grounds unilaterally. Indeed, I confirmed this point in a letter to both parties in February 2026.
33. Mr Clayton had raised proportionality of harm vs remedy in his proof in relation to the appeal under ground (a). However, it was not until Mr Clayton's opening that he made the point that the steps required are excessive, referencing the splay that (it is asserted) the Council say would make the development acceptable. Although reference to a splay was made in Mr Clayton's proof, the significance of this to an appeal under ground (f) was not apparent until his opening.
34. Whether an argument falls under a particular ground of appeal is not necessarily a straightforward matter. Even appellants who are represented will advance a case under a particular ground, only for it to be identified later on in proceedings that it should be dealt with under a different ground of appeal. Such difficulties are inevitably more likely to be encountered with unrepresented appellants. This does not, in my view, constitute unreasonable behaviour.
35. The Council also raises concern that one of the appellants gave evidence which was not foreshadowed at the CMC or by way of a proof of evidence and then requested to be recalled to give further evidence on the 2nd day of the Inquiry which, the Council suggests, was not probative of the issues before me. I note the concerns raised by the Council regarding Miss Clayton's evidence, as well as her decision to give her own closing submissions, despite Mr Clayton acting as advocate in the proceedings. However, Miss Clayton is an appellant and so is entitled to appear at the Inquiry. While Miss Clayton and other witnesses did not provide a written proof of evidence, a witness is not obliged to do so.
36. A person entitled to appear at an Inquiry may be represented by any other person and they may also do so on their own behalf. Although unusual, the Council was able to show me no reason why Miss Clayton should not have been afforded the opportunity to sum up her case. The closing submissions made by Miss Clayton were handwritten and were hard to follow. Nevertheless, I am mindful that both Mr and Miss Clayton are unrepresented appellants. While I explained the purpose of closing submissions, an unrepresented appellant inexperienced in such proceedings may have difficulty in knowing whether something is considered 'new evidence', whether something is immaterial to my decision, or constitutes an improper allegation.
37. The Council also raise concern regarding Mr Clayton's closing submissions. It is suggested that they were lengthened by his clear departure from a clear answer given in relation to his ground (f) appeal and his allegations of procedural impropriety as a result of Mr Woodward not being called to give evidence. However, it is not unusual during cross examination for matters of clarification to be raised. It was clear from Mr Clayton's response that he did not fully understand the implications of having agreed to certain elements being dealt with by round table discussion and so it needed to be understood whether the appellants were disadvantaged by this in any way during the proceedings.
38. While the duration of the Inquiry was longer than the number of days scheduled, this, in my view, was a consequence of the appellants seeking to represent themselves, which is not unreasonable behaviour.

39. In my view, for the reasons set out above, unreasonable behaviour by the appellants resulting in unnecessary or waste expense has not occurred and an award of costs against the appellants is not warranted.

M Savage

INSPECTOR