



Appeal 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

Appeal Refs: APP/W4325/C/26/3377350 (Appeal A) & 3377351 (Appeal B) **Land at 63 Marlowe Road, Liscard, Wallasey, Wirral CH44 3DE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Jamal Clayton (Appeal A) and Ms Julie Clayton (Appeal B) against an enforcement notice issued by Wirral Metropolitan Borough Council.
- The notice was issued on 2 December 2025.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised operational development constituting the erection of a single storey rear extension to the property, as shown in the approximate location edged blue on attached plan 2.
- The requirements of the notice are to:
 1. Demolish and permanently remove the single storey rear extension in its entirety,
OR
 2. Permanently reduce the single storey rear extension in size, to constitute permitted development under schedule 2 part 1 Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015.
The single storey rear extension must not project more than 3 metres beyond the original rear wall of the dwellinghouse, if within 2 metres of the boundary of the eaves height must not exceed 3 metres, the extension must not be higher than the existing house's eaves or ridge height, must not cover more than 50% of the land around the original dwellinghouse and the materials used must be similar in appearance to the existing house
AND
 3. Remove from the Land all resulting materials associated with the compliance with requirement 1 or 2 above.
- The period for compliance with the requirements is: 6 calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. The enforcement notice is quashed.

Applications for costs

2. Applications for costs were made by both the Council and the appellants during the Inquiry. These applications are the subject of separate decisions.

Preliminary Matters

3. Evidence to the Inquiry in respect of grounds (c) and (d) was taken under affirmation. Applications for costs were made during the Inquiry. It was agreed that the Inquiry would be adjourned to allow responses in writing. Following receipt of such comments, the Inquiry was closed in writing.

4. Although the appellants did not tick ground (f) on their appeal form, it was confirmed during the Inquiry that they wish to pursue an appeal under ground (f).

Whether an appeal under ground (a) is precluded

5. The Council assert that granting retrospective planning permission sought in the 2023 application would involve granting planning permission in respect of the matters specified in the EN, which was issued on 2 December 2025, within 2 years of the 2023 application being refused. The Council suggests that section 174(2A) therefore applies and the appeal under ground (a) cannot lawfully proceed and has requested that I make a ruling that section 174(2A) is engaged and the appeal on ground (a) cannot proceed. I advised both parties that I would make my ruling through this decision letter.
6. Planning permission has previously been sought for 'Demolition of existing conservatory Single storey rear extension', dated 13 September 2023, reference APPH/23/01434. Within the application form, it is stated that the development or work was started on 1 July 2022 and was completed on 1 December 2022. It is stated within the application form that the applicants have been advised to submit a retrospective planning application.
7. This planning application was refused on 14 December 2023. Although the appellant tried to appeal the refusal, this was turned away by the Planning Inspectorate. The decision to turn away the appeal was not challenged, and I have no jurisdiction to consider such matters through this appeal. The test for related development would be met where the grant of permission would have the effect of authorising and regularising all the development now being enforced against.
8. The enforcement notice alleges "Without planning permission, the unauthorised operational development constituting the erection of a single storey rear extension to the property, as shown in the approximate location edged blue on attached plan 2".
9. The Planning Inspectorate wrote to the parties on 26 January 2026 and advised the following: *'Our view is that, notwithstanding the parties agree that the description of development in both the planning application and enforcement notice are the same, the planning application could not have granted planning permission for the development alleged in the enforcement notice as this relates to an extension that extends out further than that originally applied for. The planning application only relates to part of the total site in the notice. This could form part of a consideration of ground (a) but is not, in our view, "related development" (as defined in sub-section (2AA)) as the granting of planning for the development on the smaller area subject to the planning application would not involve "granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control" on the land edged red in the enforcement notice. Therefore, we do not think ground (a) is barred.'* However, this view was based upon the information available at the time.
10. During my visit, I saw that the extension which has been erected broadly aligns with the structure shown on the plans submitted in support of the planning application. During the Inquiry, measurements were taken and agreed between the parties. While the measurements differ slightly from the measurements shown on the submitted plans, the differences are not, in my view, significant and may reflect a margin of error resulting from measuring devices used. The relationship between

the original dwellinghouse appears to be the same, as does the relationship between the appeal site and the neighbouring property.

11. Had planning permission been granted, it is highly unlikely that the Council would have taken the view that it could enforce against the extension on the basis of differences between measurements shown on the plans and as taken on the ground. In my view, granting planning permission for the application development would involve granting planning permission in respect of the matters alleged in the notice that constituted a breach of planning control. As such, I agree that an appeal under ground (a) is precluded by virtue of section 174(2A) of the Act.

Matters concerning the Notice

The allegation

12. The appellants have raised concerns regarding the description of the alleged breach, which is 'the erection of a single storey rear extension to the property, as shown in the approximate location edged blue on attached plan 2.' Part of their concern is that the extension is a side and rear extension, because it projects from the outrigger, which is an original feature of the house, as well as from the rear of the property. The appellants argue that what has occurred are alterations to an existing conservatory and an infill extension and that the allegation is therefore wrong.
13. Section 55 of the Town and Country Planning Act 1990 (as amended)(the Act) sets out the meaning of development, which 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. Section 336 of the Act defines building as 'includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building' and section 55 of the Act explains that 'building operations' include demolition of buildings, rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.
14. The Act sets out that the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, or do not materially affect the external appearance of the building and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground do not involve development of the land. For works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole.
15. A conservatory, comprising a low wall with pebble dash render and glazing above, and a glazed roof, was constructed around the year 2000. It seems, from the evidence, that in 2022, the appellants commissioned builders to carry out works to the conservatory, including what is described as an 'infill' between the conservatory and the original outrigger. The corner of the outrigger was removed and steel was put in to provide structural support, the glazing of the conservatory was removed in its entirety, leaving (it is asserted) low level walls, which were built up and a roof and skylight (or lantern) inserted.

16. The appellants made an application to the Council's Building Control for the works, which are described as *'Extension infill to connect bungalow to conservatory, alterations to existing conservatory to create additional habitable space.'* I have been provided with a document called 'Site Inspection Record Report', which, it is stated, comprises file notes made by building control officers in the Council's back-office system. The dates of various inspections are given and notes provided next to each date.
17. Amongst other things, the notes state, against an Inspection dated 19-07-2022, *'Excavations 700mm deep in clay – not OK as require deepening. Existing drain passing through excavation requires appropriate protection. Existing conservatory footings approx. 45 deep, no OK – require underpinning or replacing.'* Against an entry dated 25-07-2022, the document states *'Old conservatory now removed in its entirety. Excavations 1m deep in firm clay, below level of existing footings. Drain to be lintelled over.'*
18. During the Inquiry, it was suggested that walls were repaired and that some of the brickwork was replaced. However, it was not clear from the evidence provided how many of the bricks were repaired or how many were replaced. The breeze block wall erected alongside the boundary fence with No 61, for example, appeared of consistent construction and, despite not being able to see the subterranean elements of that wall, in my view, is likely to have been constructed at the same time. Given that prior to the works the wall comprised a significant glazed element, it is reasonable to conclude that the wall was constructed in 2022, even if some subterranean elements of the original conservatory remain.
19. Although the appellants advise that they were present during the works, they advised the Inquiry that they did not supervise the builders, nor were the builders involved in the construction of the extension called to give evidence to the Inquiry. Mr Evans gave evidence to the Inquiry, during which, it was confirmed that his involvement with the works were limited to the plastering of the interior. Mr Evans also carried out works in the garden. However, he confirmed that he was not there every day during the works, did not see all the works to the extension being carried out and was not present when Building Control officers inspected the foundations of the site.
20. Mr Cook, a brick layer, also gave evidence to the Inquiry. However, it seems that he was not involved in the works and did not see any builders. Mr Cook also advised that he doesn't like to look at other people's work because he 'usually finds faults'. Mr Scullion, who provided written evidence to the Inquiry, also appears to have had limited involvement in the works, with his evidence relating to the internal measurement of the property for the fitting of carpet prior to and following the works.
21. Mr Clayton explained that although he was on site every day, he was studying at university and was living between the appeal site and premises in town. Although Mr Clayton was present for 3 of the 5 Building Control visits, it seems he let the builders deal with it. Mr Clayton confirmed that he had not seen the Building Control notes until they were submitted in evidence to the Inquiry and does not know what was done to overcome the problems identified by Building Control, but presumes that the matters were overcome because a Building Control Certificate was issued.

22. It was suggested that the excavation could have related to the bi-fold doors that were installed, or some other building. However, Mr Clayton has no written record of his own of the visits and, although Miss Clayton recalled a Building Control officer attending the site, her recollection related to drains and the suggestion that the piping needed to go a bit lower, matters concerning a u-bend and an inspection of the steel above the kitchen and bi-fold doors.
23. As established in *Oates v Secretary of State for Communities and Local Government* [2017] EWHC 2716 (Admin), a building may be a new building, even if parts of the existing building remain. It is not necessary for complete demolition to occur. Whether something is a new building, despite including parts of an existing building (or buildings), is a matter of fact and degree and a judgement for the decision maker.
24. Whether any of the previous conservatory was actually retained or not, the works were substantial and significantly increase the bulk of the building. The materials used contrast with the lightweight glazing used in construction of the conservatory, were carried out by a builder and include structural alterations to the existing building.
25. The extension is clearly visible from the neighbouring property as well as the property to the rear of the appeal site and, in my view, the works go well beyond what could be considered as 'maintenance, improvement or other alteration of any building of works do not materially affect the external appearance of the building' and materially affect the external appearance of the building and are development for the purposes of the Act.
26. In light of the above, in my judgement, the allegation: the erection of a single storey rear extension, accurately describes the works which have been carried out, and the Notice is not invalid on this basis.

The requirements

27. Requirement 2 of the Notice requires the appellant to permanently reduce the single storey rear extension in size, to constitute permitted development under schedule 2 part 1 Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO). However, the GPDO does not grant retrospective planning permission. The extension would be unlawful as a whole, not just the part that exceeded permitted development limits. It would only have planning permission after the enforcement notice is complied with by virtue of section 173(11), not as permitted development. The appellant cannot, therefore, comply with requirement 2, as it is currently worded.
28. I have wide powers of correction under section 176(1) of the Act, subject to any correction or variation not causing injustice to the appellants or the local planning authority. I raised concerns regarding the notice prior to the Inquiry and during the event. The Council accepts that the notice should be corrected and has suggested a number of ways in which it could be corrected to provide clarity. Before going on to consider whether the requirement can be corrected, given the matters in dispute, it is first worth addressing why the extension as erected is not granted permission by the GPDO.
29. Part 1, Class A of Schedule 2 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions.

Development is not permitted by Class A if, (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse.

30. The appellants suggest that the 3m limitation does not apply because the property has not been extended to the rear but rather constitutes a 'side **and** rear' extension (my emphasis). I saw during my visit that the extension projects a little over 4.4 metres from the rear of the main part of the dwelling but does not project beyond the rear of the outrigger (it is stepped in by around 10cm).
31. The Technical Guidance for Householders advises that where the original rear wall of a house is stepped, then each of these walls will form 'the rear wall of the original dwellinghouse.' It goes on to advise that, where an extension fills the area between a side elevation and a rear wall, then the restrictions on extensions beyond rear walls and side walls will both apply. In my view, therefore, the extension exceeds the limitation at A1(f).
32. The limitation at A1(g) the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 6 metres in the case of any other dwellinghouse. A.4 sets out conditions that apply to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g) and provides that before beginning the development the developer must provide certain information to the local planning authority. However, the appellants confirmed during the Inquiry that no such information was submitted to the local planning authority prior to the works being carried out and so the works are not permitted by the GPDO on this basis alone.
33. The limitation at A1(j) is that the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would... (iii) have a width greater than half the width of the dwellinghouse. A1(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j).
34. The extension projects around 6.15m from the edge of the outrigger. Therefore, whether the conservatory was removed in its entirety, or some elements remain, it would exceed the limitation set out in sub-paragraph (j) because it extends beyond a wall forming a side elevation and has a width greater than half the width of the original dwellinghouse, whether I take the appellant's measurement of 11.64m, which includes bay windows, door recess and side return, or the Council's measurement, which is 10.06 metres the works would exceed the limitations set out in (j). In my judgement, the works that have been carried out are development and are not permitted by the GPDO for the reasons set out above.
35. Within its closings, the Council suggested that the requirement is corrected to require the appellants to: "Reduce the single storey rear extension in size to comply with the following criteria:
 - a. The retained extension does not extend beyond the rear wall of the original dwelling house by more than 3 metres;

- b. The retained extension does not extend beyond the side elevation of the original outrigger by more than 5.03 metres; and
 - c. The materials used in any exterior work are of similar appearance to those used in the construction of the existing dwelling house”
36. The Council explained that the purpose of the requirement is to enable the appellants to reduce the size of the extension to that which they would have been permitted to build under permitted development rights, rather than having to demolish it in its entirety. To address concerns raised during the Inquiry regarding the requirement, the Council has put forward a plan, so that it is clear which side and rear walls the retained extension should not extend beyond by more than 5.03 and 3 metres respectively.
37. However, altering the extension is unlikely to be straightforward. There are structural elements within the extension, such as steel supports, which extend across the extension and the original dwelling and the extension, which the original dwelling relies upon. Furthermore, there are structural elements which the retained part of the extension relies upon which would be removed, such as steel supports and roof trusses. Were the appellant to reduce the extension, it is not clear what works they would be expected to carry out, if any, in terms of erecting walls and sections of roof, or fenestration. Given the penalties associated with non-compliance with an enforcement notice, it is essential that the appellants are clear what they must do to comply with the notice.
38. There was also some discussion as to whether it would be possible to correct the notice in some other way, for example, by giving the appellants the option to modify the extension to provide a 1m by 1m ‘splay’, to address concerns regarding amenity. However, the Council’s position is that such a correction would not remedy the breach (either in full or in part), nor would it remedy the injury to amenity. Moreover, a detailed alternative scheme is not before me and so similar concerns regarding precision and whether the appellants would know what they had to do to comply with the notice would remain.
39. I raised with the parties whether it would be possible to correct the notice by deleting requirement 2 in its entirety, leaving the appellant the option to demolish and remove the single storey rear extension in its entirety (as well as requirement 3, with a minor correction to delete reference to Requirement 2). However, the appellants, understandably, object to such a correction. The notice at present gives them an alternative to complete demolition, whereas deletion of Requirement 2 would remove that option. This would leave them in a worse position and, in my judgment, would cause them injustice.
40. In my view, given the above, it is not possible to correct the notice without causing injustice to the appellant.

Conclusion

41. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

42. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR

Appearances

Appellants

Jamal Clayton: He called:

Robert Evans

Christian Cook

Julie Clayton

Council

Kimberly Ziya of Landmark Chambers: She called:

Stuart Shaw: Planning Enforcement Officer

Kieran Woodward: Planning Officer (round table discussions)

Documents submitted to the Inquiry

Doc 1: Letter of notification

Doc 2: Scale plans submitted in support of the planning application

Doc 3: Council opening

Doc 4: Written statement of Neil Scullion

Doc 5: *Oates* summary

Doc 6: *Oates v Secretary of State for Communities and Local Government* [2017] EWHC 2716 (Admin),

Doc 7: Revised plan

Doc 8: Appellant's statement on ground (g)

Doc 9: Council's closings

Doc 10: Mr Jamal Clayton's closings

Doc 11: Miss Julie Clayton's closings

Doc 12: Council's costs application

Doc 13: Appellant's costs application