



Appeal Decisions

Site visit made on 26 June 2026

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

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Appeal A Ref: APP/T2350/C/25/3375509

Appeal B Ref: APP/T2350/C/25/3375510

2 Northcote Park, Langho, Blackburn, BB6 8FB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Stephen Woodward and Appeal B is made by Mrs Kimberley Woodward against an enforcement notice issued by Ribbles Valley Borough Council.
- The notice was issued on 9 October 2025.
- The breach of planning control as alleged in the notice is on 22 July 2025 planning permission was granted by the Council under reference number 3/2025/0288 for a detached garden room to the rear and changes to land levels subject to conditions. One of those conditions (condition 2) was that the permission shall relate to the development as shown on drawing nos. 25001-P02 received 18th July 2025 and 25001-P03 received 17th July 2025. It appears to the Council that the condition has not been complied with, because the building has not been constructed in accordance with the approved drawings and additional changes to land levels have been undertaken to facilitate the enlarged building footprint.
- The requirements of the notice are to take all reasonable steps to alter the outbuilding so that it physically complies with the approved drawings. Including but not limited to removal of all building works (walls, roofing, flooring and any associated fixtures and fittings) that have been undertaken outside of the approved footprint and reinstate land levels once the building works have been removed, and install a new wall on the east elevation in compliance with the drawing.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended) (the Act) and Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Act. Since an appeal has been brought on ground (a) for Appeal A, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Ground (c) appeals

2. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.
3. The appellant claims that the breach of planning control is permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). There is no dispute between the main parties that the outbuilding that is the subject of this appeal is being used for a purpose(s) that is incidental to the enjoyment of the

dwellinghouse known as No. 2 Northcote Park. Moreover, there is no dispute between the main parties that the breach of planning control constitutes a building.

4. It is common ground between the main parties that the land previously sloped upwards from the rear of the house and towards the boundary with No. 10 Northcote Park and that about 1.2 metres of land was excavated (at its highest point) to facilitate the erection of the appeal building and with a resultant slab level that was contiguous with the formation of an essentially level garden area. There is no disagreement between the main parties that prior to the breach of planning control occurring the land sloped in accordance with the details shown on the 'proposed plans and elevations' drawing that is associated with planning permission 3/2025/0288. In other words, the evidence is that this was the former natural land level prior to excavations taking place in association with the appeal building.
5. For the development to be permitted under Class E of the GPDO it must not fall foul of any of the conditions or limitations in E.1. and E.2. The total area of ground covered by buildings, enclosures and containers within the curtilage of the dwellinghouse does not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). In this regard, the development does not fall foul of E.1.(b) of Class E of the GPDO.
6. There is no dispute between the main parties that the proposal does not fall foul of any of the other limitations or conditions of Class E apart from E.1(e)(ii) and E.1(f). The building is within 2 metres of the boundary of the curtilage of dwellinghouse. E.1(e)(ii) states that development is not permitted if *'the height of the building, enclosure or container would exceed 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse'* and E.1(f) states that development is not permitted if *'the height of the eaves of the building would exceed 2.5 metres'*.
7. Article 2(2) of the GPDO states that *'unless the context otherwise requires, any reference in this Order to height of a building or of plant or machinery is to be construed as reference to its height when measured from ground level; and for the purposes of this paragraph 'ground level' means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it'*.
8. Height is also defined in the Government's Permitted Development Rights for Householders: Technical Guidance 2019 which states that *'reference to height (for example, the heights of the eaves on a house extension), is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building'*.
9. In this case, the appeal building has been erected away from the boundary of the site with neighbouring land. The appellant has erected a new retaining wall set away from the common boundary fence with other properties in Northcote Park. The evidence is that the land set immediately behind the retaining wall reflects the highest part of the surface of the land that existed on the site prior to the building being erected and the land being excavated. When measurements are taken from

the highest part of this land, the appeal building does not have an eaves height in excess of 2.5 metres and, moreover, the height of the building does not exceed 2.5 metres. In fact, it was agreed on the site by the main parties that when the proposal is considered against the highest part of such immediately adjacent land, the development does not fall foul of the overall height or eaves height limitations in E.1(e)(ii) and E.1(f) of Class E.

10. I acknowledge that land level changes have been carried out to facilitate the erection of the Class E building on the land. The Courts have held that excavation works can amount to a separate act of substance (e.g. an engineering operation) requiring planning permission, or that they can go beyond what is incidental to what is permitted development. However, this is a matter for the decision maker on a fact and degree basis.
11. In this case, the evidence indicates that the excavation works were carried out to facilitate the erection of the appeal building. I find that the excavation works were carried out to ensure a resultant flat floor/slab level for the development and contiguous with the level of the rest of the garden and the rear access of the dwellinghouse. In my judgement, and, as a matter of fact and degree, I consider that the land level changes were carried out in association with the erection of the appeal building and were incidental to the Class E permitted development.
12. For the above reasons, I find that the appeal building is permitted development under Class E of Part 1 of Schedule 2 of the GPDO. While it is the case that the development approved under planning permission 3/2025/0288 has not been implemented in accordance with the approved plans, this does not mean that the breach of control is not permitted development. I therefore conclude that the matters alleged do not constitute a breach of planning control. Consequently, the ground (c) appeals succeed.

Conclusion

13. For the reasons given above, I conclude that the appeals should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a), (f) and (g), 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.

D Hartley

INSPECTOR