
Costs Decision

Site visit made on 2 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Costs application in relation to Appeal Ref: APP/R4408/X/22/3305841 4 Burton Crescent, Barnsley S71 2QD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Barnsley Metropolitan Borough Council for a full award of costs against Mr Cyril Barnett.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the erection of a rear outbuilding.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Council's application is founded on what they say is the appellant seeking to re-argue facts already settled by previous Inspectors on appeal. The Council's costs application does not elaborate on what those facts are, but I understand their general position to be that previous Inspectors have decided facts as to the immediately adjacent land levels to the proposed building.
3. What the appellant proposes in this appeal is however a different building from the one(s) previously considered by different Inspectors. The essence of the appellant's case is that the building, by extending its external walls, would now be built immediately adjacent to what a December 2020 survey showed to be land lying at 10.818m on the site boundary. That survey would not appear to have been available to the first Inspector, whose decision was made in October 2020. It was apparently available to the second Inspector who, whilst discounting its usefulness as to any land levels depicted on the appeal site, noted it to show the land levels in the neighbour's garden at no. 426 to be between 735mm and 834mm above the datum. That was significantly less than the +1.238m then claimed by the appellant, but is broadly consistent with the survey supplied to me (save that a maximum +843mm is there shown; +958 in an area of conifers).
4. By proposing a different building, in relation to what I understand to be (at least broadly) the same site survey showing land levels on and adjoining the site boundary, I do not find the appellant to be seeking to depart from matters of fact determined by previous Inspectors. Instead, he is seeking to re-draw the proposed building in order that it adjoins a land level from which it would be not more than 2.5m high.
5. Whilst I have not agreed with the appellant that the resultant building could be 'required' for the purpose of Class E, the building proposed is a novel

proposition compared with those put before previous Inspectors considering proposed development at the site. Although dismissing the appeal, the argument did not appear to me unreasonably hopeless, and I have not dismissed the appeal for the same reasons as those given by the Council when refusing the application.

6. The Council's additional reason for seeking costs relates to the late submission of a second appeal statement by the appellant; however, there is no complaint that the Council were unable to respond to the points then made or required extra time or effort in order to do so.
7. For these reasons I do not consider the appellant's behaviour in bringing or conducting his appeal was unreasonable so as to put the Council to unnecessary expense that would warrant an award of costs.

Laura Renaudon

INSPECTOR