The Planning Inspectorate

Appeal Decision

Site visit made on 02 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/R4408/X/22/3305841
4 Burton Crescent, Barnsley S71 2QD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Cyril Barnett against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2022/0314, dated 21 March 2022, was refused by notice dated 7 April 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the erection of outbuilding to the rear of dwelling to be used as a store, games area and hobby workshop.

Summary Decision: the appeal is dismissed.

Application for costs

1. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Preliminary Matters

2. Describing the proposal in the application form, the appellant wrote "see drawing 17-151-11". No such drawing was however submitted with the application: although no plans were listed on the Council's notice of refusal, the list of plans submitted was supplied to me as comprising drawing numbers 17-151-15 through 17-151-21.

3. The description of the proposal appearing on the Council's notice of refusal is the 'erection of outbuilding to the rear of dwelling to be used as a store, games area and hobby workshop'. The same description is used on the appellant's appeal form and hence, despite the absence of any such description in the application itself, I have adopted it here.

4. The appellant's appeal form states that the application was made under section 191 of the 1990 Act but, although the proposal has been started, this appears to me in error. The application form made reference to proposed use or development, and this is consistent with the Council's notice of refusal. I have therefore recorded above that the application was made under section 192(1)(b) of the 1990 Act; that is, to seek a certificate of lawful development for works proposed at the date of the application.

Main Issue

5. The principal issue between the parties is whether the proposed development would amount to development permitted by article 2 of, and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'). The narrower issues concern the pre-existing ground levels, and to what extent these would be exceeded by the development if built, and what constitutes the building proposed under Class E and whether that is required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Reasons

6. At the time of my visit I witnessed a building at an advanced stage of construction, with a floor slab laid, and consisting of brick walls surrounding breeze blocks. The internal floor area appeared broadly consistent with the plans before me, although some of the openings to the brickwork were not. The building as yet has no roof.

7. The plans before me are not annotated with northings, but the building appears to lie close to the boundaries of the properties to the north west and the south west. At present, it is possible to access the external perimeter of the building between its outside walls and those boundary treatments: a high brick wall to the north west, tapering towards the building's north western corner, and a bamboo fence, meeting the wall of an off-site outbuilding, to the south west, parallel to the rear of the building and separated from it by around half a metre. That fence and outbuilding's wall separate the property from no. 426 Burton Road.

8. A White Agus partnership plan of March 2022, calling itself a survey of December 2020, is supplied at document 17-151-15. It is unclear from the documents before me whether this is the same 'survey' as that supplied to the previous Inspector[1], referred to at her footnote 5 as having been conducted by Turnbull Surveying. As that Inspector noted, the survey was conducted after the site was excavated and the concrete slab installed, and hence does not provide any evidence of what the pre-existing ground levels were within the appeal site.

9. Article 2(2) of the 2015 Order provides that, unless the context otherwise requires, any reference in the Order to the height of a building is to be construed as a reference to its height when measured from ground level; which means the level of the surface of the ground immediately adjacent to the building or, where that level is not uniform, the level of the highest part of the surface of the ground adjacent to it.

10. The lack of explanation of the provenance of the 'survey' with which I am now presented gives rise to some circumspection about it; but taking (without deciding) its measurements to be correct for present purposes, the plans show that the building will be finished to a maximum height of 13.318m. This would be 2.5m above the 'highest existing ground level on the site boundary' of 10.818m. That 10.818m is shown to be a point on the survey plan on the property's boundary in the north western corner (towards the top of the south western boundary).

[1] APP/R4408/X/21/3276280

11. As matters stand, the building is not 'immediately adjacent' to this point, and it was not shown to be so on previous applications that have been the subject of appeal. However, the application plans show that the finished building would immediately adjoin this point. The appellant explains this as the scheme having been revised so as to relocate part of the external walls to abut the site boundaries, as shown on the submitted drawings. The Council characterises the changes as being located outside the building envelope and which would be superfluous raised platforms located outside of the building.

12. Whether or not those proposed 'extended' walls amount to part of the building envelope, the first way in which the proposed building would potentially meet the boundary 10.818m datum is by reason of the eaves and gutters overhang, which would reach to a point vertically above that 10.818m point. However, the 2015 Order would more reasonably be construed as meaning the 'immediately adjacent' ground level to the external walls of any building constructed, and so this overhang does not assist the appellant.

13. If the 'extended' walls do form part of the building envelope, the second way in which the building would lie immediately adjacent to the datum point of 10.818m is by the result of those extensions to the building at low level. The external walls of the building in the northwestern corner are proposed to be increased in width, not for their full height but only to a height of 10.818m, in order to meet the property boundary and hence to 'immediately adjoin' the 10.818m point as depicted on the survey.

14. The Council describe this as 'contrived' in order to meet the height limitations of the 2015 Order. Whether or not that is the case, it is necessary, where Class E rights are claimed, to look at the permission thereby conferred. It is (as relevant) 'the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such' (my emphasis).

15. There is no explanation provided here as to why it is necessary to more than double the thickness of the external walls of the building, from what is shown on plans 17-151-16, 17-151-19 and 17-151-21 as being from 30cm to 80cm. Although described by the appellant as a 'relocation' of the external walls, they do not appear to me to be so: they do not create any additional internal space and amount to the 'external infill walls' described by the Council. I therefore cannot conclude, on the balance of probabilities, that the resultant building (including those walls) would be required for the stated purpose of Class E. It appears excessive to meet that purpose. The building presently under construction appears adequately to meet any structural requirements, with no demonstrated need for any extension to its external walls.

16. What is depicted on the plans appears to me to extend the building envelope in the way described, although with the result that I do not find the building as a whole to be required for the stated purpose of Class E. If the Council's preferred view is correct, and those 'extensions' do not form part of the building envelope, then although the Council do not dispute that the remainder of the building would be required for the purpose of Class E, I could not be sure, on the balance of probabilities, that the building would not exceed the height restriction of Class E to be not more than 2.5m higher than the adjacent ground level. The 10.818m datum point is found some 500mm away from the present external wall of the building, and the 'survey' cannot be relied upon to

demonstrate any land levels within the appeal site, having been carried out after the excavation works.

17. Thus, although for slightly different reasons from those expressed by the Council, I am unable to find that the proposed works would benefit from the permission conferred by Class E of the 2015 Order, because what is proposed is a building of apparently excessive construction and not one demonstrated to be 'required' for the stated purpose of Class E. No other means by which the building might be lawful have been drawn to my attention, and hence the appeal will fail.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development in respect of the erection of outbuilding to the rear of dwelling to be used as a store, games area and hobby workshop was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

19. The appeal is dismissed.

Laura Renaudon

INSPECTOR