



Costs Decision

Site visit made on 24 May 2018

by **D E Morden MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 August 2018

Costs application in relation to Appeal Ref: APP/Q1445/X/17/3176838 60 Lynton Street, Brighton, BN2 9XR

- 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 Mr D Harrison for a full award of costs against Brighton and Hove City Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the addition of a dormer to the rear roof pitch and roof lights to the front roof pitch.

Decision: The application for an award of costs is refused.

Reasoning

1. The appellant's application and the Council's response were set out in full in writing at the appeal stage and there is, therefore, no reason to repeat them here. The Planning Practice Guidance 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.
2. There is no Court judgement that deals with the question of party walls and whether development that straddles them completely is within or outside the curtilage. The appellant referred to three cases between 2001 and 2011 that went one way, the Council referred to a much more recent decision in 2016 that went the other way and, as I stated in the appeal decision, I am also aware of another appeal in 2006 that decided the same way as the 2016 decision.
3. The appellant referred to guidance and authority coming from the revised technical guidance for the GPDO three earlier decisions. Authority is not from the earlier decisions, it can only come from the Courts and whilst the revised technical guidance for the GPDO includes (as the appellant puts it) a working definition of curtilage, it does not in my view take the matter any further forward. That definition is referring to land rather than a building as such.
4. In the circumstances I do not think it was unreasonable for the Council to come to the conclusion it did regarding whether or not the development was within the curtilage of the dwelling house.
5. Turning to the question of the plans and the acceptance or not of the amended plans and consequent refusal of a second application, it is still not clear as is

evident from my decision, whether the development satisfies all the criteria and conditions in the GPDO and again it was not unreasonable for the Council to make the case that the development was not permitted by the GPDO.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and I will dismiss the application.

D E Morden

Inspector