



Costs Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2024

**Costs application in relation to Appeal Ref: APP/L3625/X/22/3294933
12 Effingham Road, Reigate RH2 7JN**

- 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 and Mrs K Morris for a full award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the construction of dormer roof in existing loft space to provide additional room.
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Decision

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

Reasons

2. 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.
3. The thrust of the applicant's case is that the Council misapplied the definition of eaves and therefore concluded the proposal was not permitted development, incorrectly.
4. There was then subsequent correspondence from the applicant's agent where the Council accepted that the term verge was a more accurate description along the gabled wall of a building. This resulted in a very similar scheme to the one before me being submitted and subsequently granted a certificate by the Council.
5. I do not appear to have a full and/or original audit trail of all the correspondence before me. In any event, it is common ground between the parties that an agreement was reached that upon the subsequent grant of a certificate from the Council, the appeal and costs application before me would be withdrawn.
6. In the event, the applicant's decided to not withdraw the appeal, which led to their agent resigning from his position. The applicants are however aggrieved because they feel the Council sanctioned the principle of a solution that was refused in the appeal application. They have also had to take legal advice and incurred the costs of other abortive work. Furthermore, all of this led to delays and the loss of their preferred builder. The applicants consider that the Council should never have put them in this situation in first place.

7. I appreciate this, however, in light of the subsequent correspondence, the Council accepted that it had misapplied the definition of eaves. Whilst it was then seemingly not prepared to grant a certificate for an identical scheme, it did so for a very similar one.
8. Whilst this could be regarded to amount to unreasonable behaviour, I am sympathetic to the view that decisions require judgements to be made on the interpretation of plans and wording of the Order. I am also mindful that the onus is also always on the applicant to demonstrate their case. Moreover, as a result of engaging with the applicant's agent, who then largely did demonstrate their case, the Council quickly accepted that the term verge was more appropriate and so did not maintain an objection in this regard.
9. I am also cognisant of the fact that an agreement was reached whereby the appeal and costs application before me would be withdrawn. Even though I appreciate the applicants are aggrieved, reneging on such an agreement does not assist in demonstrating unreasonable behaviour on the part of the Council.
10. I am then not persuaded that raising the topic of materials was unreasonable given more detail had been provided in the subsequent scheme.

Conclusion

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

Paul T Hocking

INSPECTOR