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## Costs Decision

Site visit made on 30 July 2012

by **Bill Munday BTP MRTPI MRICS**

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

Decision date: **21 August 2012**

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### **Costs application in relation to Appeal Ref: APP/Q1445/D/12/2178049 13 Vere Road, Brighton BN1 4NQ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Lady Paula Maclaurin for a full award of costs against Brighton and Hove City Council.
  - The appeal was made against the refusal of planning permission for construction of external platform and staircase with balustrade and trellis leading from the ground floor to rear garden; installation of door to rear elevation at ground floor level to replace existing window; installation of trellis to boundary wall (part retrospective).
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### **Decision**

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

### **Reasons**

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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 appellant considers that the Council failed to take into account the fact that windows and gardens in neighbouring properties are already overlooked from the appeal property; and also disregarded two recent appeal decisions and four approvals by the Council concerning similar developments. This amounts to unreasonable behaviour which caused the appellant unnecessary or wasted expense in the appeal process. No response has been received from the Council in relation to the appellant's costs application.
  4. In relation to neighbours' windows, the Council's primary concerns appear to have been with side-facing windows at no. 11 Vere Road. The appellant points out that these are already overlooked from the kitchen at no. 13, and it appears that at least one of the affected windows is fitted with obscured glass. In respect of neighbours' gardens, the officer's report on the application accepts that the modifications proposed by the appellant would to some extent reduce the potential for overlooking from the structure into adjoining gardens, whilst there remained concerns in relation to overlooking of the rear part of the garden at no. 15. It is quite apparent that adjoining gardens would have been overlooked to a considerable extent prior to the structure having been erected,
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from a range of windows on the upper floors of the appeal property and its neighbours. I consider the officer's report is somewhat lacking in this respect, in that it does not provide a comparison between the impact of the proposal and the circumstances which existed prior to the structure having been erected. However, the platform which has been constructed, notwithstanding proposed alterations, offers the possibility of a wider view than that obtainable from rear window positions, in close proximity to and elevated above the adjacent garden at no. 15, and it was not unreasonable for the Council to have taken this into account.

5. In my decision on the appeal, I have indicated my findings that any views towards the side-facing windows at no. 11 from the platform or staircase would be limited or transitory. I have also indicated my judgement that the proposal would not be likely to result in an unacceptable impact on present levels of privacy in adjacent gardens. These are matters of judgement, which are to a considerable extent subjective.
6. Other recent appeal decisions relating to similar circumstances are capable of being material considerations in the Council's consideration of subsequent applications. However, it is not clear to me from the information provided that either of the two previous appeal decisions or any of the four cases approved by the Council are directly comparable with the present appeal proposal. For example, it is not apparent that the close proximity of the terraced properties in Vere Road and Warleigh Road and their relatively confined rear gardens are circumstances shared by the other examples. Two of the Council approvals relate to relatively modest alterations to existing staircases. Given that the circumstances may have been quite different, the fact that no reference was made to the other decisions in the officer's report does not appear to me to have been an unacceptable omission. Whether or not the same case officer was involved in any of the other cases, as the appellant has indicated, does not alter my view on this point.
7. The Council considers that the development relates unsympathetically to the existing building. Whilst my judgement differs, as set out in my decision on the appeal, this is again a matter for subjective judgement. The information provided on the previous appeal decisions indicate that the setting and design of the host properties in those cases were different to the present case, and as such do not provide a particularly useful comparison with the appeal proposal.
8. The Council's reasons for refusal relate to several aspects of the proposal which it considers harmful. In my assessment on the appeal proposal, I have taken the view that the aspects referred to by the Council neither individually nor in combination would result in harmful effects sufficient to justify rejection of the proposal. However, the weight attributable to each of the aspects of the case is a matter of judgement. Where such assessments are to a large extent subjective, I do not consider it is wholly unreasonable for the Council to have arrived at a conclusion that the totality of harm arising from the proposal was sufficient to justify refusal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.

*W D Munday*    INSPECTOR