



Costs Decision

Site visit made on 21 January 2013

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 25 January 2013

Costs application in relation to Appeal Ref: APP/Q1445/A/12/2181583 1st and 2nd Floor Maisonette, 6 Trafalgar Street, Brighton BN1 4EQ

- 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 Mr Andrew Dean for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for replacement of existing rear windows with UPVC sash windows.
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Decision

1. I refuse the application for an award of costs.

Reasons

2. Circular 03/2009 '*Costs Awards in Appeals and Other Planning Proceedings*' 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 statutory tests against which this application stood to be judged are those in the Planning (Listed Buildings and Conservation Areas) Act 1990. The Local Plan policies set similar requirements with regard to the conservation area and the listed buildings and also require good design, and the Supplementary Planning Document sets out the detail with regard to windows and what might be acceptable. Section 12 of the National Planning Policy Framework concerns development that may affect heritage assets. In all of these policies and guidance, some judgements were required to be exercised by the Council.
4. The accompanying appeal decision exercises the same judgements, and comes to a different conclusion to that of the Council. Paragraph B18 of the Costs Circular says that planning appeals often involve matters of judgement concerning the character and appearance of a local area. Where the outcome of an appeal turns on an assessment of such issues it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed development.
5. In this case the Council has set out their reasoning for the decision to refuse permission and has followed the policies and guidance relevant to that decision. The evidence presented has been realistic and specific to the case. In these circumstances the fact that the appeal has been allowed is not an indication of unreasonable behaviour by the Council with regard to the two visible windows. The use of the condition to approve the details would not have overcome an

objection to the material or form of glazing, but is only of relevance once a judgement has been made that the windows are acceptable, to ensure that those further details are presented and approved, and of particular importance, that they are incorporated into the final work. This is not a situation envisaged in paragraph B25 of the Circular where conditions could have made unacceptable proposals acceptable.

6. It is the case that the policy and guidance does not support the same strict control over windows that are not visible from within the conservation area and there is an element of unreasonable behaviour in refusing all four window replacements. Nevertheless, there is a need to show in addition, unnecessary or wasted expense, and the work required of the appellant in bringing the appeal would have been no less had the Council granted permission for the inner two windows. It is therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated and no award of costs is justified.

S J Papworth

INSPECTOR