



Costs Decision

Hearing held on 15 July 2009

Site visit made on 15 July 2009

by **Wm C Cunningham BSc(Hons) MA**
MCP MRTPI

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

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Decision date:
7 August 2009

Costs application in relation to Appeal Ref: **APP/Q1445/A/09/2093159** **17 - 19 Duke Street, Brighton, BN1 1AH**

- 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 David Dyan for a full award of costs against Brighton and Hove City Council.
- The Hearing was in connection with an appeal against the refusal of planning permission for the replacement of existing roof with mansard roof extension to create additional storey.

Decision: The application fails and no award of costs is made.

The Submissions for the Appellant

1. The application as submitted was for raising the existing flat roof to form an additional floor and providing steeply pitched sloping roofs to the front and rear roofslopes with 3 dormers in each slope. With reference to paragraphs 7 and 8 of Annex 3 to Circular 8/93, it is considered that the Council misdirected itself, having described the proposed development as a mansard roof form with a flat roof. It then applied a provision of SPG1 "*Roof Alterations & Extensions*" to conclude that a flat roofed mansard was unacceptable. The Council's approach was wholly unreasonable and has led to the appellant incurring unnecessary expense in pursuing this appeal.
2. In addition, the decision does not properly reflect the situation where the proposed roofscape would not generally be seen from public or other vantage points. Where it would be seen it would represent a significant visual improvement compared to the existing small section of pitched roof covered with interlocking concrete tiles.

The Response by the Council

3. It is accepted that the proposed roof extension would not be a true mansard, but would have a form that is often referred to as a mansard by professionals and others. In fact, the appellant's documents that accompanied the application include a Design and Access Statement and a Fire Escape Statement, both of which refer to the appeal proposal as including a mansard roof.
 4. In any event, the application was dealt with on its merits based on the roof form shown on the application drawings. Evidence was submitted to demonstrate that the roof form shown on those drawings, however described, would not be appropriate to the host building or to the character/appearance of the area. The largely subjective differences of opinion expressed by the two
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principal parties do not constitute unreasonable behaviour on the part of the Council.

5. The reason for refusal is comprehensive, refers to the relevant policies and was substantiated by evidence. It is not therefore considered that this costs application is justified.

Conclusions

6. The cancellation of Circular 8/93 by Circular 03/2009 applies with effect from 6 April 2009 to all appeals made on or after that date. As this appeal was made before 6 April 2009, in accordance with paragraph 9 of Circular 03/2009 I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. It is clear to me that the Council's evidence assesses the proposed roof extension as shown on the application plans and its impact both on the host building and on the surrounding area. These plans show a mainly flat roof form with steeply pitching front and rear slopes, each of which contain three flat roofed dormers. In this way the Council produced evidence that sought to substantiate the reason for refusal. The revised description of the proposed development as used by the Council on the refusal notice that refers to a mansard roof is in any event consistent with the appellant's own use of that term on the documents that accompanied the application. It is also a term used on the rear elevation drawing on one of the application plans (Drawing No 24).
8. I do not consider the Council in any way misdirected itself when it referred to the appeal proposal as a mansard, did not act contrary to paragraphs 7 and 8 of Annex 3 to Circular 8/93 and did not therefore act unreasonably in a way that would justify an award of costs being made.

Wm C Cunningham

Inspector