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## Costs Decision

Site visit made on 17 February 2020

**by Jonathan Edwards BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 March 2020**

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### **Costs application in relation to Appeal Ref: APP/P4605/W/19/3242214 94 Bournbrook Road, Birmingham B29 7BU**

- 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 A Stavrouli for a full award of costs against Birmingham City Council.
  - The appeal was against the refusal of planning permission for change of use from a dwelling house to large HMO (sui generis) and erection of a single storey rear extension.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance (PPG) 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. This application claims unreasonable behaviour by Birmingham City Council in terms of failing to produce evidence to substantiate the refusal reasons, providing vague and generalised assertions about the development's impact and not determining similar cases in a consistent manner.
3. The Council's officers recommended that planning permission be granted for the appeal development, however permission was refused for reasons relating to the cumulative impact on the residential character and appearance of the area and the failure to contribute to a balanced and sustainable neighbourhood. While the Council is not duty bound to follow the advice of its officers, it has to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. In response to the appeal, the Council has provided no appeal statement but relies upon the Council officers' report and supplementary attachments to the questionnaire. The report sets out a summary of the comments received in response to consultation and publicity of the application, the relevant policies and the officers' appraisal of the proposal having regard to the comments received, relevant policies and other material factors. The report's conclusions are that the development meets policy objectives as set out in the development plan and National Planning Policy Framework (the Framework), that the scheme represents sustainable development and that planning permission should be granted.
5. The appeal submissions fail to give any detailed explanation as to why the Council has refused planning permission despite the conclusions to the officers'

report. While the refusal reason refers to development plan policies as well as the Framework, it fails to explain why the Council consider the development harms the character and appearance of the area or why the development does not contribute to a balanced community. As such, the Council has failed to provide substantive evidence to support its refusal reasons and has instead relied upon vague and broad comments about the effect of the development. This represents unreasonable behaviour that has required an appeal against the Council's decision to be lodged and unnecessary costs to be incurred as a result.

6. I have insufficient information to compare other schemes permitted by the Council to the appeal development and so I find no unreasonable behaviour in terms of failing to determine similar cases in a consistent manner. Nevertheless, for the reasons set out above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Birmingham City Council shall pay to Mr A Stavrouli, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Jonathan Edwards*

INSPECTOR