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## Costs Decision

Site visit made on 25 August 2020

**by S A Schinaia MSc EngD FGS**

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

**Decision date: 30<sup>th</sup> November 2020**

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### **Costs application in relation to Appeal Ref: APP/G2625/W/20/3246507 12A Old Palace Road, Norwich NR2 4JF**

- 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 Fiona Dawe for a full award of costs against Norwich City Council.
  - The appeal was against the refusal of planning permission for 'Variation of Condition 3 of previous permission 16/01927/F (allowed on appeal) to allow 8 residents'.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance 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 expense in the appeal process.
3. The Planning Practice Guidance indicates that local planning authorities will be at risk of an award being made against them if amongst other points: they prevent or delay development which should be clearly permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and they provide vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant is of the view that the Council has acted unreasonably because it has changed its reasons for refusing this application, concerning the living conditions of the occupants of the appeal site from concerns about the impacts on neighbouring residents during the previous refused application. However, I am mindful that the reason for imposing condition 3 given by the previous Inspector was to safeguard the living conditions of both neighbouring residents and occupants of the HMO itself. Given my findings in the appeal decision, I consider the concerns of the Council with regard to the living conditions of future and existing occupants were not unreasonable.
5. The appellant contends that the only material planning change would be represented by a perceived favourable support of the National Planning Policy Framework (the Framework), because the Framework would support the proposal as a sustainable development and the proposed development would be consistent with paragraph 61 of the Framework in providing an extra unit of accommodation to meet individual's needs. However, I found in my decision

that this scheme is materially different to the previous permitted scheme, due to the significant reduction in communal floorspace on the revised plan and the addition of another occupant within the appeal property.

6. According to the appellant, it would be wrong for planning to determine how residents of a HMO should occupy or live at a property and for the Council to use personal judgment to assess the living conditions of people. However, professional judgement is often required when determining planning applications. In my decision, I have agreed with the Council and concluded that the proposal would cause harm to the living conditions of the occupants, with regards to the unacceptable level of communal space, and access to kitchen facilities and the safe preparation of food, as required by development plan policies.
7. The appellant maintains that the Council has provided the property with a HMO licence for 8 residents, following compliance with standards. As set out in my decision, the HMO licencing system focuses on factual sizes and the presence of facilities, it does not consider how places function and the usability of space. Therefore, the Council have not acted unreasonably by granting a HMO licence under the Housing Act 2004 and then found the proposal unacceptable against Policies DM2 and DM13 of the LP, because they involve different considerations.

### **Conclusion**

8. Given all of the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated and the application for an award of costs is refused.

*S A Schinaia*

INSPECTOR