



## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 12<sup>th</sup> March 2015

**Subject: Appeal by McCarthy and Stone Ltd Against the decision of Leeds City Council to refuse planning permission for a later living housing scheme at Devonshire Lodge,**

**The appeal was dismissed however a full award of costs was made against the Council – Ref. 13/03606/FU**

#### Electoral Wards Affected:

Roundhay

Yes

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

### RECOMMENDATION:

Members are asked to note the following appeal result and award of a full costs application against the Council and also to note the on-going negotiations and actions of officers following the issuing of this decision.

#### 1.0 BACKGROUND

- 1.1 The application was last considered at Plans Panel on 25 September 2014 following three previous reports to June, July and Augusts Panel meetings respectively. Members resolved not to accept the officer recommendation that planning permission be granted. An appeal was lodged and subsequently dismissed (a copy of the appeal decision and a decision on costs are attached to this report). The key issue considered at the appeals related to the viability of the scheme and what figure should be attributable to the commuted sum payment for the provision of off-site affordable housing.
- 1.2 The appeal was submitted on the basis of different figures for the affordable housing contribution to those that Plans Panel had determined the application upon as the appellants submitted a unilateral undertaking that offered a commuted sum payment for off-site affordable housing provision of £68,171. However the Unilateral Undertaking also allowed provision for the Inspector to consider an amount of £286,276 defined as Enhanced Affordable Housing Contribution. This was on the

basis that the appellants basic starting point was the lower figure but if the Inspector considered the higher figure to be compliant with Regulation 122 of the Community Infrastructure Levy and/or the National Planning Policy Framework (Para 204), that this amount would become liable.

- 1.3 The appeal was initially defended on the basis that the offer made by the appellants in the unilateral undertaking was not policy compliant either in the sum of £68,171 or £286,276 and that the whole of the policy ask of £712,268 towards off site affordable housing contribution should be paid by the appellants. This was later modified to an argument that a figure closer to circa £505,000 was the appropriate amount given that the Councils expert advisor could only justify this amount given the circumstances surrounding the case. The principle still stood however that whichever figure was taken that was on offer by the appellant, the contribution fell significantly short of what could reasonably be expected by the Council.
- 1.4 The sum of £95,966 towards off site greenspace contribution was not in dispute and was incorporated into the Unilateral Undertaking as a sum to be paid by the developer should the appeal be successful. Members will re-call that the earlier reports had 'lumped' these two figures together along with £50K for the release of a covenant on the land as a 'pot' to be paid to the Council, should planning permission be granted.
- 1.5 In addition to this, the appeal was determined under the policies found in the Core Strategy rather than those found in the former UDPR this was a material change in Policy context between the two events which was also referred to in the Statement of Common Ground where the Policies that should be used by the Inspector to determine the appeal were laid out.

## **2.0 ISSUES IDENTIFIED BY THE INSPECTOR**

- 2.1 The main issue highlighted by the Inspector was;

“The main issue in this case is whether the proposed affordable housing contribution would be appropriate and reasonable in the context of the viability of the development, the Development Plan, the National Planning Policy Framework, National Planning Practice Guidance and all other material considerations.”

- 2.2 This conclusion by the Inspector followed her consideration of the various arguments and the assessment of the planning merits of the development itself including its design, siting, bulk, massing, impact on surrounding properties and the streetscene. Regard was had to the contents of a Statement of Common Ground agreed between the Council and the appellants agents which clearly stated that in all respects the development was considered acceptable other than the offered amount for Off Site Affordable Housing Contribution.

## **3.0 SUMMARY OF COMMENTS**

- 3.1 The appeal Inspector summarised the various arguments relating to the affordable housing contribution put forward by both parties which were based on different figure to those considered by Plans Panel. This variation in the figures was for a variety of reasons including the fact that the original figures for the assessment were somewhat out of date by the time of the appeal hearing given that negotiations had been undertaken on the development for over 12 months, but most notably, from the

appellants side, that they had revised their figures down to a significantly lower figure than that originally offered by them during the final stages of negotiations at the planning application stage.

3.2 The Inspector also concluded that whilst Policy H5 of the Core Strategy allowed for flexibility for assessing viability, that it does not provide for balancing viability against planning merits.

3.3 The Inspector then summarised the National Policy context of the development which likewise allows for flexibility in measuring viability against the policy requirements of a given development. Significantly, the appellants argued that their figures were based on a 20% developers profit which they claimed was what the financiers were demanding as a minimum in the current economic climate. The Council argued that a developers profit of 18.5% was more reasonable given the improving economic climate and that similar development in this region (Yorkshire as a whole), were at or around 18.5% developers profit. The Inspector was not persuaded by the need for a 20% developers profit neither was she persuaded that a developers profit any lower than 18.5% was justified either, rather she concluded;

“In September 2014 the appellant was satisfied that the value generated by the proposed scheme would provide sufficient incentive for the land to come forward and the development to be undertaken with an 18.5% profit margin. I recognise that the offer was made for expediency, but it was also made in the knowledge of the size and risk profile of the development project that is before me now. Therefore, I find that 18.5% is a reasonable profit margin for the nature of this project, on this brownfield site.”

The conclusion she drew was also based on other figures that had been the subject of the discussion at the hearing and included a 9% general external works budget, 5% contingency Budget and 9% professional fess budget. (All of which were debated at length during the hearing).

3.4 In conclusion the inspector said:

Drawing all of the viability considerations together I conclude that the proposal does not include provision for an appropriate proportion of affordable housing and that, overall, the December 2014 viability appraisal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution in lieu of on-site provision of £68,171. The proposal is therefore contrary to Policy H5 of the Core Strategy and guidance in the Affordable Housing Supplementary Planning Guidance No 3 Annex Update 2005; revision April 2012. It follows that the Affordable Housing Contribution in the Unilateral Undertaking would not make the proposed development acceptable and the proposal is contrary to Policy ID2 of the Core Strategy which requires Section 106 planning obligations to provide contributions that are necessary, directly related to the development and reasonably related in scale and kind.

3.5 The Inspector then discussed the appellants higher offer of £286,276 as the Enhanced Affordable Housing Contribution, however came to the conclusion that “the derivation of the Enhanced Affordable Housing Contribution figure is flawed and the proposal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution of £286,276 in lieu of on-site provision.”

3.6 She then considered the invitation to consider a figure up to but not exceeding the enhanced Affordable Housing offer, but considered that any lesser figure than the £286,276 maximum would not be justified.

Other Considerations:

3.7 The Inspector considered the arguments forwarded by Officers that the development, whilst in itself bringing positive contributions to the locality in terms of economic impact, would result in the loss of 90% of the B1(a) office floorspace in the Local Centre which in itself contributes in a positive manner to the vitality and viability of that Local Centre. She was not however persuaded that this loss would be of such a magnitude to outweigh the benefits of the scheme.

3.8 Likewise, she acknowledged the contribution that the existing structure makes to the character of the area but concluded that its loss would not be significant. She also concluded that the drainage issues raised by third parties could be dealt with by condition, and that the proposal would not adversely impact on the amenities of nearby buildings.

Costs Application:

3.9 The appellants made an application for an award of costs against the Council on the basis that we had acted unreasonably. The basis of the application was as follows:

The Council acted unlawfully and unreasonably by failing to produce on appeal evidence which provides a respectable basis for the authority's refusal.

The Council raised the principle of development and impact upon the local centre, when only one reason for refusal was given on the decision notice which relates to the viability of the development and Core Strategy Policies H5 and ID2.

The Council accepted that the full affordable housing contribution could not be delivered and that policy provides for a lower contribution. A contribution had been offered and agreed by the Council's expert advisers. The Council did not assert that the development could viably deliver any greater contribution than that offered and they failed to critique the applicant's viability evidence.

Refusing a proposal for specialist accommodation for the elderly for which there is a critical need because it cannot viably deliver another form of development for which there is a lesser need and does not derive from the applicant's proposal is absurd and unreasonable.

3.10 The Councils response to these allegations were:

The advice of the District Valuers' Service (DVS) was consistently that the scheme could afford to contribute £507,000 to affordable housing. Although £432,242 was put before the Plans Panels, so too was £507,000. The Panel had ample evidence before them. The applicant's appraisals based on 18.5% profit were perfectly proper and confident that they would make a profit. At the Hearing decanting tenants was accepted as not being an abnormal cost and the applicant failed to explain how the available sum suddenly dropped to £164,137. Critiquing the applicant's viability assessment put forward at appeal goes nowhere.

There are two separate concerns, viability, and the scheme's wider effects overall having regard to paragraph 14 of the National Planning Policy Framework and the three dimensions of sustainable development. The Council did not seek to add a new reason for refusal or invent a new test, the Plans Panel decision included consideration of both the viability and the planning merits. Members of the Plans Panel had to exercise judgement, not mechanically implement rules and the applicant's assessment failed to consider the dis-benefits and present a balanced case.

- 3.11 The Inspector concluded that notwithstanding the view of the Council that the full amount could not be justified towards off site Affordable Housing Contribution, that this did not justify the Council ignoring or not critiquing the applicants latest evidence. Notwithstanding that the DVS was in attendance at the Hearing that the Council did not submit a written critique prior to the Hearing as to how and why they had arrived at their decision amounts to unreasonable behavior. She then argues that had the Council produced our own viability evidence and responded to the applicants in advance of the Hearing, areas of conflict could have been summarised, the consequences of differences set out, and an opportunity for resolving concerns between the parties either before or at the Hearing. This she concludes leads her to award full costs against the Council.

#### **4.0 DECISION**

- 4.1 The appeal was dismissed but the costs application against the Council was awarded in full.

#### **5.0 IMPLICATIONS**

- 5.1 Notwithstanding that the Council have been justified in making the decision to refuse planning permission for the reasons set out by the appeal Inspector, the decision to then make a full award of costs against the Council seems perverse, especially given that the award of costs is not on the grounds for which it was claimed by the appellants. It should be noted that recent changes to the regulations allows an Inspector to make an award of costs against either party that they considered have acted unreasonably even in the absence of a formal application from the opposing party, however, the Inspector clearly understood that the Council had a fundamental objection to the lower amounts offered for off-site Affordable Housing Contribution and agreed that the Councils case in this regards had been made clearly and succinctly. In appointing the DVS to appear on our behalf, a reasonable case to counter the arguments of the appellants was made at the hearing and it is considered that little, if any additional work was needed by the appellants given this fundamental disagreement between us.
- 5.2 To this end preliminary steps have been taken to consider the possibility of a Judicial Review of the Cost Award given that the position of the Council had not altered since the decision made at Plans Panel and therefore the issues between the Council and the appellants were clearly outlined in the statements and there was a comprehensive Statement of Common Ground submitted.
- 5.3 Also, following the receipt of the decision, the appellants have issued a letter to the Inspectorate which questions the validity of the Inspectors decision. At the time of

writing the purpose behind this is unclear, it may be that they are seeking the possibility of a Judicial Review on the decision made or it may be an opening gambit to re-open negotiations for a re-submission. Should the Inspectorate respond an oral update will be given at Plans Panel.

5.4 The implications of this decision at this juncture however are as follows:

Notwithstanding the potential absurdity of any offers towards Affordable Housing Contributions made in future cases the Council will need to employ expert services to rebuff that offer if it falls below a reasonable offer.

That flexibility in the assessment of Affordability Appraisals needs to be addressed both by officers and Members in determining future applications. Where independent assessment of submitted appraisals shows that a certain figure for any particular development site is reasonable, this needs to be seriously considered in the final determination of development proposals.

That notwithstanding the above comment, none-compliance with Policy H5 and to a lesser degree ID2, and advice in the NPPF, is considered to result in unsustainable development that should be refused.

**Background papers:**

Application file: 13/03606/FU



# The Planning Inspectorate

Quality Assurance Unit  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Customer Services: 0303 444 5000

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Mary Bradshaw / Sarah Rhodes  
Leeds City Council  
Development Department  
Planning And Development  
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Leonardo Building  
2 Rossington Street  
Leeds  
LS2 8HD

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Your Ref: 13/03606/FU  
Our Ref: APP/N4720/A/14/2227584  
Date: 5 February 2015

Dear Madam

**Town and Country Planning Act 1990**  
**Appeal by McCarthy & Stone Retirement Lifestyles Ltd**  
**Site at Land At Devonshire Lodge, Devonshire Avenue, Roundhay, LS8 1AY**

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.



Yours sincerely

Rebecca Sippitt

COVERDL2

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*<http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>*

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# The Planning Inspectorate

## Award of appeal costs:

### Local Government Act 1972 – section 250(5)

#### How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment<sup>1</sup>. This is handled by:

The Senior Court Costs Office<sup>2</sup>  
Clifford's Inn  
Fetter Lane  
London EC4A 1DQ  
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court<sup>3</sup>. This is done by writing to:

The Administrative Court Office  
Royal Courts of Justice  
Strand  
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or their Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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<sup>1</sup> The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at [http://www.justice.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm)

You can buy these Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

<sup>2</sup> Formally named the Supreme Court Costs Office

<sup>3</sup> Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.

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## Appeal Decision

Hearing held on 16 December 2014

Site visit made on 21 January 2015

**by Helen Heward BSc Hons MRTPI**

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

**Decision date: 5 February 2015**

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**Appeal Ref: APP/N4720/A/14/2227584**

**Land at Devonshire Lodge, Devonshire Avenue, Roundhay, Leeds**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against the decision of Leeds City Council.
  - The application Ref 13/03606/FU, dated 01 August 2013, was refused by notice dated 26 September 2014.
  - The development proposed is described as "Erection of Later Living retirement housing (category II type accommodation), communal facilities, landscaping and car parking".
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by McCarthy & Stone Retirement Lifestyles Ltd against Leeds City Council. This application is the subject of a separate Decision.

### Procedural Matters

3. I have used the description of the proposed development on the application form because there is no evidence of any agreement to a change.
4. The decision notice refers to Policies H11 and GP7 of the Leeds Unitary Development Plan Review (2006) (the UDP) and Policies H5 and ID2 of the Local Development Framework Core Strategy (the Core Strategy). Leeds City Council formally adopted the Local Development Framework Core Strategy (the Core Strategy) and both parties agree that the proposal should be considered against the Core Strategy policies. After the Hearing closed, the final adopted Core Strategy was printed and the Council provided copies of the policies as printed. The parties agree that these are as considered at the Hearing.
5. At the Hearing the appellant submitted a signed Unilateral Undertaking and the Council requested an opportunity to consider and check titles after the Hearing. This resulted in the appellant submitting a revised Unilateral Undertaking with the second page dated and the Council has raised no further concern with this agreement. I have taken this Unilateral Undertaking into consideration in my decision below.

6. The parties agreed that two elevation sections were missing. To correct this, the appellant submitted Drawing 1871-01-08 Sectional West Elevation after the close of the Hearing, and the Council raise no objection to this drawing.
7. The appellant asked to be able to submit to the Hearing two tables summarising and comparing their viability evidence with an earlier appraisal<sup>1</sup>. With the agreement of all parties and to assist the Hearing I accepted this information.
8. The Council asked to be able to submit new viability evidence to the Hearing. Having regard to section E9 of The Procedural Guide to Planning Appeals, and without any exceptional reason for late submission, I ruled that this new evidence was not acceptable. With the agreement of all parties, and to assist the discussion at the Hearing, I allowed the Council to submit a table comparing previously submitted different appraisals<sup>2</sup>. However, I ruled that column 5 be struck out and disregarded because it contained information based upon the declined new evidence.
9. After the close of the Hearing the appellant was requested to provide factual clarification of the floor space of the proposed building. They submitted a revised version of Drawing 1871-01-06 Revision A with floor space measurements added and summarised. The Council was offered an opportunity to comment and I have taken the Drawing into consideration in my decision below.

### **Main Issue**

10. The main issue in this case is whether the proposed affordable housing contribution would be appropriate and reasonable in the context of the viability of the development, the Development Plan, the National Planning Policy Framework, National Planning Practice Guidance and all other material considerations.

### **Reasons**

11. The parties agree that Core Strategy Policy H5: Affordable Housing is relevant, up-to-date, and compliant with national planning policy and guidance. They agree that under the provisions of this policy the on site affordable housing requirement is for 15% of the number of units proposed. The Council would accept that an off-site contribution in lieu of on-site provision is justified in this case. The appellant accepts that the full contribution in lieu would be £712,268 under the provisions of the Council's guidance<sup>3</sup>.
12. Policy H5 includes provision for applicants to choose to submit individual viability appraisals to verify that the affordable housing target cannot be met; in such cases affordable housing provision may be reduced accordingly. The Policy is also clear that there is no automatic assumption that the requirement for affordable housing will be waived or reduced for elderly persons sheltered housing, but that individual viability appraisals will be taken into account. The

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<sup>1</sup> Devonshire Avenue Roundhay Leeds Hearing Note No 4 Viability Appraisal Issues (Areas of inconsistency and disagreement), reference PGJB/80176 dated 9 December 2014 together with Comparative Analysis Sheet A dated 11 December 2014

<sup>2</sup> Leeds -Devonshire Avenue – McCarthy & Stone Tabulated Appraisal Comparison prepared by Philip R Lee 16 December 2014

<sup>3</sup> Revised SPG No. 3 Affordable Housing Policy Guidance Note February 2003, Appendix A Leeds Interim Affordable Housing Policy 2011 and Appendix 1 Affordable Housing SPG Annex Update 2005 Revision April 2012.

Council do not dispute that the viability justifies a reduced contribution, nor do they seek a full contribution. However, the parties disagree as to the sum of money that the proposed development can afford.

13. The appellant's initial offer for affordable housing was £62,662, taking into consideration £150,000 for release from a covenant<sup>4</sup>. The District Valuer (DV) considered the scheme "*could provide four affordable houses which equates to a commuted sum of approximately £570,000*"<sup>5</sup>. After some negotiating the appellant put forward £357,242 for all contributions and the release from the covenant "*on the basis of commercial expediency and to secure a prompt first time permission from the Council*"<sup>6</sup>. This offer assumed a developer profit of 18.5%. The Council rejected this seeking a "*meeting roughly halfway*" and a minimum total contribution of £430,000<sup>7</sup>. The appellant reappraised and offered £432,242<sup>8</sup> to cover planning contributions and the covenant release. This appraisal included £95,966 for green-space, £110,000 for relocating tenants and a developer profit margin which "*falls below 17.5%*"<sup>9</sup>. The appellant's final offer on 13 September 2014 was this sum of £432,242 together with an alternative deferred payment offer of £482,242; although they maintained that their initial offer was justifiable, and this offer "*squeezed the margins they work to*"<sup>10</sup>. The application was recommended for permission, but the Council refused the application, considering the planning merits of the scheme and the viability issues not to outweigh the need for affordable housing.
14. Policy H5 provides flexibility for assessing viability but does not provide for balancing viability with the planning merits. Therefore I deal first with the viability of the development and Policy H5, and then other considerations.

### *Viability*

15. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that "*to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable*".
16. The National Planning Practice Guidance (the NPPG) advises that competitive returns "*will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected where possible*"<sup>11</sup>. The NPPG states that "*a site is viable if the value generated by its development exceeds the costs of developing and also provides sufficient incentive for the land to come forward and the development to be undertaken*"<sup>12</sup>. It also advises that where the applicant is able to demonstrate to the satisfaction of the local planning authority that the

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<sup>4</sup> HCA Development Appraisal by Chris Butt 29 July 2013

<sup>5</sup> Alison Mobbs to Chris Butt 18 December 2013 13.00

<sup>6</sup> Email Chris Butt to Ward Adam 14 February 2014 12.37

<sup>7</sup> Email Paul Wilson to Chris Butt 24 April 2014 12.48

<sup>8</sup> Email Chris Butt to Paul Watson 12 May 2014 16.51

<sup>9</sup> Email Chris Butt to Martin Sellens 12 September 2014 12.17

<sup>10</sup> Email from Steve Secker to Martin Sellens 13 September 2014 10.39

<sup>11</sup> Planning Practice Guidance ID 10-015-20140306 06 03 2014

<sup>12</sup> Planning Practice Guidance ID 10-016-20140306 06 03 2014

planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations<sup>13</sup>.

17. The appellant's expert witness, Mr Barefoot, advised that his December 2014 viability appraisal, submitted with the appellant's statement of case, supersedes earlier valuations, is more up to date and, given his extensive professional experience in appraising such schemes, is based on more appropriate assumptions. This appraisal, which assumes a freehold vacant possession, does not include figures for decanting tenants or release from the covenant. The Council's expert witness, from the District Valuers' Service (DVS), Mr Lee, also stated that these costs should be reflected in the site purchase price.
18. The December 2014 appraisal assumes an agreed £95,966 green-space contribution and indicates that the proposal can afford £68,171 for affordable housing. Mr Barefoot presented a comparative assessment<sup>14</sup> setting out the main differences between his December 2014 appraisal and an appraisal prepared by the DVS a year earlier in October 2013. These are discussed below.
19. Mr Lee considered that the gross development value (GDV) shown for the DVS was inaccurate and too low. Using his own table Mr Lee pointed out that the DVS's GDV calculations were much closer to Mr Barefoot's. In any event, Mr Lee did not have any significant concerns with the revised sales values and sales curve in Mr Barefoot's December 2014 appraisal, and accepted Mr Barefoot's assessment of the GDV at £9,887,375.
20. The December 2014 appraisal includes a total core build cost (TCBC) of £4,493,230 compared with £3,592,220 in the DVS's appraisal 22 October 2013<sup>15</sup>. Mr Barefoot acknowledged that in his comparison the DVS's TCBC includes an affordable housing build cost of £548,736, and that it should be deleted. In which case, the variance in the TCBC between the DVS's appraisal and the December 2014 appraisal would be £1,449,746<sup>16</sup>.
21. The December 2014 appraisal includes an increase in build costs to £1080m<sup>2</sup> and an increase for general external works to 10%. Mr Barefoot advised that these latest build costs do not include an additional figure for Code for Sustainable Homes Level 3 as this is now built into the BCIS<sup>17</sup> figures. They also include some assumptions below those used in the DVS's appraisal for arrangement fees, empty property costs, interest, stamp duty, S106 and tree work costs. Mr Lee accepted the increased BCIS rate, but questioned the external works budget, pointing out that the appellant's original appraisals had included 9% for general external works. There is nothing to say that either figure is right, it is matter of judgement and best estimate. Mr Barefoot's experience is based on similar schemes on brownfield sites. However, I note that 9% was used in earlier appraisals and there is no evidence of any changes to proposed external works. Therefore, I find that a 9% general external works budget remains reasonable for this particular proposal.

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<sup>13</sup> Planning Practice Guidance ID 10-019-20140306 06 03 2014

<sup>14</sup> Devonshire Avenue Roundhay Leeds Hearing Note No 4 Viability Appraisal Issues (Areas of inconsistency and disagreement), PGJB/80176 9 December 2014

<sup>15</sup> Column 3, Row 4.2 Comparative Analysis Sheet A, PJB/80176 11 December 2014

<sup>16</sup> Column 5, Row 4.2 Comparative Analysis Sheet A, PJB/80176 11 December 2014

<sup>17</sup> Building Cost Information Service of the Royal Institution of Chartered Surveyors

22. However, these changes alone do not account for a £1,449,746 increase in the TCBC. The December 2014 TCBC is based on a gross internal area of 3782.16m<sup>2</sup><sup>18</sup>. Mr Barefoot argues that floor space figures used by the DVS are incorrect<sup>19</sup>. Be that as it may, the appellant clarified after the close of the Hearing that the total new gross internal floor space of 3198.9m<sup>2</sup> stated at section 18 of the planning application form is incorrect<sup>20</sup>, and has submitted a measured drawing to confirm that the gross internal area would be 3782.16m<sup>2</sup>. This, together with the increased build cost used by Mr Barefoot explains the significantly higher TCBC in the December 2014 appraisal.
23. Mr Lee advised that previously the appellant accepted a 5% contingency budget and a 9% professional fee budget, and this was so in their September 2014 appraisal. In Mr Lee's opinion 5% was standard and the fee budget was justified by considerations such as the provision of in-house design services and use of standardised designs. Mr Barefoot's evidence<sup>21</sup> refers to a 5% contingency budget, but at the Hearing Mr Barefoot submitted that 6% contingency and 10% professional fees budgets reflect industry norms and recent costs on similar complex, brownfield site projects. Both arguments have some merit. However supporting documentation shows that preliminary site investigations have been carried out, and provision has been made in the December 2014 appraisal for specific factors arising from the brownfield nature of the site such as site clearance and decontamination costs. Therefore, I find that a 5% contingency budget and a 9% professional fee budget remain valid and reasonable provisions for this project.
24. Mr Barefoot submits that the finances and acquisition costs in the December 2014 appraisal reflect the current market. Mr Lee argues that in the HCA model<sup>22</sup>, credit and debit rates are equal. Therefore, a credit interest rate of 2.5% with a debit rate of 5% is not justified but I find no convincing evidence to dispute Mr Barefoot's finance rates.
25. The December 2014 appraisal provides for a 20% developer's profit. Mr Barefoot referred to several recent similar schemes where a 20% profit margin has been accepted and advised that in the present market banks required to see such returns. A letter from HSBC advises that in broad terms they would expect to see a margin significantly above 20% in the current market, but it was written in December 2010. Appeal decisions for sites at Shinfield, Reading and Gillingham, Dorset<sup>23</sup> support a 20% developer profit. In particular I note that in the Shinfield case, the Inspector's conclusion was made in the light of evidence about profit expectations from several national house builders which satisfied the Inspector that a developer profit of 20% was reasonable. However to apply 20% to the proposed scheme on this basis alone would be too rigid.
26. In this case the Council have consistently maintained that 20% is too high and Mr Lee verbally advised that 15% had been accepted for a similar scheme in Leeds in 2009, and 17% had been accepted for schemes in Malton and

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<sup>18</sup> Section 6, pp10, Alder King Financial Viability Assessment Appendix 17 The Planning Bureau Planning Appeal Statement

<sup>19</sup> Hearing Note No.4 Viability Appraisal – Issues, PJB/80176 9 December 2014

<sup>20</sup> Chris Butt email 20 January 2015 13 49

<sup>21</sup> Section 7.3.1, pp13 Alder King Financial Viability Assessment 10 October 2014 Ref PGJB/HJH/1403/80176, Appendix 17, The Planning Bureau Planning Appeal Statement

<sup>22</sup> Homes and Communities Agency Development Appraisal Tool

<sup>23</sup> APP/X0360/A/12/2179141 and APP/N1215/A/09/2117195,

Scarborough in 2009 and 2011. In his opinion these more local schemes were more relevant. It is also notable that 18.5% was the developer profit used by the appellant when making offers between December 2013 and as recently as September 2014.

27. This scheme involves extra risk because the site is previously developed land, the requirement to build out the development in a single phase, with all facilities provided up-front before many apartments will be sold, and that it is a specialist market sector. But the December 2014 appraisal already includes construction costs that reflect the brownfield nature of this site and Mr Barefoot has used his considerable experience to build in appropriate assumptions for finance and revenue that all reflect the nature and phasing of the project.
28. The appellant's evidence to the Hearing was of an improving market and this is corroborated in the site valuation report. The site is located centrally within an area that appears vibrant and attractive. One of the appellant's witnesses advised the Hearing that there was a demand for this specialised type of housing in the locality and that only 3 flats at a similar neighbouring McCarthy & Stone scheme are presently on the market. He was confident that the proposed scheme would sell well. Sales values for the appeal scheme have been revised upwards from £189,280 for a 1 bed apartment and £260,260 for a 2 bed apartment<sup>24</sup> to £197,999 and £278,999 respectively<sup>25</sup>.
29. Taking all of these matters in the round I am not persuaded that a profit of 20% has been justified. Equally there is no evidence to persuade me that rates of 15% or 17% are justified. In September 2014 the appellant was satisfied that the value generated by the proposed scheme would provide sufficient incentive for the land to come forward and the development to be undertaken with an 18.5% profit margin. I recognise that the offer was made for expediency, but it was also made in the knowledge of the size and risk profile of the development project that is before me now. Therefore, I find that 18.5% is a reasonable profit margin for the nature of this project, on this brownfield site.
30. Drawing all of the viability considerations together I conclude that the proposal does not include provision for an appropriate proportion of affordable housing and that, overall, the December 2014 viability appraisal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution in lieu of on-site provision of £68,171. The proposal is therefore contrary to Policy H5 of the Core Strategy and guidance in the Affordable Housing Supplementary Planning Guidance No 3 Annex Update 2005; revision April 2012. It follows that the Affordable Housing Contribution in the Unilateral Undertaking would not make the proposed development acceptable and the proposal is contrary to Policy ID2 of the Core Strategy which requires Section 106 planning obligations to provide contributions that are necessary, directly related to the development and reasonably related in scale and kind.
31. Having so concluded, the appellant invites me to determine the required affordable housing contribution up to, and not exceeding £286,276<sup>26</sup>. As suggested<sup>27</sup> I consider this offer against the circumstances and considerations

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<sup>24</sup> Section 4.3 District Valuer Service letter to Leeds City Council 14 January 2014 ref 1477074

<sup>25</sup> Section 7.2, pp13 Alder King Financial Viability Assessment 10 October 2014 Ref PGJB/HJH/1403/80176, Appendix 17, The Planning Bureau Planning Appeal Statement

<sup>26</sup> Planning Obligation and Unilateral Undertaking 16 December 2014 "Enhanced Affordable Housing Contribution"

<sup>27</sup> Paragraph 8.32, pp33 The Planning Bureau Planning Appeal Statement

of the appellant's offer of £432,242 which was put before the Council's Plans Panel. The offer of £432,242 was based on an appraisal that included consideration of £110,000 for relocating tenants. Mr Barefoot also advised the hearing that the Enhanced Affordable Housing Contribution sum of £286,276 was arrived at by subtracting the agreed greenspace contribution of £95,966 and £50,000 for release from the covenant from £432,242. Mr Barefoot also advised the Hearing that his December 2014 appraisal assumes freehold vacant possession, and that this was the correct approach. Accordingly, the derivation of the Enhanced Affordable Housing Contribution figure is flawed and the proposal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution of £286,276 in lieu of on-site provision. Therefore the Enhanced Affordable Housing Contribution figure in the Unilateral Undertaking would not make the proposed development acceptable and the proposal is contrary to Policy ID2 of the Core Strategy which requires Section 106 planning obligations to provide contributions that are necessary, directly related to the development and reasonably related in scale and kind.

32. Finally, I am invited to determine the sum for the contribution for affordable housing up to £286,276. If for consistency I am to do this on the appraisal underpinning the offer to the Plans Panel, then on the basis of my findings in the preceding paragraph, it follows that I am not persuaded that any lesser figure is justified. Alternatively, using the December 2014 appraisal but having regard to my findings that a 9% general external works budget, 5% contingency budget, 9% professional fee budget and 18.5% profit margin would be reasonable, I am also unable to conclude that any lesser figure would be justified.
33. In reaching these conclusions I am mindful of the requirements of paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (2010).

#### *Other considerations*

34. Paragraph 50 of the Framework includes advice that authorities should plan for a mix of housing, including, amongst other groups, the needs of the elderly and the NPPG includes advice that the need to provide housing for older people is critical<sup>28</sup>. The demand for sheltered housing for sale or shared equity in Leeds has been estimated at between 3,595 and 3,760 units<sup>29</sup>. The NPPG also refers to a Core Planning Principle in the Framework that in decision taking, local planning authorities should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value<sup>30</sup>. This advice is not limited to vacant or derelict sites. These factors, together with the overall need to boost significantly the supply of housing, add a significant degree of weight in favour of the proposal.
35. The Council has no objection in principle to the development of housing. An economic impact assessment summarises the key benefits to the local economy from an average McCarthy & Stone Retirement Living scheme<sup>31</sup>. The

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<sup>28</sup> Planning Practice Guidance ID 2a-021-2014036 06 03 2014

<sup>29</sup> Evidence of Housing Demand and Supply prepared by Three Dragons and Celandine Strategic Housing (October 2014) Appendix 7, The Planning Bureau Planning Appeal Statement

<sup>30</sup> Planning Practice Guidance ID 10-026-20140306 06 03 2014

<sup>31</sup> McCarthy & Stone Local area economic impact assessment, Executive Summary, March 2014, Appendix 5, The Planning Bureau Planning Appeal Statement



development of the scheme would contribute towards revitalising the housing market and generate jobs and work, bringing economic benefits during the construction phase. It would effectively and efficiently re-use a brownfield site. It would create additional new safe and secure housing for the elderly built to contemporary building standards, and make a contribution to helping care for the elderly in their own homes. Additionally, there may be wider benefits through the release of under occupied family housing, the release of capital into the economy, and the tendency of older people to support local shops and services.

36. A core planning principle in the Framework of proactively driving and supporting sustainable economic development includes supporting business uses. Other core planning principles include considering the different roles and character of different areas and promoting the vitality of our main urban areas.
37. The site is in a sustainable location and within a Local Centre, but outside of the shopping frontage areas. The site has an existing employment use which amounts to 90% of B1a floor space in the Local Centre. Core Strategy Policy P3 supports, but does not afford protection to, existing B1a uses within Local Centres. It also states that housing is encouraged within local centres above ground floor or outside of the shopping frontages, providing it maintains the vitality and viability of the retail area. But there is no requirement for housing proposals to demonstrate that their benefits would outweigh the loss of an existing B1a use.
38. However, the Council's Policy Officer found no objection in relation to the provisions of Policy P3, noting that the site is not needed for employment uses as there is an adequate supply, and the position posited in the Council's statement of case is predicated on an assumption that there is no evidence that the present viability of the site is in serious doubt and decline. At the Hearing, the present occupier of the building, Mr May, explained that he has empty space in the building and it has been marketed, but he has been unable to let it. In his opinion the property is old and does not have the attraction of a modern large open plan office. On my visit I observed that there were several unoccupied areas. The layout of the building with three separate projecting wings and narrow corridors make the offices feel disjointed and quite separate. I have no doubt that a single user might find this layout unattractive. Mr May also stated that when his lease expires his business will vacate.
39. Against this, a local surveyor, Mr Nabarro, gave evidence at the Hearing that there is a market for offices in the Street Lane area which is popular as an out of town location and close to the ring road. He referred to suites being let at Devonshire House and this is corroborated in the site valuation report<sup>32</sup> but that report also notes that the City has had significant inward investment over 10 -20 years and this has led to a large increase in the availability of good quality commercial property throughout the city. It advises that "*within the out of town office market there continues to be a general over supply of good quality new and second-hand buildings, all providing similar accommodation. Demand is relatively weak and as a consequence it is a tenant's market*".
40. The loss of the existing sustainably located B1a use with employees and visitors would impact on the vitality and viability of the centre, as well as reduce the mix of uses. This tempers the weight to be given to the positive

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<sup>32</sup> Appendix 1 Alder King Financial Viability Assessment, The Planning Bureau Planning Appeal Statement

benefits of the appellant's scheme, but I find no evidence that there would be an adverse effect of such magnitude to outweigh the benefits of the scheme.

41. The existing large building on the site would be demolished. It is a large building built in an Arts and Crafts Style. It is not statutorily or locally listed, or within a conservation area, and it has been altered and modified over the years. Demolition would result in some loss of local character in the street scene, but it would not be significant.
42. Surface water drainage issues in the locality give rise to concerns about drainage and there are concerns about construction traffic and site management. There are no objections from drainage or highway authorities and I consider these matters could be managed by attaching appropriate planning conditions.
43. Devonshire Lodge is to the north of the existing building. The replacement would be taller and it will cast more shadows. However, given the existing situation, the proposal would not significantly change the amount of sunlight reaching Devonshire Lodge. The Third Church of Christ Scientist Leeds occupies Devonshire Croft to the southwest of the existing, and proposed, buildings and it has no main windows on its north elevation. Therefore the proposal would not significantly change the amount of light reaching Devonshire Lodge.

### **Conclusions**

44. The benefits of providing additional critically needed housing for the elderly are substantial. However, by failing to make appropriate provision for affordable housing then, taken as whole, the proposal fails to meet the requirements of advice at paragraph 50 of the Framework which seeks, amongst other things, to deliver a wide choice of high quality homes and create mixed and balanced communities. Nor does the proposal satisfactorily contribute to providing for housing needs, or improving the conditions in which people live. The proposal does not amount to sustainable development.
45. The target of 15% on site affordable housing provision for a site in this location and a development of this scale is clearly set out in Policy H5. The provision to submit viability appraisals to verify that the affordable housing target cannot be met does not remove the target. The plan is not silent and for the reasons given I conclude that the proposal is contrary to Policies H5 and ID2 of the Core Strategy, and guidance in the Affordable Housing Supplementary Planning Guidance No 3 Annex Update 2005; revision April 2012. Therefore paragraph 14 is not engaged.
46. Having regard to all other matters and for the reasons set out above, the appeal is dismissed

*Helen Heward*

PLANNING INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Giles Cannock	Counsel, Kings Chambers, Manchester
Chris Butt	The Planning Bureau Ltd
Peter Barefoot	Chartered Surveyor, Alder King
Peter Graham	The Planning Bureau Ltd
Taffi Sikoki	The Planning Bureau Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Tom Graham	Locum Principal Legal Officer, Leeds City Council
Glen Allen	Principal Planning Officer, North East Leeds, Leeds City Council
Philip Lee	Chartered Surveyor, The District Valuers' Service

### INTERESTED PERSONS:

Mr B May	Principles Communications, Devonshire Hall Devonshire Avenue Leeds
Simon Nabarro	Nabarro McAllister, Devonshire Lodge, Devonshire Avenue, Leeds
Ms N Yumis	Affordable Housing Principal Officer, Leeds City Council
Aaron Casey	Senior planner, Leeds City Council
Mary Bradshaw	Leeds City Council
Tom Graham	Leeds City Council
Lora Hughes	Principal Planning Officer, Leeds City Council
Rebecca Sumerling	Leeds City Council

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Copies of five representations submitted during the application.
- 2 Copy of the District Valuers' Service Valuation prepared by Alison Mobbs and dated 10 October 2013.
- 3 Copy of the District Valuers' Service letter to Leeds City Council, ref 1477074, dated 14 January 2014.
- 4 Leeds -Devonshire Avenue – McCarthy & Stone Tabulated Appraisal Comparison prepared by Philip R Lee 16 December 2014.
- 5 Devonshire Avenue Roundhay Leeds Hearing Note No 4 Viability Appraisal Issues (Areas of inconsistency and disagreement), reference PGJB/80176 dated 9 December 2014 together with Comparative Analysis Sheet A dated 11 December 2014.
- 6 Copy of previously submitted Chris C Butt email 28 November 2013 and attachments.
- 7 Final Cost Application of the Appellant dated 12 December 2014.
- 8 Signed Unilateral Undertaking dated 16<sup>th</sup> December 2014.

## **PLANS SUBMITTED AT THE HEARING**

- 1 Tree Constraints plan 767/01.

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## Costs Decision

Hearing held on 12 December 2014

Site visit made on 21 January 2015

**by Helen Heward BSc Hons MRTPI**

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

**Decision date: 5 February 2015**

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### **Costs application in relation to Appeal Ref: APP/N4720/A/14/2227584 Land at Devonshire Lodge, Devonshire Avenue, Roundhay, Leeds**

- 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 McCarthy & Stone Retirement Lifestyles Ltd for a full award of costs against Leeds City Council.
  - The Hearing was in connection with an appeal against the refusal of the Council to grant, subject to conditions, planning permission for the "Erection of Later Living retirement housing (category II type accommodation), communal facilities, landscaping and car parking".
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### **Decision**

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

#### **The submissions for McCarthy & Stone Retirement Lifestyles Ltd**

2. A draft application for costs was made in writing prior to the Hearing and a written update was provided at the Hearing.
3. The Council acted unlawfully and unreasonably by failing to produce on appeal evidence which provides a respectable basis for the authority's refusal.
4. The Council raised the principle of development and impact upon the local centre, when only one reason for refusal was given on the decision notice which relates to the viability of the development and Core Strategy Policies H5 and ID2.
5. The Council accepted that the full affordable housing contribution could not be delivered and that policy provides for a lower contribution. A contribution had been offered and agreed by the Council's expert advisers. The Council did not assert that the development could viably deliver any greater contribution than that offered and they failed to critique the applicant's viability evidence.
6. Refusing a proposal for specialist accommodation for the elderly for which there is a critical need because it cannot viably deliver another form of development for which there is a lesser need and does not derive from the applicant's proposal is absurd and unreasonable.

#### **The response by Leeds City Council**

7. The response was made verbally at the Hearing.

8. The advice of the District Valuers' Service (DVS) was consistently that the scheme could afford to contribute £507,000 to affordable housing. Although £432,242 was put before the Plans Panels, so too was £507,000. The Panel had ample evidence before them. The applicant's appraisals based on 18.5% profit were perfectly proper and confident that they would make a profit. At the Hearing decanting tenants was accepted as not being an abnormal cost and the applicant failed to explain how the available sum suddenly dropped to £164,137. Critiquing the applicant's viability assessment put forward at appeal goes nowhere.
9. There are two separate concerns, viability, and the scheme's wider effects overall having regard to paragraph 14 of the National Planning Policy Framework and the three dimensions of sustainable development. The Council did not seek to add a new reason for refusal or invent a new test, the Plans Panel decision included consideration of both the viability and the planning merits. Members of the Plans Panel had to exercise judgement, not mechanically implement rules and the applicant's assessment failed to consider the dis-benefits and present a balanced case.

### **Reasons**

10. The National Planning Policy Guidance (NPPG) provides guidance on the award of costs and is designed to improve the efficiency and effectiveness of the planning appeals system<sup>1</sup>. Costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
11. The NPPG states that local planning authorities are at risk of an award of costs if, amongst other things, they fail to produce evidence to substantiate each reason for refusal, if they rely on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis or if they fail to review the case promptly following the lodging of an appeal, as part of sensible on-going case management. The NPPG also advises that where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations<sup>2</sup>.
12. The NPPG refers to a critical need for housing for the elderly but this does not override the need to provide affordable housing and the applicant accepted that Core Strategy Policy H5 was relevant to the proposed development. There is no provision within Policy H5 for a comparative assessment and the Council were clear that they had no objection to the principle of residential development on the site. Their argument was partly about viability and partly about the wider impacts and the overall planning merits of the scheme having regard to paragraph 14 of the National Planning Policy Framework and the three dimensions of sustainable development.
13. However, in this regard the cases were not that far apart; both arguing that as well as the viability of the proposal, other considerations had to be taken into account in the balancing exercise. For the Council this concern was about an adverse effect on the local centre, for the applicant it was the benefits of the

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<sup>1</sup> paragraph 028 Ref ID: 16-029-20140306

<sup>2</sup> Planning Practice Guidance ID 10-019-20140306 06 03 2014

- provision of a sheltered housing scheme for older people. This was a matter for my judgement, and although the Council's reason for refusal could have been clearer, and their argument was less substantive and I was not persuaded by it, I found it to be concisely and reasonably made. Moreover, the applicant was clear that the reason for refusal was viability and prepared their case on this basis. Their planning application and supporting documentation provided most of their evidence in relation to the effect upon the local centre.
14. The Council accepted that the full contribution required by Policy H5 could not be delivered and that Policy H5 provides for a lower contribution, but there is no automatic assumption in Policy H5 that the requirement for affordable housing will be waived or reduced for elderly persons sheltered housing. It requires such a submission to be verified. There was a difference of opinion between the parties as to whether or not the applicant's offer had been agreed by both the DVS and the planning officers, or just by planning officers. However, the evidence indicates that the Plans Panel had both the applicant's offer and the DVS's valuation before them. Some of this information was conflicting, a judgement had to be made, and Councils are not bound to accept the recommendations of their officers.
15. The Council's statement of case does not provide viability evidence or critique the applicant's latest evidence. The Council had an opportunity of responding to this in writing and in advance of the Hearing. They could not ignore it because they preferred another appraisal. A representative of the DVS attended the Hearing on behalf of the Council and submitted a summarised Table critiquing the applicant's viability evidence. This assisted the Hearing in understanding how the latest appraisal arrived at a lower figure of £164,137 for all contributions. However, these factors do not absolve the Council of the responsibility to articulate and substantiate with evidence, how and why, they had arrived at their decision, and the Council failed to submit, in advance, evidence to this effect.
16. I found against the applicant's planning appeal and in some instances concurred with the view of the DVS's representative at the Hearing. However, this does not justify the Council's behaviour. On the contrary my findings strengthen my conclusion that the behaviour of the Council was unreasonable. For had they behaved reasonably, producing their own viability evidence and responding to the applicant's in advance of the Hearing, there would have been opportunities for clarifying issues in advance, areas of conflict could have been summarised, the consequences of differences set out, and an opportunity for resolving concerns between the parties either before or at the Hearing.
17. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated and, as viability was the main issue and the only consideration under Policy H5, a full award of costs is justified.

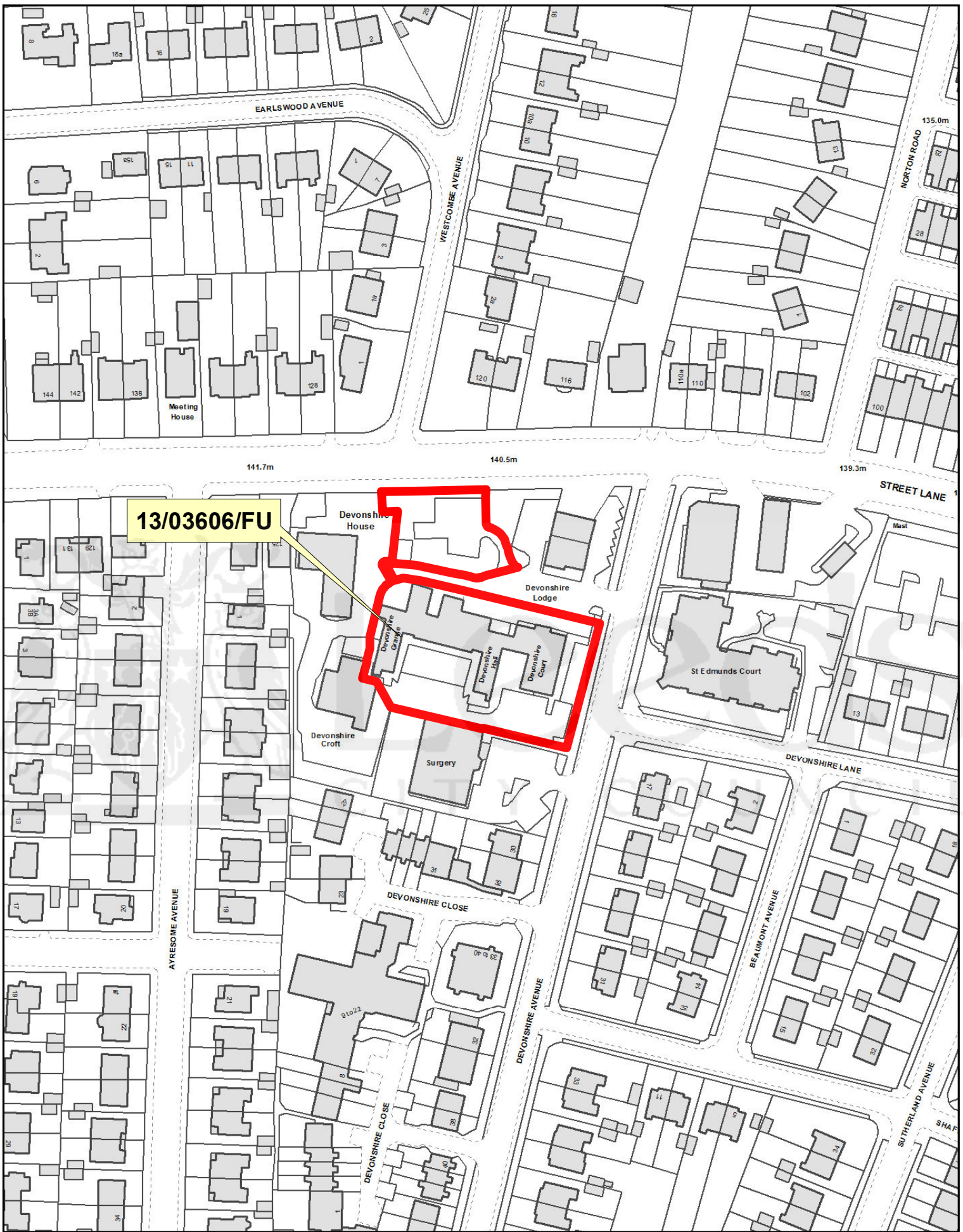
### **Costs Order**

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 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 Leeds City Council shall pay to McCarthy & Stone Retirement Lifestyles Ltd the costs of the appeal proceedings described in the heading of this decision.

19. The applicant is now invited to submit to Leeds City 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Helen Heward*

INSPECTOR



13/03606/FU

# NORTH AND EAST PLANS PANEL





