



## Costs Decision

Site visit made on 20 June 2023

**by Laura Cuthbert BA(Hons) MSc MRTPI**

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

**Decision date: 11<sup>th</sup> July 2023**

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### **Costs application in relation to Appeal Ref: APP/Y3940/W/22/3311815 Hedges House, Mill Lane, West Lavington, DEVIZES, SN10 4HS**

- 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 Aster Communities for a full award of costs against Wiltshire Council.
  - The appeal was against the refusal of planning permission for Demolition of the existing buildings and construction of 19 affordable homes together with associated parking, access and landscaping.
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### **Decision**

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

### **Reasons**

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities.
3. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. Whilst I have ultimately found in favour of the applicant in regard to the character and appearance of the area, it was reasonable of Council Members to consider matters such as the height and massing of the dwellings, most notably plot Nos 14 to 19, and their decision on these matters is an exercise of judgement. Clear evidence was provided which substantiated their reasoning. I consider that it was not unreasonable for the Council to come to a different conclusion on this matter.
5. However, regarding housing for the elderly, having regard to the requirement of the development plan, most notably Core Policy 46 of the Wiltshire Core Strategy (January 2015), there is no protection of existing accommodation capable of providing for elderly and disabled people. Based on the views of the relevant statutory consultees, in the planning judgement, it appears to me that having regard to the provisions of the development plan, including the West Lavington Neighbourhood Plan (June 2019) and other relevant considerations, the development proposed was acceptable and provided sufficient housing for the elderly. The refusal of planning permission on this matter therefore constitutes unreasonable behaviour. In these circumstances, unnecessary extra

costs were incurred by the appellant and an award against the Council in respect to the second reason for refusal is justified.

### **Conclusion**

6. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the first reason for refusal. However, a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, is warranted.

### **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 Wiltshire Council shall pay to Aster Communities the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal relating to failing to provide sufficient housing for the elderly.
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. 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.

*Laura Cuthbert*

INSPECTOR