

Planning Application OL/TH/15/0187 – Flambeau Europlast Ltd, Manston Road, Ramsgate

Planning Committee – 19th April 2017

Report Author ***Iain Livingstone, Planning Applications Manager***

Portfolio Holder ***Cllr Lin Fairbrass, Community Services***

Status ***For Decision***

Classification: Unrestricted

Previously Considered by **Planning Committee 17th June 2015**

Ward: ***Newington***

Executive Summary:

This report concerns the outline planning application for the erection of 120 dwellings on the site of Flambeau Ltd in Ramsgate. The application was considered by the Planning Committee on 17th June 2015 where Members resolved to approve the application subject to the receipt of an acceptable Section 106 agreement securing 30% of dwellings on site to be affordable units, and a contribution of £360,000 towards a new primary school at Manston Green and £5,857.93 towards bookstock for Ramsgate Library.

A viability assessment has been submitted which states that the development is not viable when the required planning obligations are included. This work has been independently assessed by Council-appointed viability consultants. The applicant has offered £100,000 towards planning obligations associated with the development. Therefore the planning application is reported back to Members for approval following consideration of the viability of the scheme with a contribution to the Strategic Access Management and Monitoring Plan (SAMM) and toward affordable housing in Ramsgate.

Recommendation:

Members approve the planning application subject to submission and approval of a legal agreement securing contributions towards the Strategic Access Management and Monitoring Plan and affordable housing.

CORPORATE IMPLICATIONS

Financial and Value for Money

The Planning Committee is not bound to follow the advice of Officers. However, should Members decide not to accept the advice of Officers it should be mindful of the potential cost implications in doing so.

The advice from Government within the National Planning Practice Guidance sets out the circumstances in which costs may be awarded against either party in planning appeals. 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. Costs may be awarded following an application by the

	<p>appellant or unilaterally by the Inspector. An authority is considered to have behaved unreasonably if it does not produce evidence to substantiate each reason for refusal.</p> <p>The advice outlined is that if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.</p>
Legal	<p>The Planning Committee is not bound to follow the advice of Officers. However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.</p> <p>The reasons for any decision must be formally recorded in the minutes and a copy placed on file.</p> <p>If Members decide not to accept the advice of Officers it should be mindful of the potential for legal challenge and associated cost implications.</p> <p>The advice from Government within the National Planning Practice Guidance sets out the circumstances in which costs may be awarded against either party in planning appeals. 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. Costs may be awarded following an application by the appellant or unilaterally by the Inspector. An authority is considered to have behaved unreasonably if it does not produce evidence to substantiate each reason for refusal.</p>
Corporate	<p>The delivery of new housing through the Local Plan and planning applications supports the Council's priorities of supporting neighbourhoods ensuring local residents have access to good quality housing, and promoting inward investment through setting planning strategies and policies that support growth of the economy.</p>
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <p>In the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this decision.</p>

1.0 Introduction

- 1.1 At the Planning Committee meeting on 17th June 2015, Members resolved to approve the planning application for the demolition of the existing industrial building on the

Flambeau site on Manston Road and for the erection of 120 houses including details of the access to the site from the highway with all matters reserved, subject to safeguarding conditions and the receipt of a Section 106 agreement which would secure contributions towards a new primary school at the Manston Green site, library bookstock at Ramsgate Library, the Strategic Access Management and Monitoring Plan (SAMM) at Thanet Coast and Sandwich Bay Special Protection, as well as 30% of housing provided to be affordable housing. The Planning Committee report outlining the planning considerations and application is included at Appendix A.

- 1.2 Subsequent to this resolution, no draft agreement has been received, and in November 2016 the applicant submitted a viability assessment for the proposed development. The applicant now proposes a contribution of £100,000 towards all planning obligations only, on grounds that the development would not be viable with 30% on-site provision of affordable housing and all the financial contributions towards education, libraries and the SAMM. This report is to analyse the findings of the report, and to offer a recommendation to the Planning Committee about whether to approve the revised application.

2.0 Viability in Planning Applications for Housing

- 2.1 The National Planning Policy Framework (NPPF) outlines a core planning principle 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)”. Specifically the National Planning Practice Guidance (NPPG), which underpins the NPPF, states that “to incentivise the bringing back into use of brownfield sites, local planning authorities should take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable”.
- 2.2 Decisions on planning applications must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. Assessing viability requires a realistic understanding of the costs and the value of development in the local area and an understanding of the operation of the market, and should be based on current costs and values. The NPPG states that where viability of a scheme is in question, “local planning authorities should look to be flexible in applying policy requirements wherever possible”.
- 2.3 A site is viable if the value generated by its development, the Gross Development Value (GDV), exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken. The accepted methodology for assessing this is the residual land value method. This calculates the estimated GDV from the development, subtracts the development cost (including the developer’s profit at an agreed level) and compares this residual land value against the existing use value of the land. The uplift from the current value of the land to the residual land value should provide a competitive return to induce a landowner to sell the site for development or develop the site.

3.0 Key considerations

- 3.1 The relevant Local Plan Policies for considering planning obligations are Policy CF2 (Developer Contributions) and H14 (Affordable Housing). Policy CF2 states that where a proposed development would directly result in the need to provide new or upgraded community facilities (including transport infrastructure, educational or recreational facilities or affordable housing), the Council will negotiate with the applicant for a contribution towards the cost of such provision, and a planning obligation to secure the contribution will normally be sought. Policy H14 states that for

development of the scale proposed, the Council will negotiate with the developer for the inclusion of an element of affordable housing on-site. In exceptional circumstances the Council will consider a commuted sum in lieu of direct provision where this will facilitate provision of affordable housing contributing to the objective of the housing strategy.

- 3.2 A viability assessment has been submitted by the appellant conducted by a chartered surveyor. Three scenarios have been provided showing a policy compliant scheme, a scheme with no affordable housing and all planning obligations, and a scheme with a fixed commuted sum of £100,000. The summary of the findings of this report are included at Appendix B. This assessment has been independently assessed by the Council's appointed viability consultant, who has provided comments to the Council.

Existing Use Value

- 3.3 The site comprises an operational industrial site of 3.5 hectares, including 12,897sqm factory floor space. The value of the land has been taken as approximately £290,000 per acre, which would create a capital value of the site at £2.5 million. This existing use value is considered to be appropriate taking into account market conditions, and the Council's viability consultants do not dispute this assessment.

Findings from assessment

- 3.4 The GDV of the private market housing has been set between £225 per square foot (psf) and £230 psf, and this is based on comparable development in the vicinity of the site and taking account of the location of this site between Manston Road and the railway line. This amount has been queried by the Council's viability consultants, with the suggestion that from research this figure may rise across the development to £250psf once the scheme has been fully developed (reserved matters submitted) and taking into account that new homes have a premium value in comparison to existing homes. However, taking into account the evidence before the Council, including examples of recently sold developments submitted by the applicant (Appendix e), the average psf value of £228 is considered reasonable at this stage for this particular site in this location, in close proximity to Meridian Village and the committed development site known as Manston Green. The GDV for affordable housing for the development in the assessment for the policy compliant scenario assumes 55% of market value, and this percentage is agreed by the independent assessment.

Cost assumptions

- 3.5 The cost assumptions for the development include construction costs (houses, infrastructure), other costs (demolition of building, remediation of land, contingency allowance), finance costs (rate of borrowing for build out programme) etc. These assumptions are broadly agreed with by the independent assessment, with the construction costs being based on Building Cost Information Service (BCIS) figure which is the industry standard approach. Also, percentage costs for professional fees, contingency cost and the rate of borrowing has been set at broadly agreed levels, and the main assumptions are not disputed. Overall the projected costs of developing the site are not unreasonable for the purposes of assessing viability on this particular site.

Developer Profit

- 3.6 Different scenarios have been provided by the applicant to show the different levels of policy compliance and the associated amount of developer profit (as a percentage of GDV):

- Policy Compliant (30% affordable housing, education and library contribution, SAMM) - 4.92%
- Policy Compliant less Affordable Housing - 16.88%
- Fixed Commuted Sum (£100,000 for all contributions) - 18.15%

- 3.7 The conclusion of the submitted assessment is that a policy compliant scheme would not provide sufficient developer profit to bring the development forward. The percentage required has been submitted as 20% of GDV, whereas the independent assessment commissioned by the Council suggests that this could be set at 15%, thereby increasing the amount to be contributed for planning obligations. It is considered that given the perceived additional risks associated with this particular development, on an industrial site with likely contamination (with a requirement for intrusive investigation to discover the extent of contamination) in this particular location and adjacent to the railway line, that the rate of 18.15% offered by the applicant is appropriate in this specific instance to assist in inducing delivery of housing on the site.

Planning Obligations

- 3.8 Taking account of both the viability appraisal submitted and the independent assessment of the appraisal, the viability of this site is marginal. When assuming a developer profit of 18.15% and a contribution of £100,000 for planning obligations, the residual land value is less than the existing value of the site, meaning that the development would be unviable, however the applicant has stated that this scheme would be deliverable. The site is previously developed land within the urban confines and the Council has an identified need for housing, and therefore in this specific instance it is considered that the planning obligations should not be sought for 30% affordable housing on this site in accordance with the advice in the NPPF and NPPG.
- 3.9 The proposal required a contribution towards the new primary school at Manston Green of £360,000, and £5857.93 for bookstock to be supplied to Ramsgate Library. The NPPG requires a flexible approach to seek a level of planning obligations that ensure combined totals of contributions do not make a site unviable, and the impact of these contributions have been shown to reduce the viability of the site for the delivery of housing. Kent County Council have provided a comment following discussions about the viability of the site:

“As discussed and known by Thanet, Primary School places in Thanet are a major issue. Whilst appreciating NPPF direction upon brownfield land and the need for balanced judgement by the Local Planning Authority in bringing development and regeneration forward, KCC Education are disappointed as there are no alternative funding streams to mitigate the impacts of developments upon local infrastructure. KCC are also concerned any decision here should not set a precedent; that would create even greater problems for KCC Education.

KCC acknowledge Thanet DC are the determining Local Planning Authority and would welcome a viability review at or near the end of the development with appropriate clawback provisions for additional infrastructure funding.

As discussed, in view of the circumstances, we would be grateful if the project for any Primary School contributions collected can be amended to: Phase 1 of the Ramsgate Free School (rather than Manston Green new Primary School as previously stated)”.

- 3.10 As outlined in the Planning Committee report, the SAMM contribution is required under the Habitats directive for the scheme of wardening at the SPA to mitigate the recreational impacts from the development. The current tariff agreed would create a

contribution of £50,520 which is required to be paid to offset impact of this development on bird populations and therefore complies with the requirement of the Habitats Regulations.

- 3.11 The Council's Supplementary Planning Document sets out that where the development is needed to meet the aims of the development plan, it is for the council to decide whether a reduced contribution could be considered to assist in the delivery of new housing. This flexibility of obligations should be considered against the benefits of kickstarting delivery. In this case, it is considered that the development meets the aims of the development plan, and it is appropriate to consider the level of contribution so as to bring the site forward. It is considered that given the economic and social benefits for redeveloping previously developed land for housing, and the need for new housing delivery in the district, that this level of flexibility is justified. The applicant has allowed for a reduced contribution of £100,000. The SAMM contribution, required to discharge the Habitats regulation's requirement upon the Council, reduces this figure to £49,480.
- 3.12 The Council's priority in terms of planning obligations and developer contributions is for affordable housing provision, and therefore the remaining contribution would be allocated as an off-site contribution for affordable housing provision in the vicinity of the site. The Strategic Housing team have confirmed that the contribution in lieu of on-site affordable housing could be utilised for the delivery of off-site units in Ramsgate as part of the new-build and intervention programme. This is considered appropriate in accordance with planning obligation requirements under the Council's supplementary planning document.
- 3.13 In considering the reduction in planning obligations, the suggestion of a viability review mechanism should be included within any undertaking, which would require a re-assessment of viability at a future stage when more certainty about the value of the houses is available (upon construction and marketing). These clauses have been considered acceptable by the Planning Inspectorate in certain instances, however in smaller schemes clauses requiring a review can create uncertainty into the future value of the land and the returns it would provide, which may discourage investors and make funding more difficult and expensive to secure. The Council would seek to utilise these provisions in cases where development was likely to be delivered in discrete phases and over a longer time period, however in this instance, given that the proposal will likely be brought forward in a single phase by a single developer, with all the houses likely built at the same time, the clause is not being sought in this case.
- 3.14 Therefore in conclusion subject to a financial contribution of £100,000 towards the SAMM and affordable housing provision and the safeguarding conditions outlined in the original planning committee report at Appendix A, it is recommended that planning permission be granted in this specific instance.

4.0 Options

- 4.1 Members confirm that planning permission be deferred to officers for approval subject to securing a legal agreement for the provision of contributions to the SAMM and affordable housing as set out in the report and conditions outlined at Appendix A
- 4.2 Members propose an alternative motion.

5.0 Recommendations

- 5.1 Officers recommend Members of the Planning Committee to agree option 4.1.

Contact Officer:	<i>Iain Livingstone, Planning Applications Manager</i>
Reporting to:	<i>Helen Havercroft, Head of Growth and Development</i>

Appendix List

<i>Appendix A</i>	<i>Planning Committee Schedule item 17th June 2015</i>
<i>Appendix B</i>	<i>Applicant's Viability Summary</i>
<i>Appendix C</i>	<i>Scenario – No affordable housing with £100,000 contribution</i>
<i>Appendix D</i>	<i>Council's independent review of Viability submission</i>
<i>Appendix E</i>	<i>Applicant's Summary of Comparable sites</i>

Background Papers

Title	Details of where to access copy
<i>National Planning Policy Framework Paragraphs 173-173</i>	<i>https://www.gov.uk/government/publications/national-planning-policy-framework--2</i>
<i>National Planning Practice Guidance</i>	<i>https://www.gov.uk/guidance/viability</i>
<i>Thanet District Council's Supplementary Planning Document – Planning Obligations and Developer Contributions</i>	<i>https://www.thanet.gov.uk/publications/planning-policy/planning-obligations-and-developer-contributions/</i>

Corporate Consultation

Finance	Matthew Sanham, 6 th April 2017
Legal	Ciara Feeney, 6 th April 2017