

# Planning Application OL/TH/16/1416 – Land Adjoining 1 Chilton Lane and Canterbury Road East, Ramsgate

**Planning Committee – 16 May 2018**

Report Author                      **Emma Fibbens, Principal Planning Officer**

Portfolio Holder                    **Cllr Jason Savage, Planning (Development Control)**

Status                                 **For Decision**

Classification:                      Unrestricted

Previously Considered by        **Planning Committee 19th July 2017**

Ward:                                 **Cliffsend and Pegwell**

## **Executive Summary:**

This report concerns the planning application for the erection of 14no. detached dwellings on land adjoining 1 Chilton Lane and Canterbury Road East, Ramsgate, under reference OL/TH/16/1416. The application was considered by the Planning Committee on 19th July 2017 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 financial contributions as set out within the Heads of Terms.

A request has been submitted by the developer to omit the provision of on-site affordable housing, and instead to provide a financial contribution towards affordable housing in the form of £166,288. The planning application is therefore reported back to Members for approval of a financial contribution towards affordable housing rather than on-site provision of affordable housing. The affordable housing contribution would be provided alongside all other financial contributions as previously agreed by members at the 19th July 2017 planning committee.

## **Recommendation:**

Members approve the planning application subject to submission and approval of a legal agreement securing the financial contributions as stated, with on-site affordable housing omitted from the scheme.

## **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.

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|                                                              | <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> <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. There are no funds allocated for any potential fines meaning cost awards will result in spend that is outside of the budgetary framework.</p>                                                                                                                                                                            |
| <b>Legal</b>                                                 | <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> |
| <b>Corporate</b>                                             | <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>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Equalities Act 2010 &amp; Public Sector Equality Duty</b> | <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</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|  | <p>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 &amp; maternity. Only aim (i) of the Duty applies to Marriage &amp; civil partnership.</p> <p>the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this decision.</p> |
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## 1.0 Introduction

- 1.1 The report taken to Members on the 19th July 2017 (Annex 1) proposed the provision of 4no. affordable housing units within the 14no. house development (reference OL/TH/16/1416). Affordable housing was required on the basis that the site exceeds 0.5 hectares in size, and therefore the provision of affordable housing is required as stated within Policy H14 of the Thanet Local Plan. The affordable housing provision agreed by members was in the form of 2no. 4-bed units and 2no. 5-bed units.
- 1.2 Subsequent to this resolution, no draft agreement has been received, and in November 2017 the applicant submitted a viability assessment for the proposed development. The applicant now proposes a financial contribution of £166,288 towards affordable housing (along with all other financial contributions as previously agreed), on grounds that the development would not be viable with 30% on-site provision of affordable housing. 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. The assessment takes into account local market evidence of sales values, up to date development costs, and registered housing provider responses in relation to on-site provision. The affordable housing financial contribution being offered is a result of removing the Benchmark Land Value from the Residual Land Value. The summary of the findings of this report are included at Annex 2. This assessment has been independently assessed by the Council's appointed viability consultant, who has provided comments to the Council (Annex 4).

#### *Benchmark Land Value*

- 3.3 The site comprises agricultural land of 0.81 hectares. The value of the land has been taken as approximately £160,000, which reflects an uplift from agricultural value based on the Council's Economic Viability Assessment of Development in Thanet report. The Council's viability consultants have advised that this existing use value is considered to be reasonable for a site of this nature. This figure has been stated within the viability tables as the Benchmark Land Value.

#### *Findings from assessment*

- 3.4 The Gross Development Value of the private market housing has been set between £3,030-£3,076 per sqm, which is based upon average sale prices in the area for 4-bed and 5-bed units. The Council's Viability Consultants have carried out their own desktop research of property values in the area, and consider that the proposed sales prices provided are reasonable.
- 3.5 An assumption of £150,000 for a 4-bed property and £157,000 for a 5-bed property have been given for the affordable units as shared ownership units. The Council's Viability Consultants have queried these values, with the expectation of much higher

values. In any event, the applicant has provided evidence of communication received from 4no. affordable housing providers, all of whom have advised that they have no interest in taking on the affordable units either due to the large size of the units (4-bed and 5-bed) or the number, which fall significantly below their thresholds of 10-20 units on a site.

A Total Gross Development Value of £6,150,000 is therefore indicated for the development on the basis of 100% private market housing being provided.

### *Cost assumptions*

3.6 The cost assumptions for the development include construction costs (houses, infrastructure), other costs (site clearance, contingency allowance), finance costs (rate of borrowing for build out programme) etc. These assumptions have been queried by the Council's Viability Consultants, specifically the contingency cost, for which 10% has been stated rather than a general assumption of 3-5%; legal fees, for which costs of £2,250 per unit have been indicated, rather than an expected cost of £750 per unit; and agent's and marketing fee, for which 3% of GDV has been applied rather than an expected 1.5% plus marketing costs. In response to this the applicant has provided evidence of the costings to address the legal and agent/marketing fee queries. With regards to the contingency, the applicant has advised that the excessive contingency level was to counterbalance the build cost quotes they had received, which totalled the build costs of the development above that identified within the viability assessment. For transparency reasons the applicant has been advised to update the build costs figures within the viability assessment (see Annex 6), thus allowing the contingency level to be reduced to a more reasonable level of 5%. Based upon the updated figures and evidence submitted, the projected costs of developing the site of £5,823,712 are not now considered to be unreasonable for the purposes of assessing viability on this particular site, as confirmed by the Council's Viability Consultants.

### *Developer Profit*

3.7 A developer profit allowance of 17.5% of GDV of the market housing and 6% on the affordable housing has been assumed within the viability report, with a total profit of £1,076,250. This is within the range of 15%-20% profit that is considered to be reasonable to enable the development to be delivered, as agreed by the Council's Viability Consultants.

### *Planning Obligations*

3.8 Financial contributions towards primary and secondary school provision, library provision, play equipment at Nethercourt play area, and a SPA contribution are all proposed in full in the form of £117,849, in accordance with the details contained within the Heads of Terms section of the previous committee report contained within Annex 1.

3.9 The Residual Land Value (Gross Development Value minus total cost of developing the site, as updated with corrected build cost figures and contingency) is £326,288, on the basis of 100% market housing, which is above the Benchmark Land value (see paragraph 3.3) by £166,288. Notwithstanding the evidence produced that an

on-site provider for affordable units on this site cannot be found, the figures produced through the viability report show that the site would be unlikely to support a reduction in GDV that would result from the provision of 4 affordable units, as the reduction would compromise the deliverability of the scheme from an insufficient incentive for the land to come forward for development. Therefore for both viability and practical reasons, the provision of on-site affordable housing is not considered achievable. Instead the applicant has agreed to the provision of a financial contribution towards affordable housing in the sum of £166,288, which is the difference between the residual land value and the benchmark land value.

3.10 The Council's Viability Consultants have advised that they consider this to be an acceptable position, and suggest that the Council consider accepting this revised affordable housing offer. The Council's Housing Strategy and Projects Team Officer has commented that the commuted sum will be invested into the section 106 development programme to enable the delivery of affordable units across Thanet.

3.11 Therefore in conclusion, subject to a financial contribution of £166,288 towards affordable housing, along with all other financial contributions and the safeguarding conditions as outlined within the original planning committee report at Anne 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 financial contributions as set out in the report and conditions outlined at Annex 1, including the provision of an affordable housing financial contribution in lieu of on-site affordable housing provision, as outlined in this report.

4.2 Members propose an alternative motion.

#### **5.0 Recommendations**

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

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| Contact Officer: | <i>Emma Fibbens, Principal Planning Officer</i>        |
| Reporting to:    | <i>Iain Livingstone, Planning Applications Manager</i> |

#### **Annex List**

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|----------------|--------------------------------------------------------|
| <i>Annex 1</i> | <i>Planning Committee Schedule item 19th July 2017</i> |
| <i>Annex 2</i> | <i>Applicant's Viability Appraisal</i>                 |
| <i>Annex 3</i> | <i>Viability Tables</i>                                |
| <i>Annex 4</i> | <i>Council's Independent Review</i>                    |
| <i>Annex 5</i> | <i>Applicant's Rebuttal of the Review</i>              |
| <i>Annex 6</i> | <i>Updated Viability Tables</i>                        |

## Corporate Consultation

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|----------------|-------------------------|
| <b>Finance</b> | Matthew Sanham, 3/05/18 |
| <b>Legal</b>   | Tim Howes, 4/05/18      |