

**Planning Application OL/TH/16/0376 – Land Rear of 2-28  
Kingston Avenue, Margate**

**Planning Committee – 16<sup>th</sup> 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 17th May 2017**

Ward: **Garlinge**

**Executive Summary:**

This report concerns the planning application for the erection of 43no. dwellings comprising of 8no. 2-bed flats, 7no. 2-bed dwellings, 25no. 3-bed dwellings and 3no. 4-bed dwellings, on land rear of 2 to 28 Kingston Avenue, Margate, under reference OL/TH/16/0376. The application was considered by the Planning Committee on 17th May 2017 where Members resolved to approve the application subject to the receipt of an acceptable Section 106 agreement securing 20% 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 reduce the provision of on-site affordable housing to 9%, in the form of 4no. 2-bed flats. In addition to this, the site has recently been cleared and the ecological mitigation works completed; so on the basis of the submission of additional information regarding the ecological work, an update to the safeguarding conditions is required. The planning application is therefore reported back to Members for approval of the reduced on-site affordable housing provision, along with an update to safeguarding conditions. The affordable housing provision would be provided alongside all other financial contributions as previously agreed by members at the 17th May 2017 planning committee.

**Recommendation:**

Members approve the planning application subject to submission and approval of a legal agreement securing the financial contributions as stated, along with the reduced level of affordable housing provision.

**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 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.

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.

**Legal**

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.

The reasons for any decision must be formally recorded in the minutes and a copy placed on file.

If Members decide not to accept the advice of Officers it should be mindful of the potential for legal challenge and associated cost implications.

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.

**Corporate**

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.

**Equalities Act 2010 & Public**

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to

<p><b>Sector Equality Duty</b></p>	<p>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 &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 17th May 2017 proposed the provision of 9no. affordable housing units (20%) within the 43no. dwelling development (reference OL/TH/16/1416). 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. 2-bed flats, 2no. 2-bed houses, and 5no. 3-bed houses.
- 1.2 Subsequent to this resolution, no draft agreement has been received, and in April 2018 the applicant submitted a viability assessment for the proposed development. The applicant proposes a reduction from 20% affordable housing to 9% affordable housing (along with all other financial contributions as previously agreed as a minimum), on grounds that the development would not be viable with 20% 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 realistic affordable housing values. The reduced affordable housing provision now being offered is a result of a revised viability assessment with updated figures being submitted, within which the development costs exceed the figures contained within the original March 2017 viability report, and the affordable housing values are reduced to a more realistic level to suit the site specific land value. The summary of the findings of this report are included at Annex 2. This revised assessment has been reviewed by the planning department (as it was previously) with input received from the housing team, in order to determine whether the updated figures as shown are reasonable.

#### *Existing Use Land Value*

- 3.3 The site comprises scrubland of 1.17 hectares. The value of the land has been taken as approximately £16,800. This value does not reflect any uplift relating to the allocation of the site for housing, or a resolution to grant planning permission, and is the same as the existing use land value contained within the previous viability assessment of March 2017. This existing use value is considered to be reasonable for a site of this nature.

#### *Findings from assessment*

- 3.4 The Gross Development Value of the private market dwellings falls between a range of £175,000 for 2-bed flats to £325,000 for 4-bed detached houses, which is based upon average sale prices in the area for the equivalent unit size. These values have

been provided by a local Estate Agents, during April 2018, and to the best of their intentions are considered to be an accurate reflection of property prices within the immediate area. The planning department 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 £105,000 for a 2-bed flat has been given for the affordable units as shared ownership units, on the basis of their reduced value at 60% of the development value as open market units. This compares to the assumption of £132,000 per 2-bed affordable flat as identified within the March 2017 viability report. The reason for this discrepancy is that the original values for the affordable units were based on them being worth 80% of the development value, but in this location registered housing providers are only willing to offer 60% of the development value for the affordable units. The inaccuracy of this figure was not known at the time of the original recommendation taken to planning committee. Following a resolution to grant planning permission at planning committee the applicant has contacted active Registered Housing Providers in the area, none of which were prepared to purchase the units from the developer. In addition, the Council's Housing Department have assessed the figures and agree that the delivery of 9no. Affordable units on the site is not viable. The revised figures now used in this reduced affordable housing offer are considered to be reasonable for this site to enable the delivery of affordable units, however, the correction of these figures has led to a reduction in the amount of affordable housing that can be provided from 9no. units (20% provision) to 4no. Units (9% provision). It is understood from the developer that agreement has been given by a Registered Housing Provider to purchase the affordable units on the basis of these revised figures and the reduced number of units to be provided.

A Total Gross Development Value of £10,260,000 is therefore indicated for the development on the basis of 91% private market housing and 9% affordable 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. The costs have increased since the March 2017 viability report. The applicant has advised that build costs have increased per square metre from £1,165 in October 2016 to £1,322 in March 2018, with the figures based on those published by the RICS Building Cost Information Service, a national recognised standard. Evidence of these figures is contained within Appendix A of the applicant's viability report. The applicant has also advised that both ecology and archaeology costs have increased from those originally indicated, with the ecology works actually having taken place on site alongside the site clearance, and the archaeology costs based upon advice received from Thanet Archaeology.

Based upon the updated figures and evidence submitted, the projected costs of developing the site of £10,105,764 are not considered to be unreasonable for the purposes of assessing viability on this particular site.

### *Developer Profit*

- 3.7 A developer profit allowance of 15% of GDV has been assumed within the viability report, with a total profit of £1,539,000. This is within the range of 15%-20% profit that is considered to be reasonable to enable the development to be delivered, as agreed on similar projects by the Council's Viability Consultants.

### *Planning Obligations*

- 3.8 Financial contributions towards primary school provision, library provision, play equipment, and a SPA contribution are all proposed in full, in accordance with the Heads of Terms previously proposed within the May 2017 committee report. The secondary education contribution has changed from that previously proposed, increasing from £87,312.60 to £113,271 due to a revised request by KCC being received for an increase in contributions due to increased local build costs. The total financial contributions proposed is therefore £295,419, in accordance with both the details contained within the Heads of Terms section of the previous committee report contained within Annex 1, and the revised KCC secondary education request.
- 3.9 The previous judgement by the Council was that the provision of 20% on-site affordable housing, with a resulting Residual Land Value of £256,570, would be acceptable, as it would result in a reasonable uplift in the value of the land to entice the landowner to sell, enabling the delivery of an allocated housing site within the Council's Draft Local Plan. The revised viability assessment calculates a residual land value of £99,236, following the provision of 9% affordable housing on site and all financial contributions. The future development of the site on the basis of this amount has been agreed by the applicant, on the basis that the site now forms part of an asset disposal process. It is considered that the resulting residual land value is reasonable in view of the evidence received, and as such it would also appear reasonable to expect no more than 9% affordable housing to be provided on this basis. The affordable housing provision is in the form of 4no. 2-bed flats, which the Housing Strategy Officer considers to be acceptable given that the highest housing need currently on the Council's register is for one and two bedroom units.
- 3.10 Safeguarding conditions are proposed as highlighted within the planning committee report dated May 2017, contained within Annex 1 of this report. The conditions require updating in relation to condition 18, which required the submission of a reptile mitigation strategy, as this has since been submitted and approved by KCC Biodiversity. The clearance of the site has since taken place, and a letter has been received from Bramley Associates (ecological consultants and surveyors) dated 24th April 2018 (Annex 4) confirming that the clearance of the site was carried out in accordance with the approved mitigation strategy. It is therefore proposed that condition 18 is removed and replaced with an informative requiring the ongoing management of the site to prevent reptile habitats establishing.
- 3.11 Therefore in conclusion, subject to the provision of 9% on-site affordable housing, along with all other financial contributions (including the increased secondary education contribution), and the safeguarding conditions as outlined within the original planning committee report at Annex 1 (excluding condition 18), 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 affordable housing and the provision of financial contributions as set out in the report and conditions outlined at Annex 1, including the provision of a reduced level of affordable housing to 9%, an increased secondary education contribution, and the removal of safeguarding condition 18, 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.

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

## Annex List

<i>Annex 1</i>	<i>Planning Committee Schedule item 19th July 2017</i>
<i>Annex 2</i>	<i>Applicant's Viability Assessment</i>
<i>Annex 3</i>	<i>Applicants Summary letter</i>
<i>Annex 4</i>	<i>Bramley Associates letter</i>

## Corporate Consultation

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