

Planning Application OL/TH/16/1765 – Land Adjacent To Salmestone Grange Nash Road MARGATE Kent

Planning Committee – 11th November 2020

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

Status **For Decision**

Classification: Unrestricted

Previously Considered by **Planning Committee 5th August 2020**
Planning Committee 16th August 2017

Ward: **Salmestone**

Executive Summary:

This report concerns the planning application for the residential development of up to 250 dwellings and alterations to the surrounding highway network, including details of access with all other matters reserved (Appearance, Landscaping, Layout, Scale) on land adjoining Salmestone Grange, Margate, under reference OL/TH/16/1765. The application was considered by the Planning Committee on 16th August 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. Subsequently the application was reported to Members in August 2020 to reduce the amount of affordable housing to 18% of dwellings on site to be affordable units, split 70% affordable rent and 30% shared ownership, for approval of the new heads of terms towards affordable housing and other planning obligations, update of planning conditions and for resolution for approval of the outline planning application subject to receipt of a legal agreement securing the agreed obligations and safeguarding conditions.

Members resolved to “defer to officers to negotiate with the applicant for an increase in the amount of affordable housing proposed, and report back for decision by the Planning Committee, including potential reasons for refusal.” This report outlines the provision of an additional option which would provide 30% affordable housing but excluding affordable rent properties, and provides commentary on potential reasons for refusal, whilst maintaining the officer recommendation from the previous report.

Recommendation:

Members confirm that the planning application be deferred to officers for approval subject to securing a legal agreement for the provision of 18% affordable housing on site (split 70% affordable rent and 30% shared ownership) and planning obligations as set out in the report and safeguarding conditions outlined at Annex 1, updated to reflect the new Local Plan with the addition of two conditions requiring new development to meet the technical standards outlined in the new Local Plan:

- Details pursuant to condition 1 shall demonstrate compliance with the national described space standards as outlined in Policy QD04 of the Thanet Local Plan 2020.
- The development hereby permitted shall be constructed in order to meet the required technical standard for water efficiency of 110litres/person/day, thereby Part G2 Part 36 (2b) of Schedule 1 Regulation 36 to the Building Regulations 2010, as amended, applies.

CORPORATE IMPLICATIONS

<p>Financial and Value for Money</p>	<p>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.</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> <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>
<p>Legal</p>	<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</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.
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 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 The report taken to Members on the 16th August 2017 (Annex 1) proposed the residential development of the land adjacent to Salmestone Grange for up to 250 dwelling with alterations to the highways network. Affordable housing was required on the basis that the site exceeds 0.5 hectares in size and the development exceeded 14 units, and therefore the provision of affordable housing was required as stated within Policy H14 of the 2006 Thanet Local Plan. The affordable housing provision agreed by members was in the form of 30% on-site units, with contributions agreed towards primary and secondary schools, youth services, library contribution and contribution towards the Strategic Access Management and Monitoring (SAMM) plan as a result of the housing development to mitigate the additional recreational pressure on the protected sites at the coast.
- 1.2 Subsequent to this resolution, in May 2018 the applicant submitted a viability assessment for the proposed development. Detailed discussion ensued over the preceding two years around the viability of the development with independent analysis of the submitted viability assessment, with the requirements to provide highways infrastructure through the site resulting in an additional assessment of costings of the road infrastructure (independently assessment by Kent County Council's highways consultants).
- 1.3 A proposal for 18% affordable housing on site, with a split of that affordable provision with 70% affordable rent and 30% shared ownership, was put to the Planning Committee on the 5th August 2020 on grounds that the development would not be viable with 30% on-site provision of affordable housing. In addition an update to the planning conditions was recommended to the Committee in light of the adoption of

the new Local Plan and the time period since the application was last reported to the Planning Committee, with an appropriate assessment undertaken.

- 1.4 Members resolved to “defer to officers to negotiate with the applicant for an increase in the amount of affordable housing proposed, and report back for decision by the Planning Committee, including potential reasons for refusal.” This report outlines the outcome of these negotiations.

2.0 Appellant’s Response and additional option

- 2.1 Further to the resolution of members, the applicant submitted a response on the 1st September 2020 and this is appended at Annex 9 of this report. Subsequent to this officers have clarified the additional option provided by the correspondence with the applicant. The applicant’s letter raises the following points about the site (summarised below):

- The reduction in affordable housing would not create a precedent for future applications due to the site-specific abnormal cost associated with the road infrastructure which forms part of this application, which impacts on the viability of this scheme.
- There are specific benefits provided for by the development of this allocated site, as part of the Inner circuit with the Thanet Transport Strategy, and the infrastructure improvements allow for the expansion of St Gregory’s school, which are unique to this proposal.

These particular points are not disputed by officers and should be taken into account by members in making a determination on the application.

- 2.2 An additional option is proposed by the applicant, to provide 30% affordable housing on site, however this would be on the basis of 100% of the affordable housing being shared ownership. This means that 75 housing units in a scheme of 250 units would be affordable housing, however none of these affordable units would be for affordable rent. This was originally proposed by the applicant which was discussed at section 3.5 of the previous report. This paragraph is provided below to provide the officer commentary on this option:

“Shared Ownership is an affordable low cost home ownership product for those on median incomes, whereas “affordable rent” affordable housing provides accommodation for those on low incomes in need of housing, managed through housing associations at a rent of up to eighty percent (80%) of local market rent (capped at Local Housing allowance rate). Whilst there is an overall need for affordable housing in the district and to increase housing options for residents, affordable rent properties provide accommodation for those on the Council’s housing register, with 100% nomination rights secured by the Council in Section 106 agreements on planning permissions. This type of affordable housing is the most needed in the district as demonstrated through the Strategic Housing Market Assessment which informs Policy SP23, stating the split of affordable housing to meet the needs of the district is 70% affordable rent and 30% shared ownership of any affordable housing provided on development sites.”

2.3 Following correspondence with the applicant, this second option has been adapted to potentially encompass all types of affordable housing within the definition within the National Planning Policy Framework (NPPF), however this flexible for the type of affordable housing would be a matter for the applicant, with the expectation that this would exclude affordable housing for rent (due to the viability constraints stated). The definition of affordable housing stated by the NPPF is provided at Annex 10 for information, and therefore the notational 75 units could be a mixture of affordable housing ownership products. This option would achieve the policy target for affordable housing in amount (30%) in SP23 of the Thanet Local Plan, however this would not meet the proportions set out in Strategic Housing Market Assessment (SHMA), which shows that the type of affordable housing most needed is affordable rent.

3.0 Potential reasons for refusal

3.1 Members of the Planning Committee expressed concerns about the level of affordable housing provided by the development on the basis of an 18% on-site provision (meeting the proportions of 70% affordable rent and 30% shared ownership). Policy SP23 of the Thanet Local Plan states that “residential development schemes for more than 10 dwelling units... shall be required to provide 30% of the dwellings as affordable housing”. Affordable housing shall be provided in proportions set out in the SHMA or successive documents and “the above requirements will only be reduced if meeting them would demonstrably make the proposed development unviable”. In the view of officers, following the analysis of viability evidence produced by both the applicant and the Council’s consultants, that to provide 30% of the dwellings as affordable housing, with 70% of those units being affordable rent and 30% shared ownership (the SHMA proportions), would make the proposed development unviable.

3.2 Paragraph 57 of the National Planning Policy Framework outlines that it is up to an applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage, and the weight to be given to a viability assessment is a matter for the decision maker having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. In this case, the specific circumstances of the case have determined the recommendation to members.

3.3 Two particular matters could impact on the level of affordable rent properties that would be provided within the development, which have been assessed in the previous report (Annex 8) and within the published evidence. A judgement has been made by officers to agree certain inputs into the viability appraisal on these two matters. The first is the Benchmark land value (BLV), which the residual land value is compared against. This has been agreed by both parties to be set at £135,000 per acre, whereas in other viability assessments for agricultural land considered by the Council, this has been agreed at £100,00 per acre for similar type of land. The second is the level of developer profit included within the viability appraisal, stated at 20% of Gross Development Value (GDV) of the market housing and 6% on the affordable housing housing, which is the top of the range of profit that is considered to be reasonable to enable the development to be delivered as stated in the National Planning Practice Guidance (15%-20% profit). If these inputs were reduced in the

assessment, then the level of affordable housing could be demonstrably higher than the 18% stated. However when taken together with the evidence submitted and other inputs into the assessment of the proposed development's viability, officers consider that the evidence demonstrates that a reduction in the level of affordable housing would be appropriate. In considering these matters, particular regard has been had to the view of the Council's appointed independent consultants, who agreed a £135,000 per acre BLV as appropriate (Annex 3), and the specific wording of the NPPG about the level of developer profit (which allows for a range up to 20% on GDV).

- 3.4 The amount of affordable housing provided by the development should also be considered as part of the determination of the proposed development as a whole, weighing the benefits resulting from the development against the departure from the affordable housing requirement under Policy SP23. The fact that this departure from the policy is only recommended for approval as a result of evidence which has been independently assessed, thereby demonstrating the specific rationale for the departure, should also be given weight in the determination by members.
- 3.5 Members expressed concerns at the previous Planning Committee meeting regarding the fact that the application previously had been reported to the Committee on the basis of a policy compliant scheme in terms of planning obligations, and now the application is being reported back to members for a reduction, that this would set a precedent that would undermine the Council's role as decision-maker. This is not a defensible reason for refusal of a planning application and the evidence and subsequent analysis has taken place to demonstrate why a reduced provision of on-site affordable housing in this specific instance would be acceptable in the opinion of officers.

4.0 Officer's Recommendation

- 4.1 The Council's adopted Housing Strategy outlines that the Council are "committed to working proactively with developers to help them find ways of making it viable to deliver our affordable housing requirements". Both the NPPG and the Thanet Local Plan state how evidence is required to demonstrate that proposed developments would be unviable to warrant the reduction in stated policy targets for on-site affordable housing, especially given that the Local Plan for the district has been demonstrated to be viable at 30% affordable housing on allocated sites. In this specific instance, the analysis of the evidence has shown that the development would not come forward as a policy compliant development (in terms of planning obligations), therefore a reduction in affordable housing would be acceptable in accordance with the Thanet Local Plan. This assessment takes into account the specific economic and social benefits for the delivery of an allocated housing site providing key infrastructure to support development in the district.
- 4.2 The Council's housing strategy states that the Council will "continue to prioritise affordable housing for rent to meet the needs of those on low incomes who are unable to afford alternative accommodation" and this is echoed with the Local plan policy SP23 when referring to the type of affordable housing meetings the needs outlined in the SHMA or subsequent documents. Whilst the proposed 18% affordable housing proportion would mean a reduction in the overall number of affordable units by 30, the requirement that 31 of the 45 units provided would be affordable rent, thereby providing homes to those most in need, with a requirement of the subsequent

legal agreement requiring 100% nomination rights of occupants to be held by the Council, is the option which maintains the principles of both the Council's Local Plan and Housing Strategy.

- 4.3 Therefore, it is considered reasonable to agree to a reduced affordable housing provision on site in this instance in accordance with Policy SP23 of the Thanet Local Plan, whilst still maximising the amount of affordable rent housing possible to provide housing for those most in need.

5.0 Options

- 5.1 Members confirm that the planning application be deferred to officers for approval subject to securing a legal agreement for the **provision of 18% affordable housing on site (split 70% affordable rent and 30% shared ownership)** and planning obligations as set out in this report, and safeguarding conditions outlined at Annex 1, updated to reflect the new Local Plan with the addition of two conditions requiring new development to meet the technical standards outlined in the new Local Plan:

- Details pursuant to condition 1 shall demonstrate compliance with the national described space standards as outlined in Policy QD04 of the Thanet Local Plan 2020.
- The development hereby permitted shall be constructed in order to meet the required technical standard for water efficiency of 110litres/person/day, thereby Part G2 Part 36 (2b) of Schedule 1 Regulation 36 to the Building Regulations 2010, as amended, applies.

- 5.2 Members confirm that the planning application be deferred to officers for approval subject to securing a legal agreement for the **provision of 30% affordable housing on site, but excluding affordable housing for rent**, and planning obligations as set out in this report, and safeguarding conditions outlined at Annex 1, updated to reflect the new Local Plan with the addition of two conditions requiring new development to meet the technical standards outlined in the new Local Plan:

- Details pursuant to condition 1 shall demonstrate compliance with the national described space standards as outlined in Policy QD04 of the Thanet Local Plan 2020.
- The development hereby permitted shall be constructed in order to meet the required technical standard for water efficiency of 110litres/person/day, thereby Part G2 Part 36 (2b) of Schedule 1 Regulation 36 to the Building Regulations 2010, as amended, applies.

- 5.3 Members propose an alternative motion.

6.0 Recommendations

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

Contact Officer:	<i>Iain Livingstone, Planning Applications Manager</i>
Reporting to:	<i>Bob Porter, Director of Housing and Planning</i>

Annex List

<i>Annex 1</i>	<i>Planning Committee Report OL.TH.16.1765 - 16th August 2017</i>
<i>Annex 2</i>	<i>Applicant's Viability Appraisal Summary</i>
<i>Annex 3</i>	<i>TDC Viability Review Report</i>
<i>Annex 4</i>	<i>Applicant's QS review of Highway costs</i>
<i>Annex 5</i>	<i>Independent QS review of Highway costs</i>
<i>Annex 6</i>	<i>Viability Appraisal Final Version</i>
<i>Annex 7</i>	<i>TDC Appropriate Assessment</i>
<i>Annex 8</i>	<i>Agenda Item Report 5th August 2020</i>
<i>Annex 9</i>	<i>Applicant's Response 1st September 2020</i>
<i>Annex 10</i>	<i>Definition of Affordable Housing within the National Planning Policy Framework</i>