

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

Planning Committee – 5th August 2020

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Status **For Decision**

Classification: Unrestricted

Previously Considered by **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.

A request has been submitted by the developer 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. The proposed heads of terms has also changed from those previously reported, with an appropriate assessment required under the Conservation of Species and Habitats Regulations 2017 and a significant period of time elapsing from the resolution to grant planning permission. The planning application is therefore reported back to Members for approval of the new heads of terms towards affordable housing and other planning obligations, and for resolution for approval of the outline planning application subject to receipt of a legal agreement securing the agreed obligations and safeguarding conditions.

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 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.

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 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). The applicant now proposes 18% affordable housing on site, 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 Decisions on planning applications must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote

economic growth. 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.

- 2.2 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. 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 a benchmark land value (BLV). The BLV is established on the basis of the existing use value of the land plus a premium for the landowner, with the premium required to provide a reasonable return to induce a landowner to sell the site for development or develop the site whilst reflecting the implications of site-specific infrastructure costs.

3.0 Key considerations

- 3.1 Subsequent to the Planning Committee's resolution to grant the planning application, the new Thanet Local plan has been adopted on the 9th July 2020, which includes evidence on the plan's viability setting expectations on contributions and obligations on major housing sites in the district. With regards to this site, the Council used the same consultants who produced the full plan assessment, to ensure that the evidence behind the judgement on this individual site is consistent with the full plan viability work. As outlined above, viability discussions have lasted over the last 2 years, more recently focusing on specific cost of site-specific works for strategic road infrastructure which the site is required to provide under Policy SP47 as a key road scheme (the link between Manston Road and Nash Road). More information about the design and highways implications of this work is outlined in the previous Committee report at Annex 1.
- 3.2 The site was included as a draft Local Plan allocation at time of resolution to grant in August 2017 and subsequently this policy allocation has been adopted in the new Local Plan as Policy H03. The policy allocates the site for up to 250 new dwellings with an average density per hectare (net) of 35 dwellings, whilst requiring the provision of a local distributor link road between Nash Road and Manston Road, including a new roundabout junction at Manston Road to be included within a required masterplan. The wording of the previous draft allocation policy has not substantially altered from the wording of the now adopted policy, and full consideration of this policy is provided in the previous Committee report (Annex 1). Full weight should be applied to the new local plan in determination of this application and new policies which have full weight within the decision making process are considered at section 4.0.

- 3.3 The relevant Local Plan Policies for considering this site in terms of planning obligations are Policy SP41 (Community Infrastructure) and SP23 (Affordable Housing). Policy SP41 states that development will only be permitted when provision is made to ensure delivery of relevant and sufficient community and utility infrastructure. Where appropriate, development will be expected to contribute to the provision of new, improved, upgraded or replacement infrastructure and facilities. Policy SP23 states that for development of the scale proposed shall be required to provide 30% of the dwellings as affordable housing, with the requirements only reduced if meeting them would demonstrably make the proposed development unviable.
- 3.4 A viability assessment was submitted by the applicant conducted by a chartered surveyor in May 2018 taking into account the head of terms agreed at Planning Committee in August 2017. The assessment takes into account local market evidence of sales values and estimated development costs including site-specific road infrastructure. 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 3). Subsequent to this report, responses have been provided by both parties on the matters in dispute (discussed separately below).
- 3.5 Upon submission of the viability assessment, the applicant proposed 30% on site affordable housing but with the tenure type being 100% shared ownership, providing no affordable rent properties due to the stated viability implications. 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. Therefore the viability scenario assessed and put forward by the applicant following negotiation considered the maximum amount of affordable housing that could be provided when applying the optimum split to provide 70% affordable rent, which is presented at Annex 6 as 18% of the total housing as affordable (45 units of 250 total).

Benchmark Land Value

- 3.6 The site comprises agricultural land of 9.3 hectares. The market value of the land was initially submitted as approximately £180,000 per acre or £4.14million approx total, on the basis of the land being a draft allocated housing site. The Council's viability consultants advised that this figure over estimated the premium above existing use value (agricultural land value) and further explanation is provided at section 3.1.11-3.1.19 of Annex 3. The recommendation was that the value of £135,000 per acre (or £3.1million approx) for this site should be applied as the

benchmark land value which any residual land value is compared against. Whilst this value has been disputed by the applicant's viability consultant, for the purposes of the viability exercise this figure has been stated within the subsequent viability appraisal submitted for assessment.

Findings from assessments

- 3.7 The Gross Development Value (GDV) of the private market housing has been set at £283 per sqft for market dwellings with affordable housing value set at 55% of market value for affordable rent properties and 70% for shared ownership properties. This has been set in the submitted appraisal (Annex 6) from February 2020 after negotiations between viability consultants through 2018 leading to an agreement in values in mid-2019. Changes in values subsequent to this agreement is addressed at point 3.12 of the report. As the application is at outline stage, the mix of dwellings has been set to accord with the mix of housing types stated in the Strategic Housing Market Assessment 2016 used to inform Local Plan Policy SP22. Overall the GDV in the submitted appraisal (Annex 6) is considered acceptable for the purposes of assessing viability of the scheme.

Cost assumptions

- 3.8 The assumptions provided regarding Contingency, External Works, Professional Fees, Sales Rates and Marketing cost have been negotiated between the Council and agent, further to the receipt of the Council's independent report (Annex 3). The marketing costs have been reduced to 2% of GDV from 3% and professional fees for all costs reduced to 10% from 11.5% following discussion. Construction costs have been agreed at £128per sqft for houses and £152 per sq ft for flats and this has been set in the submitted appraisal (Annex 6) from February 2020 after negotiations between viability consultants through 2018 leading to an agreement in values in mid-2019. Changes in values subsequent to this agreement is addressed at point 3.12 of the report.

Infrastructure cost

- 3.9 Initially the cost of the road infrastructure specifically required by Local Plan policy (main road to local distributor standard) and off-site routes required by Kent County Council Highways (new roundabout on Manston Road, highways works to Nash Road and a priority shift at Manston Road) was set at approx £1,065,195 however during discussions this increased to £5,130,890. This increase and total cost figure was queried by the Council and it was agreed that an additional independent assessment of costings of the road infrastructure should be carried out by Kent County Council's highways consultants. The information submitted by the applicant is at Annex 4 with the final view on highways cost from the independent consultants provided at Annex 5. The applicant has agreed that the cost of the abnormal highways works stated in the final report totalling approximately £3,820,469 and this figure has been included in the appraisal at Annex 6.

Developer Profit

- 3.10 A developer profit allowance of 20% 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 under the NPPG, in the current economic circumstances.

Planning Obligations

3.11 Financial contributions towards primary and secondary school provision, library provision, refurbishment of Quarterdeck Youth club, contribution towards bus stops, and a SAMM contribution were all proposed as outlined in the heads of terms section of the previous committee report contained within Annex 1. Subsequent to the resolution to grant, KCC agreed to reduce the secondary contribution to £589,950 and remove the request for primary education contribution on the basis that the highways improvements, when delivered, will allow the expansion of St Gregory's school. Prior to publishing this report, in June 2020 KCC have confirmed the acceptability of the following heads of terms within a Section 106 agreement required to be agreed and secured prior to determination:

- £589,950 towards Secondary school provision for the expansion of Ursuline College Westgate-on-Sea or the new Thanet Secondary school.
- £5156.77 towards portable equipment for new learners in Margate
- £14,860 towards the refurbishment of the Quarterdeck Youth Club in Margate.
- £12,003.95 towards library provision in Margate.
- £15,000 towards the provision of two bus stops and shelters within the proposed link road through the site.

In addition the off-site highways works identified previously in the Committee report at Annex 1 are also required to be secured by the legal agreement. In terms of the contribution towards the SAMM, previously £102,000 was agreed on the basis of £408 per dwelling. Subsequent to the resolution to grant, further work has refined the tariff for contributions towards the SAMM on the basis of the Local Plan provision of 17,140 houses and the current tariff when the dwelling type (2bed, 3bed, 4bed) is unknown is £350 per dwelling. Therefore the planning contribution required is £87,000 to mitigate the potential recreational pressure on the designated sites at Thanet Coast and Pegwell Bay. All of these planning contributions have been agreed by the applicant.

3.12 Once these planning contributions are included in the viability appraisal, submitted after negotiation on the basis of 18% of units being affordable housing (70% affordable rent and 30% shared ownership), the Residual Land Value (Gross Development Value minus total cost of developing the site, as updated) is £2,873,379, which is below the Benchmark Land value (see paragraph 3.3) by £227,621. Whilst there are minor discrepancies in the inputs into the model on Section 106 contribution (shown exceeding that required by approximately £15,000), the appraisal demonstrates that the site is on the edge of viability at the submitted affordable housing amount (18%). Since the appraisal on values and costs in 2018, it is not considered by officers that either property values or building costs have altered the dynamic of this viability appraisal to result in a substantively different outcome from the appraisal before members. Whilst the profit level (20% on GDV) is higher than that adopted on other appraisals in the district, it is important to consider the current uncertainty around the property and housebuilding market in response to the

COVID-19 pandemic as well as the requirement to bring significant strategic highways infrastructure with the site, requiring to bring forward wider highway benefits to support housing growth in the district. 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.

4.0 Material considerations since resolution to grant

4.1 Subsequent to the resolution to grant permission, the new Local Plan has been adopted by Thanet District Council. Due to the length of time since the resolution to grant and the adoption of the new Local Plan, members should consider whether any material planning considerations have changed to alter the decision previously reached and the conditions attached to the approval. As outlined above in the report, no principle issues have changed following the determination in August 2017, with full weight now placed on the allocation of the site for housing and requirement for strategic highways routes to be safeguarded. The previous committee report considers all planning matters including, but not limited to, impact on neighbouring properties, highways safety, open space provision, ecology and biodiversity, flooding and drainage, air quality, heritage etc, with safeguarding conditions requiring further details at different stages of development (prior to reserved matters submission, accompanying reserved matters application, prior to development or occupation). The new Local Plan does add a requirement under policy QD04 for all new development expected to meet the new technical standards outlined in the policy, namely that new dwellings shall meet the internal space standards within the Nationally Described Space Standards and meet water efficiency standard of 110litres/person/day. Therefore it is recommended to members that all the identified planning conditions at Annex 1 should be applied (with updates to the policy references to reflect the new local plan) with the addition of the following two conditions:

- 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.

4.2 Subsequent to the resolution to grant the application, case law has clarified the point at which an appropriate assessment must be carried out under the Conservation of Species and Habitats Regulations 2017 (prior to the agreement of means of mitigation to avoid significant impact on designated sites). The Council has completed an appropriate assessment (Annex 7) of the development on the basis that the SAMM contribution sufficiently mitigates to avoid an adverse impact on the European protected sites and Natural England have formally confirmed that they have no objection to the appropriate assessment. Therefore the development can be approved subject to securing the SAMMs contribution.

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 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>