

**Planning Application OL/TH/20/0847 – Land On The North
West And South East Sides Of Shottendane Road
MARGATE Kent**

Planning Committee – 21st July 2020

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

Status **For Decision**

Classification: **Unrestricted**

Previously Considered by **Planning Committee 21st April 2021 and 23rd June 2021**

Ward: **Salmestone**

Executive Summary:

This report concerns the planning application for the residential development of up to 450 dwellings and alterations to the highway network, including details of access with all other matters reserved (Appearance, Landscaping, Layout, Scale) on land to the north west and south east of Shottendane Road, Margate. The application was considered by the Planning Committee on 21st April 2021 where Members resolved to defer to Officers to consider alternative provision of planning obligations, specifically regarding affordable housing. This was reported to members on 23rd June 2021, where members considered the report and subsequently deferred the application to officers to bring back to members to consider reasons for refusal of the application.

The planning application is therefore reported back to Members to consider potential reasons to refuse the planning application.

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.

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

	<p>potential fines meaning cost awards will result in spend that is outside of the budgetary framework.</p> <p>It is expected that the Council would be required to instruct consultants to defend an appeal on behalf of the Council due to the available resources, which would incur additional costs to 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 The report taken to Members on the 21st April 2021 (Annex 6) proposed the residential development of the land either side of Shottendane Road for up to 450 dwelling with alterations to the highways network. This report was supported by viability evidence, including an independent assessment of the viability appraisal by the Council's appointed consultants, in support of the provision of 10% affordable housing on site, with approximately £4.9million in contributions to community and highways infrastructure (outlined in the heads of terms in Annex 6). The application was considered by officers to accord with the Thanet Local Plan, in particular with Policy SP23 as it had been demonstrated that the requirement for 30% on site affordable should be reduced as meeting it would demonstrably make the proposed development unviable.
- 1.2 The application was deferred to officers to consider alternative provision of planning obligations, specifically regarding affordable housing, and report back to a future meeting. Evidence was updated and submitted by the applicant which proposed 15% affordable housing, as well as other obligations and 2 review mechanisms within a future Section 106 agreement to capture any uplift in value and improvements to viability from a successful bid for Major Road Network funding. This was considered at length at the Planning Committee meeting on the 23rd June 2021 (Annex 9) and a motion to defer for approval on this basis was voted down, with a motion passed for consideration of reasons for refusal on the planning application.

2.0 Reasons for refusal

- 2.1 In January 2021, the Housing Delivery Test 2020 was published and the district has not met the requirements of the test. Therefore currently any housing application submitted to the Council, in accordance with paragraph 11 of the NPPF, will need to be considered in the context of the presumption in favour of sustainable development. Paragraph 11 of the National Planning Policy Framework (NPPF) states decisions should apply a presumption in favour of sustainable development which means for decision-taking, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF.
- 2.2 In the debate at the Planning Committee meeting on the 23rd June 2021, the consensus of members was a significant concern about the provision of affordable housing under the 30% target in Policy SP23 of the Thanet Local Plan. Other matters outlined by individual members of the Committee were regarding flooding, impact on healthcare facilities and impact on biodiversity.

Affordable housing

- 2.3 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. The previous reports at Annex 6 and 9 outlined the viability evidence submitted with the application and the independent assessment of the viability appraisal by the Council's appointed consultants, which confirms that the development would be un-viable if more than 15% affordable housing was provided

on-site (when taking into account all other planning obligations stated). Following the previous Planning Committee meeting, the viability information provided has been reviewed to assess whether a lower percentage amount for different costs could reasonably be identified which would increase affordable provision to 30%. This has looked at base-build costs, external works, professional fees, disposal costs, private revenue and developers return. Whilst a lower developer profit figure (at 15%) could be adopted, this would not result in a sufficient increase to allow for 30% affordable housing, with the approach of a 17.5% figure consistent with the position of the Council on other viability appraisals within the identified Government range. The other assumptions reviewed in the viability appraisal do not clearly show any reasonable limits of deviation which would increase the viability of the scheme on the basis of the evidence provided by the applicant and independently assessed. Therefore it is concluded that the development would be in accordance with Policy SP23.

- 2.4 Members cited the particular issues within the district regarding affordability and access to affordable housing in the debate on the 23rd June 2021. Provision of affordable housing is a key planning objective at both the local and national level, with a key tenet of the Council's housing strategy to deliver a range of homes to meet the local housing need which residents can afford. As of 9th July 2021, there are 1563 households on the housing register applying for social housing. The Council's Housing strategy (March 2020), outlines that:

“Currently 19,471 households or 29% of the population are on a low income, which is defined as less than £15,988 per annum. On average earnings are £462.50 per week which is within the bottom 20% of the whole of England. Only 19.12% of households are in the lower managerial and professional occupations. This presents the challenge that more than 80% of the population in Thanet, cannot afford to buy an averagely priced terraced house and those who are renting in the private sector are spending over 50% of their earnings on living costs. The median income for Thanet is £25,000 and to be affordable, the National Housing Federation identifies that only 30% of income should be spent on housing costs.”

- 2.5 There is also a particularly acute need for affordable rented accommodation following 5 years of low delivery (between 2014-2019). The Strategy elaborates that the “low delivery of affordable housing in recent years means it is crucial to maximise the number of affordable homes to be delivered over the duration of this strategy and beyond” and identifying that “the most recent Strategic Housing Market Assessment has calculated that the district needs 857 homes per annum”. In the supporting evidence for the Thanet Local Plan, the update on Objectively Assessed need (2017) stated that 397 affordable units were required each year to meet affordable demand. This is a high percentage (46%) of overall housing need, demonstrating the acute need for affordable housing in the district.
- 2.6 The key matter is what harm results from the provision of less than 30% affordable housing, and whether this outweighs the identified substantial benefits of the scheme (including the provision of 15% affordable housing from the application, exceeding the national target of 10%). Whilst the proposal would not be contrary to Policy SP23 when taken as a whole, if members consider that there is substantial harm created by not provided 30% affordable housing on this site due to the specific housing need and acute affordability issues in the district, and that this outweighs both the viability

evidence and clear benefits from the scheme, then they could refuse the application on the following reason:

The proposed development, by virtue of the proposed level of affordable housing, would not meet the identified need for affordable housing in the district, thereby not providing the required homes to create a balanced and mixed community. This harm is considered to significantly and demonstrably outweigh the benefits of the development, therefore the proposal would not constitute sustainable development and is contrary to Strategic Priority 3 of the Thanet Local Plan and the objectives of the National Planning Policy Framework.

- 2.7 It would be expected that if a decision on this basis was appealed that significant weight would be given to the viability evidence provided and independently assessed by the Council, and substantial weight would be afforded to housing delivery on a strategically allocated site, when the Council are in presumption in favour of sustainable development, as well as the clear highway, ecological and economic benefits of the proposed development. The development also complies with wording of the Council's affordable housing policy SP23 in providing viability evidence, and therefore there is no policy conflict from the development on this point.
- 2.8 Officers have reviewed an appeal decision issued in June 2021 for a decision by Newark and Sherwood District Council (see background papers link), which outlines the expected weight to be given to a reason for refusal on insufficient affordable housing, when a viability case has been independently agreed (Paragraphs 39-43 and 80 are particularly relevant). This appeal was upheld by the Inspector, granting development due to the benefits of the development and evidence provided outweighing the identified harm. In the case before members, it is expected that greater weight would be given to the benefits of the proposed development, as the Council has not met the Housing delivery test, and 15% affordable housing is being proposed (in the appeal case, none was proposed).

Flood risk

- 2.9 At 5.3 of Annex 7, officers stated:

"The detailed assessment in the application and mitigation measures has been reviewed by specialist Kent County Council officers (as the Local Lead Flood Authority), with agreement for safeguarding conditions on any grant of planning permission to require further details including a detailed surface water drainage scheme and subsequent verification report. This scheme would need to be formulated as part of the detailed layout of the site, which is not being considered at this outline stage, but the principles of the strategy have been assessed to be satisfactory to manage surface water run-off from the development. The planning conditions (13, 14, 15) are considered appropriate mechanisms for ensuring that flood risks from development to the future users of the land and neighbouring land are minimised in accordance with Policy CC02 of the Local Plan and the guidance within the National Planning Policy Framework."

- 2.10 Whilst members expressed concerns about the potential for flooding, or that the properties built would be affected by flooding, no evidence was provided to counter the view of KCC as the local lead flood authority, that the scheme could come forward

without increasing surface water drainage flows or increasing flood risk. Therefore officers are not able to provide a cogent planning reason for refusal on this ground.

Impact on Healthcare

2.11 This matter was previously addressed at 5.2 of Annex 7, which stated:

“Concerns were raised by members of the Planning Committee regarding the lack of GP services in the district both broadly and in relation to the proposed housing development. The Council consulted with the NHS Kent and Medway Clinical Commissioning Group (CCG) who have assessed the implications of this proposal on delivery of general practice services. They have requested a contribution which has been considered to sufficiently mitigate the impact of the development with a payment of £388,800 towards creating capacity at the Limes. Current operational issues in regard to recruiting GPs to the district would not be a justifiable planning reason for refusal of the application, as the issue is not directly related to the development, and the responsible body (CCG) have confirmed that a contribution is sufficient to mitigate the impact from the development on healthcare provision.”

2.12 Therefore officers are not able to provide a cogent planning reason for refusal on this ground, as the lack of GPs in the district is not an impact directly attributable as a result of this development.

Impact on Biodiversity

2.13 Concern was raised at the meeting regarding the lack of a detailed breeding/nesting bird survey. The application was accompanied by a Phase 1 Habitat Survey, which was included in the Environment Impact Assessment, and did not identify the presence of Skylarks on the site. Notwithstanding this, the Environmental Statement outlines specific mitigation proposed during construction (strict protection of root protection areas of trees, working methods and timing to avoid direct impacts to nesting birds, compliance with terms of European Protected Species derogation licensing, updating surveys where necessary), with a landscape and ecology management plan to be prepared at detailed design stage to set out the measures for the establishment and management of newly created and retained habitats. These would be secured by proposed conditions 31 and 41 outlined at Annex 6, and no objection has been raised to this approach by either Natural England, or KCC Biodiversity as the Council's expert advisors on Biodiversity matters. Therefore officers are not able to provide a cogent planning reason for refusal on this ground.

3.0 Applicants submission

3.1 Following the meeting in June, the applicant Gladman Developments has written to the planning department. This is appended to this report at Annex 10 and outlines an option from the applicant's perspective that members could resolve to defer and delegate for approval subject to the full requirement for 30% affordable housing being provided on-site (as well as obligations as previously stated), which would then put the onus on the applicant to sign a Section 106 agreement on that basis if they wished to secure the permission. This option is acknowledged to deviate from the agreed viability evidence, and would likely rely upon the Major Road Network (MRN) bid being successful (as this would mean the vast majority of road costs on site

would be funded by the grant - thereby improving viability to be able to increase affordable provision on site).

- 3.2 The approach is not recommended by officers as a resolution on this basis would effectively leave the application undetermined until either the MRN is successful, or viability improves to an extent that the applicant signs a legal agreement on these terms, with no timescale for this outcome. This resolution would be based on hope rather than evidence, whilst the application would be open for a non-determination appeal by the applicant. It would also require Members to set aside the proposal submitted and resolve to determine the application irrespective of the evidence.

4.0 Options

- 4.1 Members refuse the application on the lack of sufficient affordable housing, as outlined at 2.6 in the report.
- 4.2 Members refuse the application on the lack of sufficient affordable housing, as outlined at 2.6 in the report and additional reasons to be outlined in the meeting.
- 4.3 Members confirm that the planning application be deferred to officers for approval subject to securing a legal agreement for the provision of 15% affordable housing on site (split 80% affordable rent and 20% shared ownership), and planning obligations and safeguarding conditions outlined at Annex 6.
- 4.4 Members propose an alternative motion.

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>Applicant's Viability Appraisal</i>
<i>Annex 2</i>	<i>DSP Viability Review</i>
<i>Annex 3</i>	<i>Highways Cost review</i>
<i>Annex 4</i>	<i>Applicant response on Highways cost</i>
<i>Annex 5</i>	<i>Habitat_Regulation_Assessment 20.0847</i>
<i>Annex 6</i>	<i>Planning Committee Report 21st April 2021</i>
<i>Annex 7</i>	<i>Applicant's Additional Viability submission</i>
<i>Annex 8</i>	<i>Alternative contribution scenario</i>
<i>Annex 9</i>	<i>Planning Committee Agenda Report 23rd June 2021</i>
<i>Annex 10</i>	<i>Applicants letter received 9th July 2021</i>

Background Papers

Thanet District Council - Housing, Homelessness & Rough Sleeper Strategy - March 2020
<https://www.thanet.gov.uk/info-pages/strategic-housing/>

Strategic Housing Market Assessment (SHMA) - Updated Assessment of Objectively Assessed Housing Need 2017
<https://www.thanet.gov.uk/wp-content/uploads/2018/08/SHMA-Update-Report-2017.pdf>

Planning Appeal - Newark & Sherwood District Council vs C.B. Collier NK Limited
APP/B3030/W/20/3260970
<https://acp.planninginspectorate.gov.uk/>