

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

Planning Committee – 23rd June 2020

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

Status **For Decision**

Classification: **Unrestricted**

Previously Considered by **Planning Committee 21st April 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, and report back to a future meeting.

The applicant has considered the change in market conditions since the submission of the viability appraisal in regard to sales values and building costs and has submitted a revised offer of 15% of housing on site to be affordable as defined by the National Planning Policy Framework, with all other contributions still provided as outlined in the Committee report in Annex 6. This would potentially increase the number of affordable units by 23 dwellings from 45 to a total of 68 affordable housing units. This is considered by officers to be supported by sufficient evidence that an increase in provision of affordable housing above this level, with the current level of other planning contributions, would make the development of this allocated housing site unviable. The benefits from the application, including but not limited to the provision of housing, new road infrastructure, contributions towards community infrastructure and 15% affordable housing, is considered to demonstrably outweigh any harm created by the development, including not achieving the target for on-site affordable housing.

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 to defer and delegate 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 15% affordable housing on site (split 80% affordable rent and 20% shared ownership) and planning obligations as set out in Annex 6, and safeguarding conditions outlined at Annex 6.

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 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 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 discussed at length at the meeting and following the failure of the motion to defer the application for approval, the application was deferred to officers to consider alternative provision of planning obligations, specifically regarding affordable housing, and report back to a future meeting. This report outlines the submission of the applicant following this resolution and provides further guidance to members about the relevant planning matters. This report should be read in conjunction with the previous Committee report at Annex 6.

2.0 Applicant's Submission

- 2.1 The applicant has submitted an update to the viability appraisal to the Council which is appended at Annex 7 provided by their consultants JLL. This has assessed the changes to sales values and build costs since the previous appraisal was concluded (June 2020) and applied the values from the first quarter of 2021. For sales values, this shows an increase when using the Nationwide house Price Index Data (for outer south east) of 5.6%, which has been rounded to 6% and applied to all market housing proposed and shared ownership units. For the affordable rent units, the value of these properties has only marginally increased as these values are

calculated using the Local Housing Market Allowance rates (based on private market rents being paid in Thanet). For the build costs, using the RICS's Building Cost Information Service (BCIS) private housing construction price index, there has been an increase of 3% of build costs.

- 2.2 These percentages have been applied to the relevant sections of the appraisal report (provided in summary at Annex 7). This is considered by officers to be a suitable update to the agreed assumptions within the previous viability report based on verifiable evidence and recognised indexes. An updated appraisal has been provided which shows that the site can provide 15% affordable housing on site (at an 80% affordable rent and 20% shared ownership mix), with the same amount of contributions, without making the development viable. This has been submitted as a revised provision on site, which would provide up to 68 units (53 of which would be affordable rent), increasing the affordable units by 23 above the previous 10%.
- 2.3 The submission from JLL also outlines that the agreed review mechanisms in the Section 106 (covering if the Major Road Network (MRN) grant occurred, and a review in any event at 2 points in the development) would encompass any further increases in values using the information at the time of the reviews. This has been elaborated upon further within the previous Committee report (Annex 6).

3.0 Considerations on Planning Obligations

- 3.1 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.
- 3.2 The officer recommendation to Planning Committee previously supported the provision of 10% affordable housing, with £4.9 million (approx) contribution to community and highways infrastructure and environmental mitigation (SAMMs). This was on the basis of 2 review mechanisms provisions within the legal agreement, allowing a reappraisal during development to encompass sales values increases and any grant funding, which if the development is found to be more viable, additional contributions would be payable for affordable housing and infrastructure. This followed extensive discussion with Kent County Council to agree on an approach which maximised the contributions to required infrastructure, without precluding the development of an allocated housing site which provides key sections of road infrastructure as part of the Thanet Transport Strategy.
- 3.3 Following the increase to 15% affordable housing, 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. This judgement is based on the evidence submitted from verified evidence and

indexes, with the original assumption in the appraisal independently assessed by the Council's appointed consultants. The review mechanisms proposed would also remain in place as outlined in the Heads of terms section of the previous Committee report at Annex 6, to capture any increase in the viability of the site over time through a financial contribution.

- 3.4 The application would provide the development of an allocated housing site at a time when the Council has failed to meet the housing delivery test, placing further weight in decision-making in approving development which accords with the adopted Local Plan. In addition, the provision of the link road from Manston Road to Hartsdown Road will provide clear and demonstrable benefits to the district's transportation network, whilst accommodating additional traffic created from the proposal.
- 3.5 On the basis of the evidence before the Council, a higher proportion of affordable housing could only be achieved through reducing contributions to community and highways infrastructure. The applicant has set out that by reducing the contributions to 75% would result in an increase in affordable housing to 19% on site provision (this is appended at Annex 8). This would mean that the development would not in officers' view sufficiently mitigate the impact of the development on the highway network, nor the impact on community services including education, by reducing the off-site contributions outlined in the heads of terms, as this may mean that insufficient funding is available for strategic projects for the district. Therefore it is not recommended that the amount of contribution to community and highway infrastructure is reduced from that outlined in the Heads of Terms section of the Committee report at Annex 6.

4.0 Costs risk

- 4.1 As outlined in the "Protocol for the Guidance of Planning Committee Members and Officers" as part of the Council's constitution, if the Planning Committee is minded to refuse planning permission against officer advice the Planning Committee is required to give adequate and intelligible reasons on good planning grounds for refusing to grant planning permission and these ground(s) of refusal must be in the minds of members of the Planning Committee at the point of refusal.
- 4.2 In addition, the Council is at risk of having costs awarded against it, if, subsequently on appeal, it is unable to justify each ground of refusal. 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. One of the aims of the costs regime, outlined by the National Planning Practice Guidance, is to "encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay".
- 4.3 Following the assessment of officer's and the Council's appointed consultants, the submitted evidence has shown that the development would be unviable if the affordable housing on-site was increased above 15% (68 units in a 450 unit development). Without any evidence to the contrary, refusal on grounds of insufficient affordable housing would be untenable at appeal, as Policy SP23 of the adopted

Local Plan outlines that the 30% requirement “will only be reduced if meeting them would demonstrably make the proposed development unviable”. Therefore the reduced amount in this specific instance, taking into account the other contributions provided, and the review mechanisms to capture any uplift in value or grants awarded, would accord with Local Plan Policy, and any refusal on this ground would be a high risk of being overturned at appeal with costs awarded against the Council.

- 4.4 Members should not apply the rationale that as the development cannot provide the target affordable housing amount in the Local Plan, that the site is not suitable for development as a housing site, as this would fail to adequately take in account the guidance within the National Planning Practice Guidance regarding viability and the provisions within the Thanet Local Plan specifically in Policy SP23.

5.0 Other matters

- 5.1 It is clear from appeal decisions and advice, that the consideration of a planning application on an allocated housing site should not assess whether the site is suitable for housing development. An assessment has already occurred through the Local Plan process, and the plan has been adopted by the Council. Any refusal on principle grounds relating to the development of the site for housing would, in officers view, be unreasonable and the Council would be at high risk of a costs award. In addition, the loss of agricultural land has been considered and weighed against the need for housing through the policy process. The allocated status of the site means the decision for members is not whether the site should be developed, but how it should be developed when applying the specific policy requirements of the site and the local plan.
- 5.2 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.
- 5.3 Additional concerns were outlined in relation to drainage of the site, following the presentation of the existing surface water flows across the site. 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.

6.0 Options

6.1 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.

6.2 Members propose an alternative motion.

7.0 Recommendations

7.1 Officers recommend Members of the Planning Committee agree option 6.1.

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>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>