

# Planning Application F/TH/20/0842 –Seagulls, Cliff Promenade BROADSTAIRS Kent

**Planning Committee – 17th November 2021**

Report Author **Gillian Richardson, Senior Planning Officer**

Status **For Decision**

Classification: Unrestricted

Previously Considered by **Planning Committee 15th September 2021**

Ward: Kingsgate

## **Executive Summary:**

This report concerns the planning application for the residential development for 8 self contained flats following the demolition of the existing dwelling on site. The application was considered by the Planning Committee on 15th September 2021 where Members resolved to defer to Officers to consider the impact on the cliff regarding stability as a result of the proposed excavation, and potential cliff erosion, and report back to a future meeting.

The applicant has considered the concerns raised by Members and they have submitted a plan detailing the construction sequencing and dig required for the basement car parking.

In addition officers have sought advice from the Councils Deputy Technical Services Manager, who acknowledged that whilst there significantly more cliff falls around the Thanet coastline in Winter/Spring 2020/2021 that the cliff erosion rate in North Foreland is currently slow at approximately 100mm per year.

This is considered by officers to be supported by sufficient evidence that the proposal, if approved, would have a significantly long built life without the risk of being lost due to coastal erosion or the excavation resulting in stability problems for the cliff given the build measures proposed. The benefits from the application, including but not limited to the provision of housing, is considered to demonstrably outweigh any harm created by the development in this regard.

The planning application is therefore reported back to Members for approval for resolution to defer and delegate for approval of the planning application subject to receipt of a legal agreement securing the agreed obligation 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 SAMM contribution and safeguarding conditions outlined at Annex 1 and including the addition of the Basement Construction Sequencing Plan at Annex 2 into condition 2.

## **CORPORATE IMPLICATIONS**

<p><b>Financial and Value for Money</b></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.</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><b>Legal</b></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 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><b>Corporate</b></p>	<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>
<p><b>Equalities Act 2010 &amp; Public Sector Equality Duty</b></p>	<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 &amp; maternity. Only aim (i) of the Duty applies to Marriage &amp; 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>
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## **1.0 Introduction**

- 1.1 The report taken to Members on the 15th September 2021 (Annex 1) proposed the residential development of the land that the house known as 'Seagulls' currently occupies at Cliff Promenade in Broadstairs for 8no. Two bedroom dwellings following the demolition of 'Seagulls'. The application was considered by officers to accord with the Thanet Local Plan.
- 1.2 The application was discussed at the meeting and following the failure of the motion to defer the application for approval, the application was deferred to officers to consider the impact of the proposal on cliff erosion and stability, and report back to a future meeting. This report outlines the submission of the applicant and advice from the Council's Deputy Technical Services Manager 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 1.

## **2.0 Applicant's Submission**

- 2.1 The applicant has considered the concerns raised by Members and they have submitted a plan detailing the construction sequencing and dig required for the basement car parking. The excavation shown is set away from the cliff face. The applicant's agent has detailed that the ground is partially made ground that was excavated from the swimming pool and garden area of the original house to raise the level in the front garden and parking area. It is further detailed they will bore secant piles for the perimeter of the basement box before excavation to ensure any stability issues and if necessary, undertake a ground penetrating radar survey to ensure there are no solution features or anomalies.

## **3.0 Consultation**

- 3.1 In addition, the Deputy Technical Services Manager has provided more specific details relating to cliff erosion in Thanet and in particular in the North Foreland Area as well as cliff stability. He details:
- Existing buildings exist in high risk flood/erosion sites around the country and should not support redevelopment in the same location.
  - Due to climate change, the sea level is and will rise, exposing the cliff to increasing levels of scour from the sea (Coastal squeeze). To put this into context, the level of the foreshore between the low tide line and the cliff varies little, therefore a 500mm increase in sea level will mean the tide barely leaves the cliff as it goes out. This was not a consideration when the existing buildings were constructed.
  - The changing climate may cause cliff erosion to accelerate, in Winter/Spring 2020-21 we experienced significantly more cliff falls around the Thanet coastline due to heavy rain saturating the chalk making it heavier, followed by a cold spell freezing the water, then the inevitable cliff falls following the thaw.
  - Cliff erosion at North Foreland is currently slow at approximately 100mm per year.
  - At a minimum the cliff face is approximately 18m seaward of the road.

#### **4.0 Considerations on further information**

- 4.1 This method of excavation and sequencing shown on the plan can be included within the approved drawings in order that the LPA can control it.
- 4.2 Taking into account this information it is noted that the development is a minimum of 45m from the cliff face; separated by a grassed area and the road. It is also noted that in terms of the specific erosion rates relevant to this site it is relatively slow; 100mm a year. Whilst officers appreciated that cliff erosion is a natural and occurring process that takes place in Thanet and around the country, this level of erosion is considered by officers to be a speed that would not be prohibitive to the redevelopment of the site.
- 4.3 Therefore it is not recommended that the underground car parking is removed from the scheme or any other alteration to the proposal and the officer recommendation still remains as detailed within the Committee report at Annex 1.

#### **5.0 Costs risk**

- 5.1 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.
- 5.2 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".
- 5.3 Following the assessment of the additional information and consultation advice, the submitted information has shown that the development would not affect cliff stability and that cliff erosion is slow in the site area and unlikely to be prohibitive to development. Without any evidence to the contrary, refusal on grounds of impact upon cliff stability or cliff erosion would be untenable at appeal, as Policy CC03 of the adopted Local Plan outlines that proposals for new development within 40 metres of the coastline or cliff top must meet 3 criteria. However it is confirmed that the proposed building is in excess of 40m from the cliff top, with a slow rate of erosion at this location and construction methods proposed to control impact to cliff stability. Therefore taking into account the policy requirements and additional information provided, it is considered the proposal 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.

#### **6.0 Options**

- 6.1 Members confirm that the planning application be deferred to officers for approval subject to securing a legal agreement and safeguarding conditions outlined at Annex

1 and including the addition of the Basement Construction Sequencing Plan at Annex 2 into condition 2

6.2 Members propose an alternative motion.

## 7.0 Recommendations

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

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Reporting to:	Annabel Hemmings, Principal Planning Officer

## Annex List

<i>Annex 1</i>	<i>Planning Committee Report</i>
<i>Annex 2</i>	<i>Basement Construction Sequencing plan</i>