

# Planning Application F/TH/21/0688 – 2-12 Harold Road, MARGATE Kent

**Planning Committee – 20th July 2022**

Report Author **Emma Fibbens, Principal Planning Officer**

Status **For Decision**

Classification: Unrestricted

Previously Considered by **Planning Committee 18th May 2022**

Ward: **Cliftonville West**

## **Executive Summary:**

This report concerns the planning application for the erection of a four storey building containing 26no. 2-bed flats and 8no. 3-bed flats, and the erection of 3no. 3-storey 4-bed terraced houses, with associated parking, access and landscaping works following demolition of existing commercial buildings. The application was considered by the Planning Committee on 18th May 2022 where Members resolved to defer to Officers 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 potential fines meaning cost awards will result in spend that is outside of the budgetary framework.

	<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>
<b>Legal</b>	<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>
<b>Corporate</b>	<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>
<b>Equalities Act 2010 &amp; Public Sector Equality Duty</b>	<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>

## 1.0 Introduction

1.1 The report taken to Members on the 18th May 2022 (Annex 1) proposed the erection

of a four storey building containing 26no. 2-bed flats and 8no. 3-bed flats, and the erection of 3no. 3-storey 4-bed terraced houses. This report was supported by viability evidence, including an independent assessment of the viability appraisal by the Council's appointed consultants, with £48,122.36 in contributions to community infrastructure, and £76,877.64 in contributions towards off-site affordable housing provision (outlined in the heads of terms in Annex 1). 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 could not be achieved and should be reduced, as meeting it would demonstrably make the proposed development unviable.

- 1.2 The application was discussed by Members at the May planning committee meeting, and the motion to approve the application was voted down. A resolution to refuse the application was then passed. Members agreed to defer the application to a future planning committee meeting to allow officers to set out a proposal for potential reasons for refusal, based upon the discussions at the May planning committee whereby reasons for refusal would be discussed.

## **2.0 Reasons for refusal**

- 2.1 The Council cannot currently demonstrate a five year housing land supply. 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 18th May 2022, members raised concerns with the size, scale and height of the development, in addition to its design, the lack of doorstep play space, and the lack of affordable housing provision.

### *Size, Scale, Height and Design*

- 2.3 Members raised concerns with the height, scale and design of the development. The proposal is for a 4-storey building containing 34no. flats, which members considered to be an over intensification of the site. At 4-storey in height the building exceeds the height of the majority of buildings within Harold Road, which are predominantly three or three and a half storeys in height. When considering this height, in addition to the width and depth of the building, Members felt it resulted in a significantly large scale building that detracted from the character and appearance of the area.
- 2.4 Members further raised concerns with the proposed design, which they considered did not reflect the predominantly traditional design present within Harold Road, nor incorporate any of the features that are clearly present on existing buildings within the locality. Many of the buildings within Harold Road are Victorian buildings incorporating bay window projections, and cill and header details. Many of the buildings are also single buildings with entrances often raised above road level, giving a sense of verticality to the units within the streetscene and an appreciation of

individual units. Members felt that the proposed building lacked character, and was quite a large block that did not fit in with the streetscene, and was out of keeping with the character of the area. Whilst Members appreciated that there is a building of a similar scale on the corner fronting Eastern Esplanade, in this instance Members were of the view that that a building of a similar scale is not necessarily suited within a side road leading from the seafront, and therefore raised concerns with both the design and scale.

- 2.5 Members therefore considered that the proposal failed to relate to surrounding development, form and layout, be well designed, respect and enhance the character of the area, or be compatible with neighbouring buildings and spaces, contrary to Policy QD02 of the Thanet Local Plan.
- 2.6 The site is located within the Cliftonville Renewal Area. Policy H08 relates to development within the Cliftonville West area, and supports proposals for residential accommodation where it provides high quality homes, increases the number of family homes, contributes to the creation of mixed settled communities in which families and individuals will want to live, and where it makes a positive contribution to the street scene and environmental quality of the area. Members outlined concerns that the development would not make a positive contribution to the street scene, by virtue of its height, size, and scale, design, and the number of units proposed, would not make a positive contribution to the street scene or the quality of the environment.
- 2.7 If Members remain of the view that the size, scale, height and design is a concern then the application could be refused on the following reason:

*The proposed development, by virtue of its size, scale, height and design, will result in an obtrusive and incongruous form of development that fails to relate to surrounding development,, or make a positive contribution to the street scene or the quality of the environment. The proposal would therefore severely detract from the character and appearance of the surrounding area, and fail to create an attractive community, contrary to Policies QD02 and H08 of the Thanet Local Plan and paragraph 130 of the National Planning Policy Framework.*

#### *Doorstep Playspace*

- 2.8 Policy QD03 requires that new residential development include the provision of private or shared external amenity space/play space, where possible. Policy GI04 requires that new family dwellings incorporate garden space in order to provide a safe "doorstep" play area for young children.
- 2.9 Communal doorstep playspace has been provided to the rear of the proposed flats, measuring approximately 21m by 8m. There are no policies or guidelines to dictate the size of the garden space. During the course of the application the building has been reduced in size and the communal doorstep playspace increased. In officers view the space is now of a sufficient size to serve the number of units proposed, and as such it is recommended that the lack of doorstep playspace is not considered by members as a reason for refusal.

#### *Affordable housing*

- 2.10 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.
- 2.11 Viability evidence has been submitted with the application, and an extensive independent assessment of the viability appraisal by the Council's appointed consultants (Dixon Searle Partnership - DSP) has been carried out. The viability assessment submitted included an option for 10no. dwellings, as an alternative to a flat development, which DSP determined as not appearing to offer a viable proposition.
- 2.12 The previous report to members outlined how the main aspects of viability including build cost, sales values, benchmark land value and profit levels have been considered, and this is set out within the report contained within Annex 1.
- 2.13 The consultants who have independently reviewed the viability appraisal for the housing scheme agree that a housing scheme option for 10no. units on the site does not appear a viable proposition.
- 2.14 DSP's latest appraisal outcomes indicated a surplus of £340,946 when utilising a test profit level of 15% of Gross Development Value (GDV) and a surplus of £161,480 when utilising a profit level of 17.5% GDV. These outcomes were based on the applicant team accepting DSP's downward adjustment to the Benchmark Land Value (BLV) and increase in GDV (as requested in Annex 2 - DSP review of initial viability submission).
- 2.15 The Council has consistently accepted 17.5% as an appropriate and acceptable profit level for developers within the district, and as such an offer closer to the £161,480 surplus would be accepted in this instance. This profit level has been assessed as reasonable in the recent Shottendane Road appeal decision which focused on viability (Annex 3)
- 2.16 The applicant has offered a contribution of £125,000 towards affordable housing and other S106 contributions, plus a SPA contribution of £13,302. DSP has advised that whilst there is a small remaining between the surplus and the offer position, they are of the view that a compromise is needed, along with a balanced approach, given that assumptions can fluctuate. They have therefore advised that upon weighing it up they are of the view that the Council should consider this offer, which is a substantial increase above the original position of no contributions.
- 2.17 The Council has taken on board the advice of DSP, and the difficulties associated with developing brownfield sites within the district. The applicant has advised that they will not be increasing their offer, which is currently only £23,178 short of the £161,480 surplus DSP had suggested may be achievable. Given the limited shortfall between the surplus that DSP has recommended is achievable and the offer made by the applicant, in officers' view a refusal of the application on the basis of viability is not considered to be a reasonable grounds for refusal, when judged against the identified housing supply position and the contribution being proposed.

- 2.18 The Council does not have a priority order for the allocation of contributions. As such, based upon the comments received by residents and consultees, officer's have made the decision to allocate the £125,000 contribution offer in the following way:
- SPA contribution of £13,302,
  - A contribution of £76,877.64 towards affordable housing provision,
  - A contribution of £30,564 towards the refurbishment, reconfiguration and/or extension of The Limes Medical Centre and /or Northdown Surgery and/or towards new general practice premises development in the area
  - A contribution of £15,542.97 towards special education in the form of Foreland Fields School expansion,
  - A contribution of £2,015.39 towards waste improvements at Thanet District HWRC to increase capacity.
- 2.19 Should members disagree with the way in which the contributions have been allocated, there is the potential for this to be amended, with all contributions other than the SPA contribution (required so the development complies with the Habitat Regulations) being provided towards off-site affordable housing provision.
- 2.20 Members are aware of the Shottendane Road decision, which was refused on a lack of affordable housing ground that the council lost at appeal. The refusal of an application on lack of affordable housing requires robust evidence to support this view, and given that a viability assessment has been submitted for this application that has been independently reviewed, and which the consultants conclude can not viably achieve 30% on site affordable housing, it would be unreasonable to refuse the application for this reason, especially in light of the different viability inputs such as build costs and profit level which have been considered reasonable at appeal followed through in the assessment of the proposed development
- 2.21 On the grounds that viability has been appropriately tested, it is considered that the proposal does comply with Policy SP23 of the Thanet Local Plan, and as such in officer's view the lack of affordable housing provision should not be considered as a grounds for refusal.

#### *Technical reasons*

- 2.22 Whilst the applicant has agreed to the provision of the financial contributions (including the SPA contribution) as set out within the Heads of Terms of the original committee report (Annex 1), a signed legal agreement securing these contributions has not been submitted, and as such it is recommended that two further technical reasons for refusal be added on this basis:

*The applicant has failed to enter into a legal agreement to secure the provision of affordable housing, and the delivery of the necessary planning obligations required in order to mitigate the impacts of the proposed development on the local infrastructure and make the development acceptable in all other respects. The application is therefore contrary to Policies SP41 and SP23 of the Thanet Local Plan, and paragraphs 55, 57 and 58 of the National Planning Policy Framework.*

*The proposed development will result in additional pressure on the Thanet Coast and Sandwich Bay Special Protection Area (SPA), and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI), and in the absence of securing an*

*acceptable form of mitigation to relieve the pressure, the proposed development would be contrary to policy SP29 of the Thanet Local Plan and paragraph 182 of the National Planning Policy Framework and the Habitats Directive*

### **3.0 Options**

3.1 Members refuse the application on the following reasons:

- *The proposed development, by virtue of its size, scale, height and design, will result in an obtrusive and incongruous form of development that fails to relate to surrounding development, or make a positive contribution to the street scene or the quality of the environment. The proposal would therefore severely detract from the character and appearance of the surrounding area, and fail to create an attractive community, contrary to Policies QD02 and H08 of the Thanet Local Plan and paragraph 130 of the National Planning Policy Framework.*
- *The applicant has failed to enter into a legal agreement to secure the provision of affordable housing, and the delivery of the necessary planning obligations required in order to mitigate the impacts of the proposed development on the local infrastructure and make the development acceptable in all other respects. The application is therefore contrary to Policies SP41 and SP23 of the Thanet Local Plan, and paragraphs 55, 57 and 58 of the National Planning Policy Framework.*
- *The proposed development will result in additional pressure on the Thanet Coast and Sandwich Bay Special Protection Area (SPA), and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI), and in the absence of securing an acceptable form of mitigation to relieve the pressure, the proposed development would be contrary to policy SP29 of the Thanet Local Plan and paragraph 182 of the National Planning Policy Framework and the Habitats Directive*

3.2 Members refuse the application for the reasons set out within 3.1, and additional reasons as identified at the meeting.

3.3 Members defer and delegate the application for approval, subject to safeguarding conditions as set out within the report contained within Annex 1, and the provision of a signed legal agreement securing the SPA contribution and financial contributions towards affordable housing and community infrastructure as set out within the Heads of Terms within the report contained within Annex 1.

3.4 Members propose an alternative motion.

### **4.0 Recommendation**

4.1 The amended application is considered to be acceptable by officers, therefore it is recommended that members adopt option 3.3. However, if members are minded to

refuse the application as outlined at the meeting on the 18th May 2022, then officers recommend option 3.1.

Contact Officer:	<i>Emma Fibbens, Principal Planning Officer</i>
Reporting to:	<i>Iain Livingstone, Planning Applications Manager</i>

**Annex List**

<i>Annex 1</i>	<i>Planning Committee Report 18th May 2022</i>
<i>Annex 2</i>	<i>DSP Viability Review</i>
<i>Annex 3</i>	<i>Planning Appeal Shottendane Road</i>