

Motion regarding pausing new planning permissions for major applications

Council	12 October 2023
Report Author	Bob Porter (Director of Place)
Portfolio Holder	Cllr Rick Everitt, Leader of the Council
Status	For Decision
Classification:	Unrestricted
Key Decision	Policy Framework
Reasons for Key	N/A
Previously Considered by	Council - 13 July 2023
Ward:	All wards

Executive Summary:

Full council considered a notice of motion at its meeting on 13 July 2023, that proposed pausing new planning permissions for major applications.

This report sets out the financial, legal and planning implications of the proposed motion to properly inform members of the council.

The report recommends that council reject the notice of motion, setting out the relevant reasons, in section 3.

Recommendation(s):

Members adopted the Motion or not.

Corporate Implications

Financial and Value for Money

The advice from Central Government within the National Planning Practice Guidance sets out the circumstances in which costs may be awarded against either party in planning appeals. It is anticipated that appellants for existing major planning applications would seek an appeal against the non-determination by the Council.

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. It is considered that a failure to determine major planning applications due to the reasons provided would be unreasonable given the advice in the

National Planning Policy Framework on determining applications (Paragraph 11) and the presence and purpose of the Thanet Local Plan 2020.

It is therefore expected that a costs award would occur in all cases against the Council where the Council would not determine an application based on this motion and an appeal is made. There are no funds allocated for any potential fines meaning cost awards will result in significant spend that is outside of the budgetary framework, nor budget allocated for additional resources for planning appeals and public inquiries. Consequently, there would be an impact on the amount of budget available for service delivery and/or reserves available to mitigate risk and there would be an unavoidable need to reduce spending on council wide service delivery in order to meet these costs.

Further financial risks, related to the loss or repayment of planning fees is also set out below. The financial impact related to the loss of planning fees is potentially substantial.

Legal

Choosing to not determine planning applications over 10 units due to proposed amendments to the National Planning Policy Framework(NPPF) is not acceptable as the NPPF is statutory guidance and an adopted Local Plan has more weight in terms of material consideration.

Further, in choosing to not determine planning applications, the Council will leave itself open to a number of possible planning appeals being lodged by developers for non-determination and it is more than likely that should such developers choose to apply for costs against the Council based on unreasonable behaviour, such applications will likely succeed leading to the Council having to pay for significant costs to developer applicants. Further, it is possible that an external interested party may choose to apply for a judicial review against the Council's decision to pass this motion based on illegality, irrational and unreasonable grounds.

Risk Management

The proposed Notice of Motion poses some significant risks to the council. In summary these are:

Planning Risks:

- The government intervenes in the council's Planning Service by 'designating the council, and taking over decision making responsibilities for defined types of applications, such as major housing applications.
- The Council is unable to demonstrate a 5 year housing land supply, making resisting the development of unallocated land more difficult.
- Applicants submit appeals for non-determination of planning applications, which the council will find difficult to defend without a material planning reason for delay.
- Loss of local democratic control, with major planning decisions made by the Planning Inspector of Secretary of State for Levelling Up, Housing and Communities.
- Delay to the council's own affordable housing programme.

Financial Risks:

- Loss of Planning Fee Income. If the council is designated by the Secretary of State for Levelling Up, Communities and Housing it will not receive any planning fee income for applications within the scope of the designation. In the financial year

22/23, major planning application fees received totalled £404,944, with the income £509,705 in the financial year 21/22.

- Award of appeal costs and cost of defending appeals. It is very likely that costs would be awarded against the council for any appeals against non determination as a result of this proposal. The scale of the award would vary depending on the complexity of the appeal. This represents a significant financial risk when applied across all currently live major applications.
- Repayment of planning fees. Where no agreement to extend the time period for determination is made, then after 26 weeks (from the valid date of a planning application) the planning fee should be refunded to applicants. Currently those major housing applications expiring after 12th October 2023, without extension of time agreements, have planning fees totalling £93,724, which would be liable to be repaid if determinations were paused for more than 3 months.

Reputational Risks:

- The reputational risk in relation to the council's ability to manage an effective Planning Service and deliver its Local Plan.

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.

Equality Act 2010 & Public Sector Equality Duty

The PSED is not engaged by the issues addressed in this Report. Although the proposal in the Notice of Motion would have an impact on housing supply, and the local housing market, it would have a general effect. It would not disproportionately impact people with protected characteristics.

Corporate Priorities

This report relates to the following corporate priorities:

- *Growth*
- *Environment*
- *Communities*

1.0 Introduction and Background

- 1.1 Full council considered a notice of motion at its meeting on 13 July 2023, that proposed pausing new planning permissions for major applications. The motion was proposed by Councillor Garner and seconded by Councillor Austin. The motion read as follows:

'Motion to pause the granting of new planning permissions, for builds of more than 10 dwellings, and allow for a review into the impacts the current housebuilding programme is having across Thanet.

While it is important that new homes are built in Thanet, it is likely that the continual increases in mortgage interest rates will have a slow-down effect on both the build of new homes and of their purchase, possibly for the rest of 2023.

This presents us with an opportunity to pause the granting of new planning applications, for builds of more than 10 dwellings, and review and address the concerns of residents on the following issues:

- 1. Southern Water's infrastructure is not fit for purpose to service the current households and businesses in the district. What impact will the proposed number of new dwellings have on the current residents in Thanet and on the environment around our coastline because of increased sewage releases?*
- 2. There are too many dwellings across Thanet which remain unoccupied. Investigate how many empty properties there are across the district and the reasons for this.*
- 3. How many previously approved planning applications are still to commence development?*
- 4. How many of the already approved numbers of affordable homes have been built and made available at an affordable price?*
- 5. Have the GP surgeries, primary schools, social amenities promised in previously approved planning applications been adequately delivered by the builders?*
- 6. What is the impact of the recent new builds on traffic and highways in Thanet?*

This Council agrees to pause the granting of new planning permissions, for builds of more than 10 dwellings, and set up a cross party working group of 7 councillors to work with officers to carry out the review, using the Treasury Green Book Gate Review (see link below) process as a guide for that review.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002663/1174-APS-0-CCS0521656666-001_IPA_Gateway_Web.pdf ‘

- 1.2 Members voted to debate the motion. However, due to paragraph 3.8 of the constitution stating, ‘The Council should not debate any motion which would give rise to a significant change to income of the Council, to its expenditure or contract terms, unless it has received a report from the Chief Finance Officer or the Monitoring Officer as appropriate setting out the legal of financial effect of the motion,’ the Council did not debate this motion at the meeting, and deferred it to the next meeting of Council.
- 1.3 This report sets out the financial, legal and planning implications of the proposed motion to properly inform members of the council.

2.0 The Current Situation

2.1 The adopted Local Plan (2020) allocates a range of sites to meet the housing needs of the district (including sites that would be affected by this NoM). In addition, the Local Plan contains numerous policies that seek to address many of the infrastructure and related matters raised in the notice of motion. This is either through specific site requirements for strategic housing allocations, or through topic-specific policies, such as:

- Policy SP39 - QEQM Hospital
- Policy SP40 - New Medical Facilities at Westwood
- Policy SP41 - Community Infrastructure
- Policy SP42 - Primary and Secondary Schools
- Policy SP45 - Transport Infrastructure
- Policy GI04 - Amenity Green Space and Equipped Play Areas
- Policy CC02 - Surface Water Management
- Policy SE04 - Groundwater Protection
- Policy CM01 - Provision of New Community Facilities
- Policy TP01 - Transport Assessments and Travel Plans
- Policy TP02 - Walking
- Policy TP03 - Cycling
- Policy TP04 - Public Transport

2.2 As part of the Local Plan process, the Council engaged with a range of service providers and statutory bodies in relation to the provision of key elements of infrastructure. This work was undertaken through an infrastructure delivery plan process, and was subject to scrutiny by the independent Planning Inspectors. The same approach will be applied for the Local Plan update.

S38(6) of the Planning and Compulsory Purchase Act 2004 gives primacy to the Local Plan in decision-making, stating that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Material considerations can cover a range of factors. However, the principle of development on allocated sites is already established through the Local Plan process. The National Planning Policy Framework (NPPF) states that decisions should apply a presumption in favour of sustainable development. This means approving development proposals that accord with an up-to-date development plan without delay. In addition, where the most important policies for determining applications are out-of-date, also granting permission unless any adverse impacts of development so would significantly and demonstrably outweigh the benefits. The NPPF does not provide a mechanism for any form of blanket moratorium on the determination of planning applications.

2.3 A major development is defined by the General Procedure Order 2015 as development involving any one or more of the following:

- the provision of dwellinghouses, where the number of dwellinghouses to be provided is 10 or more or the number is not defined by the site area is 0.5hectares or more.

- the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more.
- development carried out on a site having an area of 1 hectare or more.

3.0 The Implications of the Motion

3.1 The statutory time limits for determining applications for planning permission are set out in article 34 of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended). These are 13 weeks for applications for major development, 16 weeks for application accompanied by an Environmental Statement, and 8 weeks for all other types of development. These time periods begin when an application has been made valid in accordance with national and local requirements. The National Planning Practice Guidance states that “once a planning application has been validated, the local planning authority should make a decision on the proposal as quickly as possible”.

3.2 Section 62B of the Town and Country Planning Act 1990 (as amended) allows the Secretary of State to designate local planning authorities that “are not adequately performing their function of determining applications”, when assessed against published criteria. Those criteria relate to:

- the speed of decisions made by local planning authorities for applications for major and non-major development, measured by the percentage of applications that have been determined within the statutory period or such extended time as has been agreed between the local planning authority and the applicant
- the quality of decisions made by local planning authorities for applications for major and non-major development, measured by the proportion of decisions on applications that are subsequently overturned at appeal (including those arising from a ‘deemed refusal’ where an application has not been determined within the statutory period)

3.3 Designation effectively means that the Secretary of State (SoS) will remove planning powers from the Local Planning Authority and directly determine planning applications. The SoS is also able to determine which type of applications this will apply to, for example all major applications for 10 or more homes. The time taken to determine major housing applications is one of these criteria, and in the event that the council were to consistently exceed the 13 week timescale for major housing applications there is a significant risk of designation. This would mean that the Council would lose control of the outcome of the application, as applicants would have the choice to apply directly to the Planning Inspectorate, rather than the Council. In addition to the significant reputational damage that this designation would cause, the council would also not receive the planning fees for those applications made directly to the Planning Inspectorate.

3.4 Separately to designation by the SOS, In the event that valid planning applications are not determined within these timescales, or alternative timescales agreed by the council and the applicant, then the applicant has the right to submit an appeal for non-determination. Any appeal would be determined by the Planning Inspectorate

who would decide the applications in accordance with NPPF and the Thanet Local Plan.

- 3.5 In addition to the loss of local democratic control over the outcome of an application, the outcome of an appeal for non-determination can also include an award for costs. It is highly likely that any attempt at a blanket moratorium on the determination of planning applications for the reasons given would be considered unreasonable by the Planning Inspectorate leading to the risk of substantial cost awards against the council. The National Planning Practice Guidance states Local Planning Authorities are at risk of an award of costs if they behave unreasonably, for example, by unreasonably refusing or failing to determine planning applications. Examples provided include:
- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - acting contrary to, or not following, well-established case law.
- 3.6 As at 22 September 2023, the Council had 26 active planning applications for major housing development. If all were to be left undetermined, all could be determined by the Planning Inspectorate, if appealed after the expiration of deadlines with a risk of costs. This cost award would take into account all or part of an applicant's costs of the appeal including consultants fees. The scale of the applications would potentially result in public inquiries on the appeals, further increasing the costs awarded anticipated as this would include legal fees/barrister costs. For the public inquiry on the Shottendane Road planning application (OL/TH/20/0847) the Council's costs for consultants and a barrister came to £48,700, without including staff costs. It is anticipated that these costs would be exceeded by applicants if a public inquiry were requested, with the Council liable for its own costs and potentially for part or all of the applicants costs.
- 3.7 In addition to statutory timescales for determination, if the motion were to pass and major housing decisions ceased to occur, the Council would be liable to repay some of the planning fee income already received. Government guidance states that where no agreement to extend the time period for determination is made, then after 26 weeks (from the valid date of a planning application) the planning fee should be refunded to applicants. Currently those major housing applications expiring after 12th October 2023, without extension of time agreements, have planning fees totalling £93,724, which would be liable to be repaid if determinations were paused for more than 3 months. This could potentially also affect major housing applications submitted after this date not yet received.
- 3.8 Local Planning Authorities are required to demonstrate a 5 year housing land supply. A 5 year land supply is a supply of specific deliverable sites sufficient to provide 5 years' worth of housing (with an appropriate buffer) against a housing requirement set out in adopted strategic policies. The number of housing sites in the district that have outline or full planning consent, in comparison to the requirements set out in the Local Plan, is a factor in demonstrating that the council has a 5 year housing land

supply in place. The existence of a 5 year housing land supply is a material consideration in determining planning applications for housing on sites that are not allocated in the Local Plan for housing. And conversely, not having a 5 year housing land supply makes it more difficult for the council to resist applications for housing on non-allocated sites. Currently the Council cannot demonstrate a 5 year supply. Therefore the proposed motion would make it more difficult for the council to resist the development of unallocated sites, as housing applications on allocated sites within the Local Plan would be delayed/left undetermined. This would give greater weight to housing applications on unallocated sites at appeal, as the Council would not be able to demonstrate it is attempting to provide a 5 year supply: Potentially leading to development in undesirable areas of the district including the green wedge and countryside.

- 3.9 The council has committed to its own programme of affordable housing delivery, with an express ambition to deliver or acquire at least 400 new affordable homes during the period of the current administration. The proposed motion would impact on the council's ability to deliver this ambition.
- 3.10 Any pause on the determination of major housing applications for an unspecified time period would not be able to change the planning policy framework for the Council in the determination of planning applications. This means that after the review suggested, the Council would still be required by planning legislation to determine planning applications against the Local Plan, as it would still be the statutory development plan. Appeals made during any review period would be determined by the Planning Inspector, also against the adopted Local Plan.

4.0 Detailed questions in the motion

- 4.1 The proposed motion raises six specific questions. This section updates members on the current position in relation to these questions, as follows:

1. *Southern Water's infrastructure is not fit for purpose to service the current households and businesses in the district. What impact will the proposed number of new dwellings have on the current residents in Thanet and on the environment around our coastline because of increased sewage releases?*

The management of surface water is the responsibility of another statutory body and set out in legislation:

- Water Industry 1991 Act
- Flood and Water Management Act 2010

These duties extend to the management of flood events caused by surface water run off into the drainage network, and arrangements are set out in Southern Water's Drainage and Waste Water Management Plan.

Southern Water is a consultee in the preparation of the Local Plan. The Local Plan contains a policy ([Policy CC02](#)), which sets a requirement for the provision of sustainable drainage systems in new development, designed to reduce potential surface water run-off from development sites, and ensure no

net increase in surface water run-off. The impact of new dwellings on the capacity of the existing network is assessed individually during the planning application process. It is not considered that the approval of new dwellings, subject to required mitigation being enacted, would cause a worsening of the current problems caused by the existing drainage network. The provision of sustainable drainage systems in new development is due to become a legal requirement in 2024.

In addition, the retrofit of sustainable urban drainage (SUDs) helps to reduce surface water runoff entering the sewerage system, for example [George V Park](#), Westbrook.

2. *There are too many dwellings across Thanet which remain unoccupied. Investigate how many empty properties there are across the district and the reasons for this.*

Figures for empty homes in the district were presented to Council on 13 July this year.

The key indicator is the number of homes registered as unoccupied and unfurnished for more than six months on the Council Tax register. This figure stood at 1,124 in July 2023.

Additionally, there are 112 empty homes undergoing structural alterations and major repairs are eligible for a 12-month discount, due to the importance of providing housing stock in good condition. A further 315 properties have been left empty for more than six months for other reasons, primarily as they are awaiting probate. In total, there are 1,551 long term empty homes.

The Council has a dedicated full time empty homes officer. Their role is to engage with the owners of empty homes to help them bring their properties back into use, including accessing support via the No Use Empty scheme. When the informal approach is unsuccessful, the council considers whether there are any appropriate legal powers that could be used to help bring about reoccupation.

Our target for the 2023/24 year is to help bring 120 long term empty homes back into use.

In relation to planning, the adopted Local Plan (See Local Plan Policy H021) already makes provision for the contribution of empty homes to housing land supply (540 units over the Local Plan period). This identifies a proportion of empty properties being returned to residential use.

3. *How many previously approved planning applications are still to commence development?*

At 31 March 2023, a total of 2,137 units had not been started on site but did have a planning permission in place (outline 1,797 units; full or reserved matters 322 units; 18 prior notifications). In addition, a number of sites where development has started have not progressed significantly in the last year, with some 426 units not yet started.

This is not relevant to the determination of individual planning applications. However, consented sites being delayed in coming forward, for whatever reason, is a good ground for approving new applications on allocated sites, increasing the diversity of housing land supply, and improving delivery.

4. *How many of the already approved numbers of affordable homes have been built and made available at an affordable price?*

Information on the number of dwellings completed following planning permission being granted is provided in the Council's Annual Monitoring Report published each year. Affordable housing is sought on major housing applications in accordance with Policy SP23. A proportion of the total number of dwellings with planning permission but not completed (outlined in question 3 above) would be affordable, however this amount will depend on the individual planning agreements on individual cases.

The number of new affordable homes delivered by all registered providers, including the council and Housing Associations is recorded on the Homes England website. This shows:

- 19/20 - 132,
- 20/21 - 64,
- 21/22 - 186.

Figures for 2022/23 are not yet available from Homes England.

5. *Have the GP surgeries, primary schools, social amenities promised in previously approved planning applications been adequately delivered by the builders?*

The Local Plan process seeks to identify the key social and physical infrastructure needed to support new development and the phasing of that infrastructure. This work will be reviewed as part of the Local Plan update.

However, the provision of these services and infrastructure is the responsibility of other statutory/public bodies and service providers. Individual planning proposals are required to mitigate their own impact on social and physical infrastructure and this is dealt with through planning agreements under Section 106 of the Planning Act connected to planning decisions. The provision on site or providing a financial contribution to off-site infrastructure is

linked to trigger points with Section 106 agreements. The Council is scheduled to publish data on all contributions secured, received and spent in planning agreements for the financial years 19/20, 20/21 and 21/22 within the next 3 months.

6. *What is the impact of the recent new builds on traffic and highways in Thanet?*

The impact of the planned 17,140 homes over the plan period was assessed as part of the Local Plan process. Transport modelling was undertaken (with KCC), which informed both the Local Plan proposals and the measures set out in the district Transport Strategy. This work will be reviewed as part of the Local Plan update.

Individual major housing planning applications are required to submit transport assessments which model the impact of traffic on the highway network. This includes assessments of individual junctions to assess capacity.

For significant development this includes creating modelling scenarios using traffic flow data from Kent County Council's bespoke traffic model. The model was created for the Local Plan, to account for the cumulative amount of development expected across the district. This information is used in the determination of applications, to ensure that required mitigation (for example new roundabouts, adjustments to junctions, new lanes etc) is in place prior to the occupation of new dwellings. Temporary traffic issues from construction vehicles, for example on the Haine Road corridor, is not considered to be an accurate reflection of the operation of the highway network as a result of new development.

5.0 Decision Making Process

5.1 The Motion was proposed by Cllr Garner and seconded by Cllr Austin at the Council meeting of 13 July 2023. The motion couldn't be forwarded to the Cabinet as Planning was not an Executive function and so Cabinet would have no remit over it. As such, only Council could decide upon the motion. It was then agreed by the Meeting to debate the motion.

5.2 At this point however, paragraph 3.8 of the constitution was explained to the meeting namely:

“viii. The Council should not debate any motion which would give rise to a significant change to income of the Council, to its expenditure or contract terms, unless it has received a report from the Chief Finance Officer or the Monitoring Officer as appropriate setting out the legal or financial effect of the motion.”

5.3 Council then agreed to request such a report to come to the next meeting of Council in order to allow for an informed debate (this report). Council is now free to debate the motion and after that debate can decide whether it wishes to adopt the motion or not.

Contact Officer: *Bob Porter (Director of Place)*

Reporting to: *Colin Carmichael (Chief Executive)*

Annex List

None

Background Papers

None

Corporate Consultation

Finance: *Chris Blundell (Director of Corporate Services - Section 151)*

Legal: *Sameera Khan (Interim Head of Legal & Monitoring Officer)*