

PLANNING COMMITTEE

APPLICATION NUMBER:	CA/24/01903
SITE LOCATION:	North of Bullockstone Road / Canterbury Road Roundabout, South of Thanet Way, Herne Bay, Kent, CT6 7NN
PROPOSAL:	16 two-storey and three-storey dwellings together with green space and associated works including new access and drainage
Head of Service	Simon Thomas, Planning and Health
Classification	This report is open to the public
CCC Ward(s)	Herne and Broomfield
Recommendation	To authorisation be given to the Head of Planning permission to grant planning permission subject to the suitable safeguarding conditions set out in the report at Annex 1 and the completion of a Section 106 legal agreement to secure the financial contributions set out in this report

Introduction

At its meeting on 19th August 2025, the Planning Committee resolved to grant planning permission for the proposed development. This resolution was subject to the imposition of suitable safeguarding conditions and the completion of a Section 106 legal agreement, securing the following:

- Provision of 30% affordable housing (70/30 split in favour of affordable rent);
- Upgrades to the southbound bus stop along the A291;
- SAMMS contribution towards the Sandwich Bay and Thanet Coast SPA and SAC; and,
- Financial contributions requested by KCC towards community infrastructure, including primary, secondary and SEND education, community learning, children's services, adult social care and waste.

The link to the officer report and the minutes of the meeting can be found [here](#).

This resolution has not been implemented, owing to a challenge from the applicant that the financial contributions requested by KCC will be paid through the Community Infrastructure Levy (CIL) and so a second payment through a Section 106 agreement is not reasonable.

Background information

Adopted Local Plan

Policy EMP9 of the Canterbury District Local Plan 2017 requires provision to be made to meet educational needs arising from new development. Policy QL8 also requires adequate provision to be made for health and social care facilities arising from the impact of new developments. Appropriate mechanisms are required to secure the delivery of such facilities.

Community Infrastructure Levy

The CIL is a charge that local authorities can apply to new developments to help fund infrastructure projects that support the delivery of development in their areas.

The Council adopted a Charging Schedule in 2020, and this sets out a standard rate that is applied to specific types of developments in certain areas of the district.

Alongside this, an Infrastructure List was produced that specifies the projects and/or types of infrastructure that may be funded wholly or partly through the CIL to support the delivery of the adopted Local Plan. This document states that education, health and social and community infrastructure will be funded through the CIL and not through Section 106 agreements.

Where open space, flood management and sustainable transport infrastructure is specifically required to facilitate a proposed development, such infrastructure would continue to be funded through Section 106 agreements, even where the development is liable to the CIL.

The Infrastructure List does include exemptions from the CIL charge, most notably in relation to the 12 strategic development sites in the adopted Local Plan. These 12 sites are exempt from CIL completely and instead, will continue to fund any necessary infrastructure or improvements through Section 106 agreements.

Section 106 agreements

Section 106 of the Town and Country Planning Act 1990 allows local authorities to seek planning obligations in order to make a development acceptable in planning terms, secured through a legal agreement between the applicant, local authority and any other relevant parties.

The planning regulations require that a Section 106 agreement meet three tests, that they be:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and,
- (c) fairly and reasonably related in scale and kind to the development.

Assessment

Regarding this application, the Planning Committee resolved to grant planning permission for the development subject to a Section 106 agreement being made to secure, amongst other things, financial contributions towards education, social and community infrastructure.

Given that primary and secondary education and social and community care infrastructure are identified by the Council as being funded through the CIL, it would not be necessary or reasonable for the developer to be asked to enter into a Section 106 agreement to fund these infrastructure types, on top of paying the CIL - this would amount to double counting. As such contributions for these types of infrastructure would not meet the three tests set out in the relevant Regulations that are referred to, above, in this report.

The contribution towards Waste management is also non-compliant with the Regulations as there is no identified project for this money can be used

It is therefore recommended that planning permission be granted for the development, subject to the imposition of the safeguarding conditions set out in Annex 1 and the completion of a Section 106 agreement securing the following:

- 30% affordable housing (70/30 split in favour of affordable rent);
- Upgrades to the southbound bus stop along the A291; and,
- SAMMS contribution towards the Sandwich Bay and Thanet Coast SPA and SAC.