

**COUNCIL****MEETING OF 18 FEBRUARY 2025****AGENDA ITEM 6 - QUESTIONS FROM THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE NO 5.6**

The following question has been asked pursuant to Council Procedure Rule No 5.6 by Sharon Page:

- **Question Subject: Costs of Appeal**

At the last Area 2 Planning Committee, Chief Planning Officer James Bailey's reasoning for not accepting the 8;2 majority vote against the application, was on the ground of the cost implication to the council, should the developer appeal any of the grounds for refusal.

It is my understanding that 'costs' must not be a factor in planning decisions. In addition, Mike Taylor council member, stated the significantly substantial cost , running into hundreds of thousands of pounds. The Housing & Planning Scrutiny Select Committee doc of March 2024, highlights the Planning appeal cost to be significantly less than stated.

Therefore, the question is, why is this being used as an excuse for refusal ?

**The response of the Cabinet Member of Planning (Cllr M Taylor) provided at the meeting is set out below:**

Case law confirms that whilst costs risks and reputational harm are not material planning considerations, Officers giving Councillors advice on potential cost and reputational implications of refusing planning permission is acceptable.

Part 4, Paragraph 15.25 of the constitution states that a Committee decision will stand adjourned until the next meeting where the Officer present feels there is a risk of significant costs against the Council from any potential planning appeal.

However, I did not say we should refuse on the grounds of cost, what I said was if we refused without the support of Statutory Consultees and sound planning reasons we could be taken to appeal, deemed unreasonable and have costs awarded against us - that can run into hundred's of thousands of pounds. I actually proposed another deferral.

**COUNCIL**

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The following question has been asked pursuant to Council Procedure Rule No 5.6 by Marc Page

- **Question Subject: Sustainability and Safety**

The TMBC's 2020-2030 Climate Change Strategy states that it "has a key role in ensuring that new developments are as sustainable as possible", specifically referencing "reducing travel needs", "maximising opportunities for sustainable travel" and "including walking and cycling routes". The KCC's 2021-2026 'Vision Zero – Road Safety Strategy states a target to "increase levels of safety for walking and cycling" and "to make walking and cycling an attractive and realistic choice for short journeys" and 'improved safety for all road users'.

East Malling currently has NO Cycle paths, NO local amenities, NO regular bus services, inaccessible train platforms (for disabled/infirm/those with small children) and dangerous and often impassable very narrow footpaths.

As such, any new local housing residents (be they in affordable houses or not), like existing residents, would be almost entirely car dependant.

Therefore, how can the Ivy Farm Development, which is estimated to house c. 210 residents, be considered to be even remotely logical or compliant and not exacerbate the existing issues?

**The response of the Cabinet Member of Planning (Cllr M Taylor) provided at the meeting is set out below:**

I should start by stating that the planning application referred to in the question is still under consideration by this Council, and it due to be considered at the next Area 2 Planning Committee meeting tomorrow. I therefore answer this question in my capacity as Cabinet Member for Planning and deliberately offer no view about whether the application should be approved or rejected, on the basis I am required to approach that meeting with an open mind.

Individual applications are subject to a detailed assessment of sustainability under Paragraphs 8, 9 and 11d of the National Planning Policy Framework. This assessment would cover the location of a proposed development in relation to existing settlements to ensure that a proposal would not be isolated but also have to consider facilities available and the benefits a development might bring. As East Malling benefits from both primary and secondary schools, a railway station and community facilities, Planning Officers recommended to Area 2 Planning

Committee that East Malling would be considered to have facilities that would count towards the sustainability considerations of the area. But Borough Councillors may disagree.

Whilst there may not be a cycle network in the East Malling area, an application would have to consider the overall impacts, both positive and negative, and make a judgement on that basis. This takes into account all of the matters previously referred to as well as important other factors including housing need, and especially the huge uplift in Housing numbers the Government are requiring Tonbridge and Malling Borough Council to find sites for.

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The following question has been asked pursuant to Council Procedure Rule No 5.6 by Frances Saunders:

Local Authorities have a statutory duty under the 1990 Planning Conservation Area Act to publish proposals for the enhancement and preservation of their conservation areas. In total, TMBC has 61 designated conservation areas within the borough's boundaries, all of which are greatly valued by the public as special, much-loved and irreplaceable places.

Please could this Council explain why they are not complying with UK legislation, with Conservation Area Appraisals being woefully out of date (25 years in many cases), no management proposals ever published as required under UK law and many of these important heritage assets under extreme pressures from inappropriate developments and unsustainable traffic levels.

**The response of the Cabinet Member of Planning (Cllr M Taylor) provided at the meeting is set out below:**

As the Housing and Planning Scrutiny Select Committee considered last week, the Local Plan timetable is ambitious and costly. We have significant pressure on our Planning team, as has been the case for many years. Updating and preparing conservation area appraisals is a significant task.

Like Ms Saunders, I would have liked us to have done more. However, we have just secured some grant funding from Government and will start with 3 conservation area appraisals which will include a 6 week public consultation. The new Heritage Strategy will be prepared as part of our Local Plan work too.

Ms Saunders is right, we need to protect our important heritage assets from inappropriate development, we will do as many as we can and I will action and progress this issue.

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The following question has been asked pursuant to Council Procedure Rule No 5.6 by Tasha Allen:

Please can you kindly confirm the following - members are using a need for Section 106 funds and affordable housing as reasons for approving planning applications?

However, we are seeing developers, once granted planning permission submitting applications to vary the terms of their 106 Agreements and being approved by the Planning Department. See Esquire Bluebells on Hermitage Lane site. Affordable housing reduced by 25% after permission granted.

Can you confirm how many affordable housing units have been lost in the TMBC areas over the past 3 years by what appears to be a legal loophole that developers are making use of and explain how these are overriding material planning considerations when they are not even guaranteed to stay the same

**The response of the Cabinet Member of Planning (Cllr M Taylor) provided at the meeting is set out below:**

The National Planning Practice Guidance (NPPG) confirms that viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it.

Viability Assessments follow the guidance set out in the NPPG and are prepared with professional integrity by a suitably qualified practitioner.

The Council uses independent experts to assess all viability appraisals submitted by applicants to ensure a rigorous assessment of the information.

If a lower amount of developer contributions is accepted by the Council, this would be on the basis of evidence supplied by the applicant and verified by the Council through its appointed consultants.

This is a recognised process for assessing a scheme's viability both through the planning process and post decision. Market conditions at the time play a fundamental factor in this process.

According to the Council's records and with a number of Deed of Variation applications remaining un-determined (and therefore not part of my response)

there have been no affordable housing units lost due to viability considerations post decision in the last three years.

There has however been a number of cases where the affordable housing mix (that is the types of affordable housing and the numbers of each type) has been re-negotiated which has improved the overall viability of the scheme.