

# Public Document Pack



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17 January 2017

Dear Councillor

NOTICE IS HEREBY GIVEN THAT a meeting of the **PLANNING COMMITTEE** will be held in the Council Chamber at these Offices on Thursday 26 January 2017 at 6.00 pm when the following business will be transacted.

Members of the public who require further information are asked to contact Kate Batty-Smith on (01304) 872303 or by e-mail at [kate.batty-smith@dover.gov.uk](mailto:kate.batty-smith@dover.gov.uk).

Yours sincerely

A handwritten signature in black ink, appearing to read "Kate Batty-Smith", written over a white background.

Chief Executive

Planning Committee Membership:

F J W Scales (Chairman)  
B W Butcher (Vice-Chairman)  
J S Back  
T J Bartlett  
T A Bond  
D G Cronk  
B Gardner  
D P Murphy  
A F Richardson  
P M Wallace

AGENDA

- 1 **APOLOGIES**  
To receive any apologies for absence.
  
- 2 **APPOINTMENT OF SUBSTITUTE MEMBERS**  
To note appointments of Substitute Members.

3 **DECLARATIONS OF INTEREST** (Page 6)

To receive any declarations of interest from Members in respect of business to be transacted on the agenda.

4 **MINUTES** (Pages 7-15)

To confirm the attached Minutes of the meeting of the Committee held on 15 December 2016.

5 **ITEMS DEFERRED** (Page 16)

To consider the attached report of the Head of Regeneration and Development.

**ITEMS WHICH ARE SUBJECT TO PUBLIC SPEAKING**  
(Pages 17-20)

6 **APPLICATION NO DOV/16/1120 - COXHILL FARM, COXHILL, SHEPHERDSWELL** (Pages 21-27)

**Change of use from agriculture to light industrial workshop (Use Class B1)**

To consider the attached report of the Head of Regeneration and Development.

7 **APPLICATION NO DOV/16/00620 - POPPYLAND, NORMAN ROAD, ST MARGARET'S BAY** (Pages 28-33)

**Conversion of existing double garage to ancillary residential annexe, erection of side dormer roof extension; formation of 'Juliette'-style balcony; insertion of roof-lights and formation of new parking access**

To consider the attached report of the Head of Regeneration and Development.

8 **APPLICATION NO DOV/16/01099 - FORMER THREE HORSESHOES PUBLIC HOUSE, CHURCH HOUGHAM, DOVER** (Pages 34-42)

**Erection of detached dwelling on site of former public house**

To consider the attached report of the Head of Regeneration and Development.

9 **APPLICATION NO DOV/16/00866 - TOWNSEND PADDOCK, TOWNSEND FARM ROAD, ST MARGARET'S-AT-CLIFFE** (Pages 43-55)

**Erection of six detached dwellings, creation of vehicular access and associated car-parking**

To consider the attached report of the Head of Regeneration and Development.

10 **APPLICATION NO DOV/16/01176 - LAND OPPOSITE WALMER CASTLE, KINGSDOWN ROAD, WALMER, DEAL** (Pages 56-61)

**Installation of a car park charging machine plus associated signage**

To consider the attached report of the Head of Regeneration and Development.

- 11 **APPLICATION NO DOV/16/01132 - 8 RIVERDALE, RIVER, DOVER** (Pages 62-68)

**Erection of 2-metre high boundary fence**

To consider the attached report of the Head of Regeneration and Development.

- 12 **APPLICATION NO DOV/16/01143 - 5 BEECH TREE AVENUE, SHOLDEN** (Pages 69-74)

**Installation of garage door to existing car port and erection of verandah**

To consider the attached report of the Head of Regeneration and Development.

- 13 **APPLICATION NO DOV/16/00044 - LAND AT RICHBOROUGH, RAMSGATE ROAD, SANDWICH** (Pages 75-115)

**Erection of a guyed steel lattice mast (322 metres in height) with nine anchor points, installation of telecommunications and associated equipment, site compound, secure fencing, single storey equipment structure, access track, ground-mounted solar panels within compound and associated works**

To consider the attached report of the Head of Regeneration and Development.

- 14 **APPLICATION NO DOV/16/00524 - LAND TO THE NORTH OF KINGS END FARM, RICHBOROUGH, SANDWICH** (Pages 116-155)

**Erection of a 305-metre high/2.5-metre wide guyed communication mast (with 5 no. 9-metre wide anti-twist frames at intervals above 140 metres) with 6 no. 3.7-metre diameter dish antenna, 206-square metre base compound enclosing associated equipment cabins and electric meter cabinets up to 2.5-metres in height (4.2 metres above ground level), 9 no. guy stay compounds, stone access track, hard and soft landscaping and associated works**

To consider the attached report of the Head of Regeneration and Development.

- 15 **CON/10/01010/MM - PHASE 1 OF WHITFIELD URBAN EXPANSION, WHITFIELD, DOVER** (Pages 156-175)

**Application for approval of details reserved by Condition 51 of DOV/10/01010 in respect of sewage and foul drainage**

To consider the attached report of the Head of Regeneration and Development.

- 16 **APPLICATION NO DOV/16/01038 - 43 DOLA AVENUE, DEAL** (Pages 176-184)

**Variation of condition 2 of Planning Permission DOV/15/00327 to allow amendments to the approved plans (amendments to the rear dormer roof extensions on chalet bungalows and alterations to fenestrations) (Section 73 application)**

To consider the attached report of the Head of Regeneration and Development.

- 17 **APPLICATION NO DOV/16/01049 - LAND OFF CHEQUER LANE, ASH** (Pages 185-202)

Outline application for the erection of 90 dwellings, new vehicular and pedestrian access from Chequer Lane, public open space and landscape buffer and associated infrastructure, with all matters reserved

To consider the attached report of the Head of Regeneration and Development.

- 18 **APPLICATION NO DOV/16/00800 - LAND OFF SANDWICH ROAD, ASH** (Pages 203-225)

Outline application for the erection of 104 residential dwellings with associated commercial (B1) and nursery (D1) units, hard and soft landscaping, and associated infrastructure (all matters reserved except access)

To consider the attached report of the Head of Regeneration and Development.

## **ITEMS WHICH ARE NOT SUBJECT TO PUBLIC SPEAKING**

- 19 **APPEALS AND INFORMAL HEARINGS** (Pages 226-233)

To receive information relating to Appeals and Informal Hearings, and appoint Members as appropriate.

- 20 **ACTION TAKEN IN ACCORDANCE WITH THE ORDINARY DECISIONS (COUNCIL BUSINESS) URGENCY PROCEDURE**

To raise any matters of concern in relation to decisions taken under the above procedure and reported on the Official Members' Weekly News.

### **Access to Meetings and Information**

- Members of the public are welcome to attend meetings of the Council, its Committees and Sub-Committees. You may remain present throughout them except during the consideration of exempt or confidential information.
- All meetings are held at the Council Offices, Whitfield unless otherwise indicated on the front page of the agenda. There is disabled access via the Council Chamber entrance and a disabled toilet is available in the foyer. In addition, there is a PA system and hearing loop within the Council Chamber.
- Agenda papers are published five clear working days before the meeting. Alternatively, a limited supply of agendas will be available at the meeting, free of charge, and all agendas, reports and minutes can be viewed and downloaded from our website [www.dover.gov.uk](http://www.dover.gov.uk). Minutes will be published on our website as soon as practicably possible after each meeting. All agenda papers and minutes are

available for public inspection for a period of six years from the date of the meeting.

- If you require any further information about the contents of this agenda or your right to gain access to information held by the Council please contact Kate Batty-Smith, Democratic Support Officer, telephone: (01304) 872303 or email: [kate.batty-smith@dover.gov.uk](mailto:kate.batty-smith@dover.gov.uk) for details.

**Large print copies of this agenda can be supplied on request.**

**Declarations of Interest**

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

Other Significant Interest (OSI)

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

Note to the Code:

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

Minutes of the meeting of the **PLANNING COMMITTEE** held at the Council Offices, Whitfield on Thursday, 15 December 2016 at 6.00 pm.

Present:

Chairman: Councillor F J W Scales

Councillors: B W Butcher  
J S Back  
T J Bartlett  
T A Bond  
B Gardner  
D P Murphy  
G Rapley  
P M Wallace (Minute Nos 95-101 only)

Officers: Principal Planner  
Senior Planner  
Senior Planner  
Planning Consultant  
Legal Officer  
Democratic Support Officer

The following persons were also present and spoke in connection with the applications indicated:

<u>Application No</u>	<u>For</u>	<u>Against</u>
DOV/16/00594	Mr Tony Doyle	Mr Andrew Gwinnett
DOV/16/01024	Mr Peter Bailey	Mr Robert Beasley
DOV/16/00442	Mr Ralph Noel	-----
DOV/16/00136	Mr Les West	Mr Pete Boast

90 APOLOGIES

It was noted that apologies for absence had been received from Councillors D G Cronk and A F Richardson.

91 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that, in accordance with Council Procedure Rule 4, Councillor G Rapley had been appointed as a substitute for Councillor A F Richardson.

92 DECLARATIONS OF INTEREST

Councillor T A Bond declared an Other Significant Interest in respect of Agenda Item 9 (Application No DOV/16/00136 - Land on South Side of Singledge Lane, Whitfield) by reason that he was employed by a company which owned the hotel situated adjacent to the application site.

93 MINUTES

The Minutes of the meeting held on 24 November 2016 were approved as a correct record and signed by the Chairman.

94 ITEMS DEFERRED

The Chairman advised that Application Nos DOV/16/00594 and DOV/16/00442 appeared elsewhere on the agenda. The remaining item (DOV/16/00576 – Roseacre, East Langdon Road, Martin) remained deferred.

95 APPLICATION NO DOV/16/00594 - 180 LONDON ROAD, DEAL

The Committee viewed drawings and photographs of the application site. The Senior Planner reminded Members that the application had been deferred at the previous meeting for a site visit, and proposed the erection of three dwellings in replacement of the existing detached bungalow.

The pair of two-storey semi-detached dwellings (Plots 1 and 2) would front London Road and the detached chalet-style dwelling (Plot 3) would be situated to the rear of the plot. The applicant had submitted amended plans which showed that roof-lights on the front elevation had been removed. Following comments made at the last meeting, the applicant had indicated that enhanced planting to the front boundary treatment would also be provided. The rear dwelling would be 17 metres distant from 143 and 147 Church Path. Accordingly, it was recommended that a condition be imposed removing permitted development rights relating to the roof form of this building. It was confirmed that a condition would also be imposed to ensure that the new access road remained for the sole use of Plot 3.

For the benefit of the site visit panel, the applicant had marked out the parking area for Plots 1 and 2. Further clarification having been sought on this matter, Kent County Council (KCC) Highways had confirmed that the turning area arrangements were satisfactory, and had raised no objections to the scheme as a whole. It was recommended that the application be approved.

Councillor D P Murphy reported the outcome of the site visit held on 13 December. The site visit panel had considered the potential impact of the proposal on the street scene, together with the parking arrangements for Plots 1 and 2 and the access arrangements for all three dwellings. By a majority of 4:1 Members had considered the proposal acceptable in terms of parking, access and its impact on the street scene.

Councillor B Gardner stated that he would have preferred to see the detached house situated at the front of the plot as this would be more sympathetic to the existing street scene. He would also have preferred one access point for all three dwellings. He was disappointed that KCC Highways had raised no objections to the notion of having two additional accesses on such a busy road. Councillor T A Bond was of the view that the proposed development would be out of keeping with the existing street scene, and that the turning arrangements would not allow cars to exit the site safely.

Councillor B W Butcher acknowledged that the access arrangements were not ideal, but these alone were not sufficient justification to refuse the application. The Chairman agreed that there were existing access problems, but he did not believe that the proposed development would exacerbate these. Having viewed the parking layout and looked at drawings during the site visit, he was satisfied that vehicles could turn around on the site.

In order to safeguard the street scene, Councillor Gardner proposed that permitted development rights should be removed to ensure that no roof-lights could be installed in the front elevation.

RESOLVED: (a) That Application No DOV/16/00594 be APPROVED subject to the following conditions:

- (i) Standard Time Limit;
- (ii) Approved plans;
- (iii) Material samples;
- (iv) Details of hard and soft landscaping including boundary treatment to be submitted;
- (v) Construction Management Plan;
- (vi) Bicycle storage provision;
- (vii) Bin store to be provided and retained;
- (viii) Car parking and manoeuvring areas to be provided and retained;
- (ix) Prevention of surface water discharge onto highway;
- (x) Bound surface to be provided for first 5 metres;
- (xi) Closure of existing access prior to use commencing;
- (xii) Access road solely for Plot 3;
- (xiii) Remove permitted development rights to Plot 3 for all extensions, roof alterations, windows and remove permitted development rights for first-floor side windows in Plots 1 and 2;
- (xiv) Remove permitted development rights for roof-flights in front elevations of Plots 1 and 2.

(b) That powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

96 APPLICATION NO DOV/16/01024 - DIAL HOUSE, 23 ST MARGARET'S ROAD, ST MARGARET'S BAY

Members were shown plans, drawings and photographs of the application site. The Senior Planner advised that the application sought permission for the erection of two detached dwellings and the demolition of the existing dwelling on a site situated in the St Margaret's Bay Conservation Area where there was no prevailing style of architecture. The topography of the site was

such that the land stepped down in a series of terraces before falling sharply away to the road. A hedgerow along the front of the site was an important feature, as were a number of trees on the site which added to its character. In order to widen the access point, three and a half metres of the hedgerow would be removed. The occupants of Brown Cottage had raised concerns about overlooking. However, given the topography of the site and distance between the dwellings, views towards Brown Cottage would be well above the ridge of its roof.

There would be a substantial distance between the proposed dwellings which would be contemporary in appearance. A number of applications had been submitted for the lopping and felling of trees, to which no objections had been raised. The proposed driveway would be built using suspended beams in order not to encroach into the tree root protection area. In response to the Chairman, the Senior Planner confirmed that, whilst the dwellings would be seen from wider public views, including the coastal path, this would be in the context of existing development and was not considered to be unduly harmful.

Both Councillors Butcher and Gardner expressed their dislike for the design of the proposed dwellings which they considered too large and out of keeping with the Conservation Area. Although Councillor Bond sympathised with these views, he was not convinced there were sufficient reasons to refuse the application. Whilst difficult to define, he feared that these dwellings would detract from the feel and character of the Conservation Area. In response to the Chairman, the Senior Planner advised that non-reflective glazing could be conditioned, as could materials to minimise its longer range impact.

The Senior Planner advised that the National Planning Policy Framework (NPPF) encouraged high quality design, and the reinforcement of local character. Planning authorities should not be looking for pastiches of existing designs, nor to stifle architectural innovation. The proposals were of a high quality design and a good deal of thought had gone into the spatial layout of the site, and how the dwellings would appear in the surrounding topography.

The Chairman reminded the Committee that there was no local distinctiveness to St Margaret's Bay in terms of design. Councillor J S Back pointed out that the Council's Heritage Officer was satisfied with the proposal and its impact on the Conservation Area. In his view, the Committee would struggle to refuse the application on design grounds.

RESOLVED: (a) That Application No DOV/16/01024 be APPROVED subject to the following conditions:

- (i) Standard time limit;
- (ii) Approved plan;
- (iii) Material samples (including external finish and colour);

- (iv) Tree and hedge survey;
- (v) Tree and hedge protection measures;
- (vi) Retained trees/shrubs;
- (vii) Retained hedges/hedgerows;
- (viii) Hard and soft landscaping plan;
- (ix) Site sections;
- (x) Earthwork details;
- (xi) Provision of access;
- (xii) Provision of parking/garaging;
- (xiii) Access gradient;
- (xiv) Bound surface to be provided for first 5 metres;
- (xv) Bins and cycle storage;
- (xvi) Surface water drainage;
- (xvii) Rainwater goods: iron/aluminium, matt finish; internal gutters and rainwater goods;
- (xviii) Permitted development restrictions – in respect of extensions, roof extensions and side windows;
- (xix) Smaller dwelling – retention in perpetuity of imperforate privacy screen, and prohibiting use of any part of the roof structure as a terrace;
- (xx) Construction Management Plan (referring, not only, to: hours of working, contractors' parking, storage of materials and plant, etc);
- (xxi) Non-reflective glazing and glazing materials.

(b) That powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

97 APPLICATION NO DOV/16/00442 - THE THREE TUNS, THE STREET, STAPLE

The Committee was shown plans, drawings and photographs of the application site. The Planning Consultant reminded Members that the application had been deferred at the meeting held on 22 September 2016 due to amended plans having been submitted which required re-advertisement and public consultation. The application sought full planning permission for the erection of eight dwellings and the conversion of a public house which was a Grade II-listed building.

The Council's Core Strategy identified Staple as a village in the settlement hierarchy which was suitable for some development in order to maintain existing facilities. The Land Allocations Local Plan made some provision for a change to the village's settlement confines in order to deliver a limited number of dwellings at land to the west of Orchard Lea.

The rear part of the application site lay outside the settlement boundary, with the public house, its gardens and a rear outbuilding defined as being within the village confines. Seven houses in total would lie outside the village confines. The report to the earlier meeting had recommended refusal due to

the impact of the development on the listed building. However, amended plans had been received. The two units originally proposed at the front of the site had been reduced to one, thus creating an area of open space around the listed building. The design of this dwelling responded well to the adjacent listed building. Whilst the dwellings to the rear of the public house would have an impact on the setting of the listed building, the Council's Heritage Officer did not consider this to be sufficiently substantial to raise objections. Nevertheless, conditions could be attached to ensure a high quality finish.

A report had been submitted with the application demonstrating that the building's use as a public house was no longer viable. An independent assessment of the marketing of the pub had been undertaken, and Officers accepted the principle of converting the pub to a dwelling.

In order to provide a pedestrian link between the site and the village, the applicant had agreed to provide a footpath within the site. It was considered that there was sufficient parking for occupants and visitors. In addition, Officers had no concerns regarding residential amenity. The proposal undoubtedly stretched the site to its maximum potential, and there would be some impact on the listed building. However, Officers considered that there were not sufficient grounds for refusal and, on balance, recommended that the application should be approved.

Councillor Butcher expressed concerns about the rear of the site being outside the village confines. In his view the development would have a dominant visual impact when seen by road from Wingham. He was in favour of development on the site, but wanted to see the number of dwellings situated outside the confines reduced. Councillor T J Bartlett supported the principle of development on the site since he accepted that the use of the pub was no longer viable. However, whilst he appreciated the amendments made by the applicant, he was also of the view that there would be too many dwellings on the site, particularly when planning permission had already been granted for four properties opposite. He was also concerned that the proposed three-storey dwelling would be out of keeping with the rest of the village.

Councillor Gardner agreed that there were too many dwellings outside the confines, suggesting that these should be reduced to four or five. He was also concerned about the impact on the listed building. The Planning Consultant was of the opinion that a scheme could be achieved which would address the impact on the listed building and open countryside. If refused, and a subsequent appeal was successful, there was a risk that the Council would be left with an unacceptable scheme which would not be the case if the application were deferred for further negotiations to take place with the applicant. In response to Councillor Gardner, the Legal Officer clarified that, following a November 2014 Ministerial Statement, the Court of Appeal had confirmed in May 2016 that contributions towards affordable housing should not be sought for developments of ten units or fewer.

RESOLVED: That, notwithstanding the Officer's recommendation, Application No DOV/16/00442 be DEFERRED on the following grounds:

- (i) To allow a further report to be presented that sets out the justification for not adhering to the Local Plan and an explanation for the number of houses proposed;
- (ii) To enable further negotiations to take place between the applicant and Officers in order to achieve more openness within and around the development in order to reduce the impact on the setting of the listed building and to retain the open character of the area/street scene.

98 ADJOURNMENT OF MEETING

The meeting was adjourned at 7.32pm for a short break and reconvened at 7.35pm.

99 APPLICATION NO DOV/16/00136 - LAND ON SOUTH SIDE, SINGLEEDGE LANE, WHITFIELD

Members viewed plans and photographs of the application site. The Planning Consultant advised that the site had been included within Core Strategy Policy DP11 and as a village extension in the Whitfield Masterplan Supplementary Planning Document (SPD). Although there was a phased programme for the Whitfield expansion, it was proposed to bring forward this development independently due to its status as a village extension and subject to a number of criteria being met. Part of the application site fell within land earmarked in Policy TR4 for the widening of the A2. However, the Committee was advised to attach no weight to this in determining the application.

Significant concerns had been raised regarding the impact on the highway network and Singledge Lane. Further amendments had been submitted by the applicant. Referring to a letter from KCC Highways recently circulated to Members, the Committee was advised that KCC Highways no longer had objections to the development, subject to appropriate conditions being attached. It was therefore recommended that, if minded to refuse the application, the Committee should remove the ground relating to highways.

With regards to drainage, both Southern Water and KCC, as the lead flood authority, had raised objections to the application. Without additional infrastructure, there was potential for an overflow of surface water from the development which would affect the foul sewerage system and lead to flooding. Furthermore, insufficient information had been submitted to demonstrate that surface water could be adequately attenuated. The development also fell short in terms of ecological mitigation which could not be overcome due to the need to safeguard land earmarked for dualling works to the A2.

Whilst Officers recognised the importance of delivering housing in the absence of a 5-year housing land supply, the application in its current guise did not comply with the Local Plan or the SPD, the latter being highly detailed and offering a strong evidence base. In summary, the lack of a housing supply did not outweigh the need for strong, robust decisions and refusal of the application was therefore recommended.

Councillor Back referred to Southern Water's confirmation that surface water from the development could not be accommodated without additional local infrastructure. In respect of foul water, he understood that sewage would go to the Forge Lane pumping station which was already running over capacity. Based on previous experience, he reiterated his lack of confidence in Southern Water's assurances that the system could cope with foul water generated by the development.

Councillor Back also expressed concern regarding the Singledge Lane junction with the A2, stating that Singledge Lane was very narrow with no footpath. The A2 was already under pressure from port traffic, and the proposed development was likely to lead to traffic queues on the outside lane of the A2 caused by traffic leaving the Whitfield roundabout for Singledge Lane. He also considered that the development did not respect the character of Singledge Lane. Given that no development should take place within land safeguarded for the widening of the A2, and that the ecological mitigation measures proposed were therefore considered unsatisfactory, the application should be refused. Whilst he was not opposed to development in Whitfield, this proposal was in the wrong place.

In response to Councillor Gardner who queried why no larger houses were being offered as part of the affordable housing provision, the Planning Consultant advised that the Council's Housing Officer was content with the proposals. The Council's target of 30% did not require a mix of all housing types to be provided but simply a suitable mix of housing types. Demand for affordable housing tended to be for smaller houses.

The Committee was advised that, following negotiations between the applicant and KCC Highways, there were no objections to the development on highways grounds and, given that KCC Highways was the statutory technical consultee, it would be difficult to refuse on these grounds. In terms of foul water disposal, Southern Water had indicated that it was satisfied that foul water could be dealt with and had raised no objections in this respect. Details of which pumping station would be used had been included in the drainage strategy which was available on the Council's website.

RESOLVED: (a) That Application No DOV/16/00136 be REFUSED on the grounds that:

- (i) Due to the proximity of the site to the Lydden and Temple Ewell Downs Special Area of Conservation, the suitable Suitable Alternative

Natural Greenspace (SANG) mitigation is required to be provided on site to address the impact upon this designation. The mitigation proposed within this development includes land that is safeguarded for future road widening by virtue of Policy TR4 of the Dover Local Plan and, as such, cannot be guaranteed to be secured in perpetuity. If this development were permitted, it could preclude future road widening which would be contrary to the Whitfield Urban Extension Supplementary Planning Document and Policy TR4 of the Dover Local Plan.

- (ii) The applicant has failed to provide sufficient information with regards to surface water drainage and, as such, a full assessment of the impact of the development cannot be made. Without this assessment, it cannot be ascertained as to whether the proposal would adequately address surface water drainage, which may also result in harm to the foul water drainage provision. This would therefore prove contrary to the Whitfield Urban Extension Supplementary Planning Document and Policy CP6 of the Dover District Core Strategy.

- (b) That powers be delegated to the Head of Regeneration and Development to add an additional ground for refusal should off-site arrangements for the disposal of foul sewage be found to be unacceptable.

100 APPEALS AND INFORMAL HEARINGS

The Committee noted that there was no information to receive regarding appeals or informal hearings.

101 ACTION TAKEN IN ACCORDANCE WITH THE ORDINARY DECISIONS (COUNCIL BUSINESS) URGENCY PROCEDURE

The Committee noted that no action had been taken since the last meeting.

The meeting ended at 8.10 pm.

DOVER DISTRICT COUNCIL

REPORT OF THE HEAD OF REGENERATION AND DEVELOPMENT

PLANNING COMMITTEE – 26 JANUARY 2017

**CONSIDERATION OF THE FOLLOWING ITEMS HAS BEEN  
DEFERRED AT PREVIOUS MEETINGS**

Members of the Planning Committee are asked to note that the following application(s) have been deferred at previous meetings. Unless specified, these applications are not for determination at the meeting since the reasons for their deferral have not yet been resolved.

1.     **DOV/16/00442**           **Erection of eight dwellings, change of use and conversion of the existing public house into a single residential dwelling, creation of vehicular access, parking area and associated works - The Three Tuns, The Street, Staple (Agenda item 8 of 15 December 2016)**
  
2.     **DOV/16/00576**           **Outline application for the erection of two detached dwellings, alterations to the existing access and car parking – Land adjacent and fronting Roseacre, East Langdon Road, Martin (Agenda Item 13 of 21 July 2016)**

Background Papers:

Unless otherwise stated, the appropriate application file, the reference of which is stated.

**MIKE EBBS**

Head of Regeneration and Development

The Officer to whom reference should be made concerning inspection of the background papers is Alice Fey, Support Team Supervisor, Planning Section, Council Offices, White Cliffs Business Park, Dover (Tel: 01304 872468).

## **APPLICATIONS WHICH MAY BE SUBJECT TO PUBLIC SPEAKING**

### The Reports

The file reference number, a description of the proposal and its location are identified under a) of each separate item. The relevant planning policies and guidance and the previous planning history of the site are summarised at c) and d) respectively.

The views of third parties are set out at e); the details of the application and an appraisal of the proposal are set out at f) and each item concludes with a recommendation at g).

**Additional information received prior to the meeting will be reported verbally. In some circumstances this may lead to a change in the recommendation.**

Details of the abbreviated standard conditions, reasons for refusal and informatives may be obtained from the Planning Support Team Supervisor (Tel: 01304 872468).

It should be noted, in respect of points raised by third parties in support of or objecting to applications, that they are incorporated in this report only if they concern material planning considerations.

Each item is accompanied by a plan (for identification purposes only) showing the location of the site and the Ordnance Survey Map reference.

### Site Visits

All requests for site visits will be considered on their merits having regard to the likely usefulness to the Committee in reaching a decision.

The following criteria will be used to determine usefulness:

- The matter can only be safely determined after information has been acquired directly from inspecting this site;
- There is a need to further involve the public in the decision-making process as a result of substantial local interest, based on material planning considerations, in the proposals;
- The comments of the applicant or an objector cannot be adequately expressed in writing because of age, infirmity or illiteracy.

The reasons for holding a Committee site visit must be included in the minutes.

### Background Papers

Unless otherwise stated, the background papers will be the appropriate file in respect of each application, save any document which discloses exempt information within the meaning of the Local Government (Access to Information) Act 1985.

The Officer to whom reference should be made concerning inspection of the background papers is Alice Fey, Planning Support Team Supervisor, Planning Department, Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ (Tel: 01304 872468).

## **IMPORTANT**

### **The Committee should have regard to the following preamble during its consideration of all applications on this agenda**

1. Section 70(2) of the Town and Country Planning Act 1990 requires that, in dealing with an application for planning permission, the local planning authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that: 'If regard is to be had to the development plan for the purposes 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'.
3. Planning applications which are in accordance with the relevant policies in the Development Plan should be allowed and applications which are not in accordance with those policies should not be allowed unless material considerations justify granting of planning permission. In deciding such applications, it should always be taken into account whether the proposed development would cause demonstrable harm to interests of acknowledged importance. In all cases where the Development Plan is relevant, it will be necessary to decide whether the proposal is in accordance with the Plan and then to take into account material considerations.
4. In effect, the following approach should be adopted in determining planning applications:
  - (a) if the Development Plan contains material policies or proposals and there are no other material considerations, the application should be determined in accordance with the Development Plan;
  - (b) where there are other material considerations, the Development Plan should be taken as the starting point and the other material considerations should be weighed in reaching a decision;
  - (c) where there are no relevant policies in the Development Plan, the planning application should be determined on its merits in the light of all material considerations; and
  - (d) exceptionally, a development proposal which departs from the Development Plan may be permitted because the contribution of that proposal to some material, local or national need or objective is so significant that it outweighs what the Development Plan says about it.
5. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, in considering planning applications for development affecting a listed building or its setting, special regard shall be had to the desirability of preserving the building, its setting or any features of special architectural or historical interest which it possesses. Section 72 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas when considering any applications affecting land or buildings within them. Section 16 requires that, when considering applications for listed building consent, special regard shall be had to the desirability of preserving the listed building, its setting, or features of special architectural or historic interest which it has.
6. Section 38(6) of the 2004 Act does not apply to the determination of applications for advertisement consent, listed building consent or conservation area consent. Applications for advertisement consent can be controlled only in the interests of amenity and public safety. However, regard must be had to policies in the Development Plan (as material considerations) when making such determinations.

### **The Development Plan**

7. The Development Plan in Dover District is comprised of:

Dover District Core Strategy 2010  
Dover District Land Allocations Local Plan 2015  
Dover District Local Plan 2002 (saved policies)  
Worth Neighbourhood Development Plan (2015)  
Kent Minerals and Waste Local Plan 2016

## Human Rights Act 1998

During the processing of all applications and other items and the subsequent preparation of reports and recommendations on this agenda, consideration has been given to the implications of the Human Rights Act 1998 in relation to both applicants and other parties and whether there would be any undue interference in the Convention rights of any person affected by the recommended decision.

The key articles are:-

Article 8 - Right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol - Right of the individual to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Account may also be taken of:-

Article 6 - Right to a fair trial and public trial within a reasonable time.

Article 10 - Right to free expression.

Article 14 - Prohibition of discrimination.

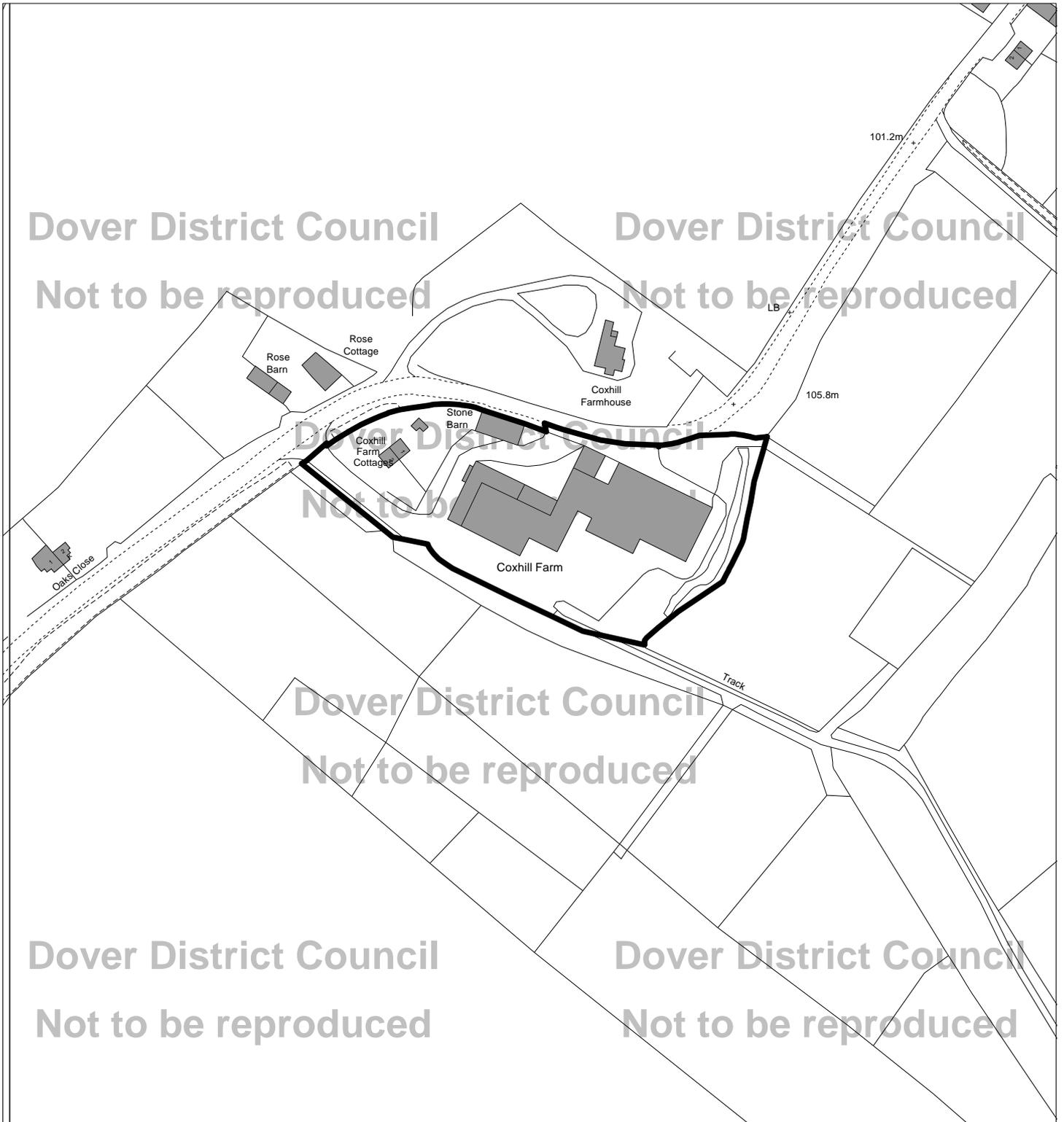
The Committee needs to bear in mind that its decision may interfere with the rights of particular parties, particularly under Article 8 and Article 1 of the First Protocol. The decision should be a balanced one and taken in the wider public interest, as reflected also in planning policies and other material considerations.

(PTS/PLAN/GEN) HUMANRI

## PUBLIC SPEAKING AT PLANNING COMMITTEE

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1. The scheme for public speaking at Planning Committee only concerns matters relating to the determination of individual applications for planning permission contained in the Planning Committee agenda and not to other matters such as Tree Preservation Orders or Enforcement.
2. The scheme for public speaking will apply at each meeting where an individual application for planning permission is considered by the Planning Committee.
3. Any person wishing to speak at the Planning Committee should submit a written request using this form and indicate clearly whether the speaker is in favour of, or opposed to, the planning application.
4. The form must be returned to Democratic Support no later than two working days prior to the meeting of the Planning Committee.
5. Speaking opportunities will be allocated on a first come, first served basis but with the applicant being given first chance of supporting the scheme. Applicants or agents will be notified of requests to speak. Third parties who have applied to speak will be notified of other requests only when these directly affect their application to speak. The names, addresses and telephone numbers of people who wish to speak may be given to other people who share their views and have expressed a wish to address the Committee. The identified speaker may defer to another at the discretion of the Chairman of the Committee.
6. One person will be allowed to speak in favour of, and one person allowed to speak against, each application. The maximum time limit will be three minutes per speaker. This does not affect a person's right to speak at a site visit if the Committee decides one should be held.
7. Public speakers will not be permitted to distribute photographs or written documents at the Committee meeting.
8. The procedure to be followed when members of the public address the Committee will be as follows:
  - (a) Chairman introduces item.
  - (b) Planning Officer updates as appropriate.
  - (c) Chairman invites the member of the public and Ward Councillor(s) to speak, with the applicant or supporter last.
  - (d) Planning Officer clarifies as appropriate.
  - (e) Committee debates the application.
  - (f) The vote is taken.
9. In addition to the arrangements outlined in paragraph 6 above, District Councillors who are not members of the Committee may be permitted to address the Planning Committee for three minutes in relation to planning applications in their Ward. This is subject to giving formal notice of not less than two working days and advising whether they are for or against the proposals. In the interests of balance, a further three minutes' representation on the contrary point of view will be extended to the identified or an additional speaker. If other District Councillors wish to speak, having given similar notice and with the agreement of the Chairman, this opportunity will be further extended as appropriate.
10. Agenda items will be taken in the order listed.
11. The Chairman may, in exceptional circumstances, alter or amend this procedure as deemed necessary.



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**Note:** This plan is provided for purposes of site identification only.

**Application: DOV/16/01120**

**Coxhill Farm**

**Coxhill**

**Shepherdswell**

**CT15 7ND**

**TR25194725**



**a) DOV/16/1120 - Change of use from agriculture to light industrial workshop (Use Class B1) - Coxhill Farm, Coxhill, Shepherdswell, Dover**

Reason for report: number of contrary views.

**b) Summary of Recommendation**

Planning permission be granted.

**c) Planning Policy and Guidance**

**Dover District Council Core Strategy**

- Policy CP1 states ‘the location and scale of development in the District must comply with the settlement Hierarchy. The Hierarchy should also be used by infrastructure providers to inform decisions about the provision of their services’.
- Policy DM1 states that ‘development will not be permitted outside the confines unless specifically justified by other plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses’.
- Policy DM4 states ‘ Permission will be given for the re-use or conversion of structurally sound, beyond the confines for commercial uses’.
- Policy DM13 states ‘parking provision should be a design led process based upon the characteristics of the site, the locality, the nature of the proposed development and its design objectives. Provision for non-residential development, and for parking provision, should be informed by Kent County Guidance SPG4, or any successor. Provision for residential development should be informed by the guidance in the Table for Residential Parking’.
- Policy DM15 ‘ development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted if it is justified by a need to sustain the rural economy or a rural community’.

**National Planning Policy Framework (NPPF) 2012**

- Paragraph 7 sets out 3 dimensions to sustainable development – the economic, social and environmental role which should not be undertaken in isolation.
- Paragraph 14 states ‘that at its heart there is a presumption in favour of sustainable development. Where the development plan is absent, silent or out of date this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole’.
- Paragraph 17 sets out the core planning principles... Planning should... always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings...”take account of the different roles and character of different areas, promoting the viability of our main urban areas, protecting the Green Belts, around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it....”
- Paragraph 28 supports economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local neighbourhood plans should: support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings, promote the development and diversification of agricultural and other land-based rural businesses.
- Paragraph 152 sets out that local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of

these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate measures are not possible, compensatory measures may be appropriate'.

Other Guidance/Relevant Matters

None relevant.

d) **Relevant Planning History**

None specifically related to the building the subject of this application however DOV/99/00293 was for a change of use of stables and workshop to provide a light industrial unit and livery yard and granted on 23/07/1999. This application related to an adjacent building on the wider site.

(e) **Consultee and Third Party Responses**

Dover District Councils Environmental Health Officer:

No objections subject to the times of operation are restricted to between the hours of 08:00 hours and 18:00 hours Monday to Saturday, with no operations permitted on Sundays and Bank Holidays.

Kent Highway Services:

Verbal advice has been sought from Kent Country Council highways they have said that the B1 use/activities proposed would be unlikely to generate more traffic than agricultural uses. In addition to this B1 use traffic is likely to be lighter and smaller than the previous agricultural use.

Shepherdswell and Coldred Parish Council – No objection

No objection to this application although the local planning authority may wish to consider placing limits on permitted working hours.

Third Party Responses:

Thirteen letters of objections have been received, raising a number of concerns including;

- The road into the village from the A2 which runs past Coxhill Farm is very dangerous and it is narrow with tight bends, how will it accommodate heavy duty vehicles?
- The farm units are in the middle of two very sharp bends. Lorries often get stuck, therefore further traffic pulling in and out of the farm is adding to this hazard. Horse riders and cyclists are particularly vulnerable on this piece of road.
- There is a bright light coming from the property which is a concern together with the impact of high noise and is changing the environment and this is cannot be peaceful for neighbours.
- The nuisance effect of an industrial related activity in such close proximity to a long-established residential dwelling.
- The grant of planning permission for B1 light industrial use will result in an official planning creep and what may start as something that does not offend the parameters of B1 effectively develops into B2 type use and then the statutory nuisance process starts all over again.

- There are careless storage gas or oxygen tanks and what might appear to be chemical barrels or drums just lying around and unattended in an open yard directly contravening the Health and Safety Executive legislation.
- These workshops are unsuited to B1 light industrial use, has an environmental impact study taken place.
- The plans for this site are extremely unsuitable to this previously quiet, country location and completely destroys the character of the village.
- The overall appearance of the site, the mess around its entrance and the noise makes the location unsuitable.
- The proposal will affect the whole locality, the users of local amenities and facilities which is rural and residential.

It should be noted that a number (9) of the objection letters have been received from third parties who are not local to the site.

## **1. The Site and the Proposal**

- 1.1 The building forms one of a range of former agricultural buildings, and is accessed off Coxhill with direct access to the A2 on the outskirts of Shepherdswell. The application site comprises an area of 190 sq metres, consisting of a stone barn with a floor space of 153 sq metres, which until recently was being used by a company who repaired agricultural machinery; this use was considered to be B2 use and was investigated by the local planning authorities Enforcement Officer and this has now ceased. The remaining site area is identified as vehicle parking for the proposed use. A storage container on the designated parking area would be removed.
- 1.2 The wider farmyard area has been historically divided into a number of different uses. The building to the south is being used as a livery yard with facilities for the users of the livery yard and a hay barn. The buildings to the east are used for farm storage and a small area of this building is currently being used by Elite Arborists (B1 use, permitted in 1999) see above history.
- 1.3 The site is located just off Coxhill which leads directly onto the A2 to the south west approximately 0.70km. There are two vehicular accesses onto the wider site. Both from Coxhill, the main access to the wider site lies to the north west of the site and serves the cottages, the stables/livery and farm storage area. There is a secondary access into the wider site adjacent to the application site.
- 1.4 Land to the south of the complex is fairly open and presently used for agriculture/grazing horses.
- 1.5 From Coxhill to the north of the site, the site is sporadically open to inward views. The side of Coxhill opposite the site is very heavily hedgerow and screened, so much that inward views from Coxhill are not achievable.
- 1.6 The site is located just off Coxhill which leads directly onto the A2 to the south west approximately 0.70km. There are two vehicular accesses onto the wider site. Both from Coxhill.

### Proposed Development

- 1.7 Planning permission is sought for the change of use of the building to light industrial workshop (Use Class B1), along with the formation of an associated parking area.

1.8 The applicant has control of the whole site and has confirmed that it would be possible to erect a gate within the site, across the internal areas driveway/track to prevent vehicle movement across the whole site.

1.9 The applicant has achieved that the B1 use would be likely to generate 2 jobs.

## 2. Main Issues

2.1 The main issues in the consideration of this application are;

- Principle of the development
- Residential amenity.
- The impact on the landscape and visual amenity.
- Highway safety.

## 3.0 Assessment

### Principle of Development.

3.1 Policy DM1 of the Dover District Council Core Strategy states 'development will not be permitted on land outside the urban boundaries and rural settlement confines shown on the proposals map unless specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses. In this case the proposal falls to be considered against policy DM4 of the Dover District Council Core Strategy which sets out 'permission will be given for the re-use or conversion of structurally sound, permanent buildings within Rural Service Centres, Local Centres and in Villages for commercial, community or private residential units'. 'Beyond the confines of Rural Service Centres, Local Centres and Villages permission will be given for re-use or conversion of such buildings for community uses in buildings that are closely related or adjacent to the confines'.

3.2 The National Planning Policy Framework paragraph 28 identifies planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings and promote the development and diversification of agricultural and other land-based rural businesses. In terms of sustainability of location the site is in the close proximity to a major serve route (the A2).

3.3 The site is in a good location as far as transport links are concerned, the building the subject of this application is structurally sound and would be suitable for a commercial use. Overall the proposed change of use to a B1 use is considered to be acceptable in policy and National Planning Policy Framework terms. The principle of the development is therefore acceptable, subject to other matters

### Residential Amenity

3.4 Complaints had been previously received by Environmental Health Officers relating to the use of the building for B2 use and the activities carried out by Elite Arboriculturist in the larger building.

- 3.5 The B2 use has ceased and it is understood that the Elite Arboriculturists are now operating within the B1 condition attached to their 1999 consent (i.e they are operating without causing noise and disturbance problems). Hours of work suggested by Environmental Protection have suggested 8am – 6pm Monday – Saturday, no work on Sundays or Bank Holidays.
- 3.6 A B1 use is a use which can be carried out in a residential area without detriment of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dirt or grit. Accordingly provided appropriate controls i.e conditions are in place to limit the hours of work, external storage, burning and external lighting, and appropriate hours as suggested by Environmental Protection, in this location, the development as proposed would not cause undue harm to residential amenity. Any change of use to a B2 use would require a further permission.
- 3.7 The mature hedgerow/tree screen to the north of the site alongside Coxhill would effectively mitigate noise and light spills that might be generated from the proposed use. Accordingly, subject to appropriate conditions and controls it is not considered that the proposed use and associated activities would harm residential amenity.

#### The landscape and visual appearance

- 3.8 DM15 refers to development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted if it is justified by a need to sustain the rural economy or a rural community providing that measures are incorporated to reduce, as far as practical, any harmful effects on countryside character.
- 3.9 The wider farmyard site is visible across open landscape to the south. However, the application site the subject of this application is well screened from the south by existing buildings and their related uses. It is not considered therefore that the proposed use would adversely affect the character or appearance as such of the wider countryside.
- 3.10 With regards to the impact on Coxhill, there are no external alterations proposed to the building itself. A storage container currently visible from the street would be removed, to make way for parking for the B1 use. Overall it is likely the proposal would improve the appearance of the site, and the rural character of this part of the street.
- 3.11 Local residents have raised the issue of drums, gas bottles etc being kept on the site. However these have now been removed. Overall the development proposals would not result in harm to the character and appearance of the countryside.

#### Highway Matters

- 3.12. At present there vehicle activities relating to the existing lawful and historic stable/livery, B1 use and agricultural uses on the site. The main vehicular access into the wider site is from the north west and is the most used by vehicular traffic
- 3.13 Kent County Council Highways have advised that the B1 use proposed would be unlikely to generate more traffic than the lawful and agricultural uses currently being carried out on the wider site. In addition to this B1 use traffic is likely to be lighter and smaller in nature than agricultural uses. On this basis there are no highway objections. There is only space for 3 cars to park within the application site as such. However there is plenty of space available on the wider site (which is owned by the applicants) for vehicle parking. Vehicles will be able to turn and manoeuvre within the site, off the road.

#### 4 Conclusion

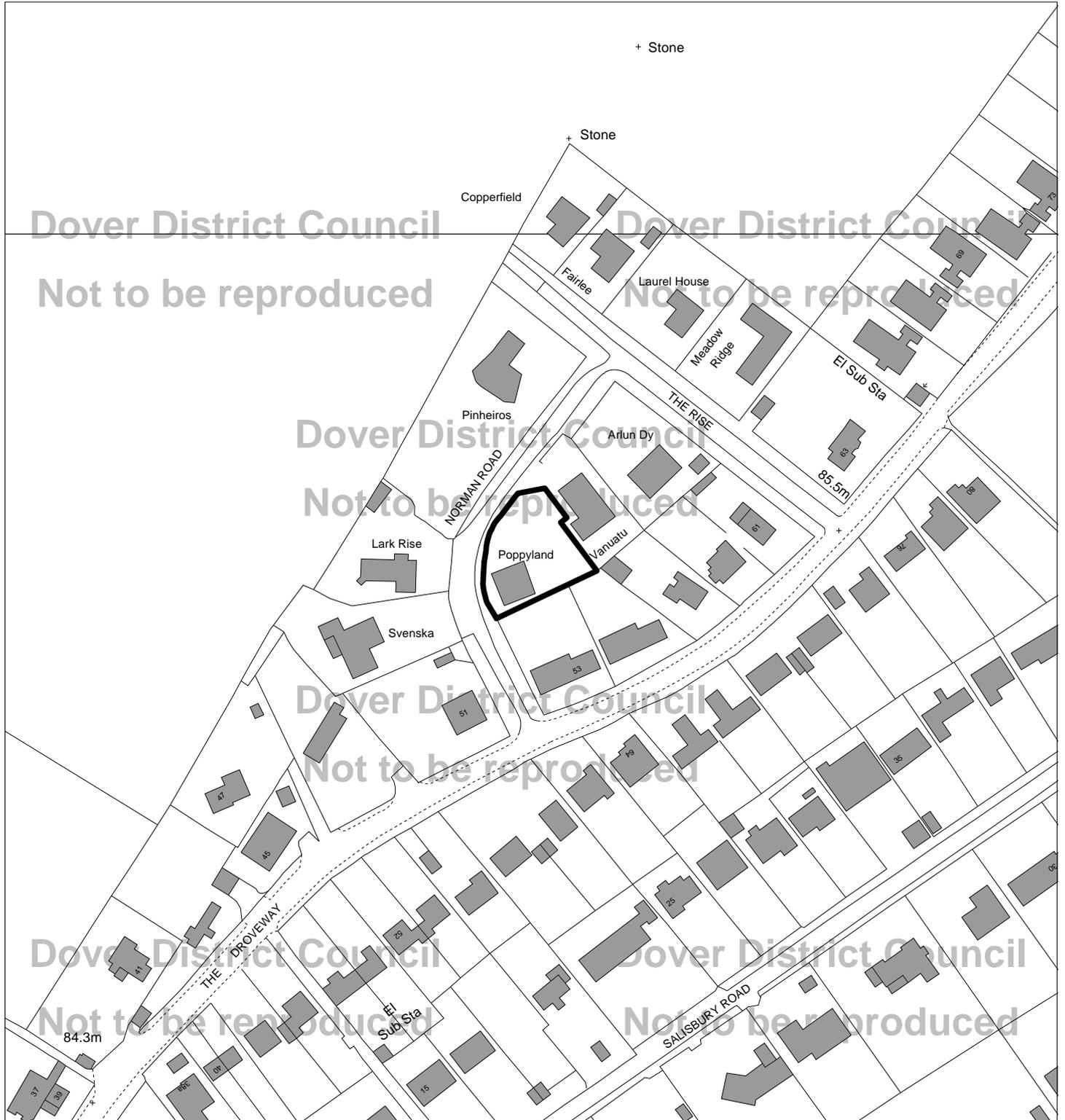
- 4.1 At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The application site is considered to be in a sustainable location close a major service route and would make good use of a rural building, whilst providing employment. In addition to this the proposed development would allow the local planning authority to regulate the use of the building with appropriate conditions which would help mitigate any potential impact. Overall this is a type of business enterprise that is suitable for the proposed location; it complies with the aims and objectives of policies set out in the Dover District Core Strategy and the National Planning Policy Framework.

#### **g) Recommendation**

- I. PERMISSION BE Granted for the subject to conditions to include, in summary: 1) time 2) development carried out in accordance with the approved details, 3) times of operation be restricted between 08:00 and 18:00 Monday – Saturday, no operations permitted on Sundays and Bank Holidays, 4) details of the parking / turning arrangements (which would involve the removal/re-location of the container), 5) restricted to a Class B1 use 6) controls over lighting
  
- II. The powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation, and as resolved by the planning committee.

Case Officer

Karen Evans



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**Application: DOV/16/00620**

**Poppyland**

**Norman Road**

**St Margarets Bay**

**CT15 6DA**

**TR36684490**



- a) **DOV/16/00620 – Conversion of existing double garage to ancillary residential annexe, erection of side dormer roof extension; formation of `Juliette`-style balcony; insertion of rooflights and formation of new parking access - Poppyland, Norman Road, St Margaret’s Bay, Dover**

**Reason for report:** Number of views contrary to officer’s recommendation

- b) **Summary of Recommendation**

Planning permission be granted.

- c) **Planning Policies and Guidance**

Dover District Core Strategy

- DM1- Settlement boundaries
- DM 13- Parking provision

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles set which amongst other things seek to secure high quality design and a good standard of amenity for all existing and future residents.
- The NPPF paragraphs 17, 55-58, 61 and 64 are of particular relevance and seek to promote good design and resist poor design. Development should take the opportunity to improve the visual quality and character of the area.

The Kent Design Guide

- The Guide contains criteria and advice on providing well designed development.

- d) **Relevant Planning History**

01/00819- Erection of replacement garage. Planning permission was granted 29/10/2001 subject to conditions, inter alia; the garage should be used for the parking of vehicles only and shall not be used for commercial purposes.

10/00611- Change of use from double garage to a dwelling (bungalow). Planning permission was refused on 15/10/2010 for the following reasons:-

1. The development would relate poorly to its context by virtue of its prominent location in the street scene, its appearance and its relationship to the existing dwelling. Accordingly, it would be detrimental to the visual amenities of the locality contrary to the provisions of PPS1 and PPS3 concerning design.

A subsequent appeal against the LPA’s refusal of planning permission was dismissed on 11/02/2011, the Inspector stating that “ the uncharacteristic nature of the proposal in terms of the sub-division of the plot and size of the proposed dwelling means that the local environment would not be adequately respected and this indicates that planning permission should be withheld.”

- e) **Consultee and Third Party Responses**

Consultees

St. Margaret's-at-Cliffe Parish Council - Objects to the proposal on the following grounds:-

1. Potential disturbance to neighbours;
2. Lack of availability of parking/loss of garage space- this is an unadopted/ unmade road; and'
3. Potential loss of privacy to neighbouring gardens.

### Public Representations

There have been two public consultations as the drawing and the description of development have been amended.

Eleven responses have been received from seven individual occupiers objecting to the proposal on some or all of the following grounds:-

1. Loss of garage will result in increased on street parking;
2. Adverse effect on condition of unadopted road;
3. On-street parking resulting in access problems for service and emergency vehicles;
4. Holiday let will not benefit local community;
5. Holiday let out of character;
6. Detrimental visual impact:
7. Adversely affect character of area;
8. Overdevelopment;
9. Overlooking/ loss of privacy; and,
10. Amending `holiday let` to `ancillary residential accommodation` does not address parking and highway safety concerns.

### 1. **The Site and Proposal**

- 1.1 The application site is located on the eastern side of Norman Road, some 35m to the north of its junction with The Drove. It comprises a detached chalet style bungalow with asymmetrical gabled roof and a mixture of red brick and tile hung elevations. There is a pitched roofed detached double garage to the side with a tiled pitched roof and stone/ red brick elevations. The property has two vehicular accesses onto Norman Road.
- 1.2 The surrounding area is wholly residential in character. Adjoining the site to the north-east, "Vanuatu" is a relatively substantial modern two storey detached house. To the south are the rear gardens of two storey detached houses fronting The Drove. To the west of the site on the opposite side of Norman Road, are a detached bungalow and two storey house.
- 1.3 Norman Road is an unadopted residential access road.
- 1.4 The applicant is seeking full planning permission for the conversion of the existing double garage into an ancillary residential annexe comprising a living room/ kitchen, WC/shower room and bedroom. The applicant has indicated that the additional accommodation would be for the sole use of visiting family and friends. The associated external works to the garage would comprise the installation of patio doors in the rear elevation and three rooflights in the south-east side facing roof slope.
- 1.5 In respect of the main house, the proposal involves the formation of a 2.2m wide x 2.1m high x 2.2m deep tile hung box dormer on the south-east facing side roof slope, whilst on the north-west facing side roof slope, a small eaves level dormer

incorporating glazed French doors and `Juliette` style balcony below together with a large four panel rooflight, are proposed.

- 1.6 One off-street parking space with access onto Norman Road would be provided.
- 1.7 The application has been amended during the course of its consideration. These are as follows:-
1. As originally submitted the garage conversion was for a holiday let. It is now ancillary residential accommodation;
  2. A small rear extension originally proposed for the garage has been deleted; and,
  3. The garage doors are to be retained rather than replaced by windows.

## 2. **Main Issues**

2.1 The main considerations in the determination of this application are:-

- The principle of the proposed development;
- Impact on the character and visual amenities of the area;
- Impact on the amenities of neighbouring residential occupiers; and,
- Highways and parking

### Assessment

#### Principle of the Proposed Development

2.2 The site lies within the designated settlement boundaries of St Margaret's-at-Cliffe and as such, the proposal is acceptable in principle and accords with policy DM 1 of the Core Strategy subject to the considerations highlighted below.

#### Impact on the Character and Visual Amenities of the Area

2.3 The dwellings along Norman Road exhibit a variety of styles and designs. In respect of the works to the main house, the formation of a relatively small tile hung box dormer to the expansive south-east facing side roof slope would appear as a subservient feature and would be in keeping with character of the host building and street scene. Similarly, the proposed glazed doors with associated Juliette style balcony and roof light to the north-west side elevation of the building would have a satisfactory design, form and appearance.

2.4 The previously refused scheme (DOV/10/00611) involved the sub-division of the plot and the conversion and enlargement of the existing garage to form a separate dwelling. In dismissing the subsequent appeal the Inspector stated that:

*“While the building already exists, as a garage it appears entirely appropriate as an ancillary building. As an independent dwelling on a sub-divided plot it would fail to achieve the same complementary appearance.”*

2.5 In the current submission, the plot would not be sub-divided and the garage would be used solely as accommodation ancillary to the main house. The external works would be limited to the installation of three roof lights and patio doors to the rear, the garage doors to the front elevation being retained in their existing form.

2.6 Under these circumstances, it is considered that when viewed from the public realm the appearance of the garage and the plot as a whole would be unchanged. Therefore, given the limited visual impact of the proposal, it is considered that the

Inspector's and the Local Planning Authority's previous concerns have been satisfactorily addressed.

- 2.7 Notwithstanding this, it is recommended that in the event of planning permission being granted, a condition be imposed to preclude the use of the converted garage as a separate dwelling house.

#### Impact on the amenities of neighbouring residential occupiers

- 2.8 The proposed dormer to the south-east side elevation of the main house is relatively small and contains no side facing fenestration. Therefore, there would be no detrimental impacts on the outlook or privacy of the adjoining residential occupiers at No.53 The Droveaway.
- 2.9 The proposed `Juliette` balcony and rooflight to the north-western side elevation of the house would look towards the rear garden of "Pinheiros" a two storey detached house. However, at a distance of 20m to the garden and some 45m to the rear elevation of the house itself, it is not considered that the privacy of the occupiers would be unduly compromised.
- 2.10 The external alterations to the garage itself would have no adverse effects on the amenities of neighbouring occupiers in terms of light, outlook or privacy. A condition restricting its use to ancillary accommodation only should also preclude any material issues relating to disturbance and intensification. With this regard, it should also be noted that in the previous refusal of planning permission and the subsequent appeal dismissal, the conversion of the garage to a separate dwelling was not considered to have any detrimental impacts on the amenities of neighbouring occupiers.

#### Highway and Parking

- 2.11 The proposal will result in the loss of two garage spaces. However, the residual provision would include two off-street spaces on the forecourt of the garage and two fronting the house. An additional space is also proposed for the rear garden to give a total provision of five spaces. The house including the ancillary accommodation would provide a total of four bedrooms. The Council's car parking standards indicate a maximum provision of two spaces for a four bedroom house and as such, it is considered that there is adequate provision in accordance with Policy DM 13 of the Core Strategy.
- 2.12 Accordingly, it is considered that the proposal would not adversely affect highway safety or the free flow of traffic on this un-adopted residential access road.
- 2.13 Members are advised that issues relating to inadequate parking provision and highway safety did not constitute one of the Council's reasons for refusing the previous planning application for the conversion of the garage to a separate dwelling nor was this matter raised by the Inspector when dismissing the subsequent appeal.

#### Conclusion

- 2.14 The representations received have been noted. However, for the reasons outlined above it is considered that the proposed development, as amended, would have no adverse effects on the character of the area; the visual amenities of the street scene; the amenities of neighbouring occupiers; or, highway safety. Accordingly, the application is recommended for approval subject to condition.

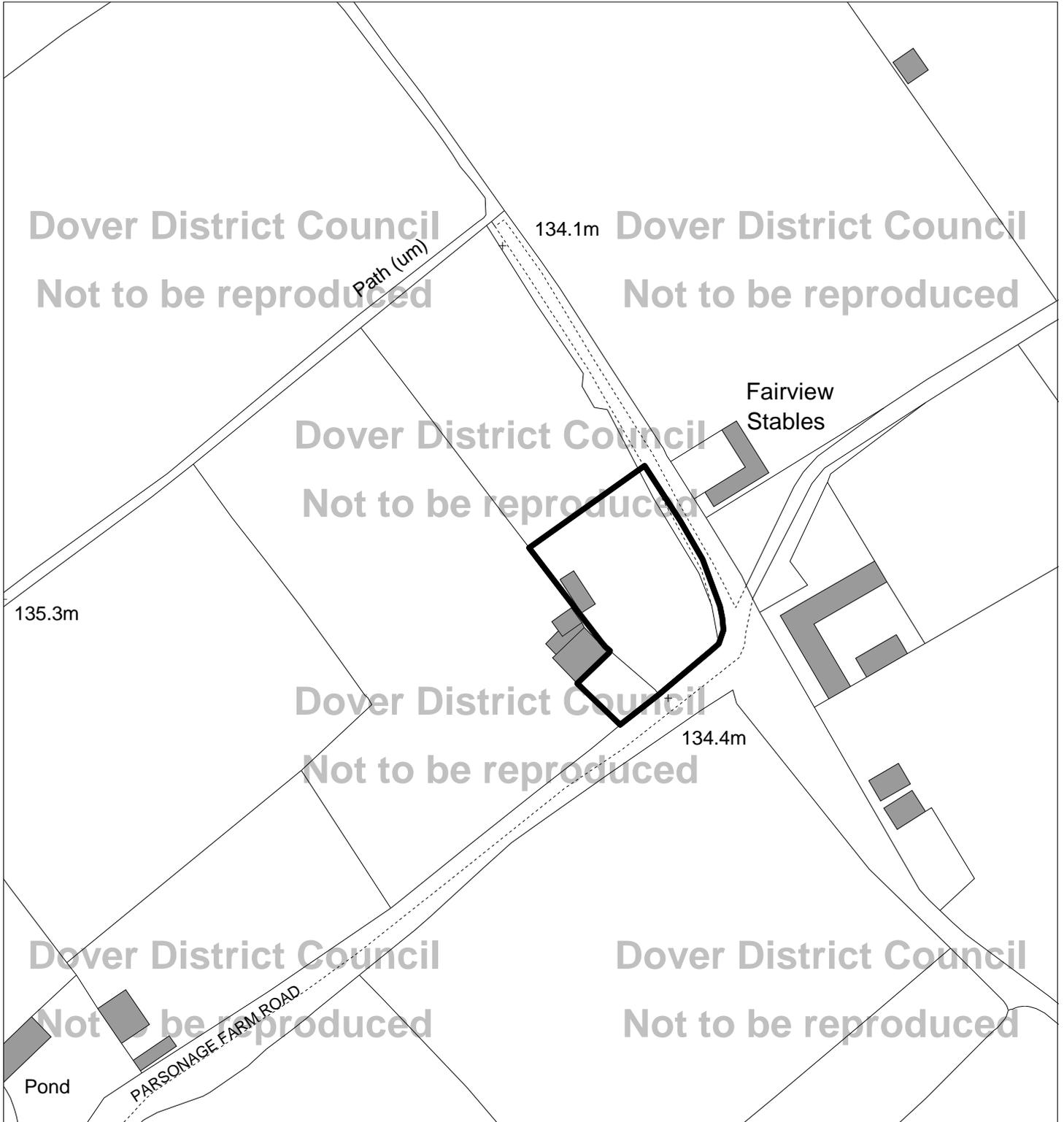
g) **Recommendation**

- i) Planning permission be GRANTED, subject to conditions to include: 1) Full time; 2) Approved plans; 3) Restrict to ancillary accommodation to Poppyland.
- ii) Powers be delegated to the Head of Regeneration and Development to settle any necessary conditions in line with issues set out in the recommendation and as required by Planning Committee.

Case Officer

Ray Hill

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**Application: DOV/16/01099**

**Former Three Horse Shoes PH**

**Church Hougham**

**CT15 7FD**

**TR28274021**



a) **DOV/16/01099 – Erection of detached dwelling on site of former public house - Three Horseshoes Public House, Church Hougham, Dover**

Reason for report: The number of third party contrary views.

b) **Summary of Recommendation**

Refuse planning permission.

c) **Planning Policies and Guidance**

Dover District Core Strategy

- Policy CP 1 Settlement Hierarchy- Identifies where housing development should be directed.
- Policy DM 1 Settlement Boundaries- Development will not be permitted on land outside the rural settlement confines unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- Policy DM 11 Location of Development and Managing Travel Demand- Indicates that development that would generate travel will not be permitted outside urban boundaries and rural settlement confines unless justified by development plan policies.
- Policy DM 13 Parking Provision.
- Policy DM 15 Protection of Countryside
- Policy DM 16 Landscape Character

National Planning Policy Framework (NPPF)

- Paragraph 14 of the NPPF requires that where the development plan is absent, silent or relevant policies are out-of-date development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole, or, specific policies in the NPPF indicate that development should be restricted.
- The NPPF has 12 core principles which, amongst other things, seeks to: secure high quality of design and a good standard of amenity for all existing and future residents; recognise the intrinsic character and beauty of the countryside; contribute to conserving and enhancing the natural environment; and actively manage patterns of growth to make the fullest possible use of public transport, walking, cycling, and focus significant development in locations which are or can be made sustainable.
- Paragraph 49 of NPPF states that housing applications should be considered in the context of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of housing sites.
- Paragraph 55 of the NPPF states that “To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities... Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances...”

- Paragraph 109 of the NPPF requires that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes.
- Paragraph 115 of the NPPF specifies that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.

#### Kent Downs AONB Management Plan 2014-2019

Policy SD1- Conservation and enhancement of the Kent Downs AONB.

Policy LLC1- Protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Kent Downs AONB.

#### d) **Relevant Planning History**

DO/74/ 357 - Erection of two detached bungalows. Planning permission refused.

DO/78/1075 - Erection of log house. Planning permission refused.

DO/80/347 - Erection of stable and store. Planning permission granted.

DO/85/1096 - Erection of bungalow for disabled person. Planning permission refused.

DOV/15/01264 - On 5<sup>th</sup> February 2016 planning permission was refused for the erection of a detached dwelling for the following reason:-

1. The development does not comply with the Core Planning Principles set out in the NPPF and Development Plan Policy. It is unjustified development located beyond any confines, in an isolated and prominent location and if permitted would detract from, and harm the setting, character, appearance and functioning of the AONB, would not generate social benefits, and would not benefit the wider economy. Accordingly, the development is not sustainable and is contrary to the aims and objectives of the NPPF, in particular at Paragraph 7, 14, 55, 109 and 115 and Development Plan Policies DM1, DM11 and DM15.

#### e) **Consultee and Third Party Responses**

Hougham Without Parish Council- Resolved to positively support this application and approve the design and site location stating that:-

“We are aware that such a new building close to the village would appear to set a precedent for other land owners in the parish to apply for similar permission. However, the council believes this location is a special case because there has already been a property on the site in living memory.

The old pub and other dwellings existed on the site until WW2 when they were badly damaged and demolished. Until this time these properties had been very much part of the community of Church Hougham and even though additional properties were built within the village immediately after the war

there has been only three other new buildings erected since then and most recent of these was around 35 years ago.

We consider thereby that this proposed property is sustainable as part of the village of Church Hougham. The property will not increase traffic flow in the village as the applicants already visit the site regularly to attend their animals which therefore would reduce the number of journeys.”

Ecological Officer- The site is within the Kent downs AONB and has reverted to a greenfield site. The development of a detached house on this isolated site would not conserve the landscape or natural beauty of the AONB, contrary to Paragraph 115 of the NPPF.

Public Representations- A total of eleven letters have been received from seven respondents objecting to the proposal on some or all of the following grounds:-

- Outside designated village confines;
- Adverse impact on character and visual amenity of AONB;
- Site is greenfield not brownfield;
- Unacceptable precedent for future development;
- Unacceptable increase in traffic;
- Exacerbate existing parking and access problems;
- Inadequate infrastructure;
- Additional traffic would damage existing poor quality road surface; and,
- Noise and disruption during construction.

A total of eleven letters have been received from ten individual respondents in support of the application, raising the following points:-

- Development would improve the appearance of the area;
- Dwelling would be well sited;
- There would be no significant increase in traffic;
- Help to restore local population;
- Area would benefit from more houses;
- The village is not isolated or remote;
- Would improve security for the community
- Would deter flytipping; and,
- Development would be good for the welfare of the applicant's horses.

In addition, two responses were received neither objecting to or supporting the application.

f) 1. **The Site and the Proposal**

1.1 The application site is located on the north-eastern fringe of Church Hougham at the end of Parsonage Farm Road, a narrow rural access lane. The site is roughly rectangular in shape with a maximum depth of 38m, a width of 30m and an area of approximately 0.1 ha. The site contains a small barn of timber construction and is bounded by a timber post and wire fence supplemented by a hedgerow to the south-eastern side and a line of trees along part of the south-western side. The site previously contained a Public House and two cottages that were destroyed during WW2, prior to the `appointed day` i.e. 1948. Any structures or buildings on the site are now considered to have `gone`. The lawful use of the site is now for agricultural purposes.

- 1.2 The site lies on high ground within the Kent Downs Area of Outstanding Natural Beauty (AONB) and is readily visible from the surrounding countryside, particularly to the north, west and east. The surrounding area is mainly used for the grazing of horses with a number of the adjacent and nearby fields containing stable blocks and field shelters.
- 1.3 The applicant owns approximately 2.8 hectares of additional land immediately adjoining the application site to the south-west, north-west and to the north-east, which appears to be solely used for the keeping of horses.
- 1.4 The application seeks full planning permission for the erection of a two storey, two bedroom detached house. The proposed building would occupy a central position within the site. It would have a rectangular footprint with a width of 11.5m, a depth of 10m with an eaves height of 4.8 and a ridge height of 7.8m. It would be set back 12m from the Parsonage Farm Road frontage and 6m from the return frontage with the rural track to the east.
- 1.5 The proposed building would be of a 'traditional' design with face brick elevations, a tiled gable roof and UPVC windows. There would be parking on the forecourt for three cars utilising the existing access onto Parsonage Farm Road.
- 1.6 Although located in a comparable position within the site, the two storey gable roofed dwelling currently proposed is significantly larger than the chalet style bungalow with half-hipped roof previously refused (DOV/15/1264). For example, the dwelling currently proposed is 2m wider and 2m its eaves and ridge 2.3m and 1m higher respectively.
- 1.7 The applicant has not submitted a Design and Access Statement or other documentation in support of the proposal. However, Members are advised that in connection with the earlier refused planning application, the applicant's indicated that they need to live on site on a full time basis because they look after horses with on-going medical conditions.

## 2. **Main Issues**

- 2.1 The main considerations in the determination of this application are:-
  - The principle of the proposed development;
  - Design and impact on the character and visual amenity of the area including the impact on the AONB;
  - Impact on the amenities of neighbouring occupiers;
  - Highways and parking; and,
  - Sustainability
- 2.2 The principle of the proposed development
- 2.3 Church Hougham is not specifically identified in the Settlement Hierarchy (Core Strategy Policy CP1) and is thereby classified as a 'hamlet' which is "*not suitable for further development*". Church Hougham does not have confines. Given that residential development

does not functionally require a rural location, the proposal is contrary to Policy CP1.

- 2.4 Having regard to the proposals map the application site itself is located on land outside the designated urban boundaries and rural settlement confines and as such, under policy DM1 of the Core strategy development should not be permitted unless certain exceptions apply:-
- i. Unless specifically justified by other development plan policies; or,
  - ii. It functionally requires a rural location; or,
  - iii. It is ancillary to existing development or uses.
- 2.5 The above exceptions are not applicable in this case and therefore the principle of residential development in this location is also considered to be contrary to Policy DM1.
- 2.6 As members will be aware the District cannot currently demonstrate a five year supply of housing land and under these circumstances the National Planning Policy Framework (NPPF) indicates that policies for the supply of housing including CP1 and DM1 should not be considered up-to-date. Paragraph 49 of the NPPF goes on to state that where policies are not up-to-date planning permission should be granted unless *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”* or specific policies in the NPPF indicate that development should be restricted. The lack of a five year supply of housing land diminishes the weight of Policy DM1 to an extent but it remains an extant policy and the decision maker is required to consider how much weight should be attached to it.
- 2.7 In this case Paragraph 55 of the NPPF is of particular relevance and advises that with regard to development in rural areas local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the need for a rural worker to live at or near their place of work; where the development would re-use redundant buildings and lead to an enhancement to its immediate setting; or the design of the dwelling is of exceptional quality.
- 2.8 The proposed dwelling would be located in an isolated rural location beyond any designated settlement confines. It would not provide essential workers accommodation or re-use redundant or disused buildings. Furthermore, as reported below the design of the building would not be of exceptional quality. An additional single dwelling would hardly make a contribution to the Local planning Authority’s housing land supply deficit, and in this case little weight can be given to this argument. The proposal would not accord with the aims and objectives of the Core Strategy and the NPPF with regard to the protection of the countryside and the AONB.
- 2.9 Therefore, the proposal is contrary to Paragraph 55 of the NPPF and Core Strategy Policies CP1 and DM1. Other matters are considered below.
- 2.10 Design and Impact on the Character and Visual Amenity of the Area
- 2.11 The site lies within a protected AONB landscape and the countryside and is thereby subject to Policy DM 15 of the Core Strategy which

seeks to protect the character and visual amenity of the countryside. This development plan policy requirement is in accordance with the statutory requirement set out in the Countryside and Rights of Way Act 2000 to have regard to the “purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty” in exercising its planning function.

2.12 Paragraph 115 of the NPPF is also pertinent, stating that “*great weight should be given to conserving landscape and scenic beauty in... Areas of Outstanding Natural Beauty*”.

2.13 The Council has also adopted the Kent Downs AONB Management Plan as a material consideration in the determination of planning applications. This plan contains a number of policies including SD1 which states:-

*“The need to conserve and enhance the natural beauty of the Kent Downs AONB is recognised as the primary purpose of the designation and given the highest level of protection within statutory and other appropriate planning and development strategies and development control decisions”.*

Policy LLC1 sets out:-

*“The protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Kent Downs AONB will be supported and pursued.”*

2.14 The farmed landscape is a key characteristic of the Kent Downs AONB. Policy FL1 of the Management Plan seeks to “*retain the principally farmed character for which it is valued*”.

2.15 The application site is used for stabling and pasture, in keeping with the surrounding area which is characterised by agricultural or managed grasslands in equine related uses. It is considered that the introduction of an unjustified substantial residential building on this site together with the associated domestic paraphernalia of washing lines, sheds, hard surfacing and potential for fences, walls and gates, would be out of keeping with the prevailing unspoilt rural landscape and would fail to conserve or enhance the visual quality and natural beauty of the AONB.

2.16 Whilst the design of the proposed house may be acceptable for a village setting it is not considered to be of a particularly exceptional quality or innovative nature which would significantly enhance its setting and as such cannot be justified as an exception to the aims of rural protection allowable under Paragraph 55 of the NPPF.

2.17 In summary the proposal would constitute an unacceptable form of development which would have a detrimental impact on the character and visual amenity of the AONB and countryside, contrary to the aims and objectives of policies DM15 and DM16 of the Core Strategy and the NPPF and the AONB Management Plan policies SD1 and LLC1 in particular.

2.18 Highways and Parking

- 2.19 Policy DM 13 of the Core Strategy requires that developments provide a level of car and cycle parking which balances the characteristic of the site, the locality, the nature of the proposed development and design objectives.
- 2.20 The applicant indicates that three off-street parking spaces would be provided utilising the existing vehicular access onto Parsonage Farm Road. Although numerically this is sufficient to meet the Council's parking standards, it is recommended that in the event of planning permission being granted, details of the parking and access arrangement should be submitted to the Local Planning Authority in the interests of visual amenity and highway safety.
- 2.21 Policy DM11 of the Core Strategy does not support development that would generate travel in a countryside location and states that *"development that would generate travel will only be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies"*. The NPPF also places great emphasis on the need to create sustainable development and to make the fullest possible use of public transport, walking and cycling.
- 2.22 The proposed dwelling would be located on the outskirts of a small hamlet over a mile from the nearest small village settlement of West Hougham. There are no significant facilities or public transport services in West Hougham and the application site itself is surrounded by a network of narrow lanes with no footways. In view of these circumstances, it is considered that a family house in this location would not only result in an increase in private car journeys putting more pressure on the rural lane network but would also be too remote to have a positive impact on the vitality and viability of the nearest rural settlement.
- 2.23 Accordingly, it is considered that the proposal would not constitute a sustainable form of development and as such would be contrary to the aims and objectives of the Local Development Framework and the NPPF.
- 2.24 Impact on the Amenities of Neighbouring Occupiers
- 2.25 There are no residential properties in the immediate vicinity of the application site and as such, there would be no adverse amenity implications in terms of privacy, daylight and sunlight.
- 2.26 Sustainability Overview
- 2.27 The development is an unjustified dwelling outside confines, distant from any facilities, remote in public transport terms and within the AONB. The NPPF sets out that sustainable development should perform an economic, social and environmental role. In this case for the reasons set out above the development is not considered sustainable.
- 2.28 Other Matters
- 2.29 The application site is within an AONB and it is therefore necessary, under the EIA Regulations 2011 (as amended) to screen the development as to whether an Environmental Statement would be

required. Due to the scale of the development, in this case it is not considered that an Environmental Impact Statement would be required.

2.30 Conclusion

2.31 The applicant previously put forward a case that the need to care for horses was the primary justification for the proposed development. Whilst it is accepted that horses welfare is important, it is not accepted that this is sufficient justification for setting aside strong policy objections. An on-site presence is very rarely, if ever a sufficient reason to justify overturning heavily weighted policy objections. There are always alternative methods ensuring the wellbeing of horses such as alarm systems and pressure infra-red security lighting Therefore, it is considered that the proposed residential development of this site, which is outside the defined settlement confines and in a rural location with limited access to services and amenities, would represent an unsustainable form of development. Furthermore, your Officers consider that the proposal would constitute an incongruous and visually intrusive feature in this important rural landscape to the detriment of the character and appearance of the Kent Downs AONB. Accordingly, the application is contrary to the aims and objectives of the Local Development Framework and the NPPF and therefore, it is recommended that the application is refused.

g)

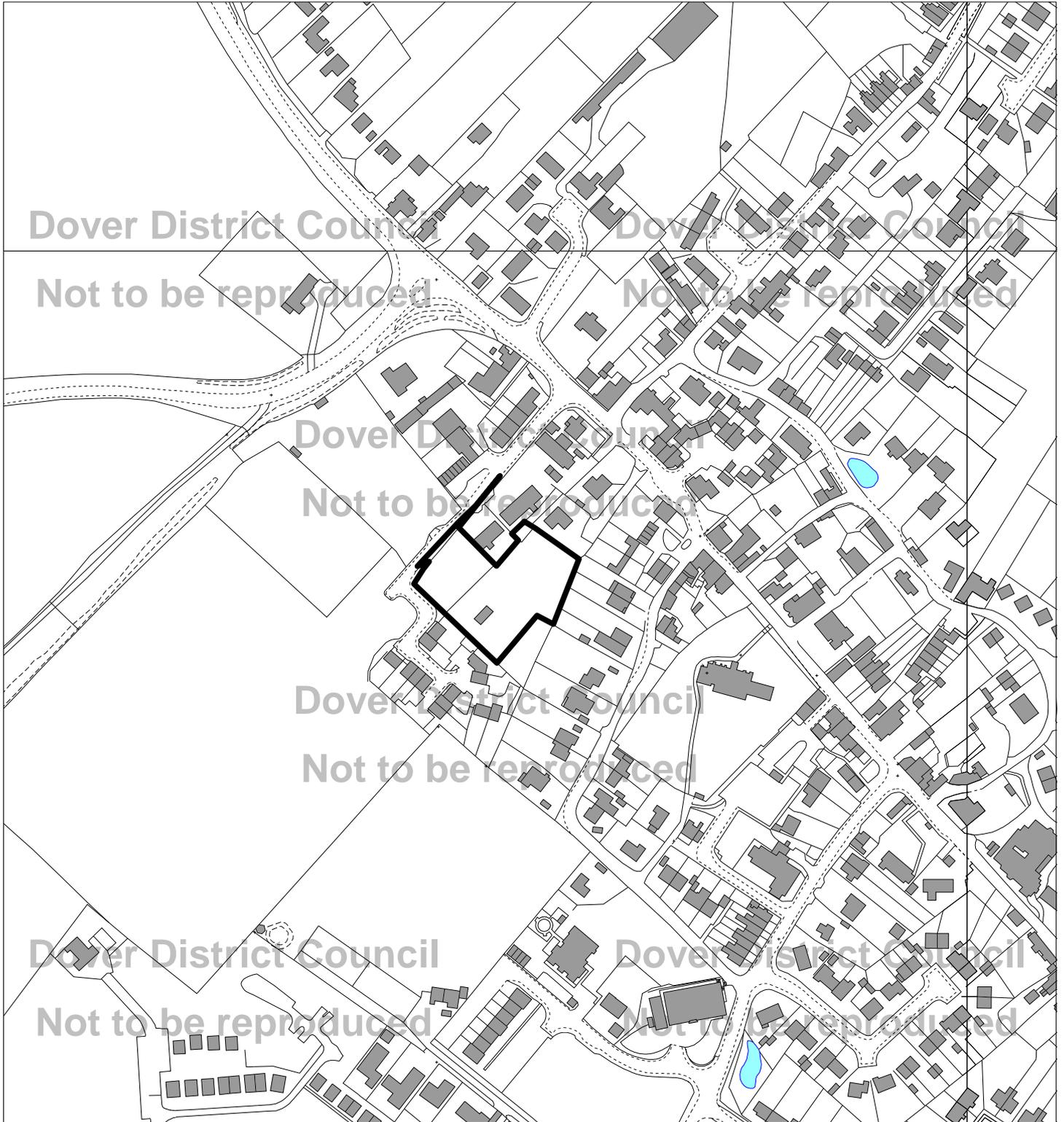
**Recommendation**

Planning permission be REFUSED for the following reason:-

1. The development does not comply with the Core Planning Principles set out in the NPPF and Development Plan Policy. It is unjustified development located beyond any confines, in an isolated and prominent location and if permitted would detract from, and harm the setting, character, appearance and functioning of the AONB, would not generate social benefits, and would not benefit the wider economy. Accordingly, the development is not sustainable and is contrary to the aims and objectives of the NPPF, in particular at Paragraph 7, 14, 55, 109 and 115 and Development Plan Policies DM1, DM11, DM15 and DM16 and the Kent Downs AONB Management Plan, in particular Policies SD1 and LLC1.

Case Officer

Ray Hill



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**Application: DOV/16/00866**

**Townsend Paddock**

**Townsend Farm Road**

**St Margarets at Cliffe**

**CT15 6JJ**

**TR35754483**



a) **DOV/16/00866 – Erection of six detached dwellings, creation of vehicular access and associated car-parking - Townsend Paddock, Townsend Farm Road, St Margaret's-at-Cliffe, Dover**

Reason for report: The number of third party contrary views.

b) **Summary of Recommendation**

Planning permission be granted.

c) **Planning Policy and Guidance**

Dover District Core Strategy

- Policy CP1 advises on the hierarchy of settlements throughout the Dover District and states that a village, such as St. Margaret's-at-Cliffe, is a tertiary focus for development in the rural area suitable for a scale of development that would reinforce its role as a provider of services to essentially its home community.
- Policy DM1 states that development will not be permitted on land outside the urban boundaries and rural settlement confines, unless justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development.
- Policy DM11 advises that development that would increase travel demand should be supported by a systematic assessment to quantify the amount and type of travel likely to be generated and include measures that will help to satisfy the demand. Development beyond the urban confines must be justified by other development plan policies.
- Policy DM13 sets out parking standards for dwellings and states that provision for parking should be a design-led approach based upon the characteristics of the area, the nature of the development and design objectives.
- Policy DM15 advises that development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted if it is in accordance with allocations made in Development Plan Documents.
- Policy DM16 states that where the landscape is harmed, development will only be permitted if it is in accordance with allocations made in the Development plan documents and incorporates necessary mitigation or its can be sited so as to avoid or reduce the harm and/ or incorporates design measures to mitigate the impacts.
- Policy DM17 restricts development within Groundwater Source Protection Zones unless adequate safeguards against possible contamination are provided.

Dover District Land Allocations Local Plan

- Policy LA43 allocates the site at Townsend Paddock for residential development.

#### National Planning Policy Framework (NPPF)

- Paragraph 14 of the NPPF states that at its heart is a presumption in favour of sustainable development and that for decision-taking this means approving proposals that accord with the development plan without delay. Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole; or
  - Specific policies in this framework indicate development should be restricted.
- The NPPF sets out 12 core planning principles, which include securing high quality design and a good standard of amenity for all existing and future occupants; conserving and enhancing the natural environment; and, conserving heritage assets in a manner appropriate to their significance.
- Paragraph 49 of the NPPF advises that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate five-year supply of deliverable housing sites.
- Paragraph 55 sets out to promote sustainable development in rural areas and states that housing should be located where it will enhance or maintain the vitality of rural communities.
- Paragraph 64 states that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- Paragraph 109 of the NPPF requires that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes.
- Paragraph 115 specifies that great weight should be given to conserving landscape and scenic beauty in National Parks, The broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.
- Paragraphs 126 to 141 of the NPPF seek to reinforce the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 by setting out guidance on assessing the impacts of the development on designated heritage assets.

#### Planning Legislation

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in granting planning permission the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural interest it possesses.

Section 72 of the 1990 Act requires that in granting planning permission the local planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

d) **Relevant Planning History**

DOV/15/01213- Erection of seven detached dwellings, creation of vehicular access and associated car parking. Planning permission was refused on 1<sup>st</sup> July 2016 for the following reasons:-

1. The proposed development, by virtue of its layout, density, scale and mass of the proposed dwellings and car barns would, if permitted result in an unsympathetic and poorly related form of development, out of keeping with the existing form and character of adjacent development and would be harmful to the character and appearance of the surrounding area and street scene, obscuring views across the site towards the Grade 1 Listed Building which would result in harm to its setting as well as the setting of the Kent Downs Area of Outstanding Natural Beauty, contrary to National Planning Policy Framework policies 17, 56, 58, 64, 115, 134, Policy DM16 of the Dover District Core Strategy and Policy LA 43 of the Land Allocations Local Plan.
2. The proposed development, by virtue of its proximity to and relationship with neighbouring properties would result in an unacceptable level of overlooking and loss of privacy to the occupiers of these properties, contrary to National Planning Policy Framework Paragraphs 17 and 56.

e) **Consultee and Third Party Responses**

Consultees

St. Margaret's Parish Council - Have no objections to the proposal but have requested that the following matters be given consideration:-

- Soft hedging to be used rather than fencing;
- Low level lighting to be used;
- Site has aquifer running through it; and,
- Site is likely to have archaeological remains.

Environmental Health - No objections subject to conditions regarding soil contamination/ remediation measures and construction management plan.

Environment Agency - No objections subject to conditions relating to contamination and SUDS.

KCC Highways - No objections subject to standard conditions.

Southern Gas Networks - Advises no excavations to take place within 0.5m of low pressure gas main.

Southern Water - No objections subject to no development or tree planting should be located within 3m of easement and no soakaways within 5m of public sewer.

County Archaeologist - Site lies within an area of high archaeological potential and requests that a condition be imposed requiring an archaeological field evaluation.

English Heritage: Do not wish to comment.

High Hedges/Tree officer - No response received.

Ecologist - No response received.

### Third Party Representations

Nine representations have been received objecting to the proposal on some or all of the following grounds:

- Overlooking/Loss of privacy;
- Noise and disturbance;
- Noise and disturbance dust/pollution during construction;
- Two storey houses and large car barns overbearing;
- Loss of light/sunlight;
- Noise and disturbance from increased traffic;
- Result in increased parking on Townsend Farm Road
- Loss of rural views;
- Adverse impact on countryside;
- Loss of countryside;
- Impact on views of listed church;
- Too much new housing development in the village;
- Not affordable housing as suggested in the application documents;
- Should develop brownfield site instead; and,
- Land not wholly in ownership of applicant

f) 1. **The Site and Proposal**

1.1 The application site is located at the end of Townsend Farm Road approximately 100m to the south-east of its junction with High Street, the main thoroughfare running through the Village of St. Margaret's-at-Cliffe. The site is roughly L-shaped in plan with a frontage width to Townsend Farm Road of 36m, a depth of approximately 70m and an area of 0.5 ha. It comprises a redundant paddock laid to grass with a row of trees along the south-western boundary, a further group of trees towards the rear (i.e. south-east) and a dilapidated shed in the centre. The land level within the site slopes gently upwards from the Townsend Farm road frontage with a steeper rise towards the south-east and south-west boundaries.

1.2 Apart from the open fields to the west on the opposite side of Townsend Farm Road which falls within the Kent Downs Area of Outstanding Natural Beauty (AONB), the surrounding area to the north, east and south is residential in character comprising a mixture of bungalows and two storey houses.

- 1.3 The site lies just outside the boundary of the St. Margaret's-at-Cliffe Conservation which contains a number of important buildings, including the Grade I Listed St Margaret's Church situated on higher ground some 100m away to the south-east.
- 1.4 The application seeks full planning permission for the erection of six detached houses together with the formation of a new access and associated car parking.
- 1.5 The scheme proposed, comprises two detached houses on the Townsend Farm Road frontage (Plots 1 & 2) set either side of a centrally positioned access road which terminates in a vehicular turning head and two parking courts. Beyond this, a pair of two storey semi-detached houses (Plots 3 & 4) would be located at the southern corner of the site and to the north two detached houses in staggered formation (Plots 5 & 6).
- 1.6 Plot 1-
- This is a four bedroom single storey detached house with accommodation in the roof space. It would be roughly T-shaped in plan with a maximum depth of 12.5m and a width of 10.5m. The main bulk of the building would be sited on a north-west to south-east axis and would be surmounted by gabled roof with an eaves height of 2.7m and a ridge height of 6.8m.
- 1.7 Plot 2-
- This would comprise a four bedroom part two storey, part single storey detached house. It would be T-shaped in plan with a maximum depth of 10m and a maximum width of 11m. The main bulk of the building would be two storeys and run along a north-west to south-east axis and be surmounted by a gabled roof with an eaves height of 5m and a ridge height of 7.8m. The single storey side projection would have a half-hipped roof with front and rear dormers and a ridge height of 6m.
- 1.8 Plot 3 & 4 -
- These would contain a three and four bedroom two storey semi-detached house. The pair would be positioned on a north-east to south-west axis with a combined width of 20.57m and a depth of 9.8m. The pair would be surmounted by a pitched roof with gabled and hipped ends and an eaves height of 5m and a maximum ridge height of 8.5m.
- 1.9 Plot 5 –
- This would comprise a four bedroomed single storey detached house with accommodation in the roof space. It would be T-shaped in plan and sited on a north-west to south-east axis and surmounted by a gabled roof with an eaves height of 3m and a ridge height of 7m. The single storey side projection would have a half-hipped roof with a ridge height of 6.5m.
- 1.10 Plot 6-

This would contain a single storey four bed dwelling with accommodation in the roofspace. It would be T-shaped in plan with the main body of the building positioned on a north-west to south-east axis with a width of 13m and a depth of 10m. It would be surmounted by a half-hipped roof with an eaves height of 2.9m and a ridge height of 6.9m.

- 1.11 The development has adopted a broadly traditional design approach with a muted colour palette of red / brown face brick and clay roof tiles, cream white weather boarding, reconstituted stone window cills, white UPVC double glazed windows and black UPVC rainwater goods.
- 1.12 Each dwelling would have a private rear garden.
- 1.13 A total of 14 allocated car spaces would be provided including two garages and a single and double car barn together with two visitor spaces. Two secure cycle parking spaces would be provided for each dwelling.
- 1.14 The following documents have been submitted in support of the application:
  - Design and Access statement;
  - Flood risk Assessment;
  - Drainage Strategy
  - Tree Survey;
  - Preliminary ecological appraisal;
  - Site contamination Investigation and Risk Assessment; and,
  - Archaeological desk based Assessment

## 2. **Main Issues**

- 2.1 The main areas of assessment are:-
  - The principle of the proposed development;
  - Design and visual impact;
  - Impact on the listed church and conservation area;
  - Impact on the AONB;
  - Impact on residential amenity;
  - Standard of amenity for the future occupiers;
  - Highways and Parking; and,
  - Other matters.

## 3. **Assessment**

### The Principle of the Proposed Development

- 3.1 Although the plot is located outside the designated village confines, it is part of a larger site, which includes No's 1 & 2 Townsend Paddock, that is allocated under policy LA43 of the Dover District Land Allocations Plan for residential development. The policy indicates that planning permission for development on this site will be permitted provided that:-
  - Development proposals are sensitively designed in terms of height and massing in order to ensure the development does not have an adverse impact on the AONB and countryside;

- The raised land to the south east and south west is left undeveloped;
  - The existing trees along the south west boundary are retained; and,
  - If street lighting is required this should be designed to minimise the impact of light and pollution and conserve the dark night skies of the AONB.
- 3.2 Accordingly, there are no objections in principle to the development of the site for residential purposes subject to the criteria set out in policy LA43 and the matters considered below.

Design and visual impact on the Area

- 3.3 The built context of the application site is varied and comprises a recent development of two storey houses of traditional design to the south on Ash Grove; circa 1950's bungalows adjoining the site on the Townsend Farm Road frontage and to the rear, the gardens of two storey houses and bungalows fronting Well Lane.
- 3.4 The earlier refused application (DOV/15/01213) comprised a substantial one-and-a-half storey house and a two storey detached house on the Townsend Farm Road frontage; a row of five large closely spaced two storey detached houses occupying the south-eastern part of the site; and, a line of four double car barns immediately to the rear of No's 1 & 2 Townsend Paddock. It was previously considered that this proposal constituted an overdevelopment of the site, which was reflected in a cramped overly regimented layout with houses of a size, siting and form that failed to satisfactorily respect the character of the area.
- 3.5 The revised application currently under consideration has sought to address these concerns by reducing the number of units and amending the design approach to reflect the informal character of the area. The height, bulk and massing of the two dwellings on the Townsend Farm Road frontage has been significantly reduced, markedly improving the visual transition with the neighbouring bungalows. For example, the dwelling on Plot 1 is now single storey with accommodation in the roof space with a maximum ridge height of 6.9m rather than a part single storey part two storey dwelling with a ridge height of 8.3m. Similarly, the house on Plot 2 on the opposite side of the site entrance is now a one-and-a-half storey unit with a maximum height of 7.8m rather than 2 storey with a height of 9m as previously submitted. The deletion of one unit from the scheme has resulted in a more spacious less regimented layout than that of the previously refused application. The height, bulk and massing of the four houses to the rear of the site has been significantly reduced and greater variety introduced to the design. For example, the previously refused application included one one-and-a-half storey house and four detached two storey houses of comparable size and design, whereas the current proposal comprises a pair of two storey semi-detached houses and two single storey houses with accommodation in the roofspace. The parking arrangements have also been significantly modified, six bulky double car barns being replaced by one double and a single car barn and two single garages. It is considered that in its current form the proposal rather than representing a suburban form of

development is now more organic in form and in keeping with the character of this village fringe location.

- 3.6 In terms of their external appearance, a broadly traditional design approach has been adopted, with buildings of differing heights and a varied roofscape of gables, half-hips and small gable bonneted dormers and red/brown brick elevations with decorative brick plinths, cream weatherboarding and soldier courses above the windows. It is considered that the development would have a satisfactory appearance complementing the neighbouring built form and in keeping with the character of the area. Notwithstanding this, it is recommended that in the event of planning permission being granted, a condition be imposed requiring the submission and approval of materials.

#### Impact on the Setting of the Grade I Listed St. Margaret's Church and Conservation Area

- 3.7 The current application has satisfactorily addressed the Local Planning Authority's previous concerns regarding the impact of the development upon views of the Grade I Listed Church. Unlike the earlier refused application, the deletion of one dwelling from the scheme has facilitated a more spacious layout with a significant gap of some 15m between Plots 4 & 5 rather than a nominal separation of 2m. The roof on the two storey semi-detached house on Plot 4 has been hipped and the dwelling on Plot is single storey with accommodation in the roof space whilst the dwellings on the site frontage are significantly lower than previous scheme. The Heritage Officer has indicated that there would still be a minor impingement on the sightline from the south-west across the site to the church, but the amended layout together with the reduction in bulk and massing of Units 1 and 4, has satisfactorily ameliorated the impact so that there would be no harm.
- 3.8 In order to reduce the impact of any residential development on the site on the nearby conservation area and AONB, Policy LA43 of the Land Allocations Local Plan identified an area of raised land on the south-east boundary of the site as non-development land. Since the designation of the site the area of land comprising the majority of the non-development land has been sold to a neighbouring occupier and is now outside the confines of the site and the residual area of raised ground is undeveloped and contained within the gardens of Plots of 3, 4, 5 and 6. Notwithstanding this, a condition is proposed requiring the submission and approval of details of land and floor levels prior to the commencement of development.

#### Impact on the AONB

- 3.9 The site is clearly visible from the Kent Downs AONB to the west. In such areas, the NPPF indicates that great weight should be given to conserving landscape and scenic beauty whilst Policy SD2 of the Kent Downs AONB Management Plan specifies that the character and distinctiveness of the area shall be reflected in the design, scale, setting and materials of new development. Policy DM16 of the Core Strategy goes on to specify that although the character of the landscape should be protected, this does not preclude the possibility of development but requires that its location should be carefully selected

and the scale and design of the buildings crafted to fit the circumstances.

- 3.10 In this case the site has been designated in the Land Allocations Plan for residential development. It does not lie within the AONB but constitutes an enclave of open land within a built-up context with residential properties to the north, south and east.
- 3.11 In respect of the previously refused application the Local Planning Authority considered that it would have a detrimental impact on the setting of the AONB due to its layout, density and scale. In the current application the density of the development has been reduced providing a more open and spacious layout which allows views both into and through the site from the AONB. The bulk and massing of the dwellings has been significantly reduced and in particular those on Plots 1 & 2 on the highly visible Townsend Farm Road frontage. Units 1 & 2 are also set well back from the road with substantial front gardens that unlike the previous submission are free of hard-surfaced parking spaces. In addition, in comparison with the previous application where the houses were relatively uniform in design and typical of a modern housing development within an urban environment, in the current proposal the dwellings a more varied height, design and detailing and sympathetic to this rural fringe location.
- 3.12 The applicant has not submitted a lighting scheme. However, to ensure compliance with Policy LA43 a condition is proposed requiring that, in the event of street lighting being necessary, details will need to be submitted to and approved by the Local Planning Authority to minimise the impact of light pollution and to conserve the dark night skies of the AONB.
- 3.13 It is considered that the proposed development would be in keeping with the character of the area and would have no harmful impacts on the setting of the AONB in accordance with the aims and objectives of the NPPF and the Local Development Framework.

#### Impact on Residential Amenity

- 3.14 The earlier application was refused on the grounds of overlooking from first floor bedroom windows into the rear facing habitable room windows and gardens of the bungalows at No.1 and No.2 Townsend Paddock. In the current submission, to address this shortcoming, the proposed dwellings occupying Plots 5 and 6 to the rear of these properties are chalet style bungalows with no first floor windows or dormers in their north-west facing elevations.
- 3.15 Plot 6 is the closest to the bungalows on Townsend Farm Road. Its north-western side elevation is 10m from the rear elevation of No.1 Townsend Paddock and 6m from its rear garden boundary. It is acknowledged that this spatial relationship is not ideal, however given that the side elevation of the proposed bungalow is only 7.5m wide and its bulk and massing minimised through the use of a low hipped gable end, it is not considered that the light and outlook of the occupiers of No.1 Townsend Paddock would be compromised to an extent that would warrant refusal. At its closest point the north-western corner of Unit 6 is 3m from the rear garden of No.2 Townsend

Paddock, however the building is off-set to the north-west and as such, would not adversely effect the light and outlook of the occupiers. There is a car barn 1m from the rear of this property but with an eaves height of 2.4m and a hipped roof, the apex of which is set back some 4m, it is not considered that the outlook occupiers would be adversely effected. Members are also reminded that this represents a significant improvement upon the previously refused application which included a row of three comparable car barns located immediately to the rear of this property. There are three windows in the south-west facing side elevation of No.2 Townsend Paddock. However, a 3m to 4m gap to the proposed chalet style bungalow on Plot 1 would be sufficient to maintain a reasonable level of light and outlook to these secondary windows.

- 3.16 With regard to 'Little Orchard', a chalet style bungalow to the north-east of the site, with a building to building separation of 8.5m and a distance of between 3m to 5m from its garden boundary, the proposed dwelling on Plot 6 would have no material impact on the light and outlook of the occupiers. Other than two bathroom windows which can be obscure glazed by condition, there are no habitable room windows in the north-east facing elevation of the unit on Plot 6 and as such, the privacy of the occupiers would not be adversely effected.
- 3.17 With building to building distances of between 35m and 50m and rear garden depths of 10m to 12m the bungalow on Plot 5 and the two storey semi-detached houses on Plots 3, 4 and 5 would have no adverse effects on the light outlook or privacy of the occupiers of the houses to the rear of the site fronting Well Lane.
- 3.18 On balance, it is considered that the proposed development would not have a detrimental impact on the amenities of the neighbouring residential occupiers in terms of light, outlook or privacy. Notwithstanding this, it is proposed that a condition should be imposed removing permitted development rights for the erection of extensions, outbuildings and the installation of additional windows in the elevations and roof planes of the units to ensure that the privacy and outlook of the neighbours is maintained.

#### The Amenities of the Future Occupiers

- 3.19 The proposed development would provide a satisfactory standard of living accommodation for the future occupiers in terms of room sizes, light, outlook and privacy. Each unit would have a private garden of sufficient size and quality with adequate space for refuse and recyclables storage.

#### Highways and Parking

- 3.20 Two parking spaces or garages and storage facilities for two cycles have been provided for each unit in accordance with Policy DM 13 (Parking Provision) of the Core Strategy. Kent County Council Highways and Transportation have indicated that the development provides satisfactory access and parking arrangements subject to conditions requiring suitable parking, loading and turning facilities being provided for construction vehicles and personnel.

### Trees and Ecology

- 3.21 The site boundaries contain a mixture of trees and hedges. An arboricultural report has been submitted indicating that a group of ten trees on the rising ground on the south-eastern part of the site are to be felled. However, these are low value ash and fruit trees of little amenity value and will in any event be supplemented by additional fruit trees located to the side and rear of Plot 5. In accordance with Policy LA43 of the Land Allocations Plan the trees of significant amenity value on the south-western boundary are to be retained. Notwithstanding this, it is recommended that a condition be imposed requiring hand digging within the root protection zones of the retained trees.
- 3.22 The applicant has undertaken a preliminary ecological assessment which indicates that the site contains no protected species and is of relatively low ecological value. The ecological enhancements suggested include the retention of boundary trees and hedgerows and the inclusion of roosts and nesting boxes details of which can be secured by condition.

### Other matters

#### Groundwater Source Protection and Contamination

- 3.23 The application site is located within a Groundwater Source Protection Zone 2. The Environment Agency has raised no objections to the scheme, subject to conditions relating to the infiltration of groundwater and a remediation strategy in the event that unexpected contamination is found.

### Archaeology

- 3.24 The County Archaeologist has advised that during construction of the neighbouring Ash Grove site archaeological remains of late Neolithic/early Bronze Age remains were found. He has recommended that a condition is put in place to secure the implementation of an archaeological field evaluation in accordance with specifications and timetable submitted to the Local Planning Authority.

### Land Ownership

- 3.25 The Occupiers of 'Shalimar' Well Lane have indicated that the south-eastern boundary of the site is inaccurate and encroaches on a parcel of land in their ownership and as such the requisite notice under the Town & Country Planning (General Development Procedure) Order 2015 has not been given. This is disputed by the applicant.
- 3.26 Members are advised that land ownership disputes of this nature do not fall within the remit of planning control. However, the area of land in question would not compromise the proposed development as submitted.

### Conclusion

3.27 The Land Allocations Local Plan 2015 includes the site as a residential allocation and as such the principle of residential development is acceptable. The comments of third party respondents have been noted and addressed above. It is considered that the design and appearance of the development would be acceptable and that there would be no harmful or detrimental effects on the setting of the AONB and the impact on the Conservation Area and listed church would be neutral. The development would have no material adverse effects on the amenity of neighbouring residential occupiers and the standard of accommodation provided for the future occupiers is acceptable. No objections have been raised by KCC Highways and the development provides sufficient parking in accordance with Policy DM13.

g) **Recommendation**

I PERMISSION TO BE GRANTED subject to conditions set out in summary to include:

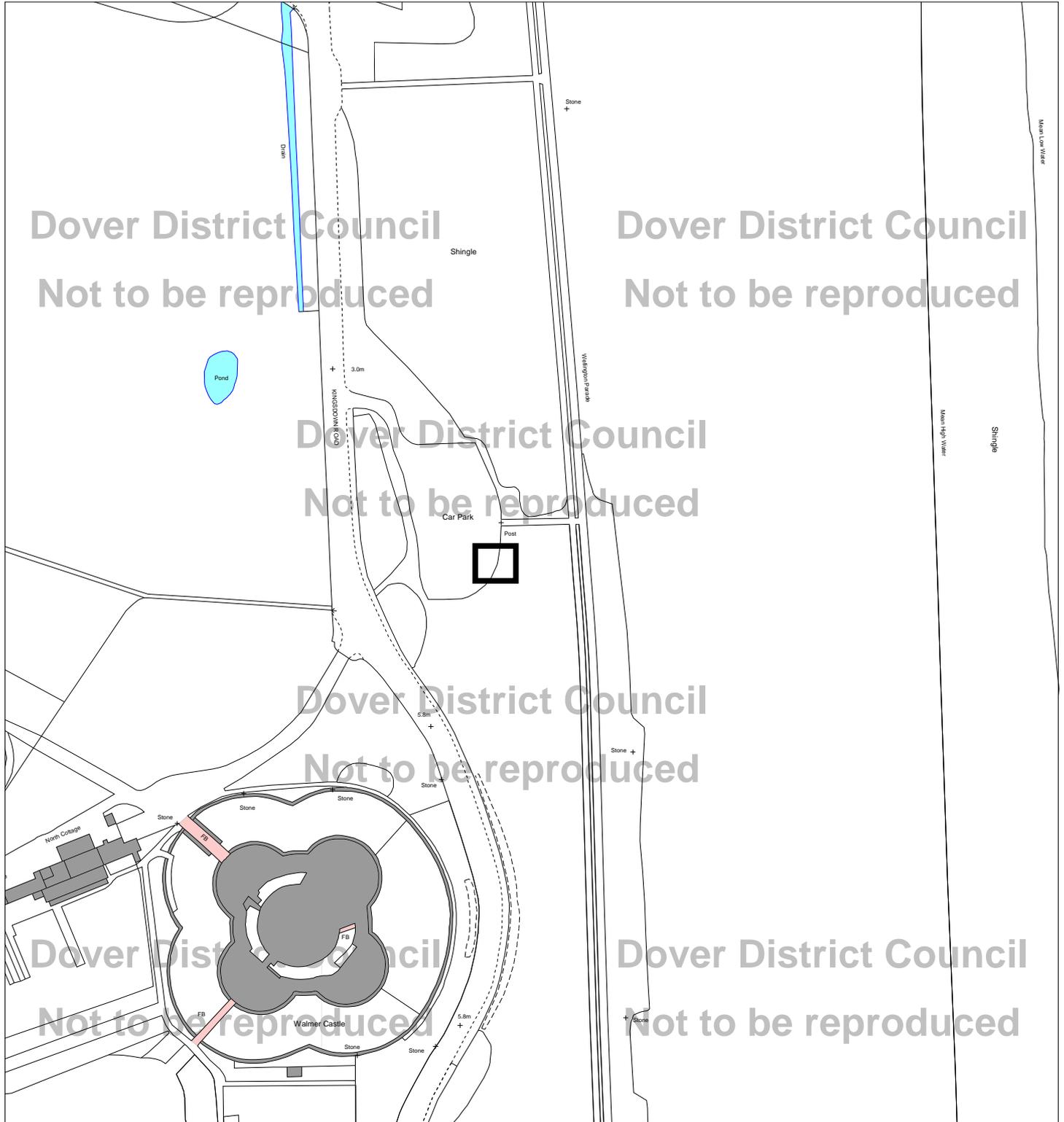
(i) commencement within 3 years; (ii) carried out in accordance with approved drawings; (iii) sample materials (iii) land levels; (iii) hard and soft landscaping scheme; (iv) provision and retention of car parking; (v) provision of cycle parking; (vi) archaeological field evaluation; (vii) street lighting details; (viii) removal of permitted development rights relating to extensions, windows and outbuildings; (ix) implementation of ecological enhancements.

II That powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation, and as resolved by the Planning Committee.

Case Officer

Ray Hill

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**Application: DOV/16/01176**

**Car Park opposite Walmer Castle**

**Kingsdown Road**

**Walmer**

**CT14 7LH**

**TR37815007**



a) **DOV/16/01176 – Installation of a car park charging machine plus associated signage – Land opposite Walmer Castle, Kingsdown Road, Walmer, Deal**

b) **Summary of Recommendation**

Planning Permission be GRANTED

c) **Planning Policy and Guidance**

Dover District Core Strategy (CS)

Policy DM1 seeks to encourage development to be carried out within the urban confines or ancillary to existing development or uses

Policy DM 16 – Development that would harm the character of the landscape etc

Policy DM19 – Historic Parks and Gardens

National Planning Policy Framework (NPPF)

Core Principal Para 17 – seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Para 56 onwards – refers to the value of achieving design quality, visually attractive developments as a result of good architecture

Paragraphs 126 onwards conserving and enhancing the Historic Environment

Paragraphs 109 onwards especially 115 – Protecting Natural Environments

d) **Relevant Planning History**

There is no specific planning history for this area of car parking. It's use as a car parking area is however lawful being clearly visible on 1960 aerial photography

e) **Consultee and Third Party Responses**

Walmer Parish Council – Positively supports the proposal

KCC – Public Rights of Way - Have no comments on the application

County Archaeologist – No views received

Ecologist - comments that the site has been in use for many years as a car parking area and has no other observations

Third Party representations

As at the time of drafting the report there were a total of 114 emails objections and one email of support.

In summary the objections relate to the following issues:

- Object to the principle of charging for use of the car park – always been free – very few free parking areas available - just another money making scheme etc.
- The imposition of a charge will deter tourists to the area.
- Charging for this area will divert parking to residential streets/roads to the disbenefit of nearby residents and the increased risk of accidents.
- Would have an adverse impact on dog owners, the elderly, the disabled, young families etc who visit the site several times a day.
- Would have an adverse impact on health and wellbeing discouraging people taking exercise – walking etc.
- The machine will have an adverse impact on the landscape and appearance of the area.

Many of the objectors appear to believe that it is Dover District Council that is receiving revenues accrued from the use of the car park rather than English Heritage.

**f) The Site and the Proposal**

1 The Site

- 1.1 The site comprises an area of hard surface used as a car parking area owned by English Heritage. It is in a poor state of repair with many pot-holes and rutted areas. It is oval in shape roughly 45 metres by 25 metres and is accessed by a short poorly maintain drive from the Kingsdown Road
- 1.2 The land lies within a designated local wildlife site and is opposite the Ancient Monument of Walmer Castle and its designated Historic Gardens,
- 1.3 There is a short hard surfaced footpath between the car parking area and the sea front walkway and beach beyond. This particular path has been labelled as a disabled access route. There are also several informal tracks between the car park and the walkway. Between the car parking area and Kingsdown Road there is a small copse of trees screening the car park from the road itself and providing substantial screening for Walmer Castle beyond.

The Proposal

- 1.4 The proposal seeks approval for the installation of a modern ticket vending machine with a footprint of roughly 40 centimetres by 30 centimetres and an overall height of 1.82 metres. The machine would be black in colour. There would be signage immediately adjacent to the machine explain the charging regime which would be 40 centimetres wide and slightly less than the height of the machine itself. As originally proposed the signage would have been on top of the machine giving an overall height of about 2.75 metres but at officers suggestion it would now be positioned immediately adjacent to the machine itself.
- 1.5 The machine would be located at the edge of the parking area between the car park itself and the footpath along the foreshore. EH were asked why

this particular location was chosen and responded: *“The proposed location was chosen to be visible from a driver’s point of view when entering the car park – we believe that the public would be more concerned at being fined for failure to pay due to the signage and marking machine not being entirely visible. The location between the car park and the Castle was considered but rejected as members of the public not visiting the Castle might not see the signage and parking machine”.*

- 1.6 EH were asked the reason the machine was required and they responded: *“The car park is currently owned by ourselves but has been let to Dover District Council and is not managed so is used by members of the public who do not visit Walmer Castle. The intention is to terminate the Lease (with DDC) and take over the day-to-day management. While the car park will still be available for members of the public and Castle visitors alike, a parking charge would be levied on all users but visitors to the Castle will be reimbursed upon arrival at the Castle. In this way we hope to nudge the use of the car park more towards our own visitors for the benefit and promotion of the Castle.”*
- 1.7 EH were asked whether they had carried out any consultation with interested parties before submitting the application and responded as follows: *“Given the very small physical nature of the application, I have to admit that we haven’t engaged in any consultation with local bodies. Given the subsequent reaction, this was clearly a misjudgement for which I apologise. However .... The Parish Council, notwithstanding the number of communications, have decided not to object”.*
- 1.8 EH have indicated, in response to questions, that they are not currently considering resurfacing the car park at this time.

## **2. Main Issues**

- 2.1 The main planning issues in this application are:
- Design issues and impact on the street scene and the adjacent coastal walk,
  - The effect on the setting of Heritage Assets including Walmer Castle and its Historic Garden,
  - The effect on the Local Wildlife site
  - The effect on the surrounding Highway Network
  - Impact on Tourism to the District as a whole and Walmer in particular
- 2.2 The decision of English Heritage, as landowners, to charge a fee for the use of this car park is not material to the determination of this application.

## **3. Assessment**

- 3.1 Design of the Proposal, impact on the street scene, coastal walk and character of the area

- 3.2 The machine and associated signage are of a standard design and form and in themselves are acceptable.
- 3.3 The location of the machine may be considered as prominent – but as pointed out by the applicant it is designed to ‘catch the eye’ of those using the car park. From a visual point of view, setting the machine against the backdrop of the adjacent copse would be better in visual amenity terms but is also less likely to be seen by the users of the car park and would be more likely to attract vandalism.
- 3.4 Seen from the highway and the car park the machine would be set against a backdrop of the sea and would correspond with other facilities such as rubbish bins, seats and other signage and would be acceptable as part of the backdrop of modern living. To users of the walkway and cycleway along the foreshore itself the machine and signage would be set against a fairly verdant backdrop and would not unduly attract the eye.
- 3.5 Overall the impact of the proposal on the street scene, costal walk and character of the area would be minimal and not unduly harmful.

The Setting of the Heritage Assets of Walmer Castle and its Park and Gardens

- 3.6 The car parking machine and signage is some distance (about 120 metres) from the castle and its historic gardens and separated by extensive vegetation. It is not considered that the proposal would have an adverse impact on the setting of these heritage assets. Due to the distance involved and intervening tree and plant cover the impact would be neutral.

Effect on the Local Wildlife Site

- 3.7 The unit would have no significant impact on wildlife and the Council's Ecological Officer has not raised any objection to the scheme

Highway Safety and the Convenience of Road Users

- 3.8 It is undoubtedly true, as pointed out by many objectors that charging a fee for this previously free parking area would be likely to encourage some drivers to park elsewhere. However there is a currently free large car parking area some 250 metres to the north, which gives equally good access to the foreshore walkway and cycleway.
- 3.9 The site is some distance away from residential streets and is unlikely to result in residential road users being inconvenienced

Effect of the proposal on tourism to the District

- 3.10 If the public are prepared to pay for transport to the area including fuel cost, wear and tear on vehicles or the cost of public transport it is unlikely that an additional small charge for parking would have any serious impact on the number of visitors to the area. In the case of visitors to the castle itself, visitors will be reimbursed the cost of car parking.
- 3.11 In the case of visitors to the foreshore then again the currently free car parking area is available close by

### Public Sector Equality Duty

- 3.12 Section 149 of the Equality Act sets out the Public Sector Equality Duty. It is necessary to take into account the Public Sector Equality Duty and ensure there is no discrimination, harassment, victimisation or other conduct prohibited under the Act against those with protected characteristics, including age, disability or race. Whilst it is accepted that access from this car park to the foreshore is marginally better for disabled users than the free car park to the North the car park will remain available for disabled users albeit with a charge which, as has been previously stated is not a material consideration.

### Conclusion

- 3.13 The issues and points raised by objectors have been taken into consideration.
- 3.14 For the reasons set out above it is concluded that the proposal is acceptable in planning terms and I therefore recommend approval.

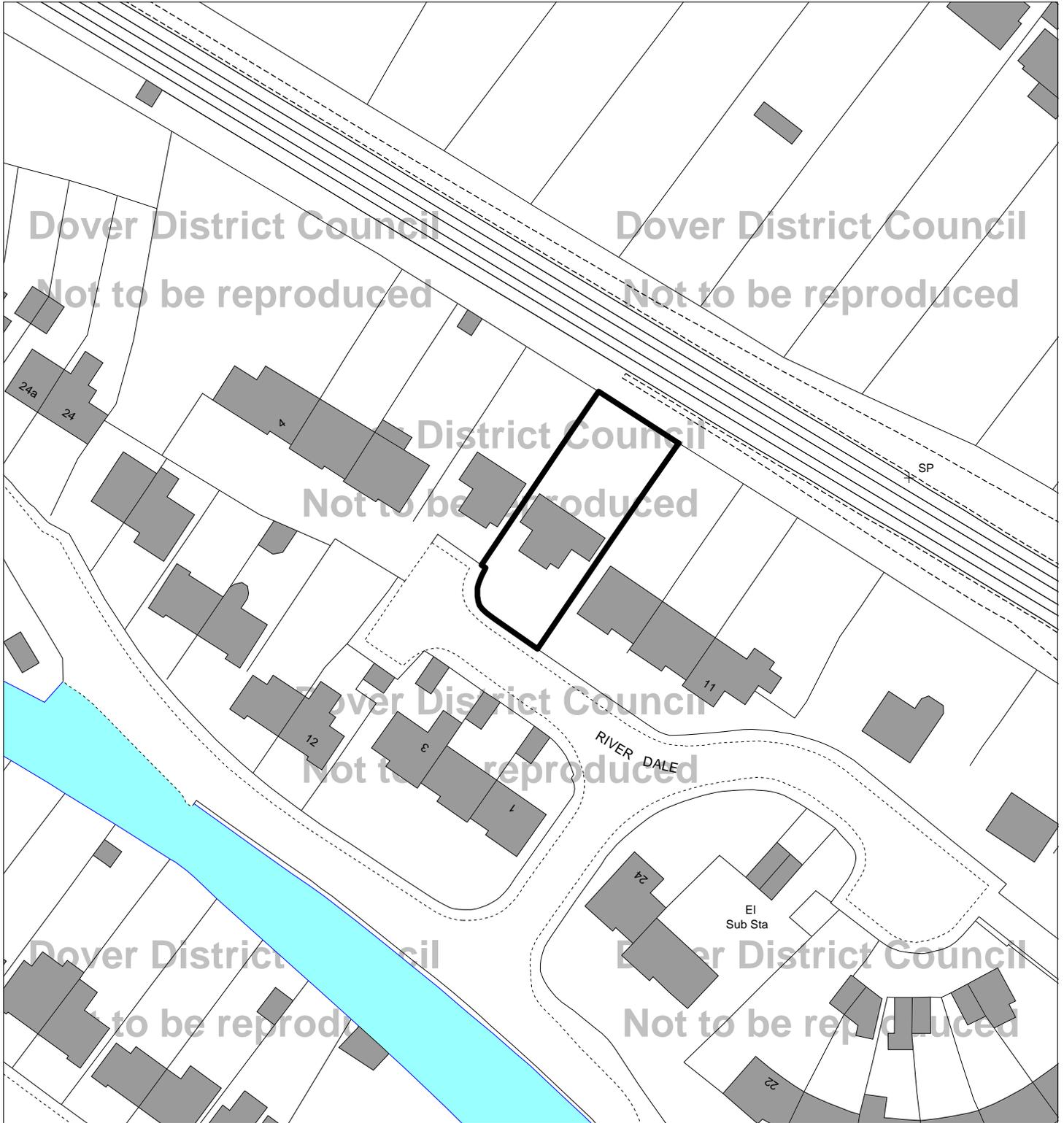
### **g) Recommendation**

- I Planning permission **be** GRANTED subject to conditions to include: i) Time; ii) Compliance with plans.
- II Powers be delegated to the Head of Regeneration and Development to settle any necessary issues in line with the matters set out in the recommendation and as resolved by Planning Committee.

Case Officer

Tony Jarvis

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**Application: 16/1132**

**8 Riverdale**

**River**

**CT17 0QX**

**TR29624339**



a) **DOV/16/01132 – Erection of a 2-metre high boundary fence - 8 Riverdale, River, Dover**

b) **Summary of Recommendation**

Planning Permission be GRANTED.

c) **Planning Policy and Guidance**

Dover District Core Strategy (CS)

Policy DM1 seeks to encourage development to be carried out within the urban confines.

National Planning Policy Framework (NPPF)

Core Principal Para 17 – seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings

Para 56 onwards – refers to the value of achieving design quality, visually attractive developments as a result of good architecture

Paragraphs 126 onwards conserving and enhancing the Historic Environment

d) **Relevant Planning History**

CH/2/71/0060 – The erection of 49 dwellings and conversion of existing building into two cottages - Permitted

DO/80/0593 – Addition of Balcony – Permitted

DOV/92/433 – Two-Storey Side Extension – Granted

DO/16/1403 – Certificate of Lawfulness for a 2 Meter Fence - Refused

There have been a number of applications relating to works to trees on the site and the area as a whole some of which have been allowed others not.

Conditions and Covenants

There is no condition on the base planning permission requiring that the development be kept free of fences and other means of enclosure to the front of the houses – known colloquially as an ‘open plan’ condition. It is understood that there is a covenant on the deed of the property that prohibits fencing forward of the building line.

Covenants are legal agreements between buyers and sellers of property to which the Council is not a party. Such covenants are not enforced by the Council nor are they a material planning consideration.

e) **Consultee and Third Party Responses**

The Heritage Team has no comments on the application.

In response to the original scheme River Parish Council:

The Parish Council could not support the scheme because:

The application conflicts with Clause 8 of the original covenant on the building;  
There are concerns about loss of direct sunlight to the patio area at 9 Riverdale;  
Also, because of the overbearing nature of the proposed fence, which, if approved could set a precedent for the whole development

In response to the revised scheme River Parish Council:

Welcomes the alterations to the scheme but still has concerns about the height of the fence and feels that a height of one metre would be sufficient for the needs as stated (especially the front panel) whilst not causing loss of light to the patio area of the neighbouring property

Third party responses to the original scheme

The original scheme as submitted attracted a total of seven letters/emails of support. The thrust of all the letters/emails of support relate to the safety of the children of the applicant whilst at play in the front garden area.

A total of nine letters/emails of objection from local residents were received in respect of the original scheme summarised as follows:

- Contrary to a Covenant on the Household deeds of the estate
- Would harm the 'open plan' nature of the estate,
- Loss of sunlight to a patio area in the afternoon
- Inaccuracy of Plans and information
- Proposed sleepers are unsightly
- Loss of light to rear garden of neighbour
- The proposed fence would set an unfortunate precedent
- The front garden fence will not make this area any safer for children

Some objectors made the point that a lower fence may ensure the safety of the children whilst protecting the amenity of the neighbour

Third party responses to the revised scheme

Following the initial consultation a revised scheme was submitted which reduced the height of the fence slightly in the area towards the front of the neighbours dwelling. The revised scheme was re-advertised and the following comments received:

One email of support was received from an original supporter welcoming the amendments and offering continued support

Three communications of objection were received from original objectors reiterating and amplifying previous statements and concerns

## **f) The Site and the Proposal**

### **1 The Site**

1.1 The application site comprises a three storey detached brick and tile dwelling of modern 1970's style. The ground floor comprises a garage with the first floor being the main living area. There is a balcony at first floor level and a small rear patio area. The house is set on land sloping upward to the rear and against a backdrop of wooded landscape. To the front of the house the garden slopes downwards less steeply to the roadside.

- 1.2 The property benefits from a side extension pursuant to a 1992 permission, which extends the property to within about half a metre of the boundary of the property on the south eastern flank (number 9 Riverdale). There is also an open balcony on the front first floor level granted permission in 1980
- 1.3 The house is situated slightly to the rear of its immediate neighbour of number 9 Riverdale by about three metres, which lies to the south-east. This neighbour's house is also lower (by almost a metre) than the applicant's house. This neighbour at number 9 also has a tiered garden with a small rear patio area but the occupants do however occasionally use a small area to the side of their house as a sitting out area in the afternoon sun.
- 1.4 The primary characteristic of the estate as a whole is its open nature at the front of the houses, which are set against the backdrop of steeply rising ground and the trees to the rear. It has a spacious feel and a pleasant aspect. There are however a number of hedges demarcating various front gardens. It is likely that one of the reasons it has remained open and spacious is because of the impact of the covenant mentioned above.
- 1.5 The site lies within the River Conservation Area although the estate was built subsequent to designation

## 2 The Proposal

- 2.1 The revised proposal is for a close-boarded fence (a means of enclosure) running along part of the boundary between number 8 Riverdale (the application site) and number 9 Riverdale. The fence would start from an existing small fence that abuts the existing side extension towards the rear of that extension. It would then run forward, being tiered down in two steps, to a point about 1.75 metres behind the front elevation of number 9 Riverdale
- 2.2 The fence would run initially just behind the top of a retaining wall between the two properties for about two thirds of its overall length. The height of the existing retaining walls in this area varies between 1.7 and 1.37 metres high. The height of this part of the fence would be 1.9 metres measured from the top of the wall.
- 2.3 The remaining one third of the overall length would be 1.8 metres above the level of the neighbour's patio area and would partly comprise railway sleepers at the base as a retaining wall element. This element would measure about 2.6 metres in length measured from the end of the retaining wall.
- 2.4 In places the resultant means of enclosure would exceed 2 metres in height above the natural land level of the property at number 9 Riverdale and therefore require an express planning permission.

## 3. Main Issues

- The Street Scene
- Heritage Issues
- The safety of the applicant's children
- Effect on living conditions of the immediate neighbour
- The fall back position

#### **4. Assessment**

##### Street Scene Issues

- 4.1 The proposed fence would run between the front wall of the side extension to the applicant's house and a point about 1.75 behind the front wall of the neighbour's house at number 9. The total length of the fence would be about 9.75 metres.
- 4.2 The fence would be visible in the street scene mainly in views from towards the end of the cul-de-sac looking the south easts. It would however be set well behind the 'building line' comprising the front wall of number 9 Riverdale. Subject to a condition that the fence be stained and retained a light natural wood colour I consider that the fence would not cause unacceptable harm to the street scene nor would it intrude into the open aspect of the estate as a whole

##### Heritage Issues

- 4.3 The site lies within the River Conservation Area. Although the estate was built subsequent to designation, the duty of the Local Planning Authority to preserve and enhance such areas remains.
- 4.4 For reasons similar to those raised in paragraph 4.3 above the proposed fence would have a neutral effect on the Conservation Area

##### The safety of the applicant's children

- 4.5 The applicants stated need for the fence is to ensure the safety and security of her children. Clearly this is an important consideration and the majority of letters of support raise this issue. On the other hand one objector points out that: "I lived at this address as a child and had no issues with safety playing outside"
- 4.6 Towards the rear of the applicants front garden and abutting the applicant's house are two small and relatively narrow areas, probably originally intended as landscaping, that are difficult to access for any child and probably undesirable as an area for a child to play. The main danger should a young child get onto these area is falling from one level to another within the applicants own garden - but no attempt has been made to physically exclude children from these areas. It is however true that a child falling sideways off these 'platforms' or the narrow approach to them may be at risk but it is considered that a one metre high picket style fence would be sufficient to ensure the safety of the child should it climb onto the platforms
- 4.7 In the case of the lower level of the garden, the gentle slope between the applicants garden and the neighbours patio area would not be likely to pose any serious danger to playing children.
- 4.8 Overall, whilst accepting that the safety and welfare of children is of paramount importance I consider that the proposal is a rather heavy handed approach to address this issue which could be solved in the main by a sturdy one metre high picket style fence

### Residential Amenity

- 4.9 The neighbour most affected by the proposal is the occupant of number 9 Riverdale which lies immediately to the south east and is set forward of the applicant's property.
- 4.10 The rear section of the fence, comprising about four and a half metres of its overall length, is set against the backdrop of the two storey extension on the applicants property granted in 1992. In view of this, and the bulk of number 8 Riverdale, I do not feel that this length of fence will cause an undue sense of dominance and overshadowing over and above that created by the extension itself.
- 4.11 The central section of the fence comprising about two and a half metres in length would have its top at 3.25 above the neighbours ground level. This area does not appear to used primarily as a sitting out area and is in any case screened to a small extent by an existing tree. There is potential for overshadowing mid afternoon but again this area is significantly overshadowed by the bulk of number 8 Riverdale
- 4.12 The forward length of fence is about two and a half metres and sits alongside a patio area used by the neighbour to catch the afternoon sunshine. The potential interference with the enjoyment of this area is a major concern to the neighbour.
- 4.13 There is a gap of just over 2 metres between the flank wall of the neighbour's property and the boundary on which the fence would be positioned. As originally proposed the fence would have ran along the full length of this patio and would have been two metres high the lower part of which would have comprised a railway sleeper retaining element. The revised scheme now envisages a fence 1.8 metres high running just over half of the length of the patio area.
- 4.14 The orientation of the patio is such that the occupant can currently expect to enjoy sunlight from about one o'clock onward depending upon the time of year. The proposed fence would reduce this sunlight towards the rear of the patio during the late afternoon - again depending upon the time of year.
- 4.15 Overall, the proposal would cause some overshadowing and loss of sunlight to the neighbour but this must be considered against the fall back position set out below

### The Fall Back Position

- 4.16 Class A of Part 2 (Minor Operations) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 allows for the "Erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure"
- 4.17 The height of such a fence is limited to two metres in height except where it is adjacent to a highway used by vehicular traffic where it is limited to one metre in height.
- 4.18 Problems associated with fences have been the subject of a number of Planning and Enforcement appeal decisions over the years. These appeal

decisions clarify that 'height' is to be taken from natural ground level on the applicant's land. Any artificial raising of land levels is not taken to be 'natural ground level' nor is erecting the fence on artificial features such as existing walls etc.

- 4.19 In the case of this application the ground level is sloping as set out above. For some of its length the top of the retaining walls is above immediately adjacent ground level on the applicant's side of the wall. The result is that where the base of the fence runs adjacent to, or level with the top of the retaining walls, it is greater than two metres above ground level in some areas. Having said that in some areas it is less than two metres above the natural ground level especially in the area of the neighbour's patio.
- 4.20 Should the applicant choose to construct a two metre high fence behind the wall, sloping down and follow the contours on her own land rather than the tiered fence that is currently proposed it could be permitted development and not require the benefit of an express planning permission.
- 4.21 A permitted development fence would likely to be higher than the development proposed especially in the sensitive area adjacent to the neighbour's patio

**5. Conclusion**

- 5.1 Overall the submitted scheme is likely to cause less harm to residential amenity and to other interest of planning importance than the implementation of a 'permitted development' scheme.
- 5.2 I therefore recommend planning permission be granted.

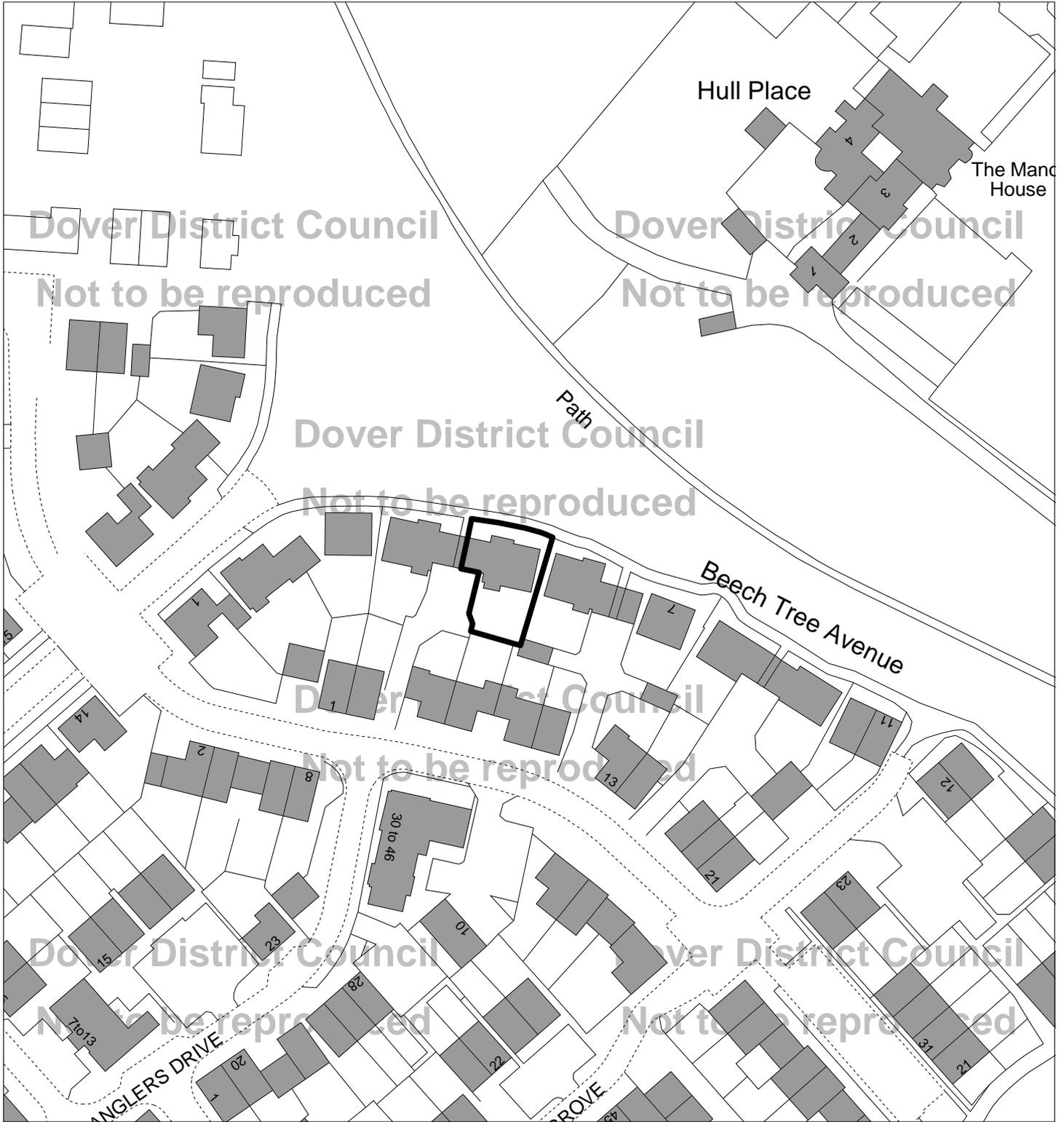
**g) Recommendation**

- I Planning permission GRANTED subject to conditions to include: i) time; ii) compliance with plans; iii) treatment of the fence with natural staining.
- II Powers be delegated to the Head of Regeneration and Development to settle any necessary issues in line with the matters set out in the recommendation and as resolved by Planning Committee.

Case Officer

Tony Jarvis

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**Application: DOV/16/01143**

**5 Beech Tree Avenue**

**Sholden**

**CT14 0FB**

**TR35615270**



a) **DOV/16/01143 – Installation of garage door to existing car port and erection of verandah – 5 Beech Tree Avenue, Sholden**

Reason for Committee: Number of views contrary to officer's recommendation.

b) **Summary of Recommendation**

Planning permission be granted.

c) **Planning Policies and Guidance**

Core Strategy (CS) Policies

- Policy DM1 states that development will not be permitted outside the settlement boundaries unless it is ancillary to existing development
- Policy DM16 restricts development which would harm the character of the landscape

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles set out in paragraph 17 which amongst other things seek to secure high quality design and a good standard of amenity for all existing and future residents.
- NPPF – is relevant as the proposal should seek to be of a high design quality and take the opportunity to improve the visual quality and character of the area. Paragraphs 56-58, 61 and 64 seek to promote good design and resist poor design.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development and advises that context should form part of the decision making around design.

Planning History

- d)
- DOV/10/01065 – Granted, for the development of the housing estate on which the application property is located. Condition 23 of that permission prevents the enclosure of the garage and therefore it prevents the installation of garage doors without the benefit of planning permission.

e) **Consultee and Third Party Responses**

Parish Council: The verandah is considered to overlook other homes and is out of context with the other homes. It is suggested that the applicant re-apply

with a new application for installation of garage door only. Expressed concern over loss of privacy.

Kent PROW Officer: No comments.

Public Representations:

There have been 5 other representations received against the proposal. The concerns can be summarised as follows:

- The use of the verandah area would exacerbate the existing noise and disturbance caused by the occupiers of the application property
- The design and materials of the structure are out of character with the building and surrounding area
- There would be an adverse visual impact

f)

1. **The Site and the Proposal**

- 1.1 The new estate is a well planned housing extension of Sholden, which forms part of the urban settlement of Deal. The design, appearance and layout of the estate provide an attractive form of development using local design and vernacular as the design context for the proposal. The cart barn/garage designs are an important part of the estate. These are either located adjacent to houses or in small courtyards. The open 'barn' design of these buildings reflects the local context and although they are ancillary buildings they make a positive contribution to the overall design and appearance of the area and have a local identity and character.
- 1.2 The application property's barn/garage is one of those buildings within a small courtyard serving those properties surrounding it. These 'barns' are laid out to provide a central space and to provide a thoroughfare through the middle with access to the front of these properties adjacent to the appeal building. As such, the courtyard is not a 'tucked away' insignificant location, but rather a means of access that is used by the occupiers of and visitors to those houses along Beech Tree Avenue and this part of the new estate.
- 1.3 The application property is a link detached two storey house, with a frontage facing onto an area of open space, served by a pedestrian link. To the rear and adjoining the house is the barn/open garage, the subject of this application, and its immediate courtyard. The surrounding houses are built cheek-by-jowl, so that the urban form is quite tight knit, with short rear gardens, but in the immediate area the gardens are wider due to the houses being on larger plots.
- 1.4 The rear of the application property is visible from the first floor windows of nearby houses, and above the boundary fence seen from the courtyard adjacent.
- 1.5 The proposal is in two parts. The first part is an amendment to that

which was first submitted by the applicant. Originally submitted, the proposal sought metal up and over garage doors. As amended, the proposal is to install a set of timber composite doors on the open garage. The doors would be designed using vertical boarding and have an up and over mechanism.

- 1.6 The second part of the proposal is to erect an open sided canopy against the rear elevation of the house. The structure would be painted black metal with a glazed roof. It would project some 2.2m and cover half the width of the rear elevation of the house.
- 1.7 In response to the concerns with regard to noise and disturbance, the applicant has responded by stating in writing that her and her husband intend to move in and live in the house in Spring. They are both in their 60s and intend living at the property for the next 30-40 years. The structure proposed is intended for shelter. The existing residents are moving out in March and the garage doors and structure will be put in place after they have moved out.

## **2. Main Issues**

2.1 The main issues are:

- the impact of the proposals on the character and appearance of the area
- the impact upon residential amenity

## **3. Assessment**

### Character and Appearance

- 3.1 Although each proposal is determined on its own merits, it is important that new development on this estate retains continuity in design and layout to be able to retain the overall design ethos and context throughout and to ensure that each new proposal makes a positive contribution to the area. Each proposal should take the opportunity to improve the existing character and quality of the area.
- 3.2 The proposal would retain the design ethos of the estate through the use of timber, vertical doors. Other timber doors have been allowed elsewhere on the estate at Sholden Drive and Anglers Drive. By contrast, a proposal to install metal doors within the garage/barn of No.6 Beech Tree Avenue was dismissed on appeal last year.
- 3.3 The use of vertical composite timber doors would match both the building on which they would be installed and the overall character and appearance of the area. The proposal would therefore meet the requirements of good design and Paragraph 17 of the National Planning Policy Framework which seeks to secure high quality design and Paragraphs 57-58 and 64 of the National Planning Policy Framework which seek high quality inclusive design, design that

responds to local character and reflects the identity of local surroundings and materials.

- 3.4 The proposed structure would be open sided and project some 2.2m. Although it would be visible from the surrounding houses it would have limited visibility from the public, open areas nearby. Especially as the boundary fence is some 2m high.
- 3.5 As such, the open sided structure, its limited visibility from public vantage points and its modest scale would not result in a prominent or obtrusive development. This would ensure that the appearance of the area is not unduly affected.

#### Residential Amenity

- 3.6 The nearest residential property (No.6) is some 3m from the location of the proposed structure. This structure would have a modest projection, and with its open sided design it would not be overbearing or dominant for the occupiers of nearby properties.
- 3.7 With regard to noise and disturbance, the use of the land is not proposed to be changed and therefore the noise and disturbance caused by the occupiers is not a material consideration in this case.

#### Conclusion

- 3.8 Good design is a key aspect of sustainable development and should contribute positively to making better places for people. It is considered that the design and appearance of the garage doors and the extension relate well to the host property and integrates with the existing context and character and appearance of the area.
- 3.9 It is not considered that the proposal would give rise to undue harm to the living conditions of the occupiers of surrounding properties.

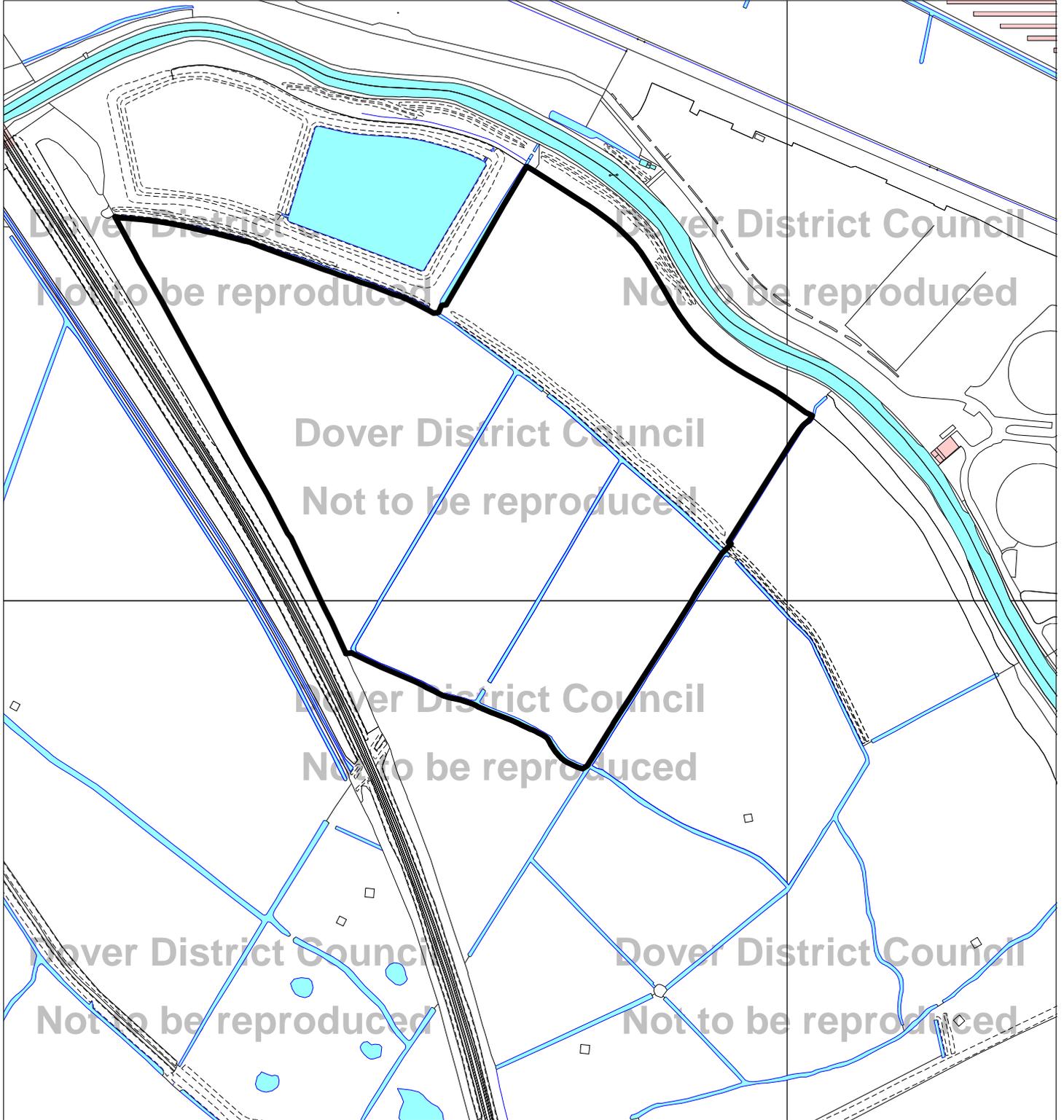
g)

#### **Recommendation**

- I PERMISSION BE GRANTED subject to conditions, to include:
  - i) Commencement of Development; ii) Compliance with Drawing 16.1010.DPS.PL03 A received 12 October 2016; iii) Retention of timber doors.
- II Powers be delegated to the Head of Regeneration and Development to settle any necessary wording of conditions in line with the recommendations and as resolved by the Planning Committee.

Case Officer:  
Vic Hester





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**Application: DOV/16/00044**

**Site at former Richborough Power Station**

**Ramsgate Road**

**CT13 9NL**

**TR32746210**



- a) **DOV/16/00044 – Erection of a guyed steel lattice mast (322m in height) with nine anchor points, installation of telecommunications and associated equipment, site compound, secure fencing, single storey equipment structure, access track, ground-mounted solar panels within compound and associated works - Land at Richborough, Ramsgate Road, Sandwich**

**Reason for report:** Number of contrary views

b) **Summary of Recommendation**

That planning permission be refused.

c) **Planning Policy and Guidance**

Legislation

The combined effect of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) is that planning applications must be determined in accordance with the statutory development plan unless material considerations indicates otherwise.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses.

Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) applies in the event that planning permission is granted and requires that a planning obligation (under s.106 of Town and Country Planning Act 1990) may only constitute a reason for granting planning permission for the development if the obligation is (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.

Dover District Core Strategy (Adopted February 2010)

The stated aim of the Core Strategy is to regenerate the District so that economically and socially it out performs the region. At Sandwich the strategy seeks to support the town's tourism and leisure function. There is a general priority on protecting the qualities of the built and natural environments.

Specific objectives of the Core Strategy are to maintain and enhance the District's natural environment inheritance; that the intrinsic quality of the historic environment is protected and enhanced.; and that the infrastructure needs to support the high growth strategy are delivered.

Policy CP6 identifies the importance of the provision of infrastructure to meet the demands of development. In determining infrastructure requirements, it should first be considered whether existing infrastructure can be used.

Policy CP7 seeks to protect and enhance the existing network of green infrastructure. The integrity of the existing network of green infrastructure will be protected and enhanced.

Policy DM1 restricts development on land outside the urban boundaries and rural settlements unless it functionally requires such a location.

Policy DM12 relates to the access arrangements of development proposals.

Policy DM15 seeks to protect the character and appearance of the countryside. Development will only be permitted under specific circumstances.

Policy DM16 addresses landscape character – development that would harm the character of the landscape will only be permitted if its impacts can be reduced or mitigated to an acceptable level.

#### Dover District Local Plan (Adopted 2002) - Saved Policies

Policy CO5 seeks to conserve, protect and enhance undeveloped or heritage coasts.

Policy ER6 seeks to ensure that proposals incorporate appropriate avoidance and mitigation measures against light pollution.

#### Dover District Land Allocations Local Plan (Adopted January 2015) (“LALP”)

The LALP confirms that the conservation and enhancement of the landscape character remains an important policy objective as set out in the Core Strategy.

The LALP should be read in conjunction with the Adopted Core Strategy and Dover District Local Plan (saved policies). The LALP recognises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. The value and significance of heritage assets is included in the LALP as specific reference is made to the Dover District Heritage Strategy (2013).

#### Kent County Council Minerals and Waste Local Plan 2013 - 2030 (adopted 2016)

Policy CSM11 states that planning permission will be granted at suitable locations for drilling operations associated with the prospecting for underground limestone resources in East Kent. However, the Local Plan clarifies that the surface working area of any an East Kent limestone mine is not identified for safeguarding. This is because there has been no advancement in the mine's development since the identification of this resource in the 1993 Minerals Subject Plan. There is no certainty where the built footprint for the surface aggregate processing facility is likely to be situated (if it is ever developed).

#### National Planning Policy Framework (“the Framework”)

At paragraph 7, the Framework states that there are three dimensions to sustainable development – an economic role, a social role and an environmental role. These roles (Framework paragraph 8) cannot be undertaken in isolation because they are mutually dependent.

Relevant core planning principles of the Framework that should underpin decision making include:

- proactively drive and support sustainable economic development to deliver infrastructure (amongst other types of development) that the country needs;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

- take account of the different roles and character of different areas; recognise the intrinsic character and beauty of the countryside; and supporting thriving rural communities within it;
- encourage the reuse of existing resources;
- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- encourage multiple benefits from the use of land in urban and rural area;
- conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;
- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

Paragraphs 18 to 22 address sustainable economic growth, including that local planning authorities should plan proactively to meet the development needs of businesses.

Paragraph 42 recognises that advanced, high quality communications infrastructure is essential for sustainable economic growth and that it plays a vital role in enhancing the provision of local community facilities and services.

Paragraph 43 identifies that whilst the local planning authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband, they should aim to keep the numbers of radio and telecommunications masts and the sites for such installations to be a minimum consistent with the efficient operation of the network. The use of existing masts, buildings and other structures should be used unless the need for a new site has been justified.

Paragraph 45 requires that applications for telecommunications be supported by evidence to support the development, including the outcome of consultations; that the use of an existing building, mast or other structure has been explored before a new mast is proposed; and that International Commission on non-ionising radiation protection guidelines are met.

Paragraph 46 stresses that that local planning authorities must determine applications on planning grounds and should not seek to prevent competition between different operations, question the need for the telecommunications system, or determine health safeguards if the proposal meets the International Commission guidelines for public exposure.

Paragraph 65 recommends local planning authorities to not refuse planning applications for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits).

Under Paragraph 75, public rights of way and access should be protected and enhanced.

Paragraph 99 confirms that local plans should take account of factors including flood risk, and changes to biodiversity and landscape.

Inappropriate development in areas at risk of flooding should be avoided (Paragraph 100), with application of the sequential test and exception test.

Paragraph 109 sets out that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Development should minimise impacts on bio diversity and provide net gains where possible.

Paragraph 113 states that local planning authorities should set out criteria based policies against which proposal for any development on or affecting protecting wildlife or geodiversity sites or landscape areas will be judged.

Local planning authorities should maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes (Paragraph 114).

Paragraph 118 states that local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Paragraph 125 seeks to limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

Under Paragraph 132, when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater that weight should be.

Paragraph 134 requires that where a development proposal will lead to less than substantial harm to the significance of a designated asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Paragraph 203 requires that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

At Paragraph 204, it is clear that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

#### Planning Policy Guidance ("PPG")

The PPG provides guidance on matters relating to main issues associated with development and is underpinned by the Framework.

#### Other Documents

- Dover District Green Infrastructure Strategy (2014)

- Seascape Character Assessment for the Dover Strait (2015)
- Landscape Character Assessment (2006)
- Dover District Heritage Strategy (2013)

**d) Relevant Planning History**

Application Site

DOV/13/00794 - Creation of a solar farm and associated works. Permitted (24/01/14), not implemented.

In response to a EIA Screening Request, the Council issued a Screening Opinion that the development required EIA due to its likely significant environmental effects.

Surrounding Area

- i. DOV/16/00524: Erection of a 305m high / 2.5m wide guyed communication mast (with 5no. 9m wide anti-twist frames at intervals above 140m) with 6no. 3.7m diameter dish antenna, 206sqm base compound enclosing associated equipment cabins and electric meter cabinets up to 2.5m in height (4.2m above ground level), 9no. guy stay compounds, stone access track, hard and soft landscaping and associated works on Land to the North of Kings End Farm, Richborough, Sandwich, CT13 9JH. Pending determination.
- ii. Richborough Connection Project: A Development Consent Order application. Proposed electricity transmission development including substations and pylons between Richborough and Canterbury. The Examination of the DCO has now concluded and a decision for the Secretary of State is expected in Summer 2017.
- iii. Nemo Interconnector: Development Consent Order. An underground high voltage cable, with above ground works including converter station building (max height 30.8m), substation building (max height 15m), outdoor plant (max height 12.7m), converter station (max height 11.8m) construction compound, security fencing, access road and hard landscaping.
- iv. DOV/12/01017: Peaking plant facility at the former Richborough Power Station – electricity infrastructure plant – approved – under construction.
- v. F/TH/15/1245: Wind Turbine (67m tall) at the former Richborough Power Station – approved.
- vi. DOV/13/00701: Estover CHP Biomass Plant at Discovery Park – combined heat and power plant and associated fuel storage – approved under construction.
- vii. DOV/14/00058: Redevelopment of Discovery Park – redevelopment and change of use for a mix of employment, energy, retail, hotel, non-residential institution and residential uses – approved.
- viii. DOV/15/00430 & DOV/13/00783: Industrial units at Discovery Park – B2 use industrial unit and foodstore – both approved.

- ix. DOV/15/00588: Land South of Stonar Cut, Ramsgate Road. Waste management for the sorting of skips.

e) **Consultee and Third Party Responses**

Ash Parish Council

Objection on the following grounds:

- the site boundary is not as described, at the former Richborough Power Station, Ramsgate Road, Sandwich. This was not clear in the previously submitted documentation. It is on the west side of the River Stour between the river and the railway line and is within the parish of Ash. It is on marshland and not on a brownfield site and there will be destruction of the special habitat, flora and fauna that is present on this site;
- the adverse visual impact of the mast is seriously understated in the photomontage submissions and in the assessment of the impact it has on surrounding historical sites, villages and the Saxon Way footpath;
- this application will set a precedent for this height of mast;
- the cumulative effect will increase the adverse visual impact of the mast; and
- other objections as per consultation response in February stand, except with acknowledgement that CAA has said that it will not prevent the possibility of the development of Manston Airport for aviation.

Sandwich Parish Council

No objection. However, the Council would urge any businesses planning to build telecommunication masts to work together, thus reducing the total number of masts.

Worth Parish Council

Support the application, providing the conditions of the benefits to local school children and community groups are carried out as presented to the Parish Council previously by the applicant.

Cliffsend Parish Council

Objection:

- the mast would tower over the whole area and aircraft lights would become a visual eyesore at night;
- over 80% of houses in the Cliffsend would see the mast, which would be extremely detrimental to their visual outlook;
- TV and radio signals to the village could be affected;
- dover community radio transmissions will not reach Dover; and
- other sites on higher ground should be considered. The application does not make the case as to why they are discounted;
- could there be a taller mast in Belgium instead;
- the mast would be a danger to aircraft, including if Manston Airport were to reopen.

Thanet District Council

The primary concern is that the proposals should not prejudice Thanet District Council's ability to undertake a proper assessment of the Manston airport's

commercial potential, and therefore the proper planning of the area. It is expected that Dover District Council will undertake its own assessment of aviation information submitted, with whatever additional professional advice it considers is required. If the Dover District's Council's assessment is that this proposal could prejudice these wider strategic decisions, Thanet District Council would request that the application be refused on those grounds.

Severe concerns are raised about the visual impact on the character and appearance of the former Wantsum Channel and the Wantsum Channel North shore area, with reference to long views of Pegwell Bay.

#### Historic England

In summary, Historic England comment that the proposed development would cause significant harm to the ability to appreciate the heritage significance of the Richborough Fort scheduled monument, though this is not amount substantial harm in the terms of the Framework. For a clear and convincing justification for the harm to be made it would be necessary to show that other less harmful designs and locations are not possible and that the unavoidable harm is outweighed by the public benefits of the scheme.

The Council should weigh the harm that this scheme will cause against any public benefits that the scheme might bring, as required by paragraph 134 of the Framework.

The full consultation response of Historic England provides comments in relation to the significance of Richborough Fort and the effects of the Proposed Development. For the benefit of the Committee, this is appended to this committee report (**Appendix 1**).

#### Natural England

The Site is in close proximity to the Thanet Coast to Sandwich Bay SPA, which is also listed as the Thanet Coast and Sandwich Bay Ramsar site and notified at a national level as the Sandwich Bay to Hacklinge Marshes SSSI.

The Proposed Development is unlikely to have a significant effect on any European site (the SPA and Ramsar). Subject to use of deflectors fitted to the guys to reduce the risk of bird collisions and a monitoring strategy to ensure that measures to avoid bird collisions are successful (with an option to increase measures if need be), there are unlikely to be implications from the Proposed Development on the Sandwich Bay to Hacklinge Marshes SSSI.

No objection with regard to internationally and nationally designated sites.

#### Civil Aviation Authority – Safety and Airspace Regulation Group

The CAA's position is that it would be inappropriate for it to support or refute any or all of the assessments made by either party in this case. This is because any future requests to activate airspace structures or procedures at Manston would be subject to regulatory scrutiny and assessment by the CAA, Safety and Airspace Regulation Group (SARG), of which Aerodromes and Airspace Regulation are two capability teams.

In summary, the CAA recognises that one must consider a variety of political and economic imperatives and technical assessments when reaching a decision on planning applications. Tall structures close to an airfield will obviously have some degree of impact on operations. The real issue that needs to be considered here is the scale of that impact and the ability of the aerodrome operator to mitigate those impacts and safeguard operations; this may well involve a degree of business risk on behalf of the aerodrome operator.

#### NERL Safeguarding Office

NATS (En Route) Public Limited Company (“NERL”), who is the organisation responsible for the management of en route air traffic, has reviewed the Proposed Development from a technical safeguarding aspect and advises that it does not conflict with NERL’s safeguarding criteria. There is no safeguarding objection to the proposal.

#### The General Aviation Awareness Council

Objection: Any decision on the Application would be premature until Manston's future as an airport is clarified. Objection is maintained even with a deconstruction clause because of hazards to safe aviation.

#### Environment Agency

No objection in principle, subject to conditions relating to potential ground contamination and groundwater.

The submitted flood risk assessment is adequate and the proposal does not create or exacerbate flood risk on or off site.

Groundwater quality and nearby surface waters will be at risk from historic, current and proposed activities at this site and all precautions should be taken to prevent discharges and spillages to ground, both during and after construction. There should be certainty that pollutants at the identified ash lagoon will not be mobilised that may impact upon the groundwater and surface water environment.

The piling risk assessment should include information on any contamination.

Infiltration drainage is unlikely to be acceptable due to the high ground water level.

Any facilities for the storage of oils, fuels or chemicals shall be provided with secondary containment that is impermeable to both the oil, fuel or chemical and water. Above ground pipework should be protected from accidental damage. Below ground pipework should have no unnecessary mechanical joints.

The production and implementation of a Construction Environmental Management Plan (CEMP) and Invasive Species Management Plan, as proposed in the Ecology chapter of the Environmental Statement, is sufficient to ensure that measures will be taken to avoid adverse impacts to ecology.

#### National Grid

National Grid has made a Holding Objection to the Proposed Development, because the Site falls partly within the limits of the Development Consent Order (DCO) application, made to the Planning Inspectorate for a 400kV electricity transmission

connection between Richborough and Canterbury – the Richborough Connection Project (RCP).

The application contains insufficient information to consider the effects of the Proposed Development's construction programme against that of the RCP. The eastern guy rope anchor point would impact the access roads required for the construction of the RCP. The access route for the Proposed Development interferes with that for the RCP.

National Grid is committed to discussions with Vigilant Global to ensure that both projects could be built and operated in parallel, but maintains its objection until there is agreement.

#### Network Rail

No objection. As the site is adjacent to Network Rail's operational railway infrastructure, Network Rail strongly recommends the developer contacts [AssetProtectionKent@networkrail.co.uk](mailto:AssetProtectionKent@networkrail.co.uk) prior to any works commencing on site. Network Rail strongly recommends the developer agrees an Asset Protection Agreement with it to enable approval of detailed works.

#### KCC Highways and Transportation

No objections in respect of highway matters. The proposals generate very little traffic for operational purposes and construction traffic can be managed through a Construction Management Plan, which can be secured by condition. This should include routeing of vehicles to/from the Site; access arrangements through the existing waste transfer site, in particular how the current height barrier, access route through to the bailey bridge and existing HGV movements to/from the waste transfer station are to be managed so that vehicles will not queue back onto the highway; parking and turning areas for deliveries and site personnel; and wheel washing facilities.

#### KCC Archaeology

The proposed mast lies close to the Scheduled Roman site of Richborough, which is a Scheduled Ancient Monument and Grade I Listed building (Richborough Castle). Richborough is a site that is of great importance in understanding the complete story of Roman Britain. It is here that the Emperor Claudius is believed to have landed during his invasion of Britain in AD 43, and it is at sites such as Richborough that the withdrawal of the last vestiges of Roman administration in circa AD 410 can be observed.

By virtue of its size and location the proposed mast will clearly be visible from within the English Heritage visitor site at Richborough and from across the wider Scheduled Monument. The proposed mast lies some 1.4km to the north of the Richborough Scheduled site (not 2.25km as suggested in the applicant's submission) and will be very conspicuous in views north from the fort across the former Wantsum Channel towards the Isle of Thanet.

The significance of the landscape setting of Roman Richborough is undervalued in the applicant's assessment of the schemes impacts. Conversely I think the existing harm caused by existing modern features in views from Richborough are overstated.

The construction of the proposed mast has the potential to be very harmful to the setting of the Richborough Roman site and could affect the ability of visitors to understand the significance of the place. At some 322m high the structure will be of a magnitude that far exceeds anything else in the local area and will be particularly conspicuous. Whilst there are sporadic masts, pylons and other industrial buildings within view from Richborough these are lower lying than the proposed mast and generally protrude little above the horizon. As such it is felt that the mast would become the prominent and defining feature in this view.

The mast's sheer scale would mean that it would be the dominant feature in views out from the Scheduled Monument to the north. Setting is not however just about views, but is also about how a person experiences an asset. The height of the mast is such that it will remain visible even from within the massive stone-walls of the Saxon Shore Fort. It would be a constant presence and would be harmful to the visitor's experience of the site, would detract from the monumental character of the fort's walls and would break the sense of enclosure that the masonry walls currently provide.

For these reasons, on the basis of present information, the construction of the proposed mast would be harmful to the significance of the Grade I Listed Building and Scheduled Monument at Richborough.

The construction of two masts, serving such similar purposes, in such close proximity to each other would seem be unnecessarily harmful to the significance of the important Roman site of Richborough.

The applicant has put forward proposed mitigation measures in response to the scheme's direct impacts on remains of geo-archaeological and archaeological interest which comprises a combination of purposeful geo-archaeological boreholes to investigate deeply buried sedimentary sequences and archaeological monitoring of shallower construction works. The proposed mitigation measures appear reasonable. Such a programme of archaeological work could be secured by an appropriately worded planning condition.

#### KCC Public Rights of Way and Access Service (PROWAS)

The easternmost anchor point will directly impact on public right of way EE42, which forms part of the Saxon Shore Way. However, it is noted that the route walked on the ground is not the definitive route.

Following discussions with the applicant, there is no objection (confirmed letter dated 4 July 2016) to the diversion of footpath EE42, subject to that being regularised pursuant to the Highways Act 1980, the Town and Country Planning Act 1990, or Growth and Infrastructure Act 2013 Section 12.

#### KCC Landscape

An assessment of the landscape and visual impacts of the Proposed Development and a review of the planning application has been provided by a landscape architect on behalf of KCC.

There would be a number of receptors experiencing adverse visual effects, many of which would be highly significant. In particular, walkers on a large stretch of the Saxon Shore Way and visitors to Richborough Castle would experience highly significant adverse effects. There would also be lesser adverse effects on other

public footpaths but spread over a significant geographical range. Quex Park Cottages and Castle Cottages off Richborough Road are highly sensitive residential receptors and the magnitude of adverse impact would be high, I conclude that this would result in a highly significant adverse effect. Further afield the view over Pegwell Bay from Ramsgate Esplanade would also be significantly adversely affected. The landscape character of Pegwell Bay, Ash Levels and Richborough Castle would be significantly adversely affected.

Cumulative impacts would increase the severity and geographical extent of the adverse impacts identified.

#### DDC Environmental Protection Officer

Ground conditions: no objection subject to standard contaminated land conditions.

Hours of work to be agreed by condition.

The applicant has provided an ICNIRP declaration, which is acceptable for this application.

#### DDC Ecology Officer

The Site comprises grazed grassland intersected by ditches and is part of the wider Ash Level and South Richborough Pasture Local Wildlife Site (DO21). To the north are the ash lagoons associated with the earlier Richborough Power Station, while to the south is further grazing land.

The ditches retain importance through their assemblage of plants. Species of interest on the site are Curlew (non-breeding) and *Haliplus variegatus*, a nationally rare water beetle.

Natural England does not object to the application. Kent Wildlife Trust maintains an objection based on site selection and construction details.

The ES identifies that the ditches provide suitable habitat for Water Vole (*Arvicola amphibius*) – a species protected under the Wildlife and Countryside Act 1981 and a UK Priority Species (Natural Environment and Rural Communities Act 2006). There is concern that not all the ditches within the Site have been subject to specific biodiversity assessment

Whilst it is usual to ensure that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted (ODPM Circular 06/2005), given that any effects on Water Vole are bound to be limited, by virtue of the small amount of ditch habitat involved, and then only during the construction and decommissioning periods, it is considered proportionate in this instance to condition a detailed survey and mitigation scheme.

The invasive species of *Crassula helmsii* occurs on the Site, close to the eastern support guys. It is an offence to plant or otherwise cause this species to grow in the wild. A construction and decommissioning ecological management plan should demonstrate how the spread of *Crassula helmsii* will be prevented.

The size of the application Site has significantly increased from its original 0.5675 ha to the amended 2.6456 ha. The original ecological report (21 January 2016) covers

the Site and a large area around it, including a large proportion of the land for the access route. However, it does not include a Phase 1 survey of the southern section of the access route, across the ex-landfill site. As a matter of completeness this should be addressed.

### Habitat Regulations Assessment

The Global Vigilant mast proposal lies within an SSSI Impact Risk Zone which is concerned with likely impacts on European and Ramsar sites, as well as SSSI.

The Conservation of Habitats and Species Regulations 2010 (as amended) requires that the Local Planning Authority, as the competent authority, assesses proposed developments in respect of their implication for European sites. UK Government policy extends that protection offered to European sites to Ramsar sites.

In accordance with Habitats Regulation 61 (2) the applicant has supplied information to inform the HRA as Appendix C of the Environmental Statement. This is considered to be a comprehensive and thorough report.

The initial stage of the HRA is to screen potential likely significant effects. The one SPA and Ramsar cited species that is known to use the Ash Level, the golden plover (*Pluvialis apricaria*) has been considered and the applicant concludes that there would be no likely significant effect on this species. The other SPA cited species – little tern (*Sterna albifrons*) and ruddy turnstone (*Arenaria interpres*) are not known to use the Ash Level.

Natural England has been consulted on the application and concurs with the finding of the applicant.

Therefore, it is concluded that the collision risk to little terns, ruddy turnstone and golden plover is low, that the installation of bird deflector spirals would lessen this risk still further, and, consequently, there is no likelihood of a significant effect and no further assessment is necessary.

Natural England does, however, request that bird collision monitoring is put in place. The Local Planning Authority concurs with this and a condition requiring such monitoring for 5 years post-construction is recommended.

### DDC Heritage Officer

Impact on the setting of the grade I listed St Peter's Church: The Framework defines setting as 'the surroundings in which a heritage asset is experienced'. Further guidance on assessing setting is contained within the Historic England GPA3: the setting of heritage assets (GPA). Setting is not a defined boundary and the contribution to the significance of the heritage asset is often described as views of or from it. With specific reference to churches in the district, the Dover District Heritage Strategy defines churches as being of outstanding significance and notes that rural religious buildings have value in their contribution to the aesthetics of the historic landscape and wider rural environment; it states 'the spires of rural churches can often be seen over long-distances and are recognised and valued local landmarks'.

St Peter's Church in Sandwich has recently opened up access to the tower with a platform allowing a 360 degree view of the surrounding landscape, providing far reaching views on a clear day including Richborough Fort being visible in the mid-distance. An appreciation of how Sandwich and St Peter's sit within the landscape

can now be gained from this vantage point. In particular, there are often visual links between churches within different parishes, and on looking north the spire of the Church of St Mary in Minster-in-Thamet is clearly visible on the ridge. Despite the distance, in my view the Proposed Development would be visible within this viewpoint, set against and extending significantly above the ridge, and will potentially draw the eye and detract from the inter-relationship between St Peter's and St Mary. However, this relationship is only able to be appreciated visually from the St Peter's platform (as long range views of St Peter's from the ridge are generally obscured) and can be said to have a more significant impact on the setting of St Mary's.

Impact on conservation areas: the highly dense urban grain of the Sandwich Walled Town Conservation Area precludes views out into the surrounding landscape except when on routes out of the town or on the town wall. Even in these circumstances the views of the landscape are discrete and the relationship of the town to the surrounding rural landscape has been affected by modern development. Notwithstanding the view of the conservation area within the wider landscape that is now afforded by the viewing platform at St Peter's church discussed above, whilst there is no doubt that the height of the masts will have potential to make them visible at points within the conservation area, in my view the no harm would be caused due to the distance of the masts from the conservation area. This is also the case with St Bart's Conservation Area, which has been enclosed on the NW with extensive modern development.

Impact on grade II listed buildings: the setting of several grade II listed buildings has potential to be affected by the masts. In general, the impact is limited due to the listed buildings having limited interaction with the surrounding landscape, and consequently being capable of appreciation at close quarters rather than long distance views. The buildings on which the masts will have the greatest impact are Guston Court, Kings End Farm, Richborough Farm Cottage and Castle Farm. The latter three buildings are located close to each other and have or had a functional relationship with the surrounding land. However, they are set within well treed/vegetated landscapes and with the exception of Castle Farm have limited presence in the public realm and no clear visual inter-connection with the landscape. Whilst the masts will be visible they will not be viewed within the context of these listed buildings and there is consequently no harm to their setting in my view.

#### DDC Landscape

The proposal is for a 324 m high telecommunications mast for the primary purpose of international high frequency trading. The proposed location is the northern section of the Richborough Marshes, that area of the Ash Level isolated by the mainline railway embankment and the River Stour.

Applications such as this are rare and the current best practice guidance, the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA3) can only provide limited assistance. It is noted, however, that whereas the GLVIA3 encourages a clearer use of terminology, the Landscape and Visual Impact Assessment (LVIA) as presented in the Environmental Statement (ES) is, perhaps, over-complicated by inclusion of heritage landscape assessment within the same chapter, which can involve a different set of considerations to landscape. There is also some variation in terminology within the ES.

Beneficially, the applicant has supplied photomontages to illustrate cumulative impacts with other proposals and authorised developments in the area.

The applicant has supplied further information, as requested, which has been valuable in assisting an understanding of the likely effects of the proposal, including those during night time.

A comprehensive review of the applicant's conclusions regarding both landscape character effects and visual effects has been undertaken and is appended. The review considers the Richborough Connection, this application, and the New Line Networks application, in turn. A short consideration of cumulative effects of the three applications is also given to highlight effects should two or more of the applications be granted planning permission.

Dover district benefits from a Landscape Character Assessment, dating from 2006, which forms a framework in which to consider the effects of the proposed mast. The Assessment draws up a number of Landscape Character Areas (LCAs) which have their own special qualities. Normally, it would be expected that any LVIA would base itself on such LCAs or, refine them further. However, in this case the applicant has enlarged the areas, and even, in the case of Richborough Castle LCA, disposed of them. To regain some order in the review and allow comparison with other applications, the effects have been interpreted in terms of the Dover Landscape Character Assessment.

The conclusions of the review are given below:

- there will be a significant adverse visual effect on Richborough Fort and Roman amphitheatre, a heritage site of national importance and tourist attraction of importance for east Kent, as well as Sandwich Bay and Pegwell Bay National Nature Reserve. The new section of the England Coast Path north of Sandwich will be significantly affected, as well as two regional trails, the Saxon Shore Way and the Stour Valley Walk. People using four other public rights of way and well as residents of up to 14 rural properties will experience a significant adverse visual effect. There will be a moderate, but significant, adverse visual effect on tourists using the church tower of St Peter's, Sandwich, for viewing the surrounds;
- four Dover Landscape Character Areas would be affected by the proposed development. For two LCAs, Richborough Castle and Sandwich Bay, the landscape effects will be adverse and significant. While the landscape effects on the Ash Level are considered not significant, there would be a significant adverse impact on the Richborough Marshes subset of the Ash Level; and
- there would be a major and significant adverse visual effect cumulatively with the proposed New Lines Network Mast.

Given the widespread and significant adverse effects on landscape and visual impact, it is considered that on landscape grounds, the proposed development should be refused.

#### DDC's agricultural consultant

The loss of agricultural land, or impact on agriculture, is unlikely to be significant factor in this case. The land is of not particularly high agricultural potential and on which a solar farm development has already been consented.

### Kent Wildlife Trust

The application site lies wholly within the Ash Level & South Richborough Pasture Local Wildlife Site (LWS, DO21).

Kent Wildlife Trust accepts that the operation of the communications mast will have a negligible impact on terrestrial habitats and the wildlife it supports. But objection is raised on the grounds of (i) a lack of justification for the selection of this location, in comparison with alternative locations; (ii) the absence an evaluation of the extent of working areas for the construction of the mast compound, the mast foundations and the anchor point foundations; and (iii) the argued use of 'permitted development' for construction (and decommissioning) activities that the Council is not obliged to have regard to such environmental impacts.

Objection relating to decommissioning impacts only was subsequently withdrawn (letter of 3 March 2016).

### Kent Downs AONB Unit

No comments received.

### Public representations

122 representations have been received by the Council. Of these 100 representations raise objections to the mast, 21 are in favour and 1 provides comments.

The following is a summary of the objections raised that are material to the consideration of this application:

- visual Impacts;
- adverse impacts on visual outlook;
- detrimental impacts on the existing radio and communications signal due to line of sight
- loss of transmission;
- health and safety impacts;
- EMF Exposure and Radio Frequency Radiation;
- adverse effects on marshland;
- impacts on the operation of Manston airport;
- impacts on flight safety;
- lack of public benefits;
- the proposed masts will restrict the re-opening of Manston Airport;
- inconsistencies with the submitted information, in particular the INCRIP certificate
- lack of public consultation;
- impacts on Richborough Castle;
- impacts on neighbouring operations such as the solar farm as a result of shadowing;
- inappropriate development within the local environment;
- access and egress of the proposed site is through the Richborough Household Waste Facility;
- the proposed location can have severe impacts on the local micro-climate;
- interference and impacts on the nearby existing and proposed electricity pylons;
- no co-location opportunities sought;

- English Heritage does not support the proposal as the resulting harm is significant; and
- financial support to seek to offset the negative effects on the Roman fort is offered, but this does not address the harmful impacts.

Nathaniel Litchfield & Partners (NLP) on behalf of New Line Networks (NLN) have provided some comments towards this application and highlights that the application boundary appears to be incorrect as it does not incorporate access routes, pathways, links to the public highway for either the construction or the operational phase. The access routes could therefore currently be beyond the remit of this planning application and an amended site boundary plan should be submitted. The proposed construction phase access road and off-site construction compound should require a planning permission.

NLP highlight that there are inconsistencies and a significant range of constraints affecting this site and it is important that full details and the justification for the final design are provided. The application in its current form does not provide the extent of any physical encroachment onto PROW EE42 during the construction and operation phase of the proposal.

Given the location of the application site within the immediate vicinity of the Richborough Connection project, there is a significant overlap of the overhead line route(s) and the mast access route. In order for the implications of this to be adequately considered, robust technical evidence should be provided, demonstrating how the proposed mast can be implemented and operated without impacting on the delivery and future operation of the Richborough Connection project. Similarly, given the proximity to the South Eastern Ken Coast Railway, robust evidence should be provided which demonstrates how the proposed mast can be implemented and operated without impacting the safety, operation or integrity of the railway.

In summary, NLP consider that the further detail must be submitted in order to allow a full assessment of the application proposal.

Objection has been received on behalf of Riveroak Investment Corp, who have an interest or potential interest in Manston Airport. Their concerns are that the Proposed Development would represent a significant operational and safety risk for the future operation of the airport. These are considered in more detail further in this report.

Objection has been received on behalf of The National. The proposed mast is likely to have significant impacts on the quiet enjoyment of, and be visually intrusive to, on the quiet enjoyment of, and be visually intrusive to National Trust land at Pegwell Bay. The Pegwell Bay nature reserve and local area is designated at the highest level as RAMSAR site, Special Area of Conservation (SAC) and Special Protection Area (SPA), and as a National Nature Reserve (NNR) and SSSI of the highest sensitivity for nature conservation and consequently of significant landscape value.

The National Trust highlight that it is not apparent from the application what the public benefits of the mast will be, or what its contribution and function is. It is therefore very difficult for any assessment of the planning balance to be made in terms of any benefits of the mast, against the wide range of impacts on the environment, and on the very high status of the nature conservation designations at Pegwell Bay. In this case, a precautionary approach should be taken and any harm arising from the development should be assessed on a worst case scenario.

An objection has been received from CPRE Kent which highlights that the applicant has not demonstrated that other technologies are not available to meet communications needs. Establishing the need for the mast will be important during evaluation of the planning balance when determining the application. The least harmful site must be identified. The case has not been made. The search parameters did not include avoiding landscapes of historical, cultural or archaeological importance or avoiding impacts on habitats and species of principal importance, and designated habitats. The application documents do not demonstrate that there is a need for two masts of this scale. A mast of this height and in this location is not necessary to sustain the rural economy, nor meet the needs of the community.

The CPRE considers that the proposed mast would not protect or enhance the local and wider landscape character of this open and horizontal landscape. This harm to the character and appearance of the landscape is a significant impact. The proposed development is likely to have a significant effect on the setting of the Roman site at Richborough, a Scheduled Ancient Monument and Grade I listed Richborough Castle. The former Wantsum Channel is a heritage asset of value, which forms part of the setting of Richborough Fort. The impact would be substantial and harmful to its evidential, historic and aesthetic value and thereby its significance.

Lastly, the risk of bird impacts is a significant concern of CPRE and this issue should be discussed in detail with Natural England, Kent Wildlife Trust and RSPB.

No objection has been received from the Channel Gliding Club.

**f) The Site and the Proposal**

- 1.1 The application site comprises an area of agricultural grazing fields, which are predominantly flat with a number of ditches than run across them.
- 1.2 The location of the mast is some 0.5km to the west of Richborough Energy Park and approximately 1.5km from the coastline. The River Stour curves to the north and east; and the railway is to the west. The closest settlements are Cliffsend, Minster and Ramsgate to the north and Sandwich to the south. There are a number of isolated dwellings and hamlets to the south and west.
- 1.3 The Site includes a narrow strip of land to the south on which a temporary access track is proposed, connecting the proposed mast, via Baily Bridge over the River Stour, to the public highway (A256) to the south. The southern part of the Site crosses a former landfill site.
- 1.4 The location of the mast is approximately 3.5km to the south of the former Manston Airport (operations closed in 2014).
- 1.5 The Site is mainly in Flood Zone 2 and forms part of the 'Ash Level and South Richborough Pasture Local Wildlife Site' (LWS, DO21).
- 1.6 The Thanet Coast and Sandwich Special Area for Conservation, Special Protection Area and a RAMSAR, which is also a Site of Special Scientific Interest ("SSSI"), is some 2km to the east.
- 1.7 Sandwich and Pegwell Bay National Nature Reserve is located approximately 700m each of the Site.

- 1.8 Public right of way EE42 is to the east of the Site, which runs along the western bank of the River Stour.
- 1.9 Richborough Fort, a scheduled ancient monument and Grade I listed building is located approximately 1.5km to the south of the proposed position of the mast.

#### Proposed Development

- 1.10 Planning permission is sought for erection of a three-sided 3m wide, 322m tall guyed mast, which would be of a lattice-steel construction with an access ladder located within it.
- 1.11 On the mast, it is proposed to install:
- eight communication dishes for use by the applicant, with a respective diameter of between 2.4m and 3.7m, located at heights between 160m and 320m;
  - four communication antennae for VFast Internet, three of which have a height of 0.7m and the other a diameter of 0.43m, located at heights of 100m and 97m; and
  - an antenna for Dover Community Radio, 1.3m in size at a height of 235m.
- 1.12 The mast would be supported by guys that would spread out in three directions – 6 guys on each side, that connect to one of three concrete guys stays on each side.
- 1.13 The guys would have bird warning devices at 5m intervals up to 60m.
- 1.14 The mast would have seven aircraft warning lights, spread evenly at heights between 46m and 322m
- 1.15 At ground level, an operational compound would be provided, measuring some 32m by 15, with a 2.4m high green palisade fence around its perimeter. Within the compound there would be a single storey equipment building, some 15m wide by 2m deep, on a raised platform; and three rows of solar panels.

#### Temporary construction works

- 1.16 Planning permission is sought for an access track, approximately 1.5km in length, from Bailey Bridge to the position of the mast. The applicant notes that much of the route of this access track coincides with that which is proposed by National Grid as part of the Richborough Connection Project. However, to avoid dependency on the Richborough Connection Project, the full length of the access track forms part of this planning application.
- 1.17 There is an alternative access option: via a new bridge, to the east of the location of the proposed mast, over the River Stour, which forms part of the National Grid's Richborough Connection Project. This bridge would connect with a proposed section of access track on the western side of the river. In this option, subject to the applicant securing access rights, the longer access track south to Bailey Bridge would not be needed.
- 1.18 The track would have a width of approximately 4m with a 1m verge on either side. It would be made of crushed and compacted rock.
- 1.19 Other proposed temporary construction works include a construction laydown and assembly area, measuring 50m by 50m, to the north of the mast; and a temporary

construction compound, to house welfare facilities, to the east of the mast. Both these would be made of crushed and compacted rock.

- 1.20 Following the construction of the Proposed Development, these temporary works would be removed and the land reinstated.
- 1.21 Operational access would be via the existing Bailey Bridge and across the fields with a 4x4 vehicle, without the need for a formal access track.

## **2. Main Issues**

2.1 The main issues in the consideration of this application are:

- principle of development
- landscape and visual impacts
- heritage impacts
- ecology and ornithological impacts
- highways and transport
- aviation
- flood risk and drainage
- other matters
  - public safety
  - noise
  - contamination
- purported benefits
- cumulative effects and mast sharing
- planning balance

### Principle of Development

- 2.2 The primary purpose of the Proposed Development is to provide an optical line of sight connection to a corresponding mast in Belgium in order to improve a data link between financial markets in London and Frankfurt.
- 2.3 The applicant sets out that the Proposed Development will contribute to the provision of a high speed communications network, supporting the operation of the financial services sector in the UK. There is reference by the applicant to a government report ('FinTech: On the Cutting Edge' (2016; UK Treasury), noting that it is crucial that investment is made in the high speed telecoms market, to ensure the competitiveness of the UK and future economic growth potential. The applicant describes the speed that data can be transferred by such a private network as vital to the businesses which it serves, particularly so for financial data.
- 2.4 Paragraph 42 of the Framework recognises that advanced, high quality communications infrastructure is essential for sustainable economic growth. Other sections of the Framework also emphasise the government's commitment to securing sustainable economic growth. Paragraph 46 states that the Council should not seek to question the need for a telecommunications system; however, this does not prevent the application being properly considered and determined on planning grounds.
- 2.5 The purported economic benefits of the proposal are addressed later in this report. But consideration should first be given to the justification for the height and location of the mast.

- 2.6 Paragraph 43 and 45 of the Framework stress that new communications equipment should be located on existing masts, buildings and other structures, unless the need for a new site has been justified.
- 2.7 The applicant sets out a site selection process was based on its requirement for the communication route to be in a straight line between the corresponding site in Belgium and London (a data centre in Slough, approximately 25 miles to the west of London). This straight line passes over Richborough, which was considered by the applicant to have sufficient land and flexibility in the area for the mast to be located.
- 2.8 The applicant considers that the mast needs to be as close as possible to the Kent coast due to the technical requirements of obtaining line of sight communication. A location of the mast further inland would result in the need for a taller mast.
- 2.9 Accordingly, a narrow area of search was defined, very close to the path of the straight line, from the coast back inland for a distance of approximately 5km. It is noted that this approach is generally consistent with that for application DOV/16/00524.
- 2.10 Within this search area, the applicant considered a number of selection criteria including impact on agricultural land, flood risk, ecological impact, context of other development, impact on heritage assets, ability to not prejudice other development, ability to mitigate any unacceptable impact on Manston Airport and the presence of suitable transport infrastructure.
- 2.11 The applicant considers that the Site, falling within the search area, meets all of the specific selection criteria and has accordingly been progressed.
- 2.12 The applicant refers to other existing masts – the transmitter tower at Church Hougham, the Swingate Transmitting Station in Dover and an existing mast near Ramsgate – but considers that these would deviate too far from the direct line of communication and the Swingate and Ramsgate masts are of insufficient heights. The tower at Church Hougham is at the required height, but it would only achieve a marginal connection and would be unreliable. Officers have no evidence to dispute this.
- 2.13 Whilst the applicant's site selection justification is not without its weaknesses – particularly that the Richborough area was immediately considered as having sufficient land and flexibility before any more detailed assessment – it is considered, nevertheless, that it is reasonable within the technical and operational constraints provided.
- 2.14 The use of alternative technologies is considered by the applicant, such as fibre optics and cables, or other wireless technologies. Fibre optics are stated by the applicant to be 40% slower than microwaves and would require the laying of cables across a large area of land, which may lead to large scale environmental impacts and/or nuisance, whilst other wireless technology was discounted by the applicant on the basis of not being able to provide the required improvement in network data transfer speed.
- 2.15 Core Strategy Policy DM1 (Settlement Boundaries) seeks to restrict development outside existing settlement boundaries unless it functionally requires such a location. Core Strategy Policy DM15 seeks to protect the countryside from development that

would harm its character or appearance unless it is justified that it cannot be accommodated elsewhere (i.e. not within the countryside).

- 2.16 As such, with regard to the justification of the siting of the Proposed Development, it is considered that the impacts of the mast should be considered on its merits, including landscape and heritage impacts and (with regard to the similar mast development proposed under application DOV/16/00524) whether or not the number of masts has been kept to a minimum.
- 2.17 Core Strategy Policy CP6 relates to the provision of infrastructure, but it is a policy to ensure that infrastructure is provided in a timely manner to support other development coming forwards (such as residential and retail growth). It is considered to be not applicable to the Proposed Development.
- 2.18 The Proposed Development, taking account of the compound, access track and guys, would result in the loss of an area of agricultural grazing land. Advice has been received by the Council's rural planning consultant that the Site and surrounding area is generally more suitable for grazing with more limited potential for crops. The advice concludes that the loss of agricultural land or impact on agriculture is not significant in this instance. Regard is also had to the recent planning permission for a solar farm on the Site.

#### Landscape and Visual Impacts

- 2.19 The applicant has submitted a Heritage, Landscape and Visual Impact Assessment with the application as part of the Environmental Statement.
- 2.20 The applicant has assessed the impacts of the Proposed Development on particular landscape character areas (receptors):
- i. The Wantsum Channel (including Minster Marshes, Ash Level and Stour Marshes);
  - ii. Wantsum North Shore;
  - iii. Thanet Plateau;
  - iv. Coastal Conurbation;
  - v. Pegwell and Sandwich Bays;
  - vi. Sandwich Corridor;
  - vii. Preston and Ash Horticultural Belt;
  - viii. Sandwich;
  - ix. Lydden Valley
  - x. Eastry Arable; and
  - xi. Deal.
- 2.21 The applicant considers that the greatest significance of landscape effect would be moderate adverse on the landscape character areas of Wantsum North Shore and Pegwell and Sandwich Bays, with minor effects on the areas of Wantsum Channel (including Minster Marshes, Ash Level and Stour Marshes), and Preston and Ash Horticultural Belt.
- 2.22 In response, landscape advice from the Council and KCC is that the significance of the landscape effects has been underestimated by the applicant. In particular, there would be significant impacts on the landscape areas of Richborough Marshes, Richborough Castle and Sandwich Bay, as well on Pegwell Bay although falling outside of Dover District

- 2.23 Visual impacts of the Proposed Development are also considered by the applicant, through an assessment of 29 representative viewpoints (VP) and receptor groups including residential properties, walkers, tourists/visitors to heritage assets and other activities (including cycling, golf and bird watching).
- 2.24 The representative VPs the applicant considers would be most affected, with a moderate adverse significance of effect, are those at Saxon Shore Way, near Richborough Energy Park (VP1); Richborough Fort (VP3); the base of the Old Pipe Bridge adjacent to the PRow (VP12); from inside Richborough Fort (VP13); and adjacent to the west of Richborough Fort (VP14).
- 2.25 For receptor groups of walkers and visitors to Richborough Fort, the applicant also considers that there would also be moderate adverse effects. Other receptor groups of residential, cyclists, golfers and other general recreational pastimes, are considered by the applicant to have a lesser minor adverse effect.
- 2.26 However, advice from KCC disagrees with the applicant: the applicant's Environmental Statement understates the dominance of the Proposed Development. Highly significant adverse effects are identified from:
- Saxon Shore Way, near Richborough Energy Park (VP1) because of the mast's very close proximity and its much larger scale than existing structures, and because of the high sensitivity of the receptor;
  - Richborough Fort (VP3) – the mast would be intrusive and dominating from such a sensitive location (Grade I listed building and scheduled monument);
  - Royal Esplanade, Ramsgate (VP8) and Pegwell Conservation Area (VP21) – the broad panorama looking over Pegwell Bay and Sandwich Bay, which is a notable view for tourists and set within a conservation area. The Seascope Assessment for the Dover Strait notes the 'wide, simple and unrestricted views along the coastline including to Pegwell Bay to the south, from high points such as West Cliff'. The Thanet Local Plan comments on the area (para. 10.95): 'The Thanet coastline and the sea also considerably enhance the value of the District's landscape, and this enhanced value is recognised by its partial designation as part of the Pegwell Bay Special Landscape Area and the former Wantsum Channel Landscape Character Area';
  - Old Pipe Bridge (VP12), where the mast would be very prominent for highly sensitive walkers using the Saxon Shore Way;
  - in and around Richborough Fort (VP13, VP14 and VP15) – the mast would be clearly visible as a backdrop to the monument, contrast with the flat landscape setting, and be a new and very tall element in the centre of the view and of much greater height than other detractors;
  - residential properties on Ebbsfleet Lane and at Sevenscore some 1km from the Proposed Development; and
  - public rights of way within 3km of the Site, reducing to moderate adverse significance at distances up to 6k. This would affect an approximately 5km length of the Saxon Shore Way.
- 2.27 Advice is also received from the Council's landscape officer who identifies moderate adverse and significant impacts from Saxon Shore Way, near Richborough Energy Park (VP1); Richborough Fort (VP3); Old Pipe Bridge (VP12); in and around Richborough Fort (VP13 & VP14); and from the viewing platform at St Peters Church, Sandwich.

- 2.28 Core Strategy Policy DM16 seeks to protect the character of the landscape. Development that would harm the landscape character should only be permitted if it is in accordance with a specific development plan allocation (which the Proposed Development is not); or if design mitigation measures can be taken to reduce impacts to an acceptable level.
- 2.29 Given the significant adverse landscape and visual effects of the mast, which cannot be acceptably reduced or mitigated through design measures, it is considered that the Proposed Development is contrary to Policy DM16 and the Framework including paragraphs 109, 113 and 114 as well as its core planning principles at paragraph 17.

#### Heritage Impacts

- 2.30 The application is accompanied by an assessment of heritage impact. It identifies that although there are no heritage assets within the Site, the Proposed Development will affect the setting of several heritage assets, most notably the Scheduled Monument and Grade I listed building of Richborough Fort/Castle.
- 2.31 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory requirement that the Council as local planning authority pays special regard to the desirability of preserving the setting of a listed building. This duty has been clarified in recent case law – namely *Barnwell Manor Wind Energy Ltd v East Northants District Council & Ors* [2014]; and *Forge Field Society & Ors R v Sevenoaks DC* [2014]. It was found in both rulings that the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 had not been discharged correctly, in that ‘special regard’ to the desirability to preserving the setting of listed buildings had not been given.
- 2.32 In respect of the current application, Members’ attention is drawn to this statutory presumption in favour of preservation of listed buildings and their settings, and that ‘considerable weight and importance’ must be given to the desirability of this. As a result, the Committee needs to consider any predicted harm to designated heritage assets and needs to give any such harm considerable weight in any subsequent planning balance.
- 2.33 Heritage assets that the applicant has scoped into its assessment are all Grade I and Grade II\* listed assets, conservation areas, Scheduled Monuments and Registered Parks and Gardens within 10km of the Site. For assets of medium value, including Grade II listed assets and Scheduled Monuments without upstanding remains, only those within 5km have been scoped in.
- 2.34 These assets include the Scheduled Monument and Grade I listed building of Richborough Fort and Castle, some 1.4km to the south; numerous listed buildings in the countryside within 5km surrounding the Site; many listed buildings, Scheduled Monuments, Registered Park and Garden and conservation area at Sandwich; other clusters of listed buildings and some Scheduled Monuments within Marshborough, Monkton, Minster, Cliffs End and Ramsgate; and conservation areas at Sandwich, Stone Cross, Minster, Monkton, Pegwell Bay and Ramsgate.
- 2.35 The Framework (paragraph 132) requires the impact of the Proposed Development on the significance of designated heritage assets to be considered. Great weight should be given to an asset’s conservation: the more important the asset, the greater the weight should be. Significance can be harmed or lost through development within its setting.

- 2.36 The applicant makes an assessment of the construction and operation impacts of the Proposed Development on the setting the identified heritage assets. The Heritage Statement considers that the only material impact on the significance of any heritage asset is a moderate adverse impact on the setting of Richborough Fort. The applicant explains that although some 'minor adverse' effects are identified on other assets, this is as a result of the application of the EIA matrix, which makes it impossible for there to be less than a 'minor' effect for medium and high value assets, even if the magnitude of the effect is only negligible.
- 2.37 Officers have received consultation advice from Historic England and the archaeology officer at KCC.
- 2.38 Historic England focuses on the significance of Richborough Fort and the effects of the Proposed Development on it. The mast will be clearly visible from Richborough Fort and will be seen in conjunction with the heritage asset in views looking north. The mast would be a substantial new presence that is both nearer and much taller than other existing developments.
- 2.39 Historic England are particularly concerned that the Proposed Development would distract from views within the Fort, which would undermine the sense of enclosure and isolation that is presently created by the walls.
- 2.40 In long views from Richborough Fort north towards the Thanet plateau, across the Wantsum marshes, the Proposed Development would create a new and incongruous addition to the existing scene of open, flat fields. The existing sporadic other masts and groups of industrial and agricultural buildings rise little above the horizon. The Proposed Development would be difficult to ignore, dominating in northward views.
- 2.41 Historic England consider as well that the significant harm to the setting of the Fort would reduce the public benefit that it provides as a visitor attraction.
- 2.42 The response from the archaeology officer provides some further archaeological background to Richborough Fort and an assessment of its setting. It is considered that the Proposed Development has the potential to be very harmful to the setting of Richborough Fort and could affect the ability for visitors to understand its significance. Views across the former Wantsum Channel from the Fort are important in understanding its context; the Proposed Development will be very conspicuous in these views; and its constant presence would be harmful to the visitor's experience of the Fort.
- 2.43 Further comments from the archaeology officer, following further environmental information submitted by the applicant, disagree with the applicant's assessment that the "mast will be perceived as a structure in the distance, part of the larger group of manmade structures near the former power station site". The archaeology officer considers that at some 322m high the mast will be of a magnitude that far exceeds anything else in the local area and will be particularly conspicuous. Whilst there are sporadic masts, pylons and other industrial buildings within view from Richborough Fort, these are lower lying than the Proposed Development and generally protrude little above the horizon. Advice is that the Proposed Development would be harmful to the significance of the Grade I listed building and Scheduled Monument at Richborough.
- 2.44 In the cumulative scenario (taking account of other committed or proposed developments in the surrounding area), the applicant considers that the overall impact on Richborough Fort and other heritage assets will be minor. However, a

more detailed cumulative assessment has not been carried out by the applicant. Officers consider that the cumulative impact on the setting of Richborough Fort would be greater.

- 2.45 To seek to mitigate the impacts of the Proposed Development, the applicant would have offered to English Heritage (who manage Richborough Fort) a financial contribution of £100,000 towards the improvement of visitor facilities at the Fort. However, no detail is provided by the applicant as exactly what would be funded and how any improvements would be delivered in a timely manner that is linked to the Proposed Development.
- 2.46 The Council's heritage officer has considered in more detail the setting of St Peter's Church in Sandwich. It is identified that the Dover District Heritage Strategy defines churches as being of outstanding significance, and notes that such buildings have value in their contribution to the aesthetics of the historic landscape and wider rural environment; it states 'the spires of rural churches can often be seen over long-distances and are recognised and valued local landmarks'. From the viewing platform of St Peter's Church, there are far reaching views to the north towards the Church of Saint Mary in Minster. In this view the Proposed Development would draw the eye and detract from the inter-relationship between St Peter's and Saint Mary. As a result, there would be some harm, within the less than substantial range, to the significance of the setting of these churches.
- 2.47 With regard to the character of the Sandwich Walled Town Conservation Area and St Bart's Conservation Area, the heritage officer advises that the Proposed Development would not cause harm to their significance.
- 2.48 Consideration has also been given to any impact on the numerous grade II listed buildings. In general, the heritage officer advises that the impact is limited because the buildings have a more limited interaction with the surrounding landscape. Even with regard to those buildings on which the Proposed Development would have the greatest impact, although the mast would be visible, there would be no harm to the significance of their setting.
- 2.49 In relation to unidentified archaeological remains, the archaeology officer is satisfied, with a condition to secure the implementation of a programme of archaeology work, in accordance with a written scheme of investigation, that any potential impact can be mitigated.
- 2.50 The harm to Richborough Fort and Castle and the inter-relationship between the churches of St Peter's and Saint Mary must be weighed against the public benefits of the Proposed Development, as above and as identified elsewhere, as part of the balancing exercise required by Paragraph 134. That planning balance is carried out at the end of this report.

#### Ecology and Ornithological Impacts

- 2.51 Paragraph 109 of the Framework highlights that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests and soils; recognising wider benefits of ecosystem services; minimising impacts on biodiversity and providing net gains in biodiversity where possible. Furthermore, Paragraph 118 seeks to conserve and enhance biodiversity by ensuring that the development does not result in the loss or deterioration of irreplaceable habitats, including ancient woodland and equally seek to protect wildlife sites.

- 2.52 The Site is in close proximity to the Thanet Coast to Sandwich Bay SPA and SAC, which is also listed as the Thanet Coast and Sandwich Bay Ramsar site and notified at a national level as the Sandwich Bay to Hacklinge Marshes SSSI.
- 2.53 In relation to these sites of international and national importance, Natural England advise, subject to the fitting of bird deflectors, that the Proposed Development is unlikely to significantly affect them. A monitoring strategy to ensure that the applicant's conclusions are realised is recommended by Natural England.
- 2.54 A Habitat Regulations Assessment carried out by the Council, under the Conservation of Habitats and Species Regulations 2010 (as amended) considers that there is no likelihood of a significant effect from the Proposed Development on European site above and that no further assessment is necessary.
- 2.55 The Site lies within the Ash Level & South Richborough Pasture Local Wildlife Site, which is a large complex of grazing marsh.
- 2.56 Comments from the Council's ecology officer have been received, who has considered any more localised ecological impacts of the Proposed Development. The original Environmental Statement assessed the impact of the mast and guys through a detailed ecological assessment. This concluded, subject to mitigation in the form of an invasive species management plan (in respect of *Crassula helmsii* that occurs on the Site), construction and demolition environmental management plans, protection of nesting birds, and future monitoring of birds and bats, that the Proposed Development will not result in any significant effects.
- 2.57 In the Environmental Statement addendum, which considers further the temporary construction activities and access route to the highway, the assessment identifies potential for Water Vole. As advised by the ecology officer, given that any effects on Water Vole are bound to be limited, by virtue of the small amount of ditch habitat involved, and then only during the construction and decommissioning periods, it is considered proportionate in this instance to condition a detailed survey and mitigation scheme (if necessary).
- 2.58 It is identified that the ecological assessment does not conclude a survey of the southern section of the access route across the ex-landfill site. Advice from the ecology officer is that this should be addressed for completeness; however, in the circumstances, it is considered that the matter could be dealt with by condition in the event that the Proposed Development was to be considered acceptable in all other respects.
- 2.59 Kent Wildlife Trust has objected to the Proposed Development on grounds that there is not justification for the use of the Site, that further assessment on the ditches across the Site are needed, and that previous arguments that part of the scheme is permitted development are unfounded. However, it is considered that these matters are adequately addressed by the applicant, including in the revised Environmental Statement addendum; and it is noted that Kent Wildlife Trust considers that the operation of the mast will have negligible impact.

#### Highways and Transport

- 2.60 The mast for construction purposes would be accessed from the highway either via an access from the A256, through a recycling centre, across Bailey Bridge and a

temporary length of track; or via a new bridge, to the east over the River Stour, which forms part of the National Grid's Richborough Connection Project (RCP).

- 2.61 Operational access would be via the existing Bailey Bridge and across the fields with a 4x4 vehicle, without the need for a formal access track.
- 2.62 The highways officer at KCC raises no objections to the Proposed Development. The proposals generate very little traffic for operational purposes; and construction traffic can be managed through a Construction Management Plan, which can be secured by condition.
- 2.63 There is a holding objection from National Grid that the eastern guy anchor point would impact the access roads required for the construction of the RCP and the access route of the Proposed Development interferes with that for the RCP. Although National Grid advises that it is committed to ensure that both projects can be built and operated in parallel, until this matter is addressed by the applicant it recommended that objection for these reasons be raised by the Council.

#### Aviation

- 2.64 The Environmental Statement considers the potential impact of the Proposed Development on aerodromes. It concludes that no aerodrome is sufficiently close to the Site to be affected. This is with the position that Manston Airport is no longer an operational aerodrome.
- 2.65 Further assessment work on behalf of the applicant (Manston Airport Impact Assessment – Wind Business Support (April 2016)) considers the scenario of Manston Airport reopening as an aerodrome. With regard to previous operational procedures at Manston Airport, the applicant considers that these would have remained unaltered without modification with the Proposed Development. It remains possible to design procedures to deliberately avoid sectors of airspace for reasons including avoiding obstacles.
- 2.66 The application asserts that the constraint posed by the Proposed Development on potential manoeuvring (circling) procedures, would not affect the usability of Manston Airport or its licensing; and overall it would not constrain its future use by any potential users.
- 2.67 Detailed representations<sup>1</sup> has been received on behalf of Riveroak Investment Corp ("Riveroak"), who are in the process of drafting an application for Development Consent Order (DCO), which encompasses the compulsory purchase of the airport, to reopen Manston Airport as an international hub for air freight, passenger travel and aircraft engineering services. Riveroak are aiming to submit the DCO application in summer 2017.
- 2.68 Riveroak have assessed the potential impact of the Proposed Development (should Manston reopen and be licensed) and raise objection.
- 2.69 Key conclusions of the Riveroak's Manston Airport Safeguarding Assessment (April 2016) are that:

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<sup>1</sup> Manston Airport Safeguarding Assessment – Effect of Proposed Communication Masts to Operations conducted at a reopened Manston Airport (April 2016)  
Manston Airport Safeguarding Assessment – Review of Wind Business Support Report (September 2016)

- the masts could adversely impact plans for future licensed aerodrome status at Manson;
  - if the airport was operational, the masts would raise safety concerns;
  - there would be an impact on Instrument Flight Rules operations, although not in itself ground for objection;
  - Visual Flight Rules operations would need to take account of the masts;
  - if air space to the north of the runway had to be used, this is over more populated areas; and
  - the impact of the mast on Instrument Flight Rules operations and Visual Flight Rules operations would undermine the case for an aerodrome traffic zone.
- 2.70 Further representations by Riveroak on the Manston Airport Impact Assessment – Wind Business Support (April 2016) include comments that:
- the obstacle limitation surface is established to ensure safe operations, the encroachment cannot be fully mitigated and could undermine a future CAA Licence. This would have commercial implications;
  - Riveroak is fully committed to revive Manston Airport as a successful aviation hub – such interest is not speculative;
  - comments from NATS En-route relate only to en-route aircraft and not to the airport level;
  - a smaller existing mast closer to Manston has no relevance;
  - the previous cooling towers do not set a relevant precedent;
  - visual manoeuvring procedures would need to be restricted to flying on the north side of the airport, over more densely populated areas;
  - circling can be part of training practice;
  - lateral changes to visual circuit would introduce other safety issues;
  - the view of an independent pylon is that should an aircraft fly into the mast, lives would be lost;
  - the guy lines are even less visible; and
  - the mast undermines the case for establishment of an aerodrome traffic zone.
- 2.71 Clearly there is variance between the position of the applicant and those of Riveroak. In considering this further, regard is had to the consultation response of the CAA, who considers that:
- should Manston seek to reopen, the assessment work would need to be made in the context of the current airspace environment and any changes that may have happened since Manston closed;
  - it is likely that the masts will not have any impact on straight in procedures designed for arriving or departing aircraft;
  - there is likely to be an impact on the design of circuit traffic patterns; and
  - the masts may hinder or limit operations in some areas, but these could only be quantified by a future operator.
- 2.72 The CAA agree with Riveroak that there are a large number of relevant variables that would need to be balanced when considering the risks to aviation.
- 2.73 In conclusion, the CAA sum up that the masts will have a degree of impact of potential future operations; and the ability of the aerodrome operator to mitigate these impacts and safeguard operations is key. However, there is no current operator and the likely prospect of Manston Airport reopening is unknown.
- 2.74 Whilst Riveroak have set out their plans to submit a DCO to reopen the airport, officers are also aware of other plans for Manston Airport. There is a current

planning application (LO/TH/16/0550) being considered by Thanet District Council for a comprehensive mixed use redevelopment of the site, which does not include any operational aerodrome function, which DDC objected to.

- 2.75 The consultation response from Thanet District Council (dated 29 July 2016) is that the Proposed Development should not prejudice the ability for Thanet District Council to undertake a proper assessment of the airport's commercial potential. Thanet District Council's emerging Local Plan policy (SP05) for the former Manston Airport allocates it for a mixed use settlement of at least 3,000 new dwellings and up to 85,000sqm of employment and leisure floorspace.
- 2.76 However, a more recent report commissioned by Thanet District Council (Commercial Viability of Manston Airport (September 2016)) concludes that airport operations at Manston are very unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031.
- 2.77 As such, given the current status of Manston airport, officers would not wish to object to the Proposed Development in connection with its impact upon potential future operations. Whilst it appears that the mast could have some impact on how a future airport may need to operate, such impacts appear to not render any future airport use impossible
- 2.78 Dover District Council's position on Manston Airport (under a motion passed at Full Council in July 2014) is noted: That it supports the campaign to retain Manston as an operational airport, recognising the role and place it can have in the UK aviation industry, making the better use of regional capacity in accordance with the views of the South East Local Enterprise Partnership, while making a significant contribution as one of the strategic priorities for regeneration of the East Kent area.
- 2.79 The applicant has suggested (letter dated 11/07/16) an obligation for the mast to be reduced in height to such a level that is required by the CAA in order to issue a future licence for Manston Airport. Mindful of Riveroak's representations and Dover District Council's position, such an obligation in principle is supported by officers.
- 2.80 However, the obligation is not considered necessary, for reasons above, to make the development acceptable in planning terms. Therefore such an obligation would hold no weight in the planning balance in the determination of the application and the absence of such an obligation does not comprise reason for refusal.

#### Flood Risk and Drainage

- 2.81 Most of the Site (some 90%) is located within Flood Zone 2, with a small area in Flood Zone 3. In Flood Zone 2 there is a probability of river flooding between 0.1% and 1% each year; within Flood Zone 3, there is a greater than 1% annual probability of river flooding. The Site is also at risk from tidal flooding from inundation from the River Stour.
- 2.82 Paragraph 100 of the Framework outlines that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (as informed by a sequential test), but where development is necessary, making it safe without increasing flood risk elsewhere.
- 2.83 Paragraph 103 of the NPPF recommends for developments in areas at risk of flooding to be informed by a site-specific flood risk assessment following the sequential test, and if required the exception test.

- 2.84 With regard to the detailed site selection process that the applicant has undertaken, as detailed in this report, it is considered that the sequential test is satisfied.
- 2.85 Whether or not the Proposed Development is 'essential infrastructure' is not agreed. But if it were to be treated as this for the purposes of a flood risk assessment, an exceptions test is not required.
- 2.86 If it were to be considered otherwise, it would need to be demonstrated that the development provides wider sustainability benefits that outweigh flood risk and it would be safe for its lifetime and not increase flood risk elsewhere. However, given that the Environment Agency confirms that the Proposed Development does not create or exacerbate flood risk on or off site, an exceptions test would be passed because there would be no flood risk to weigh against any benefit (no matter how small the benefit).
- 2.87 A sustainable drainage system could be secured as part of the Proposed Development by condition.

#### Other Matters

- 2.88 The Proposed Development would include fixed plant, which is considered to be a sufficient distance from residential properties any noise to not be a nuisance, as can be secured by condition. Noise from construction works can be minimised in line with best practice.
- 2.89 Under application DOV/16/00524, the Council's ecology officer suggests that bird deflectors that make a noise in the wind are preferred for ecology reasons. If these were to be used, future assessment, as secured by condition, would be needed. Otherwise a non-audible deflector should be used.
- 2.90 The Council's environmental protection officer has confirmed that the equipment to be installed on the mast would be considered safe according to International Commission on Non Ionising Radiation (ICNIRP) guidelines. An updated ICNIRP declaration was received on 7th July 2016 due to an administrative error on the first declaration. The Framework (paragraph 46) is clear that where such equipment meets these standards, public health is safeguarded.
- 2.91 A report on the collapse risk of the mast has been submitted by the applicant. A study of potential failure scenarios shows that the mast would collapse with an area of debris smaller than half its height, due to the position and tension of the guys. The applicant concludes that this would not impact either the railway line to the west or the route of the future planned power line of the Richborough Connection Project.
- 2.92 In terms of ground conditions, the Council's environmental protection officer notes the report submitted by the applicant and recommends that any risk of contamination can be addressed by condition. The risk of any unexploded ordnance can also be addressed through further surveys secured by condition.
- 2.93 The easternmost guy stay is on the path of the definitive line of public right of way EE42, which is objected to by the Public Rights of Way and Access Service (PROWAS) at KCC. However, the general route of users of the footpath is closer to the River Stour and would avoid the proposed stay. Nevertheless, it is necessary that the public right of way is formally diverted to that of its common route. This

would ensure, in the event that the legal route of the footpath was ever enforced, it would not be blocked by the Proposed Development.

- 2.94 PROWAS have no in principle objection to the proposed diversion, as suggested by the applicant. However, whilst the application is seeking such diversion outside of the planning process, it is considered that this process should be linked to the Proposed Development (either through condition or s.106 obligation) so that the unobstructed legal footpath route is secured before its commencement.

#### Purported Benefits

- 2.95 The Proposed Development is to contribute to the provision of a high speed communications network that supports the operation and growth of the technical and financial services industry. The applicant states that this industry accounts for approximately 10% of the UK's gross domestic product (GDP). Financial technology is said by the applicant to support 61,000 employees and has accounted for approximately £6.6 billion in revenue and £524 million in investment for the UK in 2015.
- 2.96 The applicant considers that to ensure the competitiveness of the UK and its future economic growth potential in this sector, it is crucial that investment is made to allow the UK to respond to competition from elsewhere and maintain its leading market position. The applicant considers that the Proposed Development would achieve this.
- 2.97 Reference is made by the applicant to the need to minimise economic uncertainties following the outcome of the European Union referendum; and to the recently announced National Productivity Investment Fund, which is to target digital communications (amongst other things).
- 2.98 However, despite these claims and questions by officers, when meeting the applicant, as to whether there is any further information, the applicant has not quantified the extent of any such benefit from the Proposed Development. No assessment of additional jobs across the UK or tax revenue is offered. Neither has the applicant set out whether or not there would be a negative effect without the Proposed Development. Indeed, the applicant themselves considers the regional and national economic benefit to be minor and not significant.
- 2.99 During construction, the Environmental Statement says there would be some direct employment or between five and ten jobs (although in a letter dated 02/12/16, the applicant claims this is up to 24 job). However, this would be limited to a relatively short period of eight to ten months. Some construction work would be reliant on specialist construction firms who are likely to want to use workers experienced in this type of construction, rather than recruiting widely within Dover District. Overall there would be a negligible economic impact.
- 2.100 Other construction benefits are that the applicant would offer students at the Sandwich Technology School opportunity, as part of their studies (the school's BTEC construction training programme), to observe how the mast is constructed and participate in some construction tasks. This would be interesting and useful for the students involved, but is temporary and limited in participation. It is therefore no more than a minor benefit.
- 2.101 Once operational, the applicant considers any benefits to the local economy to be negligible.

- 2.102 The Proposed Development includes equipment that would allow the delivery of wireless broadband. The applicant states, in theory, that this could be across an area shown by the Zone of Theoretical Visibility provided as part of the HLVA. However, it is noted that the broadband equipment would be installed at a height of approximately 100m, only a third of the way up its total height. No information has been provided to show a more detailed assessment of coverage; the number of households and businesses that could receive a signal; the extent to which these are dissatisfied with their existing internet provision; and the extent to which the new broadband provision would make a material difference. The potential to have more choice in the broadband market is noted, but without quantifying the extent of any coverage and benefit, by itself this carries little weight.
- 2.103 Regard is also had to comments from the Broadband Project Director at KCC: We are concerned that the application states that 'the proposed wireless technology will remove the requirement for traditional broadband to be delivered by a cable'. This is not the case. Whilst fixed wireless broadband services provide a valuable service in areas that are unable to receive a viable broadband service from a wired broadband network, wired, fibre-based technologies currently offer greater speeds and are not so affected by bad weather or capacity issues.
- 2.104 The Proposed Development would also include dedicated antennae for use by Dover Community Radio and Academy FM. This may increase the broadcast coverage of both stations, but further information as to what the extent of this would be and how many additional homes and business would receive coverage has not been provided.
- 2.105 Moreover, there is no means to guarantee that the broadband service and/or improved radio broadcast coverage would be delivered. The height of the mast and its principal function is not dependant on this. It would not be reasonable to require, either through condition or s.106 obligation, for the broadband and/or radio broadcasting to be provided and maintained because they are not necessary to make the mast acceptable in planning terms, with regard to R122 of the Community Infrastructure Levy Regulations 2010 (as amended) ("CIL Regulations").
- 2.106 There would be some private benefits to Vfast Internet Limited and the radio station, who would take advantage of the applicant's offer to pay for the equipment and provide space for free on the mast. However, for reasons above, any public benefits are unsubstantiated, cannot be secured and can only carry limited weight.
- 2.107 An offer to provide broadband internet at five identified community centres and halls, together with new computers, printers and IT training (including a permanent employee at Age Concern Sandwich to provide courses for older people) is made by the applicant.
- 2.108 Whilst this may be welcomed by the beneficiaries, it is unclear whether or not they already have broadband internet and access to computers and, therefore, as to the extent of benefit that would be realised. It is also considered that this would not be necessary to make the Proposed Development acceptable and therefore would fail this test of R122 of the CIL Regulations.
- 2.109 The applicant states that they would provide funding to two local school (Roger Manwood School and Sandwich Technology School) for new IT and media equipment, as well as a radio control centre and production suite to allow the pupils to broadcast their own programmes. An internet connection would be provided to Great Oaks School. Again, whilst such provision would be welcome by the

beneficiaries, it is neither necessary to make the Proposed Development, directly related to it nor reasonably related in scale and kind.

- 2.110 The applicant has officered a financial contribution to enhance the Saxon Shore Way through an updated guide book (£20,000), wayfinding signs (£5,000) and information boards (£5,000). Whilst these would be of some use to users of the footpath, any benefit is considered to be minor one.
- 2.111 The applicant considers that funding to Richborough Fort (£100,000) and funding and broadband provision to the Spitfire and Hurricane Museum (unspecified amount) would result in minor beneficial effect on tourism. However, notwithstanding that such contributions would not satisfy the CIL Regulations, the applicant does not balance this against the visual impacts of the Proposed Development in negatively effecting tourism in the area. When such visual impacts are considered, it is considered that the impact on tourism would be, at best, negligible adverse.
- 2.112 The applicant advises that they would set up an Employment, Community and Heritage Benefit Fund in association with the Proposed Development. The Fund, with a minimum annual guaranteed value of £100,000, would be distributed among local community organisations, halls and venues, education providers, and other centres, to include education and training projects. If rental income was generated by the mast from other equipment being located on it, this could be shared through an increase to the fund. The applicant proposes that this would be secured through a s.106 agreement, which would make provision for an administrative body to be set up.
- 2.113 However, this Benefit Fund is not a material planning consideration and holds no weight in favour of the Proposed Development. It would not meet the statutory tests of R122 of the CIL Regulations 2010 (as amended), in that it is not necessary to make the Proposed Development acceptable (it would not address the planning harm identified); not directly related to the Proposed Development (there is no way to know exactly what the fund would be spent on); and therefore is not fairly and reasonably related in scale and kind to the Proposed Development. In this, regard is also had, in so far as it is applicable, to 'Community Benefits from Onshore Wind Developments: Best Practice Guidance for England' (October 2014).
- 2.114 Members must not take the Benefit Fund into account in weighing the balance of whether or not planning permission should be granted.

#### Cumulative effects and mast sharing

- 2.115 The applicant has undertaken an assessment of the effects of the Proposed Development together with the following other proposed or committed developments as a cumulative development scenario:
- i. the proposed 305m high communications mast at Kings End Farm (DOV/16/00044);
  - ii. Richborough Connection Project - electricity transmission development including substations and pylons connection between Richborough and Canterbury;
  - iii. Nemo Interconnector – an underground high voltage cable, with above ground works including converter station building (max height 30.8m), substation building (max height 15m), outdoor plant (max height 12.7m), converter station (max height 11.8m) construction compound, security fencing, access road and hard landscaping.

- iv. Peaking plant facility at the former Richborough Power Station (DOV/12/01017) – electricity infrastructure plant;
- v. Solar Farm on the Site (DOV/13/00794) – solar panels and associated infrastructure;
- vi. Wind Turbine at the former Richborough Power Station (F/TH/15/1245) – 67m high windturbine;
- vii. Estover CHP Biomass Plant at Discovery Park (DOV/13/00701) – combined heat and power plant and associated fuel storage;
- viii. Redevelopment of Discovery Park (DOV/14/00058) – redevelopment and change of use for a mix of employment, energy, retail, hotel, non-residential institution and residential uses;
- ix. Industrial units at Discovery Park (DOV/15/00430 & DOV/13/00783) – B2 use industrial unit and foodstore; and
- x. DOV/15/00588: Land South of Stonar Cut, Ramsgate Road. Waste management for the sorting of skips

2.116 The applicant considers that the cumulative scheme would not change the significance of the predicted residual effects associated with the Proposed Development; and that no significant adverse cumulative effects have been identified. Officers disagree with the applicant on this. With the main effects being landscape, visual and heritage impacts, these would be materially greater and more adverse with the accumulation of the two masts.

2.117 The Framework (paragraph 43) is clear that the number of communication masts should be kept to a minimum consistent with the efficient operation of the network. The applicant, in response to the question of potential mast sharing, is supportive of the installation of additional data transfer equipment, including from other firms: there would be no need for other structures to be built in the area.

2.118 However, there remain two planning applications and two masts. Given that the construction of two masts is considered to be significantly more harmful than a single mast, it is considered that objection to both masts should be made on the basis that the number of masts has not been kept to a minimum. If the position of either applicant is correct, there should be the need for only one mast and one planning application.

#### Planning Balance

2.119 For reasons that are set out above, it is considered that there would be harm to the significance of designated heritage assets, namely the Scheduled Monument and Grade I listed building of Richborough Fort and Castle, and St Peter's Church in Sandwich and the Church of Saint Mary in Minster (both Grade I listed). It is established that any harm to the significance of a heritage asset should be given considerable importance and great weight. Under paragraph 132 of the Framework, the more important the asset, the greater the weight should be – in this instance the heritage assets are of the highest significance; and the harm to them must be clearly and convincingly justified.

2.120 Against this harm, which is less than substantial, the public benefits of the proposal, including its optimum viable use, must be considered.

2.121 The main purpose of the Proposed Development is to provide a high speed communications network within the context of the technical and financial services industry in the UK. Whilst the applicant has asserted some minor benefit to the

national economy, no specific public economic benefits, such as additional jobs or tax revenue, have been identified.

- 2.122 Local economic benefits are negligible.
- 2.123 Other local benefits, such as training/education opportunities that directly relate to the mast, and improvements to signage and information for the Saxon Shore Way (as a degree of mitigation) are again minor. A contribution to improve facilities at Richborough Fort is offered, but even if such improvements could be delivered in a timely manner, they would do little to balance against the greater harm of the Proposed Development.
- 2.124 The Proposed Development includes secondary functions of broadband and radio broadcast equipment, but because any public benefits from them are unsubstantiated and cannot be secured, they can only carry limited weight.
- 2.125 Although a range of other incentives are offered, including an Employment, Community and Heritage Benefit Fund, these do not satisfy the statutory tests of R122 of the CIL Regulations and therefore must carry no weight in the planning balance.
- 2.126 Insufficient public benefit has not been evidenced or justified that could overcome the Council's legal duty to have special regard to the desirability of preserving designated heritage assets, particularly bearing in mind the Grade I or scheduled monument status of them.
- 2.127 Weighing further against the Proposed Development are the highly significant adverse effects identified on the landscape character of Wantsum Channel/Ash Marshes/Richborough Fort and Sandwich Bay areas; and from representative viewpoints and receptor groups including Saxon Shore Way and Richborough Fort, residential properties and other public rights of way. These effects are significant in the planning balance.
- 2.128 For these reasons, and as set out in this report as a whole, the public benefits of the Proposed Development, on its own merits, even with significant weight attached to the applicant's asserted minor economic benefits, do not outweigh the harm to the heritage, landscape and appearance of the area.
- 2.129 Regard is had to the site selection process, as to whether the location of the mast represents its optimum viable position. But even if this were to be the case, this would not change the balance in favour of the scheme.
- 2.130 Accordingly, it considered that planning permission should be refused for the reasons below.

**g) Recommendation**

- I. Planning permission be REFUSED for reasons of:
  - i) The proposed mast by reason of its height and general scale; located within the setting of Richborough Fort Scheduled Monument and Richborough Castle Grade I listed building; and its impact on the inter-relationship between St Peter's Church in Sandwich and the Church of Saint Mary in Minster (both Grade I listed); would be materially harmful to the significance of the setting of these heritage assets, which are of

the highest importance. In this, regard is had to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special regard is had to the desirability of preserving the setting of a listed building. The proposed development is contrary to Section 12 of the National Planning Policy Framework (2012), including paragraphs 131, 132 and 134. The harm in relation to these heritage assets is considered to be less than substantial with regard to paragraph 134 of the Framework, but this harm is not outweighed by the public benefits of the proposal.

- ii) The impact of the proposed mast would significantly adversely affect and be harmful to the landscape character including Ash Level, Richborough Marshes, Richborough Fort and Sandwich Bay; and from particular representative viewpoints and receptors, including Saxon Shore Way, Richborough Fort, residential properties and other public rights of way, there would be further significant adverse effects and harm. Accordingly, the proposed development is contrary to Policy DM16 of the Dover District Core Strategy (adopted February 2010); Saved Policy CO5 of the Dover District Local Plan (adopted 2002); and the National Planning Policy Framework (2012), including paragraphs 109, 113 and 114, as well as the core planning principles at paragraph 17.
- iii) In the absence of agreement from National Grid that the proposed mast would not unacceptably impact access routes required for the construction of the Richborough Connection Project (a proposed nationally important infrastructure development of overhead electricity lines), it cannot be concluded that the mast would not prejudice the delivery of that development. As such, the access arrangements of the mast development are contrary to Policy CP6 and DM12 of the Dover District Core Strategy (adopted February 2010) and paragraph 32 of the National Planning Policy Framework (2012).
- iv) Together, the proposed mast and that proposed under application DOV/16/00524, would result in materially greater adverse impacts on the heritage significance, landscape character and appearance of the area. Such a proliferation of structures, especially as each applicant considers that their mast is capable of accommodating the other's equipment, is contrary to paragraph 43 of the National Planning Policy Framework (2012) which requires that the number of telecommunications masts and the sites for such installations be kept to a minimum, as consistent with the operation of the network. However, when considered by itself, on its own merits (for the reasons set out at 1, 2 and 3 above), the proposed mast is not acceptable in planning terms.

Case Officer

Andrew Somerville



SOUTH EAST OFFICE

Mrs . Runacre  
Dover District Council  
Honeywood Close, White Cliffs Business Park  
Whitfield  
DOVER  
Kent  
CT16 3PJ

Direct Dial: 01483 252032

Our ref: P00496554

Dear Mrs Runacre

**Arrangements for Handling Heritage Applications Direction 2015 & T&CP (Development Management Procedure) (England) Order 2015**

**SITE AT FORMER RICHBOROUGH POWER STATION, RAMSGATE ROAD,  
SANDWICH, CT13 9NL  
Application No 16/00044**

Thank you for your letter of 22 January 2016 notifying Historic England of the above application.

**Summary**

We think that the proposed development would cause significant harm to the ability to appreciate the heritage significance of the Richborough Fort scheduled monument, though this is not substantial harm in the terms of the NPPF. For a clear and convincing justification for the harm to be made it would be necessary to show that other less harmful designs and locations are not possible and that the unavoidable harm is outweighed by the public benefits of the scheme. Therefore, we recommend that the Council should weigh the harm that this this scheme will cause against any public benefits that the scheme might bring, as required by paragraph 134 of the National Planning Policy Framework.

**Historic England Advice**

*Significance*

The proposed development site is close to, and inter-visible with, the Roman site at Richborough, which is a scheduled monument. Richbrough was the site at which the Roman invasion force landed in AD 43. The invasion camp was used for a period of less than ten years before being levelled to make way for the construction of a military and naval supply base. This helped store and distribute the supplies needed by the Roman forces during their rapid conquest of southern Britain. The supply base developed into a heavily defended fort, town and harbour during the first to third centuries AD. The fort is of a type known as a Saxon Shore Fort, constructed to provide protection against the sea-borne Saxon raiders who threatened the south-east



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coast. Its most distinctive features are its massive defensive stone walls and defensive ditches. The town and port is featured on many contemporary road maps and itineraries. Watling Street, the main Roman road from London and Canterbury, begins outside the gate of Richborough Fort.

The fort fell into disuse during the later fifth and sixth centuries AD but in later years, a small chapel of pilgrimage was constructed and dedicated to St Augustine, who is believed to have landed at nearby Ebbsfleet in c.597 AD and is credited with reintroducing Christianity into pagan Saxon England.

Richborough Fort illustrates the strategic importance of the promontory on which it stands. The promontory originally took the form of a small island situated near the south eastern end of the Wantsum Channel, a broad stretch of sea which separated the Isle of Thanet from the Kent mainland until at least the Late Roman period. It lay alongside a natural harbour providing a convenient landing place only about 45km from mainland Europe. The use of the promontory throughout the Roman period reflects its strategic importance to attacking and occupying forces. The flat plain of the former Wantsum marshes can, with the aid of the interpretation provided on site, be understood as remains of the Wantsum channel. The scale of the walls helps visitors to appreciate the importance of the place in Roman Britain and the relative isolation and enclosure facilitates evocation of the antiquity of the place.

*Impact*

The proposed mast will be clearly visible from the Fort, and will be seen in conjunction with the monument in views looking north. It might appear to be slender and lightweight but it would be a substantial new presence that is both nearer and much taller than existing developments within the setting of the fort.

We are particularly concerned that the proximity and height of the proposed mast would be conspicuous in, and distracting from, views within the fort. This would undermine the sense of enclosure and isolation that is presently created by the walls, which would harm the heritage significance of the fort.

We note that Richborough fort is an important visitor attraction managed by English Heritage. Many people visit the fort to explore and understand the place and experience its monumental character, which is a public benefit. In altering this experience the development would cause some harm to public benefit.

In long views from the fort, its relationships to the former Wantsum channel and the rising edge of the Thanet plateau (which help promote understanding of the history of the fort and the wider area), the mast would create a new and incongruous addition to the existing scene of open, flat fields against a backdrop of sporadic masts and groups of industrial and agricultural buildings that rise little above the horizon. We think that the quality of views will be harmed by the scale of the mast, which would be much



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taller and closer than existing structures. Views would not be obstructed over a wide segment of the vista - wide and long views over mostly open flat countryside to the cliff in the distance would still be available to a great extent - but the presence of the mast would be difficult to ignore and is likely to be dominating in most northward views.

*Policy*

Under the NPPF it is a core planning principle to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations (para.17 NPPF). When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. No other planning concern is given a greater sense of importance in the NPPF.

Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification (para.132 NPPF). The onus is therefore on you to rigorously test the necessity of any harmful works.

Any harm or loss should require clear and convincing justification. An application should demonstrate that all less harmful alternatives have been considered. If a proposal cannot be amended to avoid all harm, and the harm is less than substantial, this can be weighed against the public benefits of the proposal (para.132, NPPF).

*Position*

We think that there would be significant harm to the ability to appreciate the heritage significance of Richborough Fort and harm to the public benefit that it provides as a heritage attraction, though this is not substantial harm in the terms of the NPPF. For a clear and convincing justification for the harm to be made it would be necessary to show that other less harmful designs and locations are not possible and that the unavoidable harm is outweighed by the public benefits of the scheme. We acknowledge that there might be public benefits of such a scheme but we do not have the expertise to judge them.

**Recommendation**

We recommend that the Council should weigh the significant degree of harm that this scheme will cause to the Richborough Fort scheduled monument, and any other harmful effects, against any public benefits that the scheme might bring, as required by paragraph 134 of the NPPF.

Please contact me if we can be of further assistance. We would be grateful to receive a copy of the decision notice in due course. This will help us to monitor actions related to changes to historic places.





Historic England

SOUTH EAST OFFICE

Yours sincerely

**Paul Roberts MCIfA**

Inspector of Ancient Monuments

E-mail: [Paul.roberts@HistoricEngland.org.uk](mailto:Paul.roberts@HistoricEngland.org.uk)

cc Wendy Rogers, Heritage Conservation Team, Kent County Council

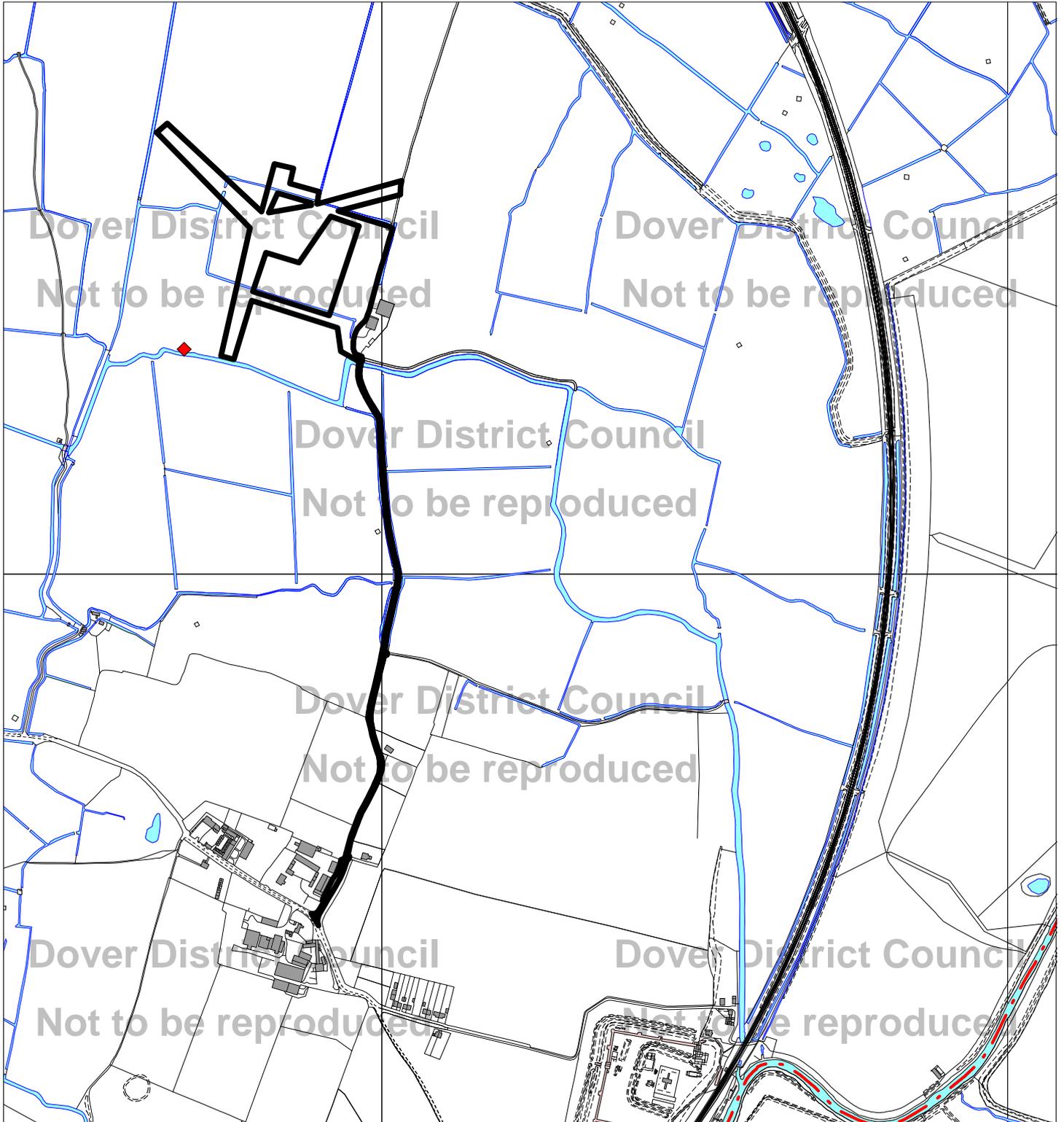


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**Not to scale**

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**Note:** This plan is provided for purposes of site identification only.

**Application: DOV/16/00524**

**Land to the North of Kings End Farm**

**Richborough**

**Sandwich**

**CT13 9JH**

**TR31876146**



- a) **DOV/16/00524 - Erection of a 305-metre high/2.5-metre wide guyed communication mast (with 5 no. 9-metre wide anti-twist frames at intervals above 140 metres) with 6 no. 3.7-metre diameter dish antenna, 206-square metre base compound enclosing associated equipment cabins and electric meter cabinets up to 2.5-metres in height (4.2 metres above ground level), 9 no. guy stay compounds, stone access track, hard and soft landscaping and associated works - Land to the North of Kings End Farm, Richborough, Sandwich**

**Reason for report:** Number of contrary views

b) **Summary of Recommendation**

That planning permission be refused.

c) **Planning Policy and Guidance**

Legislation

The combined effect of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) is that planning applications must be determined in accordance with the statutory development plan unless material considerations indicates otherwise.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses.

Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) applies in the event that planning permission is granted and requires that a planning obligation (under s.106 of Town and Country Planning Act 1990) may only constitute a reason for granting planning permission for the development if the obligation is (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.

Dover District Core Strategy (Adopted February 2010)

The stated aim of the Core Strategy is to regenerate the District so that economically and socially it out performs the region. At Sandwich the strategy seeks to support the town's tourism and leisure function. There is a general priority on protecting the qualities of the built and natural environments.

Specific objectives of the Core Strategy are to maintain and enhance the District's natural environment inheritance; that the intrinsic quality of the historic environment is protected and enhanced.; and that the infrastructure needs to support the high growth strategy are delivered.

Policy CP6 identifies the importance of the provision of infrastructure to meet the demands of development. In determining infrastructure requirements, it should first be considered whether existing infrastructure can be used.

Policy CP7 seeks to protect and enhance the existing network of green infrastructure. The integrity of the existing network of green infrastructure will be protected and enhanced.

Policy DM1 restricts development on land outside the urban boundaries and rural settlements unless it functionally requires such a location.

Policy DM12 relates to the access arrangements of development proposals.

Policy DM15 seeks to protect the character and appearance of the countryside. Development will only be permitted under specific circumstances.

Policy DM16 addresses landscape character – development that would harm the character of the landscape will only be permitted if its impacts can be reduced or mitigated to an acceptable level.

#### Dover District Local Plan (Adopted 2002) - Saved Policies

Policy C05 seeks to conserve, protect and enhance undeveloped or heritage coasts.

Policy ER6 seeks to ensure that proposals incorporate appropriate avoidance and mitigation measures against light pollution.

#### Dover District Land Allocations Local Plan (Adopted January 2015) (“LALP”)

The LALP confirms that the conservation and enhancement of the landscape character remains an important policy objective as set out in the Core Strategy.

The LALP should be read in conjunction with the Adopted Core Strategy and Dover District Local Plan (saved policies). The LALP recognises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. The value and significance of heritage assets is included in the LALP as specific reference is made to the Dover District Heritage Strategy (2013).

#### Kent County Council Minerals and Waste Local Plan 2013 - 2030 (adopted 2016)

Policy CSM11 states that planning permission will be granted at suitable locations for drilling operations associated with the prospecting for underground limestone resources in East Kent. However, the Local Plan clarifies that the surface working area of any an East Kent limestone mine is not identified for safeguarding. This is because there has been no advancement in the mine's development since the identification of this resource in the 1993 Minerals Subject Plan. There is no certainty where the built footprint for the surface aggregate processing facility is likely to be situated (if it is ever developed).

#### National Planning Policy Framework (“the Framework”)

At paragraph 7, the Framework states that there are three dimensions to sustainable development – an economic role, a social role and an environmental role. These roles (Framework paragraph 8) cannot be undertaken in isolation because they are mutually dependent.

Relevant core planning principles of the Framework that should underpin decision making include:

- proactively drive and support sustainable economic development to deliver infrastructure (amongst other types of development) that the country needs;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- take account of the different roles and character of different areas; recognise the intrinsic character and beauty of the countryside; and supporting thriving rural communities within it;
- encourage the reuse of existing resources;
- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- encourage multiple benefits from the use of land in urban and rural area;
- conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;
- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

Paragraphs 18 to 22 address sustainable economic growth, including that local planning authorities should plan proactively to meet the development needs of businesses.

Paragraph 42 recognises that advanced, high quality communications infrastructure is essential for sustainable economic growth and that it plays a vital role in enhancing the provision of local community facilities and services.

Paragraph 43 identifies that whilst the local planning authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband, they should aim to keep the numbers of radio and telecommunications masts and the sites for such installations to be a minimum consistent with the efficient operation of the network. The use of existing masts, buildings and other structures should be used unless the need for a new site has been justified.

Paragraph 45 requires that applications for telecommunications be supported by evidence to support the development, including the outcome of consultations; that the use of an existing building, mast or other structure has been explored before a new mast is proposed; and that International Commission on non-ionising radiation protection guidelines are met.

Paragraph 46 stresses that that local planning authorities must determine applications on planning grounds and should not seek to prevent competition between different operations, question the need for the telecommunications system, or determine health safeguards if the proposal meets the International Commission guidelines for public exposure.

Paragraph 65 recommends local planning authorities to not refuse planning applications for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits).

Under Paragraph 75, public rights of way and access should be protected and enhanced.

Paragraph 99 confirms that local plans should take account of factors including flood risk, and changes to biodiversity and landscape.

Inappropriate development in areas at risk of flooding should be avoided (Paragraph 100), with application of the sequential test and exception test.

Paragraph 109 sets out that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Development should minimise impacts on bio diversity and provide net gains where possible.

Paragraph 113 states that local planning authorities should set out criteria based policies against which proposal for any development on or affecting protecting wildlife or geodiversity sites or landscape areas will be judged.

Local planning authorities should maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes (Paragraph 114).

Paragraph 118 states that local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Paragraph 125 seeks to limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

Under Paragraph 132, when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater that weight should be.

Paragraph 134 requires that where a development proposal will lead to less than substantial harm to the significance of a designated asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Paragraph 203 requires that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

At Paragraph 204, it is clear that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

#### Planning Policy Guidance ("PPG")

The PPG provides guidance on matters relating to main issues associated with development and is underpinned by the Framework.

#### Other Documents

- Dover District Green Infrastructure Strategy (2014)
- Seascape Character Assessment for the Dover Strait (2015)
- Landscape Character Assessment (2006)
- Dover District Heritage Strategy (2013)

d) **Relevant Planning History**

Application site

DOV/16/00201 – Scoping opinion (issued 04/04/16) under the Environmental Impact Assessment Regulations 2011 (as amended) for the erection of a 305m high communications mast.

Surrounding area

- i. DOV/16/00044 – Erection of a guyed steel lattice mast (322m in height) with nine anchor points, installation of telecommunications and associated equipment, site compound, secure fencing, single storey equipment structure, access track, ground mounted solar panels within compound and associated works on land at Richborough, Ramsgate Road, Sandwich, CT13 9NL. Pending determination.
- ii. Richborough Connection Project: A Development Consent Order application. Proposed electricity transmission development including substations and pylons between Richborough and Canterbury. The Examination of the DCO has now concluded and a decision for the Secretary of State is expected in Summer 2017.
- iii. Nemo Interconnector: Development Consent Order. An underground high voltage cable, with above ground works including converter station building (max height 30.8m), substation building (max height 15m), outdoor plant (max height 12.7m), converter station (max height 11.8m) construction compound, security fencing, access road and hard landscaping.
- iv. DOV/12/01017 Peaking plant facility at the former Richborough Power Station – electricity infrastructure plant – approved – now under construction.
- v. F/TH/15/1245 Wind Turbine (67m tall) at the former Richborough Power Station – approved.
- vi. DOV/13/00794 Creation of a solar farm and associated works. Permitted (24/01/14), not implemented.
- vii. DOV/13/00701 Estover CHP Biomass Plant at Discovery Park – combined heat and power plant and associated fuel storage – approved – now under construction.
- viii. DOV/14/00058 Redevelopment of Discovery Park – redevelopment and change of use for a mix of employment, energy, retail, hotel, non-residential institution and residential uses - approved.

- ix. DOV/15/00430 & DOV/13/00783 Industrial units at Discovery Park – B2 use industrial unit and foodstore – both approved.

e) **Consultee and Third Party Responses**

Sandwich Town Council

At the meeting on 23/05/2016 the Council resolved to raise no objections but strongly advocate only one 300m + mast be approved for development; the associated businesses must be encouraged to work together.

Reconsultation:  
Any comments awaited.

Ash Parish Council

Objection on the following grounds:

- the cumulative effects on local amenities of this second application in conjunction with the other application already submitted and the third that is expected to be submitted;
- the precedent created for this type of mast and the incremental detriment of all objections;
- the level of exposure to the local community to the potential health risks given the scientific uncertainty around these types of microwaves especially at ground level;
- the negative impact on residential amenity on the homes within the immediate radius of the site in the parish of Ash;
- the adverse effects on the Ash levels, the surrounding unspoilt marshland habitat and ecology in which the Mast is due to be sited;
- the adverse visual impact on the Richborough Fort national heritage site, on the views from and of the iconic steeple of St Nicholas Church, Ash, on the view from the majority of the 100 miles of public rights of way within the parish of Ash - noting that the mast is situated on an area that is higher than much of the land that surrounds it;
- the negative impact the construction traffic will have on Sandwich and Ash due to roads from which the site is to be accessed; and
- the constraints on aviation and in particular on the potential future of Manston airport.

It was felt evidence provided by the applicant to support safety claims was not sufficiently compelling to ease concerns of some parishioners. Information provided by a parishioner who had been in contact directly with and received communications from Ofcom and W.H.O was at odds with some claims.

It was noted that the applicant was offering to enter into discussions with local stakeholders about the substantial and lasting benefits to the local community they say will be a consequence of this application being granted. Should this happen, the Parish Council would want to be present at any such discussions.

Re-consultation: Ash Parish Council at its meeting on 14th November 2016 considered the additional Environment Statement. The Council agreed that the visual impact assessments show the extent to which the mast would affect negatively the visual amenity of the surrounding areas. The additional information does not change the reasons that the Council had objected to this application.

Woodnesborough Parish Council

Strongly object to the proposal on the grounds that the mast will overshadow the ancient monument at Richborough, it brings no direct benefit to the local communities and it may have a detrimental impact on the re-opening of Manston Airport.

Re-consultation:

Woodnesborough Parish Council still object to this application. They feel that the negative impact on the historic buildings at Richborough and the constraints on aviation and the possible impact on the future of Manston airport are unacceptable.

Staple Parish Council

Recommend refusal. It was felt that the negative impact on the local environment of this proposal far outweighs the proposed gain for the local community.

Minster Parish Council

Minster Parish Council support this application.

Reconsultation response:

No further comments received.

Cliffsend Parish Council

The Parish Council object to this application. The additional environment statement which shows the visual impact has been considered by CPC, and members are still of the opinions that the mast would have a negative impact on Cliffsend and the surrounding areas.

Thanet District Council

The primary concern is that the proposals should not prejudice Thanet District Council's ability to undertake a proper assessment of the Manston airport's commercial potential, and therefore the proper planning of the area. It is expected that Dover District Council will undertake its own assessment of aviation information submitted, with whatever additional professional advice it considers is required. If the Dover District's Council's assessment is that this proposal could prejudice these wider strategic decisions, Thanet District Council would request that the application be refused on those grounds.

Severe concerns are raised about the visual impact on the character and appearance of the former Wantsum Channel and the Wantsum Channel North shore area, with reference to long views of Pegwell Bay.

Historic England

In summary, Historic England comment that the proposed development would cause harm to the ability to appreciate the heritage significance of the Richborough Fort scheduled monument. This would not amount to substantial harm in the terms of the Framework; however any harm or loss should require clear and convincing justification. For a clear and convincing justification for the harm to be made it would be necessary to show that other less harmful designs and locations are not possible and that the unavoidable harm is outweighed by the public benefits of the scheme.

The application is the second one in this area this year. In our view, the cumulative effect of two masts should be taken into account in assessing this application. The construction of two similar facilities providing similar services in the same area seems likely to be unnecessarily harmful. Consideration should be given to rationalising the two proposed developments.

The Council should weigh the harm that this scheme will cause against any public benefits that the scheme might bring, as required by paragraph 134 of the Framework.

The full consultation response of Historic England provides comments in relation to the significance of Richborough Fort and the effects of the Proposed Development. For the benefit of the Committee, this is appended to this committee report (**Appendix 1**).

#### Natural England

Natural England concurs with the view of the HRA assessment that the proposal can be screened out from further stages of assessment because significant effects are unlikely to occur, either alone or in combination.

Given the habitat and distance of the Site from the SPA, it is unlikely that turnstones or little terns would be affected by the application. The application includes the use of deflectors fitted to the guys to reduce the risk of bird collisions, which is considered necessary to reduce the risk to golden plovers or other species.

Subject to the fitting of bird deflectors, there are unlikely to be implications for the Sandwich Bay to Hacklinge Marshes SSSI.

No objection with regard to internationally and nationally designated sites.

#### Civil Aviation Authority – Safety and Airspace Regulation Group

The CAA's position is that it would be inappropriate for it to support or refute any or all of the assessments made by either party in this case. This is because any future requests to activate airspace structures or procedures at Manston would be subject to regulatory scrutiny and assessment by the CAA, Safety and Airspace Regulation Group (SARG), of which Aerodromes and Airspace Regulation are two capability teams.

In summary, the CAA recognises that you must consider a variety of political and economic imperatives and technical assessments when reaching a decision on planning applications. Tall structures close to an airfield will obviously have some degree of impact on operations. The real issue that needs to be considered here is the scale of that impact and the ability of the aerodrome operator to mitigate those impacts and safeguard operations; this may well involve a degree of business risk on behalf of the aerodrome operator.

#### NERL Safeguarding Office

NATS (En Route) Public Limited Company ("NERL"), who is the organisation responsible for the management of en route air traffic, has reviewed the proposed development from a technical safeguarding aspect and advises that it does not conflict with NERL's safeguarding criteria. There is no safeguarding objection to the proposal.

#### The General Aviation Awareness Council

No comments received.

#### Environment Agency

The Environment Agency have no objection. It is noted that the most southern guy rope is at least 8m from the tow of the main river embankment (Richborough Stream) in order to ensure access is maintained.

It is noted that the Ground Investigation Report (dated 20/04/16) does not make any assessment of the risk to the groundwater environment; however, it is noted however that very low concentrations of substances have been found across the site. The site also lies in a site of relatively low vulnerability in terms of groundwater protection. Hence, should the application be approved, an appropriate condition is recommended to address any unforeseen contamination.

Other conditions recommended are to cover piling or foundation design so to protect groundwater.

#### National Grid

National Grid has submitted a Development Consent Order (DCO) application to the Planning Inspectorate for a 400kV electricity transmission connection between Richborough and Canterbury to enable a connection to the new UK Belgium interconnector

National Grid notes the proposed use of an access track to connect the proposed development with Richborough Road. This access track is included within the Order limits of the Richborough Connection Project to facilitate access to construct and remove a temporary bridge over the River Stour, approximately 1km north of the application site, and for the maintenance of the overhead line.

On review of the application material and following discussions with New Line Networks, National Grid does not envisage that the proposed works and/or use of the access track by either party would prevent access during the construction and operational phases of either project. National Grid and New Line Networks have now come to an agreement in relation to this proposed access route.

National Grid has no objection to the planning application as currently proposed.

#### Network Rail

Network Rail has no objections or wishes to provide any further observations.

#### KCC Highways and Transportation

KCC Highways in their initial comments dated 26<sup>th</sup> May 2016 raised concerns about the submitted construction management plan, particularly in relation to the access from Richborough Road. Further information was sought from the applicant.

Further comments from KCC Highway (27 July 2016), in response to additional information submitted by the applicant (on 15 July 2016), confirm that the principles of the construction management proposals and marshalling of associated vehicles are acceptable, subject to a detailed construction traffic management plan being secured by condition.

#### KCC Archaeology

The proposed mast lies close to the Scheduled Roman site of Richborough, which is a Scheduled Monument and Grade I Listed building (Richborough Castle). Richborough is a site that is of great importance in understanding the complete story of Roman Britain. It is here that the Emperor Claudius is believed to have landed during his invasion of Britain in AD 43, and it is at sites such as Richborough that the withdrawal of the last vestiges of Roman administration in circa AD 410 can be observed.

The applicant's conclusions about the degree of harm that the mast would cause to the heritage significance of Richborough are not agreed. The erection of the

proposed mast would affect people's experience of the site and would be harmful to the site's heritage significance. The Environmental Statement identifies a potential significant effect on tourists and visitors to Richborough Roman Fort. The harm to Roman Richborough is greater than the applicant suggests, whereas it would appear that many of the benefits put forward are not well-defined, guaranteed or secure and as such may not be delivered. The cumulative impacts of two masts, serving such similar purposes, in such close proximity to each other would seem be unnecessarily harmful to the significance of the important Roman site of Richborough.

This harm is not substantial in terms of paragraph 132 of the Framework, but nevertheless should be a major factor in determining the planning application. Such a conclusion of the degree of harm to the setting of the designated heritage asset does not necessarily equate to a less than substantial objection to the granting of planning permission. Great weight is placed in the Framework on the conservation of designated heritage assets and any harm or loss to an asset's significance should require clear and convincing justification. Furthermore Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 notes the statutory duty to give special regard to the desirability of preserving the setting of the Listed Building.

The construction of the proposed mast also has the potential to impact directly on non-designated buried archaeological remains. The applicant has put forward proposed measures – a programme of geo-archaeological work – that aim to mitigate these direct impacts. These mitigation measures appear appropriate and could be secured by condition.

#### KCC Public Rights of Way and Access Service (PROWAS)

PROWAS does not wish to provide any comments.

#### KCC Landscape

An assessment of the landscape and visual impacts of the Proposed Development and a review of the planning application has been provided by a landscape architect on behalf of KCC.

The conclusions to this report are that there would be a number of receptors experiencing adverse visual effects, many of which would be highly significant. In particular, walkers on a large stretch of the Saxon Shore Way and visitors to Richborough Castle would experience highly significant adverse effects. There would also be lesser adverse effects on other public footpaths but spread over a significant geographical range. Houses on Ebbsfleet Lane and at Sevenscore would be highly significantly adversely affected. Further afield the view over Pegwell Bay from Ramsgate Esplanade would also be significantly adversely affected. The landscape character of Wantsum Channel/Ash Marshes/Richborough Fort and Pegwell Bay would be significantly adversely affected.

Cumulative effects for both masts would be very similar and together with the proposed Richborough Connection Project, it is concluded that cumulative effects would be high and adverse.

#### DDC Environmental Protection Officer

Ground conditions: No exceedances were recorded which may be considered to present a possibility of significant harm to human health in contact of the proposed end use.

Noise: Should permission be granted a separate noise management plan should be submitted minimise impacts from piling in accordance with BS:5228:2009 Code of Practice for noise and vibration control on construction and open sites.

The proposed mast accords with all requirements of the International Commission on Non Ionising Radiation (“ICNIRP”), and is safe to the surrounding community in respect of emissions where members of the public may be present. An ICNIRP declaration is submitted in support of the application.

No objection.

#### DDC Ecology Officer

The site comprises arable fields intersected by ditches and accessed by an existing track at Kings End Farm. The site is within the Ash Level and South Richborough Pasture Local Wildlife Site (DO21) which is primarily designated on account of the biodiversity of the ditches.

Neither Natural England nor Kent Wildlife Trust objects to the application.

A preliminary ecological appraisal (PEA) was undertaken in during 2015. The report is thorough, including survey work for bats and Water Vole.

It does not address the presence of the invasive non-native Water Fern (*Azolla filiculoides*), a species listed in the Wildlife and Countryside Act 1981, Schedule 9. However, a construction and decommissioning ecological management plan can be conditioned to ensure that this species is not spread.

The Bird Impact Assessment (March 2016) is thorough in the undertaking of winter survey and analysis of other recent survey work, including that carried out for the Vigilant Global proposal and the Richborough Connection. It concludes that there would be negligible likely effect from disturbance on existing bird populations at the site.

Collison risk is also considered and the report recommends the use of line marking devices on the guy wires, preferably those that produce a wind noise, to assist avoidance by birds at night; the use of steady red lighting, rather than slow-burning or pulsating lights; and the avoidance of night-time lighting the of the base of the mast. Controls on bird diverters and lighting can be conditioned.

The ES chapter on Ecology and Nature Conservation describes mitigation measures that should render residual effects as negligible. These should be conditioned as a construction and decommissioning ecological management plan.

#### *Habitat Regulations Assessment*

The New Line Networks mast proposal lies within an SSSI Impact Risk Zone which is concerned with likely impacts on European and Ramsar sites, as well as SSSI.

The Conservation of Habitats and Species Regulations 2010 (as amended) requires that the Local Planning Authority, as the competent authority, assesses proposed developments in respect of their implication for European sites. UK Government policy extends that protection offered to European sites to Ramsar sites.

The applicant has supplied an HRA report as Appendix E3 of the Environmental Statement. The format of the report is slightly erroneous in that it is for the Local

Planning Authority to determine any likely significant effect under Regulation 61, rather than the applicant. The Natural England response to the application correctly highlights this error. However, setting aside the conclusions given in the report, it is otherwise considered to be comprehensive, thorough and sufficient to be in accordance with the Habitats Regulation 61 (2) requirement that the applicant supply information to inform the HRA.

The initial stage of the HRA is to screen potential likely significant effects.

For this application, an identified impact pathway is the potential use of the proposed development by the bird interest of the Thanet Coast and Sandwich Bay SPA and Ramsar sites:

- golden plover (*Pluvialis apricaria*)
- little tern (*Sterna albifrons*)
- ruddy turnstone (*Arenaria interpres*)

Of these, only golden plover is known to use the Ash Level. An over-wintering bird survey found the species did not frequent the 500m radial buffer around the proposal site. The other SPA cited species – little tern (*Sterna albifrons*) and ruddy turnstone (*Arenaria interpres*) are not known to use the Ash Level.

Natural England has been consulted on the application and concurs with this finding.

Therefore, it is concluded that the collision risk to little terns, ruddy turnstone and golden plover is low, that the installation of bird deflector spirals would lessen this risk still further, and, consequently, there is no likelihood of a significant effect and no further assessment is necessary.

The Local Planning Authority considers that further assurance of no likely significant effect may be established through monitoring of bird collision and a condition requiring such monitoring for 5 years post-construction is recommended.

#### DDC Heritage Officer

Impact on the setting of the grade I listed St Peter's Church: the Framework defines setting as 'the surroundings in which a heritage asset is experienced'. Further guidance on assessing setting is contained within the Historic England GPA3: the setting of heritage assets (GPA). Setting is not a defined boundary and the contribution to the significance of the heritage asset is often described as views of or from it. With specific reference to churches in the district, the Dover District Heritage Strategy defines churches as being of outstanding significance and notes that rural religious buildings have value in their contribution to the aesthetics of the historic landscape and wider rural environment; it states 'the spires of rural churches can often be seen over long-distances and are recognised and valued local landmarks'.

St Peter's Church in Sandwich has recently opened up access to the tower with a platform allowing a 360 degree view of the surrounding landscape, providing far reaching views on a clear day including Richborough Fort being visible in the mid-distance. An appreciation of how Sandwich and St Peter's sit within the landscape can now be gained from this vantage point. In particular, there are often visual links between churches within different parishes, and on looking north the spire of the Church of St Mary in Minster-in-Thamet is clearly visible on the ridge. Despite the distance, in my view the Proposed Development would be visible within this viewpoint, set against and extending significantly above the ridge, and will potentially draw the eye and detract from the inter-relationship between St Peter's and St Mary.

However, this relationship is only able to be appreciated visually from the St Peter's platform (as long range views of St Peter's from the ridge are generally obscured) and can be said to have a more significant impact on the setting of St Mary's.

Impact on conservation areas: the highly dense urban grain of the Sandwich Walled Town Conservation Area precludes views out into the surrounding landscape except when on routes out of the town or on the town wall. Even in these circumstances the views of the landscape are discrete and the relationship of the town to the surrounding rural landscape has been affected by modern development. Notwithstanding the view of the conservation area within the wider landscape that is now afforded by the viewing platform at St Peter's church discussed above, whilst there is no doubt that the height of the masts will have potential to make them visible at points within the conservation area, in my view no harm would be caused due to the distance of the masts from the conservation area. This is also the case with St Bart's Conservation Area, which has been enclosed on the NW with extensive modern development.

Impact on grade II listed buildings: the setting of several grade II listed buildings has potential to be affected by the masts. In general, the impact is limited due to the listed buildings having limited interaction with the surrounding landscape, and consequently being capable of appreciation at close quarters rather than long distance views. The buildings on which the masts will have the greatest impact are Guston Court, Kings End Farm, Richborough Farm Cottage and Castle Farm. The latter three buildings are located close to each other and have or had a functional relationship with the surrounding land. However, they are set within well treed/vegetated landscapes and with the exception of Castle Farm have limited presence in the public realm and no clear visual inter-connection with the landscape. Whilst the masts will be visible they will not be viewed within the context of these listed buildings and there is consequently no harm to their setting in my view.

#### DDC Landscape

The proposal is for a 305 m high telecommunications mast for the primary purpose of international high frequency trading. The proposed location is the eastern section of the Ash Level, west of the Richborough Marshes and some 1.5 km north-west of Richborough Fort.

Applications such as this are rare and the current best practice guidance, the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA3) can only provide limited assistance. The LVIA in this Environmental Statement is clear and complies closely with the thrust of GLVIA3 in terms of ease of understanding.

A comprehensive review of the applicant's conclusions regarding both landscape character effects and visual effects has been undertaken. The review considers the Richborough Connection, the Vigilant Global application, and this application, in turn. A short consideration of cumulative effects of the three applications is also given to highlight effects should two or more of the applications be granted planning permission.

Dover district benefits from a Landscape Character Assessment, dating from 2006, which forms a framework in which to consider the effects of the proposed mast. The Assessment draws up a number of Landscape Character Areas (LCAs) which have their own special qualities. The applicant has considered these in the LVIA and that has enabled a review based on a common baseline.

The conclusions of the review are that:

- five Dover Landscape Character Areas will be affected by the mast. Of these, there will be significant adverse landscape effects on the Ash Level LCA and the Richborough Castle LCA;
- there will be significant adverse visual effects on Richborough Fort and Roman Amphitheatre, a heritage asset of national importance that is an important visitor attraction for east Kent;
- there will be a moderate, but significant, adverse visual effect on tourists using the church tower at St Peter's Church for viewing the surrounds;
- there will be a widespread and adverse significant visual effect on the Ash Level, both in day and night, diminishing its sense of remoteness and affecting over 35 rural properties. Two regional trails, the Saxon Shore Way and the Stour Valley Walk will be adversely affected; and
- there would be a major and significant adverse visual effect cumulatively with the proposed Vigilant Global mast.

Given the widespread and significant adverse effects on landscape and visual impact, it is considered that on landscape grounds, the proposed development should be refused.

DDC's agricultural consultant

The loss of agricultural land, or impact on agriculture, is unlikely to be significant factor in this case.

Kent Wildlife Trust

No objections.

Kent Downs AONB Unit

Does not make any comments on the proposal.

Public representations

202 representations have been received by the Council. Of these 183 representations raise objections to the mast, 14 are in support and 5 are considered to be neutral.

The following is a summary of the objections raised that are material to the consideration of this application:

- visual Impacts;
- adverse impacts on visual outlook;
- detrimental impacts on the existing radio and communications signal due to line of sight;
- loss of transmission;
- health and safety impacts;
- EMF Exposure and Radio Frequency Radiation;
- adverse effects on marshland;
- impacts on the operation of the Manston airport;
- impacts on flight safety;
- lack of public benefits;
- lack of information on EMR health and safety finds for the proposal;

- the proposed masts will restrict the re-opening of Manston Airport;
- impacts on Richborough Fort;
- inappropriate development within the local environment; and
- no co-location opportunities sought as there are several within the area (with Vigilant Global's proposed Mast which is taller – 322m height).

Objection has been received on behalf of Riveroak Investment Corp, who have an interest or potential interest in Manston Airport. Their concerns are that the Proposed Development would represent a significant operational and safety risk for the future operation of the airport, which are considered in more detail further in this report.

Montagu Evans on behalf of Vigilant Global Limited who is the applicant for current planning application 16/00044 have provided some comments towards this application dated 23 June 2016 and 2 December 2016:

- the site selection process should have taken into account constraints posed by Grade II\* and II heritage assets;
- the site selection process should not have discounted that which relates to application DOV/16/00044, which is suitable for such development;
- the submitted scheme imagery does not include proposed guy lines or the anti-twist bars which form an integral part of the proposals and have the potential to be seen in views;
- in respect of the AVRs, these look only at a 5km radius as opposed to a 10km; there are no close up views; and no grid references are provided;
- views from Richborough Fort do not include the fort and so does not accurately reflect any impact;
- a cumulative view from the viewing platform from St. Peter's Church is not provided; neither have night-time views;
- whilst the ability to mast share has been mooted, this should be a condition of its development, secured via a s106 agreement;
- the submitted cumulative impact assessment is considered to be inadequate;
- the socioeconomic effects statement sets out some benefits, but it is unclear how these could be secured. It is also unclear how the proposed scheme would serve the local communities;
- the application is not supported with a mast collapse report to demonstrate that, in the unlikely event of a failure, the mast's failure would not pose a safety hazard;

An objection has been received from CPRE Kent:

- the applicant has not demonstrated that other technologies are not available to meet communications needs. Establishing the need for the mast will be important during evaluation of the planning balance when determining the application. The least harmful site must be identified. The case has not been made.
- search parameters did not include avoiding landscapes of historical, cultural or archaeological importance or avoiding impacts on habitats and species of principal importance, and designated habitats.
- it has not been demonstrated that there is a need for two masts of this scale.
- a mast of this height and in this location is not necessary to sustain the rural economy, nor meet the needs of the community.
- the proposed mast would not protect or enhance the local and wider landscape character of this open and horizontal landscape. This harm to the character and appearance of the landscape is a significant impact.

- the proposed development is likely to have a significant effect on the setting of the Roman site at Richborough, a Scheduled Ancient Monument and Grade I listed Richborough Castle.
- the former Wantsum Channel is a heritage asset of value, which forms part of the setting of Richborough Fort. The impact would be substantial and harmful to its evidential, historic and aesthetic value and thereby its significance.
- the risk of bird impacts is a significant concern of CPRE and this issue should be discussed in detail with Natural England, Kent Wildlife Trust and RSPB.

No objection has been received from the Channel Gliding Club.

**f) The Site and the Proposal**

- 1.1 The Site comprises land at Kings End Farm, an area of flat agricultural land located approximately 1km to the north of Richborough and 1km south of the River Stour. The Site is located approximately 3km to the west of the coastline with the nearest settlements being Ash to the south west and Sandwich to south east. To the north are settlements of Minster and Cliffsend and the coastal town of Ramsgate.
- 1.2 Closer to the site to the east are two open sided livestock sheds and silos. The Site and its surrounding area are predominantly grazed and arable fields with other farm buildings/structures.
- 1.3 The Site is located approximately 4.5km to the south of the former Manston Airport (operations closed in 2014).
- 1.4 The Site is in Flood Zone 2 and forms part of the 'Ash Level and South Richborough Pasture Local Wildlife Site (LWS, DO21).
- 1.5 The Thanet Coast and Sandwich Bay Special Area for Conservation (SAC), Special Protection Area (SPA) and a RAMSAR, which is also a Site of Special Scientific Interest ("SSSI"), is some 2km to the east.
- 1.6 The Site is currently accessed via Whitehouse Drive which is an existing farm track off Richborough Road. Key strategic road networks within the area are the A256 that bypasses Sandwich and the A257 that provides east-west links. The railway line passes to the east.
- 1.7 Richborough Fort, a scheduled ancient monument and Grade I listed building is located approximately 1km to the south of the Site.

**Proposed Development**

- 1.8 Planning permission is sought for erection of a three-sided 2.5m wide, 305m tall guyed mast. This would be of a lattice-steel construction with an access ladder located within it.
- 1.9 On the mast, it is proposed to install a total of six dish antennas at various heights (from 184m to 301.4m) and orientation. Each antenna would measure 3.7m in diameter and 1.8m in depth.
- 1.10 The mast would be supported by guys which would spread out in three directions (at 75, 195 and 315 degree angles), with lengths of between 70m to 359.4m. The guys

will be anchored at nine stay blocks at ground level located at 60m, 150m and 210m distance from the mast base.

- 1.11 The guys would have bird diverters, comprising of wire attachments, affixed at regular intervals.
- 1.12 The mast would have two static red aviation lights affixed at 51m height intervals – six levels and 12 lights in total.
- 1.13 Various other works and equipment at ground level in form part of the Proposed Development, including:
  - a concrete slab for the mast;
  - three electric meter cabinets on raised plinths;
  - two equipment cabinets on a concrete base, each measuring 2.7m wide by 2.7m by deep by 4.2m high
  - an overhead cable tray between the equipment cabinet and mast; and
  - a caged enclosure, measuring 4m by 5.5m by 4.2m high, in which a generator is positioned on a raised concrete base.
- 1.14 The mast and associated equipment of the Proposed Development would be located within a secured 15.8m x 13m compound area. The new compound will be secured by means of a 2.4m high palisade security fence and 3m high vehicular access gates. A 1.2m high timber post and rail stock proof fence, would be erected around the perimeter of the palisade fencing.
- 1.15 Access to the compound would be via Whitehouse Drove and a new crushed aggregate access track (approximately 200m in length) connecting to the compound. A vehicle turning bay would be provided at the compound end of the access track.
- 1.16 Some landscape planting would be provided, primarily located between the new compound and the stock proof fence.
- 1.17 Each concrete stay would measure 4m by 5m by 0.9m tall, positioned in respective compounds surrounded by a 1m high post and rail fence.

## **2. Main Issues**

- 2.1 The main issues in the consideration of this application are:
  - principle of development
  - landscape and visual impacts
  - heritage impacts
  - ecology and ornithological impacts
  - highways and transport
  - aviation
  - flood risk and drainage
  - other matters
    - public safety
    - noise
    - contamination
  - purported benefits
  - cumulative effects and mast sharing
  - planning balance

### Principle of Development

- 2.2 The purpose of the Proposed Development is to establish an optical direct line of sight to a corresponding mast in Belgium, which would relay data between financial markets in London and Frankfurt.
- 2.3 The applicant seeks to justify the principle of the development in two accounts: (i) that there is a need to invest in infrastructure to support the UK economy, to support the operation of finance businesses in the UK and beyond, as well as delivering benefits to the local economy; and (ii) to realise these benefits, the proposed development needs to be located in this area of Kent.
- 2.4 The applicant states that the Proposed Development is part of the infrastructure supporting the growth in capital markets and other finance fields in the UK, which rely on high-speed data connections to Europe. It is asserted that the Proposed Development would provide significant support in the operations of the applicant and the wider finance sector which delivers benefits for the wider UK economy. Firms are said by the applicant to need access to data of sufficient quality to compete in a globalised financial market.
- 2.5 Paragraph 42 of the Framework recognises that advanced, high quality communications infrastructure is essential for sustainable economic growth. Other sections of the Framework also emphasise the government's commitment to securing sustainable economic growth. Paragraph 46 states that the Council should not seek to question the need for a telecommunications system; however, this does not prevent the application being properly considered and determined on planning grounds.
- 2.6 The purported economic benefits of the proposal are addressed later in this report. But consideration should first be given to the justification for the height and location of the mast.
- 2.7 Paragraph 43 and 45 of the Framework stress that new communications equipment should be located on existing masts, buildings and other structures, unless the need for a new site has been justified.
- 2.8 The applicant sets out that the Site was selected with regard to particular parameters, which are influenced by the requirements of the technology and the operational requirements of the mast within the wider communications network.
- 2.9 The search area for a suitable site has focussed on a linear area concentrated along the established geodesic straight line between London and Frankfurt, in order to maximise the effectiveness of the development. This geodesic line runs from Sandwich, to the north of Canterbury, towards Seasalter and Whitstable. The search area had a 1km variance from the geodesic line
- 2.10 The applicant considers that it is beneficial for the mast to be located as close as possible to corresponding mast in Belgium for reason of technical effectiveness and efficiency and to minimise the height of the mast. The optimum location in operational terms is where the geodesic line intersects the coast line.
- 2.11 Alternative locations have been considered by the applicant, which include the existing transmitter at Church Hougham; the Swingate Transmitting Station in Dover; a lattice tower at BT Archers Court in Dover; and three existing lattice towers to the east of Ramsgate. The applicant states that all these locations are too far from the geodesic line as well as lacking sufficient height. The site of an existing mast to the

north of the 'Banana-Land' is claimed by the applicant to be too small to accommodate the proposed mast (including guys), even if the existing structures were removed. Officers have no evidence to dispute this.

- 2.12 Within the line of deviation, options to locate the mast on higher ground further away from the coast have been considered by the applicant. Whilst there is benefit in a higher ground level, the applicant presents that this is outweighed by the increase in distance from the coast, which would require a taller structure that may be beyond that which is feasible to construct. On this basis, the search area is therefore restricted to within 5km of the coast.
- 2.13 The consideration of other constraints is detailed by the applicant, including ecological, environmental and heritage designations. The applicant also included, due to engineering complications during construction and to ensure clearance distance in the unlikely event of mast failure, selection criteria to avoid urban area, rivers, main roads, railway lines and the emerging National Grid pylon scheme.
- 2.14 Within these search parameters, three parcels of land were identified by the applicant, of which two were discounted because they were considered more constrained by the emerging National Grid pylon scheme, wildlife designations, accessibility to construction traffic, greater impacts on Richborough Roman Fort and numerous farmsteads.
- 2.15 Through this process, the applicant has progressed with the Proposed Development – a 305m high mast at Kings End Farm.
- 2.16 This justification of the selection of the site is considered by officers to be reasonable within the technical and operational constraints set out by the applicant.
- 2.17 Core Strategy Policy DM1 (Settlement Boundaries) seeks to restrict development outside existing settlement boundaries unless it functionally requires such a location. Core Strategy Policy DM15 seeks to protect the countryside from development that would harm its character or appearance unless it is justified that it cannot be accommodated elsewhere (i.e. not within the countryside).
- 2.18 As such, with regard to the justification of the siting of the Proposed Development, the impacts of the mast should be considered on its merits, including landscape and heritage impacts and (with regard to the similar mast development proposed under application DOV/16/00044) whether or not the number of masts have been kept to a minimum.
- 2.19 Core Strategy Policy CP6 relates to the provision of infrastructure, but it is a policy to ensure that infrastructure is provided in a timely manner to support other development coming forwards (such as residential and retail growth). It is considered to be not applicable to the Proposed Development.
- 2.20 The Proposed Development, taking account of the compound, access track and guys, would result in the loss of an area of agricultural land, potentially affecting an area across four fields. Advice from the Council's rural planning consultant is that the Site and surrounding area is generally more suitable for grazing with more limited potential for crops – the loss of agricultural land or impact on agriculture is not significant in this instance.

#### Landscape and Visual Impacts

- 2.21 The applicant has submitted a Landscape and Visual Impact Assessment with the application as part of the Environmental Statement.
- 2.22 As a landscape assessment, the applicant has considered the impact of the Proposed Development on eight character areas:
- i. The Former Wantsum Channel North Shore;
  - ii. Pegwell Bay;
  - iii. Ash Levels;
  - iv. Preston and Ash Horticultural Belt;
  - v. Richborough Castle;
  - vi. The Sandwich Corridor;
  - vii. Sandwich Bay; and
  - viii. Sandwich Urban Area.
- 2.23 The applicant considers that the greatest landscape impact would be moderate adverse effects on the areas of Ash Level and Richborough Castle, with minor effects on the other areas (save for the Sandwich Corridor with a negligible effect).
- 2.24 In response, landscape advice from the Council and KCC is that the significance of the landscape effects has been under estimated by the applicant. In particular, there would be significant impacts on the landscape areas of Ash Level, Richborough Castle and Pegwell Bay, although it is recognised that the latter falls outside of Dover District.
- 2.25 Visual impacts of the Proposed Development are also considered by the applicant, through an assessment of 24 representative views and receptor groups including residential properties, walkers, and tourists/visitors to heritage assets.
- 2.26 The representative viewpoints (VP) the applicant considers would be most affected, with a moderate adverse significance of effect, are those from Richborough Fort (VP1); and public rights of way EE47 close to the south of the Site (VP2), TE40 to the east of Minster (VP5), TE32 near to Cliffsend (VP6), EE72 to the north of Ash (VP11), EE65 to the west of the Site close to Westmarsh (VP12) and TE29 to the north of Minster (VP13).
- 2.27 From the nearest residential properties, which have high sensitivity, the applicant considers that there would also be a moderate adverse effect. Likewise, a moderate adverse effect for users of public rights of way up to 4.5km from the Site and for visitors to Richborough Fort. For other recreational pastimes, visitors to the viewing platform of St Peter's Church, pleasure craft on the River Stour and motorists, a lesser minor adverse effect is assessed by the applicant.
- 2.28 However, advice from KCC disagrees with the applicant: from several locations, the effects from the Proposed Development are underestimated. Highly significant adverse visual effects are identified from:
- Richborough Fort (VP1), where the mast would be a major element on the skyline and very conspicuous in views north;
  - public right of way EE47, close to the south of the Site (VP2), from where the mast would be seen as an uncharacteristically tall man-made element;
  - Ramsgate Promenade, from where the mast would be at odds with the panoramic and sweeping views, as noted by the Seascape Assessment of the Dover Strait. The Thanet Local Plan comments on the area (para. 10.95): 'The Thanet coastline and the sea also considerably enhance the value of the District's landscape, and this enhanced value is recognised by its partial

- designation as part of the Pegwell Bay Special Landscape Area and the former Wantsum Channel Landscape Character Area’;
- Castle Cottages off Richborough Road; and
  - public rights of way within 3km of the Site, reducing to moderate adverse significance at distances up to 6k. This would affect an approximately 7km length of the Saxon Shore Way.
- 2.29 It is considered that moderate significant adverse visual effects would occur from:
- public right of way, TE40 to the east of Minster (VP5);
  - public right of way EE72 to the north of Ash (VP11);
  - St. Peter’s Church, Sandwich viewing platform.
- 2.30 Advice is also received from the Council’s landscape officer who identifies moderate adverse and significant impacts from Richborough Fort (VP1); public right of way EE47, close to the south of the Site (VP2); intersection of public right of way EE72 and Cop Street, north of Ash (VP11); and national public right of way and national cycle route (VP12)
- 2.31 Core Strategy Policy DM16 seeks to protect the character of the landscape. Development that would harm the landscape character should only be permitted if it is in accordance with a specific development plan allocation (which the Proposed Development is not); or if design mitigation measures can be taken to reduce impacts to an acceptable level.
- 2.32 Given the significant adverse landscape and visual effects of the mast, which cannot be acceptably reduced or mitigated through design measures, it is considered that the Proposed Development is contrary to Policy DM16 and the Framework including paragraphs 109, 113 and 114 as well as its core planning principles at paragraph 17.

#### Heritage Impacts

- 2.33 The application is accompanied by the applicant’s assessment of built heritage (for above ground heritage assets): although there are no heritage assets within the Site, the Proposed Development will affect the setting of assets in the surrounding area.
- 2.34 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory requirement that the Council as local planning authority pays special regard to the desirability of preserving the setting of a listed building. This duty has been clarified in recent case law – namely *Barnwell Manor Wind Energy Ltd v East Northants District Council & Ors* [2014]; and *Forge Field Society & Ors R v Sevenoaks DC* [2014]. It was found in both rulings that the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 had not been discharged correctly, in that ‘special regard’ to the desirability to preserving the setting of listed buildings had not been given.
- 2.35 In respect of the current application, Members’ attention is drawn to this statutory presumption in favour of preservation of listed buildings and their settings, and that ‘considerable weight and importance’ must be given to the desirability of this. As a result, the Committee needs to consider any predicted harm to designated heritage assets and needs to give any such harm considerable weight in any subsequent planning balance.
- 2.36 Heritage assets that the applicant identifies to have a visual relationship with the Site include the Scheduled Monument and Grade I listed building of Richborough Fort,

some 1km to the south east; numerous listed buildings in the countryside within 5km surrounding the Site; clusters of listed buildings within Sandwich, Marshborough, Monkton, Minster, Cliffs End and Ramsgate; and conservation areas at Sandwich, Stone Cross, Minster, Pegwell Bay and Ramsgate.

- 2.37 Listed buildings and the conservation area at Ash have been scoped out by the applicant because there is no clear intervisibility to the Site.
- 2.38 The Framework (paragraph 132) requires that the impact of the Proposed Development on the significance of designated heritage assets be considered. Great weight should be given to an asset's conservation: the more important the asset, the greater the weight should be. Significance can be harmed or lost through development within its setting.
- 2.39 The applicant makes an assessment of the construction and operation phase impacts of the Proposed Development on the setting of the identified heritage assets. For each heritage asset, the applicant considers that there would be a negligible adverse impact to its significance.
- 2.40 In the cumulative scenario (taking account of other committed or proposed developments in the surrounding area), the applicant considers there would be a minor adverse effect on the significance of Richborough Fort.
- 2.41 Officers have received consultation advice from Historic England, the archaeology officer at KCC, and DDC's heritage officer.
- 2.42 Historic England focuses on the significance of Richborough Fort and the effects of the Proposed Development on it. The mast will be clearly visible from Richborough Fort and will be seen in conjunction with it in views looking north. The mast would be a substantial new presence that is both nearer and much taller than other existing developments.
- 2.43 Historic England disagrees with the applicant's heritage assessment: the effects of the Proposed Development would be greater because the long views from Richborough Fort north towards the Thanet plateau, across the Wantsum marshes, promote understanding of the history of the Fort and the wider area. Such views would be harmed by the scale of the mast, which would be much taller and closer than existing structures. The Proposed Development would be difficult to ignore, would dominate northward views and would undermine the sense of isolation and enclosure provided by the walls of the Fort.
- 2.44 Historic England considers as well that the harm to the setting of the Fort would reduce visitors' understanding and appreciation of the heritage asset. The Proposed Development would cause some harm to public benefit.
- 2.45 The response from the archaeology officer provides some further archaeological background to Richborough Fort as well as a further assessment of its setting. The archaeology officer considers that views across the former Wantsum Channel from the Fort are important in understanding its context, in which the Proposed Development would be very conspicuous. The constant presence of the mast would be harmful to visitors' experience of the Fort.
- 2.46 To seek to mitigate the impacts of the Proposed Development, the applicant has offered English Heritage (who manage Richborough Fort) a financial contribution of £100,000 towards improved visitor facilities; camera surveillance of Richborough Fort

from the mast, to be used as a webcam feed and security; and video footage from a drone, which could be used for marketing. Although it is recognised that these could have some public benefit to them, questions remain over how the financial contribution would secure the delivery of improvements in a timely manner that is linked to the Proposed Development.

- 2.47 The Council's heritage officer has considered in more detail the setting of St Peter's Church in Sandwich. It is identified that the Dover District Heritage Strategy defines churches as being of outstanding significance, noting that such buildings have value in their contribution to the aesthetics of the historic landscape and wider rural environment; it states 'the spires of rural churches can often be seen over long-distances and are recognised and valued local landmarks'. From the viewing platform of St Peter's Church, there are far reaching views to the north towards the Church of Saint Mary in Minster. In this view the Proposed Development would draw the eye and detract from the inter-relationship between St Peter's and Saint Mary. As a result, there would be some harm, within the less than substantial range, to the significance of the setting of these churches.
- 2.48 With regard to the character of the Sandwich Walled Town Conservation Area and St Bart's Conservation Area, the heritage officer advises that the Proposed Development would not cause harm to their significance.
- 2.49 Consideration has also been given to any impact on the numerous grade II listed buildings. In general, the heritage officer advises that the impact is limited because the buildings have a more limited interaction with the surrounding landscape. Even with regard to those buildings on which the Proposed Development would have the greatest impact, although the mast would be visible, there would be no harm to the significance of their setting.
- 2.50 In relation to unidentified archaeological remains, the archaeology officer is satisfied, with a condition to secure the implementation of a programme of archaeology work, in accordance with a written scheme of investigation, that any potential impact can be mitigated.
- 2.51 The harm to Richborough Fort and the inter-relationship between the churches of St Peter's and Saint Mary must be weighed against the public benefits of the Proposed Development, as above and as identified elsewhere, as part of the balancing exercise required by Paragraph 134. That planning balance is carried out at the end of this report.

#### Ecology and Ornithological Impacts

- 2.52 Paragraph 109 of the Framework highlights that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests and soils; recognising wider benefits of ecosystem services; minimising impacts on biodiversity and providing net gains in biodiversity where possible. Furthermore, Paragraph 118 seeks to conserve and enhance biodiversity by ensuring that the development does not result in the loss or deterioration of irreplaceable habitats, including ancient woodland and equally seek to protect wildlife sites.
- 2.53 The Site is in close proximity to the Thanet Coast to Sandwich Bay SPA and SAC, which is also listed as the Thanet Coast and Sandwich Bay Ramsar site and notified at a national level as the Sandwich Bay to Hacklinge Marshes SSSI.

- 2.54 In relation to these sites of international and national importance, Natural England advise, subject to the fitting of bird deflectors, that the Proposed Development is unlikely to significantly affect them.
- 2.55 A Habitat Regulations Assessment carried out by the Council, under the Conservation of Habitats and Species Regulations 2010 (as amended) considers that there is no likelihood of a significant effect from the Proposed Development on European site above and that no further assessment is necessary.
- 2.56 The Site lies within the Ash Level & South Richborough Pasture Local Wildlife Site, which is a large complex of grazing marsh.
- 2.57 Comments from the Council's ecology officer have been received, who has considered any more localised ecological impacts of the Proposed Development. No concerns are raised in relation to the preliminary ecology appraisal carried out by the applicant.
- 2.58 With specific mitigation during the construction phase to avoid accidental pollution of the watercourses – measures that include fencing between the works and the ditches, SuDS measures to prevent discharge to watercourses or ditches, restrictive storage of oil and fuels, prevention of concrete residues – which can be secured by condition, the residual impacts of the Proposed Development would be negligible.
- 2.59 It is noted that the Kent Wildlife Trust has no objection.

#### Highways and Transport

- 2.60 The Site would be accessed via the existing farm access road off Whitehouse Drove, which is currently used by agricultural vehicles, and a new aggregate track. Whitehouse Drove joins the public highway at Richborough.
- 2.61 The highways officer at KCC raises no objections to the Proposed Development. Subject to a detailed construction traffic management plan, which can be secured by condition, the proposed access arrangements would be acceptable.
- 2.62 Post completion, the proposed development is anticipated to require occasional access for maintenance purposes only.
- 2.63 The proposed access is included within the Limits of Deviation Order of the Richborough Connection Project for maintenance of the overhead lines located 1km to the north of River Stour. National Grid has raised no objections to sharing the use of the track with the applicant.
- 2.64 The Proposed Development satisfies Core Strategy Policy DM12 (Road Hierarchy and Development).

#### Aviation

- 2.65 The applicant has submitted an Aeronautical Assessment with the application, which states that there are no Civil Aviation Authority (CAA) aerodromes within a 15km catchment radius from the Site. The Assessment identifies that the nearest licenced aerodrome is Lydd Airport (approximately 47.2km away) and the nearest officially safeguarded aerodrome is London Southend Airport (some 53km away).

- 2.66 The Aeronautical Assessment considers whether the physical characteristics of the Proposed Development (its height) would penetrate the Obstacle Limitation Surfaces (OLS) – an area designed to ensure that obstacles do not prevent normal airport operations – for any operating aerodrome. It concludes that the Proposed Development would not be located near any of the OLS for operational airports.
- 2.67 Although the Site is located approximately 4.3km to the south of Manston Airport, the applicant notes that it closed in 2014 and no longer holds a CAA licence.
- 2.68 The Aeronautical Assessment states that the CAA has confirmed that a safeguarding area applicable to Manston Airport is not currently in effect.
- 2.69 If Manston Airport were to reopen and be licensed with the CAA, the Proposed Development would penetrate the OLS. The Aeronautical Assessment asserts that operations at Manston Airport would need to account for the known obstacles, which would be the responsibility of the airport operator and CAA: procedures would need to ensure safe operation with the obstacle in situ.
- 2.70 The Aeronautical Assessment considers, because of the location of the Proposed Development, in parallel to the runway rather than on the take-off or approach surfaces, and within the outer OLS area, that future flight procedures could be adapted to take account of the mast.
- 2.71 If Manston Airport were to reopen and operate in a manner that does not require a licence, the Aeronautical Assessment details that the Proposed Development should be conspicuously marked, as is proposed with lighting, and that (as under other guidance) information to raise awareness of the mast should be provided at the aerodrome.
- 2.72 The applicant concludes that (i) the Proposed Development complies with all applicable aviation guidance and regulation and (ii) should Manston Airport reopen, future flight procedures could be adopted to take account of the mast if it is deemed to be an obstacle.
- 2.73 Detailed representations<sup>1</sup> has been received on behalf of Riveroak Investment Corp (“Riveroak”), who are in the process of drafting an application for Development Consent Order (DCO), which encompasses the compulsory purchase of the airport, to reopen Manston Airport as an international hub for air freight, passenger travel and aircraft engineering services. Riveroak are aiming to submit the DCO application in summer 2017.
- 2.74 Riveroak have assessed the potential impact of the Proposed Development (should Manston reopen and be licensed) and raise objection.
- 2.75 Key conclusions of these representations are that:
- the masts could adversely impact plans for future licensed aerodrome status at Manson;
  - if the airport was operational, the masts would raise safety concerns;
  - there would be an impact on Instrument Flight Rules operations, although not in itself ground or objection;

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<sup>1</sup> Manston Airport Safeguarding Assessment – Effect of Proposed Communication Masts to Operations conducted at a reopened Manston Airport (April 2016)  
 Manston Airport Safeguarding Assessment – Review of Wind Business Support Report (September 2016)

- Visual Flight Rules operations would need to be take account of the masts;
  - if air space to the north of the runway had to be used, this is over more populated areas; and
  - the impact of the mast on Instrument Flight Rules operations and Visual Flight Rules operations would undermine the case for an aerodrome traffic zone.
- 2.76 Clearly there is variance between the position of the applicant and those of Riveroak. In considering this further, regard is had to the consultation response of the CAA, who considers that:
- should Manston seek to reopen, the assessment work would need to be made in the context of the current airspace environment and any changes that may have happened since Manston closed;
  - it is likely that the masts will not have any impact on straight in procedures designed for arriving or departing aircraft;
  - there is likely to be an impact on the design of circuit traffic patterns; and
  - the masts may hinder or limit operations in some areas, but these could only be quantified by a future operator.
- 2.77 The CAA agree with Riveroak that there are a large number of relevant variables that would need to be balanced when considering the risks to aviation.
- 2.78 In conclusion, the CAA sum up that the masts will have a degree of impact of potential future operations; and the ability of the aerodrome operator to mitigate these impacts and safeguard operations is key. However, there is no current operator and the likely prospect of Manston Airport reopening is unknown.
- 2.79 Whilst Riveroak have set out their plans to submit a DCO to reopen the airport, officers are also aware of other plans for Manston Airport. There is a current planning application (LO/TH/16/0550) being considered by Thanet District Council for a comprehensive mixed use redevelopment of the site, which does not include any operational aerodrome function, which DDC objected to.
- 2.80 The consultation response from Thanet District Council (dated 29 July 2016) is that the Proposed Development should not prejudice the ability for Thanet District Council to undertake a proper assessment of the airport's commercial potential. Thanet District Council's emerging Local Plan policy (SP05) for the former Manston Airport allocates it for a mixed use settlement of at least 3,000 new dwellings and up to 85,000sqm of employment and leisure floorspace.
- 2.81 However, a more recent report commissioned by Thanet District Council (Commercial Viability of Manston Airport (September 2016)) concludes that airport operations at Manston are very unlikely to be financially viable in the longer term, and almost certainly not possible in the period to 2031.
- 2.82 As such, given the current status of Manston airport, officers would not wish to object to the Proposed Development in connection with its impact upon potential future operations. Whilst it appears that the mast could have some impact on how a future airport may need to operate, such impacts appear to not render any future airport use impossible
- 2.83 Dover District Council's position on Manston Airport (under a motion passed at Full Council in July 2014) is noted: That it supports the campaign to retain Manston as an operational airport, recognising the role and place it can have in the UK aviation industry, making the better use of regional capacity in accordance with the views of

the South East Local Enterprise Partnership, while making a significant contribution as one of the strategic priorities for regeneration of the East Kent area.

- 2.84 The applicant has suggested a deconstruction obligation for the mast that would be triggered in specific circumstances where the mast prevented the airport from operating under a CAA license. Mindful of Riveroak's representations and Dover District Council's position, such an obligation in principle is supported by officers.
- 2.85 However, the obligation is not considered necessary, for reasons above, to make the development acceptable in planning terms. Therefore such an obligation would hold no weight in the planning balance in the determination of the application and the absence of such an obligation does not comprise reason for refusal.

#### Flood Risk and Drainage

- 2.86 The Site is located within Flood Zone 2, with a probability of river flooding of between 1% and 0.1% and a probability of tidal flooding between 0.5% and 0.1% in any year.
- 2.87 Paragraph 100 of the Framework outlines that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (as informed by a sequential test), but where development is necessary, making it safe without increasing flood risk elsewhere.
- 2.88 Paragraph 103 of the NPPF recommends for developments in areas at risk of flooding to be informed by a site-specific flood risk assessment following the sequential test, and if required the exception test.
- 2.89 With regard to the detailed site selection process that the applicant has undertaken, as detailed in this report, it is considered that the sequential test is satisfied
- 2.90 Whether or not the Proposed Development 'essential infrastructure' is not agreed. But if it were to be treated as this for the purposes of a flood risk assessment, an exceptions test is not required. If it were to be considered otherwise, it would need to be demonstrated that the development provides wider sustainability benefits that outweigh flood risk and it would be safe for its lifetime and not increase flood risk elsewhere.
- 2.91 The applicant identified that the highest flood level from either event is 1.93m AOD. Therefore, the base of the compound is proposed at a level of 2.05m AOD, with other specific equipment at higher levels; and the access track would be constructed at 2m AOD. The Proposed Development would not be vulnerable in a flood event.
- 2.92 A sustainable drainage system could be secured as part of the Proposed Development by condition.

#### Other Matters

- 2.93 The Proposed Development would include fixed plant, which is considered to be a sufficient distance from residential properties any noise to not be a nuisance, as can be secured by condition. Noise from construction piling can be minimised in line with best practice.
- 2.94 The Council's ecology officer suggests that bird deflects that make a noise in the wind are preferred for ecology reasons. If these were to be used, future assessment,

as secured by condition, would be needed. Otherwise a non-audible deflector should be used.

- 2.95 The Council's environmental protection officer has confirmed that the equipment to be installed on the mast would be considered safe according to International Commission on Non Ionising Radiation (ICNIRP) guidelines. The Framework (paragraph 46) is clear that where such equipment meets these standards, public health is safeguarded.
- 2.96 A report on the collapse risk of the mast has been submitted by the applicant. Such risk is extremely small. Within the maximum possible fall radius of the mast, the infrastructure of any kind is the private track of Whitehouse Drove and a pair of uninhabited barns. The risk to public infrastructure or disruption to public services is nil. It is noted that the design of the mast would comply with the relevant British Standard 8100.
- 2.97 In terms of ground conditions following soil sampling, the Council's environmental protection officer notes the Ground Investigation report submitted by the applicant, which concludes that no exceedances were recorded which may be considered to present a possibility of significant harm to human health in context of the proposed end use

#### Purported Benefits

- 2.98 The purpose of the Proposed Development is to support the financial service sector in the UK. The applicant contends that a substantial share of the socio-economic effects will be across the UK as a whole. The financial services sector in London is anticipated by the applicant to capture the greatest effects as a result of the Proposed Development.
- 2.99 It is set out in the Environmental Statement that the financial services sector accounts of 10% of the gross domestic product (GDP) in the UK., which employs a significant number of people and provides a significant tax return each year. Financial technology is said by the applicant to be a significant part of this sector; and investment in such technology will help the its global competitiveness.
- 2.100 The applicant considers that the economic benefits of the Proposed Development is to help the UK remain competitive in financial technology, which will help support its position as a pre-eminent financial destination.
- 2.101 However, despite these claims and questions by officers, when meeting the applicant, as to whether there is any further information, the applicant has not quantified the extent of any such benefit. No assessment of additional jobs across the UK or tax revenue is offered. Neither has the applicant set out whether or not there would be a negative effect without the Proposed Development. Indeed, the applicant themselves considers the economic benefit to be minor and not significant.
- 2.102 During construction, there would be some direct employment. However, this would be limited to relatively short period of 24 weeks and would be reliant on special construction firms who are likely to want to use workers experienced in this type of construction, rather than recruiting widely within Dover District.
- 2.103 Whilst there would be some multiplier effect and spending in the local area, this again would be temporary.

- 2.104 Socio-economic benefits during construction would be minor, although the effect would be limited to a temporary period.
- 2.105 Once operational, direct and indirect employment would be negligible.
- 2.106 The Environmental Statement refers to a field office to be established, which could provide a focus for local training initiatives. It is not clear how the field office is connected to the Proposed Development or could be secured.
- 2.107 The applicant also advise that it is in the process of securing partnership agreements with Sandwich Technology School and Education Business Partnership to provide educational workshops/visits; engineering challenges; computer equipment; and contributions to educational establishments.
- 2.108 These education and training contributions do not appear to be directly rated to the Proposed Development or necessary to make it acceptable in planning terms. Accordingly, they are noted but given no weight.
- 2.109 The applicant considers that the Proposed Development would provide an opportunity to enhance local mobile phone, broadband, satellite TV and radio services. The applicant details that discussions have been had with a range of third parties, including the Royal National Lifeboat Institute; Kent Public Service Network; Clear Picture (broadband provider); Call Flow Solutions (broadband provider); and Academy Radio (local community radio station), with some expressions of interest and support from them.
- 2.110 However, such facilities do not form part of the Proposed Development and no clear evidence has been provided to demonstrate a deficiency in these services or that any improvements would necessarily be delivered. These provisions are also not necessary to make the development acceptable in planning terms. This is noted by officers, but no weight is given.
- 2.111 The applicant identifies that tourism and recreation is a relatively significant employment sector in Dover District; and that Richborough Fort, Saxon Shore Way and the River Stour are significant assets, which help to stimulate expenditure and employment in the local area. The applicant considers that the Proposed Development would have an adverse impact of a negligible scale. However, this is based on their assessment of landscape, visual and heritage effects, which officers consider are underestimated. With such greater effects, it is considered that the impact on tourism and recreation would also be greater, increasing to adverse minor.
- 2.112 The applicant advises that they are setting up a Community Interest Company (CIC) with key stakeholders, including communities in Sandwich, Minster, Ash, Cliffsend, Worth and Woodneborough. The principle is that revenue generated by other facilities on the mast would be shared with them.
- 2.113 However, this CIC is not a material planning consideration and holds no weight in favour of the Proposed Development. The CIC would not meet the statutory tests of R122 of the Community Infrastructure Levy Regulations 2010 (as amended), in that it is not necessary to make the Proposed Development acceptable (it would not address the planning harm identified); not directly related to the Proposed Development (there is no way to know what the fund would be spent on and how much it would be); and therefore is not fairly and reasonably related in scale and kind to the Proposed Development. In this, regard is also had, in so far as it is applicable,

to 'Community Benefits from Onshore Wind Developments: Best Practice Guidance for England' (October 2014).

- 2.114 Members must not take the CIC into account in weighing the balance of whether or not planning permission should be granted.

Cumulative effects and mast sharing

- 2.115 The application has undertaken an assessment of the effects of the Proposed Development together with the following other proposed or committed developments as a cumulative development scenario:

- i. the proposed Richborough Communications Mast (DOV/16/00044) – a 324m high communications mast;
- ii. Richborough Connection Project - electricity transmission development including substations and pylons connection between Richborough and Canterbury
- iii. Nemo Interconnector - - an underground high voltage cable, with above ground works including converter station building (max height 30.8m), substation building (max height 15m), outdoor plant (max height 12.7m), converter station (max height 11.8m) construction compound, security fencing, access road and hard landscaping.
- iv. Peaking plant facility at the former Richborough Power Station (DOV/12/01017) – electricity infrastructure plant;
- v. Solar Farm at the former Richborough Power Station (DOV/13/00794) – solar panels and associated infrastructure;
- vi. Wind Turbine at the former Richborough Power Station (F/TH/15/1245) – 67m high windturbine;
- vii. Estover CHP Biomass Plant at Discovery Park (DOV/13/00701) – combined heat and power plant and associated fuel storage;
- viii. Redevelopment of Discovery Park (DOV/14/00058) – redevelopment and change of use for a mix of employment, energy, retail, hotel, non-residential institution and residential uses; and
- ix. Industrial units at Discovery Park (DOV/15/00430 & DOV/13/00783) – B2 use industrial unit and foodstore.

- 2.116 The applicant's summary of the cumulative assessment is that the main effects remain as landscape, visual and heritage impacts, but these would increase to being significant adverse by virtue of the two masts.

- 2.117 No further additional mitigation is put forwards by the applicant in this scenario; and it is confirmed that there is limited scope for any design changes.

- 2.118 The Framework (paragraph 43) is clear that the number of communication masts should be kept to a minimum consistent with the efficient operation of the network. The applicant, in response to the question of potential mast sharing, is committed to using the proposed mast to serve the needs of multiple financial market participants. They have discussed with the other mast applicant options for a joint venture, as well as with other industry participants. The applicant's position is that the Proposed Development can meet the needs of all parties.

- 2.119 However, there remains two planning applications and two masts. Given (i) that the construction of two masts is shown by the applicant to have a significantly more harmful effect than a single mast and (ii) that the applicant states that there is no reason why a single mast could not be consistent with the operation of the network, it is considered that objection to both masts should be made on the basis that the

number of masts has not been kept to a minimum. If the position of either applicant is correct, there should be the need for only one mast and one planning application.

#### Planning Balance

- 2.120 For reasons that are set out above, it is considered that there would be harm to the significance of designated heritage assets, namely the Scheduled Monument and Grade I listed building of Richborough Fort and Castle, and St Peter's Church in Sandwich and the Church of Saint Mary in Minster (both Grade I listed). It is established that any harm to the significance of a heritage asset should be given considerable importance and great weight. Under paragraph 132 of the Framework, the more important the asset, the greater the weight should be – in this instance the heritage assets are of the highest significance; and the harm to them must be clearly and convincingly justified.
- 2.121 Against this harm, which is less than substantial, the public benefits of the proposal, including its optimum viable use, must be considered.
- 2.122 The main purpose of the Proposed Development is to provide a high speed communications network within the context of the technical and financial services industry in the UK. Whilst the applicant has asserted some minor benefit to the national economy, no specific public economic benefits, such as additional jobs or tax revenue, have been identified.
- 2.123 Local economic benefits once operation are negligible, with at best a minor temporary benefit during construction.
- 2.124 A contribution to improve facilities at Richborough Fort is offered, but even if such improvements could be delivered in a timely manner, they would do little to balance against the greater harm of the Proposed Development.
- 2.125 Other incentives are offered by the applicant, including local training initiatives, contributions to local educational establishments, and opportunities to enhance local mobile phone, broadband, satellite TV and radio services. However, it is considered that these do not satisfy the statutory tests of R122 of the CIL Regulations and therefore must carry no weight in the planning balance.
- 2.126 Likewise, the Community Interest Company (CIC), that the applicant is seeking to setup, is not necessary to make the Proposed Development acceptable; not directly related to the Proposed Development; and therefore is not fairly and reasonably related in scale and kind. It carries no weight in the planning balance.
- 2.127 Insufficient public benefit has not been evidenced or justified that could overcome the Council's legal duty to have special regard to the desirability of preserving designated heritage assets, particularly bearing in mind the Grade I or scheduled monument status of them.
- 2.128 Weighing further against the Proposed Development are adverse and significant impacts identified including on the landscape character of the Ash Levels and Richborough Castle; and from representative viewpoints and receptor groups including Richborough Fort, public rights of way and residential properties. These effects are significant in the planning balance.
- 2.129 For these reasons, and as set out in this report as a whole, the public benefits of the Proposed Development, on its own merits, even with significant weight attached to

the applicant's asserted minor economic benefits, do not outweigh the harm to the heritage, landscape and appearance of the area.

2.130 Regard is had to the site selection process, as to whether the location of the mast represents its optimum viable position. But even if this were to be the case, this would not change the balance in favour of the scheme.

2.131 Accordingly, it considered that planning permission should be refused for the reasons below.

**g) Recommendation**

I. Planning permission be REFUSED for reasons of:

- i) The proposed mast by reason of its height and general scale; located within the setting of Richborough Fort Scheduled Monument and Richborough Castle Grade I listed building; and its impact on the inter-relationship between St Peter's Church in Sandwich and the Church of Saint Mary in Minster (both Grade I listed); would be materially harmful to the significance of the setting of these heritage assets, which are of the highest importance. In this, regard is had to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special regard is had to the desirability of preserving the setting of a listed building. The proposed development is contrary to Section 12 of the National Planning Policy Framework (2012), including paragraphs 131, 132 and 134. The harm in relation to these heritage assets is considered to be less than substantial with regard to paragraph 134 of the Framework, but this harm is not outweighed by the public benefits of the proposal.
- ii) The impact of the proposed mast would significantly adversely affect and be harmful to the landscape character including Ash Levels and Richborough Castle; and from particular representative viewpoints and receptors, including Richborough Fort, residential properties and public rights of way, there would be further significant adverse effects and harm. Accordingly, the proposed development is contrary to Policy DM16 of the Dover District Core Strategy (adopted February 2010); Saved Policy CO5 of the Dover District Local Plan (adopted 2002); and the National Planning Policy Framework (2012), including paragraphs 109, 113 and 114, as well as the core planning principles at paragraph 17.
- iii) Together, the proposed mast and that proposed under application DOV/16/00044, would result in materially greater adverse impacts on the heritage significance, landscape character and appearance of the area. Such a proliferation of structures, especially as each applicant considers that their mast is capable of accommodating the other's equipment, is contrary to paragraph 43 of the National Planning Policy Framework (2012) which requires that the number of telecommunications masts and the sites for such installations be kept to a minimum, as consistent with the operation of the network. However, when considered by itself, on its own merits (for the reasons set out at 1 and 2 above), the proposed mast is not acceptable in planning terms.

Case Officer

Andrew Somerville

## SOUTH EAST OFFICE

Mrs F Runacre  
Thanet District Council  
PO Box 9  
Cecil Street  
MARGATE  
Kent  
CT9 1XZ

Direct Dial: 01483 252032

Our ref: P00510748

Dear Mrs Runacre

**Arrangements for Handling Heritage Applications Direction 2015 &  
T&CP (Development Management Procedure) (England) Order 2015**

**LAND TO THE NORTH OF KINGS END FARM, RICHBOROUGH, SANDWICH,  
CT13 9JH  
Application No 16/00524**

Thank you for your letter of 13 May 2016 notifying Historic England of the above application.

**Summary**

We think that the proposed development would cause harm to the ability to appreciate the heritage significance of the Richborough Fort scheduled monument. This would not amount to substantial harm in the terms of the NPPF; however any harm or loss should require clear and convincing justification. For a clear and convincing justification for the harm to be made it would be necessary to show that other less harmful designs and locations are not possible and that the unavoidable harm is outweighed by the public benefits of the scheme.

The application is the second one in this area this year. In our view, the cumulative effect of two masts should be taken into account in assessing this application. The construction of two similar facilities providing similar services in the same area seems likely to be unnecessarily harmful. We recommend that consideration should be given to rationalising the two proposed developments.

We recommend that the Council should weigh the harm that this scheme will cause against any public benefits that the scheme might bring, as required by paragraph 134 of the National Planning Policy Framework.

**Historic England Advice**

Our advice relates principally to the effect of the proposed development of Richborough Fort scheduled monument, which is the closest of the highly graded



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heritage assets.

### ***The significance of Richborough Fort***

Richborough was the site at which the Roman invasion force landed in AD 43. The invasion camp was used for a period of less than ten years before being levelled to make way for the construction of a military and naval supply base. This helped store and distribute the supplies needed by the Roman forces during their rapid conquest of southern Britain. The supply base developed into a heavily defended fort, town and harbour during the first to third centuries AD. The fort is of a type known as a Saxon Shore Fort, constructed to provide protection against the sea-borne Saxon raiders who threatened the south-east coast. Its most distinctive features are its massive defensive stone walls and defensive ditches. The town and port is featured on many contemporary road maps and itineraries. Watling Street, the main Roman road from London and Canterbury, begins outside the gate of Richborough Fort.

The fort fell into disuse during the later fifth and sixth centuries AD but in later years, a small chapel of pilgrimage was constructed and dedicated to St Augustine, who is believed to have landed at nearby Ebbsfleet in c.597 AD and is credited with reintroducing Christianity into pagan Saxon England.

Richborough Fort illustrates the strategic importance of the promontory on which it stands. The promontory originally took the form of a small island situated near the south eastern end of the Wantsum Channel, a broad stretch of sea which separated the Isle of Thanet from the Kent mainland until at least the Late Roman period. It lay alongside a natural harbour providing a convenient landing place only about 45km from mainland Europe. The use of the promontory throughout the Roman period reflects its strategic importance to attacking and occupying forces. The flat plain of the former Wantsum marshes can, with the aid of the interpretation provided on site, be understood as remains of the Wantsum channel. The scale of the walls helps visitors to appreciate the importance of the place in Roman Britain and the relative isolation and enclosure facilitates evocation of the antiquity of the place.

### ***The effects of the proposed development***

The proposed development comprises a guyed communications mast supporting a range of dish antenna equipment, set within a fenced compound. The proposed communications mast is a three-sided steel lattice construction, 305m in height. Guys will extend from eight levels anchored at nine stay blocks at ground level. Static red aviation lighting will be installed at 51m intervals along the mast at six levels, with two lights per level. Anti-twist frames, providing a walkway for access and maintenance and fixing points for guys, protrude in three directions. There are six dish antenna proposed at various heights and orientations. The mast base is set on a concrete foundation within a fenced compound containing equipment cabinets and a generator and enclosed by a 2.4m high palisade security fence.



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The development is intended to provide the infrastructure for high-speed telecommunications between financial companies in London and Frankfurt. The application site is located on the direct geometric line of sight between the two centres. It could also act as a hub for a range of other telecoms functions.

*The effect on the heritage significance of Richborough Fort*

The proposed mast will be clearly visible from the fort, and will be seen in conjunction with the monument in views looking north. It might appear to be slender and lightweight but it would be a substantial new presence that is both nearer and much taller than the existing developments within the setting of the fort.

We disagree with the Non-Technical Summary and Heritage Assessment about the degree of impact on the heritage significance of the fort. We contend that the effect would be moderate adverse as we think that in long views from the fort, its relationships to the Wantsum marshes and the rising edge of the Thanet plateau help promote understanding of the history of the fort and the wider area.

The mast would create a new and incongruous addition to the existing scene of open, flat fields against a backdrop of sporadic masts and groups of industrial and agricultural buildings that rise little above the horizon. We think that the quality of views will be harmed by the scale of the mast, which would be much taller and closer than existing structures. Views would not be obstructed over a wide segment of the vista - wide and long views over mostly open flat countryside to the cliff in the distance would still be available to a great extent - but the presence of the mast would be difficult to ignore and is likely to be dominating in most northward views. The presence of the tower rising above the walls in views within the fort would undermine the sense of isolation and enclosure provided by the walls.

We also challenge the assertion that the introduction of the mast would not reduce a visitor's understanding and appreciation of the importance of the Fort. We are particularly concerned that the proximity and height of the proposed mast would be conspicuous in, and distracting from, views within the fort. This would undermine the sense of enclosure and isolation that is presently created by the walls. Many people visit the fort to explore and understand the place and experience its monumental character, which is a public benefit. In altering this experience, as we have described above, the development would cause some harm to public benefit.

*The effects on the heritage significance of other built heritage assets*

The applicant seems to have taken into account our guidance and pre-application advice about the appropriate approach to the assessment of the settings of heritage assets to some extent, and this seems to be reflected in the structure of the Heritage Assessment (e.g. most assets have a section entitled "Setting (and its contribution to significance)", which is welcome. However, the assessment of the way in which setting might contribute to the heritage significance of individual assets or groups of assets is



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superficial or absent. For example, whether long views to and from Minster Abbey contribute to its significance is not mentioned, and while there is some description of the setting of the listed buildings of Sandwich, there is no assessment of how it might contribute to the heritage significance of the group. However, these highly graded heritage assets are some distance from the proposed development and we do not think that they are very likely to be greatly harmed by it.

We don't usually comment on the effects of developments on grade II Listed Buildings and Conservation Areas, which comprise most of the heritage assets that are potentially affected, as Local Planning Authority Conservation Officers will usually be better placed to do this.

*The effects on the heritage significance of archaeological remains on the development site*

We note that the Planning Statement and ES Archaeology chapter concludes that the site has potential to contain deposits of geo-archaeological interest relating to the origins, evolution and silting of the Wantsum Channel but low potential for occupation remains. Geo-archaeological deposits would be impacted by the piling for the foundations of the mast and the guy block foundations. A programme of archaeological geo-archaeological works is proposed as mitigation of this potential impact.

We don't intend to comment in detail on the potential impacts on undesignated archaeological remains, as you will presumably receive advice about this from your archaeological advisors at Kent County Council.

*Cumulative effects*

The application is the second one within this area this year. The construction of two similar facilities providing similar services in the same area seems likely to be unnecessarily harmful. The site is also adjacent to the corridor that has been identified for the Richborough Connection Project.

**Policy**

In the National Planning Policy Framework (NPPF) it is a core planning principle to conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations (para.17 NPPF). When considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation. No other planning concern is given a greater sense of importance in the NPPF.

Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification (para.132 NPPF). The onus is



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therefore on you to rigorously test the necessity of any harmful works.

Any harm or loss should require clear and convincing justification. An application should demonstrate that all less harmful alternatives have been considered. If a proposal cannot be amended to avoid all harm, and the harm is less than substantial, this can be weighed against the public benefits of the proposal (para.132, NPPF).

### **Position**

We think that the proposed development would cause harm to the ability to appreciate the heritage significance of the Richborough Fort scheduled monument. This would not amount to substantial harm in the terms of the NPPF; however any harm or loss should require clear and convincing justification. For a clear and convincing justification for the harm to be made it would be necessary to show that other less harmful designs and locations are not possible and that the unavoidable harm is outweighed by the public benefits of the scheme.

The application is the second one in this area this year. In our view, the cumulative effect of two masts should be taken into account in assessing this application. The construction of two similar facilities providing similar services in the same area seems likely to be unnecessarily harmful. We think that consideration should be given to rationalising the two proposed developments.

### **Recommendation**

1. We recommend that consideration should be given to rationalising the two similar planning applications that are currently under consideration.
2. We recommend that the Council should weigh the harm that this this scheme will cause against any public benefits that the scheme might bring, as required by paragraph 134 of the National Planning Policy Framework.

Please contact me if we can be of further assistance. We would be grateful to receive a copy of the decision notice in due course. This will help us to monitor actions related to changes to historic places.

Please contact me if we can be of further assistance. We would be grateful to receive a copy of the decision notice in due course. This will help us to monitor actions related to changes to historic places.





Historic England

SOUTH EAST OFFICE

Yours sincerely



**Paul Roberts MClfA**

Inspector of Ancient Monuments

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Roy Porter, English Heritage

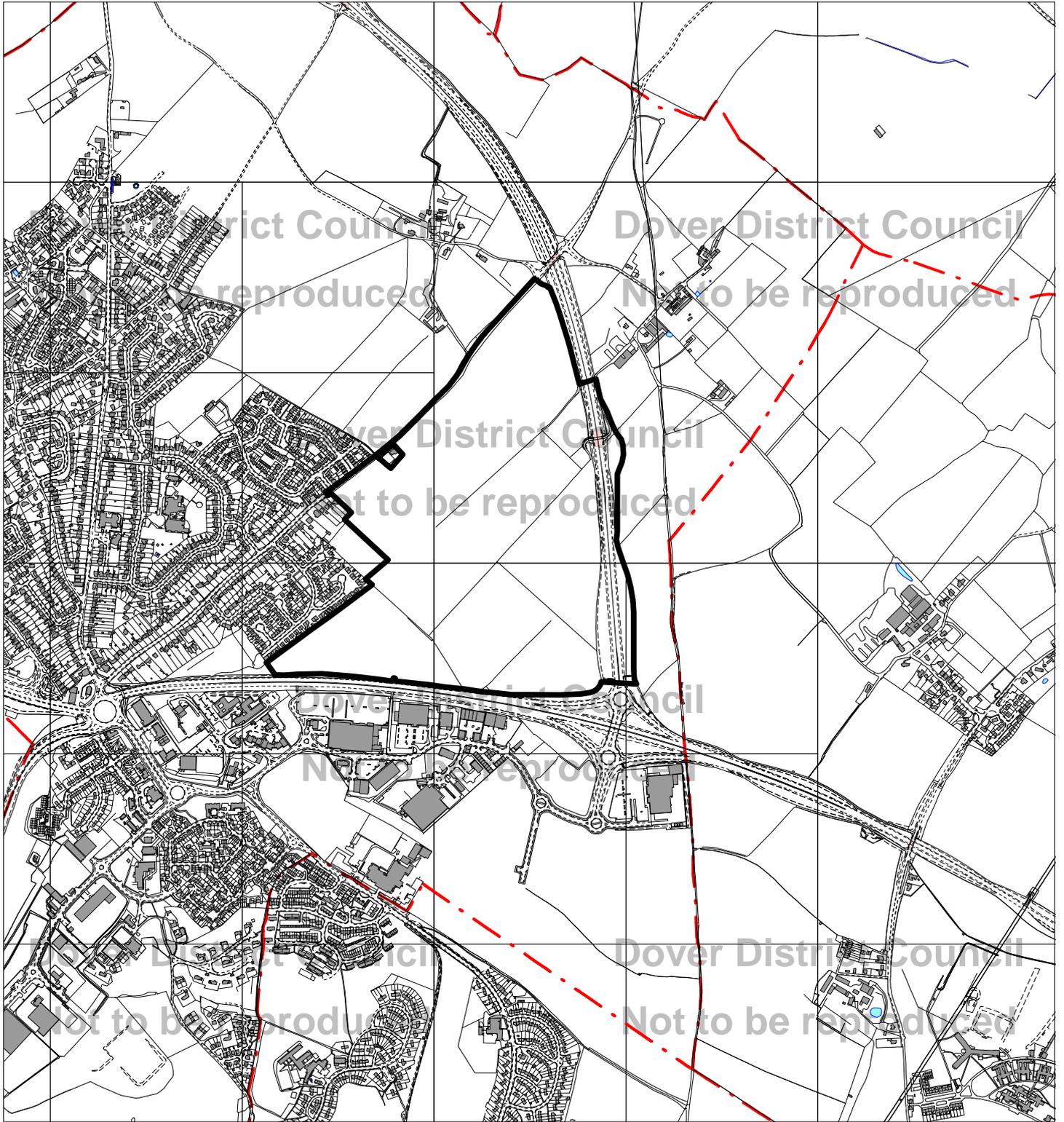


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**Note:** This plan is provided for purposes of site identification only.

**Application: CON/10/01010/MM**

**Phase 1**

**Whitfield Urban Extension**

**Land south East of Archers Court Road**

**TR31044520**



a) **CON/10/1010/MM – Application for approval of details reserved by Condition 51 of DOV/10/01010 in respect of sewage and foul drainage – Phase 1 (Light Hill), Whitfield Urban Expansion**

Reason for the Report – An appeal against the non-determination of the above application for approval of details has been received by the Council. This report seeks Committee approval for the case the Council should make at the appeal and is also reported to Committee given the importance of the Whitfield development to the delivery of the District's housing land supply.

b) **Summary of Recommendation**

That the Council would have **REFUSED** to approve the details required by condition 51 had it been in a position to do so.

C51 provides that:

None of the dwellings within each phase or sub-phase shall be occupied until works for the disposal of sewage and foul water have been provided on the site to serve that phase or sub-phase and pipework shall be sized to serve 1933 units in accordance with details including a schedule and programme of works that shall be submitted to and approved in writing by the Local Planning Authority prior to the development of that phase taking place. The development shall be carried out in accordance with the agreed schedule and programme.

Reason: To ensure adequate measures are made for the disposal of sewage and foul drainage and sewage.

The current application was made in purported accordance with C51. However no details of the on-site scheme have been provided. The application therefore does not provide the detail which C51 requires. For reasons provided in this report, the Council cannot be satisfied on the information provided that the on-site details are satisfactory or appropriate.

It appears to be claimed that the Council can be satisfied that the on-site drainage scheme will be appropriate because there are other relevant statutory schemes. However, C51 is an appropriate planning condition: see Annex A to circular 11/95. It serves planning purposes. The controls under other statutory schemes are not an appropriate substitute for C51.

From the supporting documents, it appears that the Applicant is, in effect, seeking the removal of C51. The application is not however a s.73 application and C51 is justified for the reasons given in this report. If this was a s.73 application to remove or modify C51 it would be recommended for refusal because C51 is a necessary and reasonable condition here.

In any event, the focus of the Applicant's case is that the requirement for off-site capacity improvements is unreasonable and unnecessary. Off-site requirements are in this case addressed by the s.106 agreement and not by C51. This is not an application to amend the s.106 agreement. Even if a request to vary the S106 was received it is very unlikely that it would be agreed because the relevant s.106 requirements are required to address the issue identified in para 20 of the relevant section of the NPPG (see below). The planning system is the appropriate route to address the gap identified in the case of *Barratt Homes Ltd. v Welsh Water* where there new homes are to be

provided but where there is inadequate existing off-site capacity (this case is referred to in the correspondence attached at Appendix 2).

c) **Planning Policy and Guidance**

Whilst not directly relevant to an application under C51, the following policy framework justifies C51 and the s.106 obligation.

Dover District Core Strategy 2010

Policy CP11 of the Core Strategy makes a strategic allocation for circa 5,750 new dwellings and mixed use development on an area around Whitfield, called The Whitfield Urban Expansion Area (WUE)

Policy CP11 sets out specific guidance as follows:

*The site to the west, north and east of Whitfield is allocated for an expansion of Whitfield comprising at least 5,750 homes supported by transport, primary education, primary health and social care, utility services and green infrastructure together with retail, financial and professional offices, eating and drinking establishments (Use Classes A1 to A5).*

*Planning permission will be granted provided:*

*iii. The proposals include a phasing and delivery strategy that is related to the provision of all forms of infrastructure and the creation of neighbourhood centres;*

Policy CP6 of the Core Strategy provides that development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either already in place or there is a reliable mechanism to ensure that it will be provided at the time it is needed. The infrastructure table in the Core Strategy highlights the need for new waste water infrastructure to serve WUE: see table following para 3.90 and para 4.54.

Whitfield Urban Expansion (WUE) Supplementary Planning Document April 2011

The SPD carried forward the guidance in Policy CP11 of the adopted Core Strategy to provide a framework for the preparation of subsequent planning applications proposing to develop the site and aims to give certainty to local people and developers. It enshrined the need for good design and high standards of amenity and was taken into account in imposing suitable conditions when granting outline planning permission.

The SPD contains a concept masterplan and in addition to stating general principles, identifies 5 large and distinct development areas. One of those areas called Light Hill was identified for some 1420 dwellings together with a 2 form entry Primary School, local centre and other supporting services/infrastructure. This application relates to development at Light Hill and falls to be considered within this context.

The SPD paragraphs 4.26 and 4.35 identify the foul water constraints. Appendix 2 of the SPD details the infrastructure requirements for each

phase and envisages the need for “A new low rise pumping station and foul main in Light Hill. Offsite strategic pumping station (located elsewhere in the WUE), a low rise pumping main at Broomfield Bank Wastewater Treatment Works and connection to this facility.”

#### National Planning Policy Framework

- Paragraph 109 - the planning system should contribute to and enhance the natural and local environment by:
  - preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution .....
- Paragraph 120 – to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.....
- Paragraph 206 - planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects

#### Planning Practice Guidance - Water, Water Supply and Wastewater

- In the planning system, the preparation of Local Plans should be the focus for ensuring that investment plans of water and sewerage companies align with development needs. If there are concerns arising from a planning application about the capacity of wastewater infrastructure, applicants will be asked to provide information about how the proposed development will be drained and wastewater dealt with. Applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment.
- When drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies). This should be done in consultation with the sewerage company of the area.
- The timescales for works to be carried out by the sewerage company do not always fit with development needs. In such cases, local planning authorities will want to consider how new development can be phased, for example so it is not occupied until any necessary improvements to public sewage treatment works have been carried out

d) **Relevant Planning History**

DOV/10/1010: Outline application for the construction of up to 1,400 units, comprising a mix of 2-5 bed units, 66 bed care home (Class C2) and supported living units, with vehicular access off the A256; provision of new 420 place 2FE Primary School including early years provision, energy centre and local centre comprising up to 250sqm of retail space (Class A1-A3) along with all associated access arrangements, car parking, infrastructure and landscaping, with all matters (except the means of access off the A256) reserved for future consideration. (Revised Proposals). (The application was granted permission on a slightly revised smaller site for not more than 1250 dwellings). The 2010 Phasing and Delivery Strategy (approved as part of this permission and as required under CP11 para iii) for Phases 1 and 1A recognised the need for major new on and off site infrastructure [para 4.45]:

*“...the Phase 1 area as a whole will be served by the new low rise pumping station located in the NE corner of Phase 1. ... This will need to connect to the strategic pumping station... that will, subject to outcome of the s.98 determination [requisition of new sewer at developer’s cost] be positioned to replace/support the existing Sandwich Road PS. This will connect via a rising main to Broomfield Bank WWTW which has the capacity to serve the WUE...”*

DOV/15/00878 Reserved matters application pursuant to outline permission DOV/10/01010 relating to the appearance, layout and landscaping of 94 no. dwellings together with garages and parking including all highway related details, sub phase 1A, Phase 1 (Light Hill), Whitfield Urban Expansion. Granted 12 October 2015

CON/10/1010/A Submission for approval of details relating to condition 51 – foul drainage- Sub Phase 1A, Phase 1, (Light Hill) Whitfield Urban Expansion - NOT DETERMINED. CURRENTLY IN ABEYANCE PENDING DETERMINATION OF THIS APPEAL.

CON/10/1010/LL Submission for approval of details relating to condition 51 – foul drainage in respect of 94 no. dwellings, Sub Phase 1A, Phase 1, (Light Hill) Whitfield Urban Expansion. – APPROVED 25 May 2016

CON/10/1010PP Submission for approval of details relating to condition 51 – through a Bio Disc system to treat foul water in respect of Phase 1, (Light Hill) Whitfield Urban Expansion, excluding 94 no. dwellings in Sub Phase 1A . NOT VALID

e) **Consultee and Third Party Responses**

**Southern Water**

Southern Water (SW) cannot recommend discharge of condition 51.

No detailed on-site drainage layout was provided to allow Southern Water to make any comments or recommendations.

As indicated in previous correspondence there is no capacity in foul network to accommodate the proposed development without improvement works to the existing network. SW notes that a budget estimate for the required improvement works was issued under Section 98 of the Water Industry Act by Southern water in August 2015; however the offer is already expired due to only three months validity. If the applicant wishes to proceed with the scheme, an updated offer shall be obtained from Southern Water.

- f) 1. **The Site and the Proposal**
- 1.1 The site comprises Phase 1 of the WUE – sometimes called Light Hill – and essentially comprises the land lying within the triangle formed by Archers Court Road, the A.256 and the A.2. In some places it adjoins existing development and the southern boundary excludes a triangular area to the southwest corner. Development has commenced on sub-phase 1A comprising 94 dwellings and which is excluded from this submission. Approval of drainage details under C51 was given in respect of Phase 1A following submission of details of the layout of the drains, the capacity, location and design of the pumping station and the location of the rising main on site. The infrastructure for phase 1A is not sufficient to accommodate development pursuant to the remainder of phase 1.
- 1.2 The applicants have submitted a report by Utility Law Solutions (ULS) which purports to seek to demonstrate how the WUE Phase 1 can be effectually drained without causing detriment to the existing public sewerage network. It does so by relying on the statutory duties of Southern Water and contending that those duties mean that there will be adequate off-site capacity in time. In respect of on-site it appears to contend that because the on-site infrastructure will be offered for adoption, it necessarily follows that it will meet the C51 requirements. Thus on the Applicant's approach, foul drainage does not represent a planning constraint for the proposed development and it would be unreasonable to refuse to discharge the foul drainage condition associated with WUE Phase 1 (condition 51).
- 1.3 The applicants go on to note that the WUE is a centrepiece of the adopted Core Strategy and in planning capacity improvements to their public sewerage system Southern Water must provide a holistic solution to the planned significant housing growth in the Dover catchment. Improvements to the existing already inadequate public sewerage system would need to be undertaken by Southern Water should WUE Phase 1 be connected to this part of the public sewerage systems to resolve the pre-existing issues.
- 1.4 The applicants further note that Southern Water is to prepare a Drainage Area Plan (DAP) by March 2017 on the basis of which they will plan, fund and deliver wastewater treatment capacity required to serve new development. The Applicant's proceed on the basis that costs will fall on existing and new customers and no developer contributions will be sought. No timeline for delivery is though provided

by Southern Water (or the applicants), there is as yet no detail of what the DAP will contain or how it will be developed and in what timescale. The Applicant's contend that for a drainage authority to submit representations resisting the discharge of planning conditions is unreasonable in view of their duties and responsibilities. Three appeal cases are cited examining the necessity or otherwise of foul drainage planning conditions. The thrust in one case was that such a condition was unreasonable as there would be sufficient lead time to carry out improvements to the sewerage network before any houses would be occupied. In the other cases, Inspectors concluded that there was no need for such a condition as it only duplicated powers available under other legislation.

- 1.5 The applicants say that condition 51 should therefore be discharged. There is time for Southern Water to carry out the necessary works, other legislation addresses the situation and thus there is no impact which would make the development unacceptable in planning terms.
- 1.6 The above is a precis of a 75 page document. To assist the Committee, the Executive Summary of the ULS report is attached in **Appendix 1**. A full copy of the report is available to view on the Council's website.

## 2. **Main Issues**

- 2.1 The main issues that appear to arise as part of the applicant's case are :
- 2.2
  - Does the application provide the details required by C51?
  - Should the Council proceed on the basis that C51 can be treated as discharged because other statutory schemes will ensure the on-site drainage is appropriate
  - Alternatively, can this application be treated as a s.73 application to remove C51 and if so is C51 justified?
  - Alternatively, can this application be treated as an application to vary the s.106 agreement and if so is the removal of the requirement for sufficient off site capacity justified?

## 3. **Assessment**

- 3.1 The short answers to these points are as follows:
- 3.2 This is only an application to approve details (in the sense of signing off compliance with) required by C51 for the on-site foul water infrastructure for phase 1. No details or scheme is provided (compare with the details provided and approved on sub-phase 1A). The legal arguments raised do not arise on this type of application. This short point in itself is sufficient to recommend refusal of this application. All the following points only arise because the Applicant's argument that a planning condition is not necessary or reasonable.
- 3.3 The future possibility of adoption does not now mean that the Council can be satisfied that the requirements of C51 will be met. First there is no adoption agreement, no obligation for the on-site system to be

adopted and no details to inform any adoption agreement/discussions. Second, C51 is a planning control. The matters with which it is concerned are wider and different from those under the Water Industry Act 1991 including ensuring the on-site infrastructure is designed in a way consistent with the delivery of the wider masterplan.

- 3.4 This was not submitted as a s.73 application to remove C51 and it cannot be treated as such an application – as for example there are different publicity requirements. In any event, C51 is plainly justified so as to control the planning implications of the on-site drainage infrastructure (see below);
- 3.5 C51 is concerned with on-site provision. The section 106 agreement is concerned with off-site provision. There is no application to amend the s.106 agreement (which was part of a comprehensive package agreed with the developer). The s.106 obligations are in any event entirely consistent with the NPPG and consistent with cases which ULS do not refer to where their arguments were rejected.
- 3.6 The following paragraphs provide further information and assessment to support the above.
- 3.7 External legal advice has been sought which confirms that the legality of condition 51 cannot be challenged on an application for approval of details. Nor can condition 51 be removed by such an application. The Council has therefore been advised that the applicant's arguments in respect of that issue are irrelevant to the application under consideration. The following explains that position.
- 3.8 Outline permission for phase 1 of up to 1400 units was granted on 30th April 2015 ("the Phase 1 Permission") Condition 51 of that permission required the following:
- None of the dwellings within each phase or sub-phase shall be occupied until works for the disposal of sewage and foul water have been provided on the site to serve that phase or sub-phase and pipework shall be sized to serve 1933 units in accordance with details including a schedule and programme of works that shall be submitted to and approved in writing by the Local Planning Authority prior to the development of that phase taking place. The development shall be carried out in accordance with the agreed schedule and programme."*
- 3.9 The National Planning Policy Framework advises that planning conditions should only be imposed where they satisfy what is commonly referred to as the six tests. Namely; they should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. In those respects, officers were quite satisfied that the tests were satisfied when the original condition was imposed.

Condition 51 refers to on-site foul drainage requirements only, with the signed S106 Agreement relating to service infrastructure works from off-site to a point within the boundary of the site. The implementation of works relating to both the above is required prior to the occupation

of any dwellings. The requirement for the condition relating to on-site works arises for 4 reasons.

1. Although it is usually the case that foul sewerage systems are adopted by the sewerage undertaker, there is no actual requirement for that to happen and no guarantee that it would. In such circumstances the Council needs to be satisfied that any private system would be satisfactory to adequately dispose of foul sewage from the site.
  2. Any solution for phase 1 needs to be compatible with a strategic foul drainage solution for the greater WUE. In that respect there are different options as to where connection points to a public system off-site might be established. Clearly therefore it is important for the Council to be able to ensure that any solution does not prejudice the strategic solution, for example, by ensuring that it is capable of serving further phases of development or could be improved to do so.
  3. Because of the topography of the site, with gradients running in different directions, the Council needs to be satisfied that foul drainage infrastructure is appropriately located on the site, for example siting of pumping stations, and that such infrastructure is compatible with the site layout in terms of such matters as relationship with dwellings, means of access and landscaping.
  4. Leading on from the above, if it is intended to have one large pumping station to serve the whole of phase 1, then it is likely to involve the need for compounds, service access and above ground structures. The Council will also need to be satisfied that such components relate satisfactorily to the approved layout.
- 3.10 Annex A of Circular 11/95 (which remains extant) contains a model condition covering on-site drainage. On the facts here imposition of C51 was justified. As noted above, the applicant takes a different view and argues that such a condition is unnecessary and/or unreasonable. However their approach is based on their interpretation of the inter relationship between the Water Industry Act and Planning Legislation. They do not engage with the planning justification for C51. If they wished to challenge the appropriateness of C51 then the correct avenue is a s.73 application. The applicants have not exercised that option which has different statutory procedural requirements to the current application.
- 3.11 As noted above, the applicants have previously submitted details as a part approval under the condition in relation to sub-phase 1a (the first 94 dwellings of phase1). That submission contained detailed on-site drainage proposals, supported by technical calculations, to demonstrate how the 94 units would be serviced from a foul drainage point of view. Following technical assessment of those details, they were approved (application DOV/10/01010/LL refers). Submission of those details would therefore appear to run counter to the applicants' current arguments in respect of the validity of the condition.

*Do the submitted details satisfy the requirements of the condition?*

- 3.12 The only issue relevant to the consideration of this application is in relation to whether it specifically complies with condition 51 or not.
- 3.13 The requirements of the condition specifically require details of on-site foul drainage works together with a schedule and programme of such works. The applicant has also confirmed that the submission relates to the whole of the remaining part of phase 1 i.e. the whole of the area covered by the outline permission with the exception of the 94 dwellings approved as part of sub-phase 1a. To satisfy the condition would require a detailed drainage layout for the whole of the remainder of phase 1, supported by technical drainage calculations and details of other associated drainage infrastructure, such as the on-site pumping station size and location, any emergency storage tanks, points of connection with the public sewer network and details as to how and when each subsequent sub-phase would be connected into the system. These details would allow the adequacy and planning implications of the infrastructure to be considered.
- 3.14 Instead, apart from the general arguments on whether a condition is required or not, what has been submitted is a draft drainage 'strategy' as opposed to a detailed scheme. Indeed the applicants specifically refer to a detailed design being drawn up at a later stage in consultation with the relevant statutory bodies in accordance with standard adoption criteria. Thus, details of the pumping station, storage tanks, connection points to the main sewer network are not provided current time, there is no overall drainage layout submitted, no technical details of the size of pumping station required, nor how and when the pumping station for sub-phase 1a would be upgraded over time to cater for increased foul water flows. There is no detailed schedule or a programme of when such works would be implemented in tandem with the housing. In short, the submitted details do not satisfy the requirements of the condition and therefore cannot be approved.
- 3.15 No issue can be raised on this application in respect of the s.106. However for the avoidance of doubt the Council's position is that the s.106 obligation imposes a restriction on the occupation of any units until adequate off-site capacity is provided. Such requirements are consistent with the NPPG and the decisions which ULS have not addressed and where their arguments were rejected. The Council's understanding was communicated to the Applicant in March 2016 and no response has been received. The letter is attached to this report at Appendix 2.

#### **4 Conclusion**

- 4.1 The Council was correct to impose C51 and it is lawful. The details submitted clearly do not satisfy the requirements of the condition and therefore could not have been approved had the Council been in a position to do so. In your Officers' view the wider arguments advanced by the Applicants cannot be considered under the current appeal. Even if the justification for C51 can be addressed on this application, C51 is justified for reasons including those set out above.

- 4.2 The s.106 agreement addresses off-site issues. Whilst not directly relevant to the issues on this application, as things stand and absent any progress in discussions between the Applicants and Southern Water, the Council has no confidence that adequate off site capacity will be in place before the first homes of phase 1 are completed.
- 4.3 It is extremely disappointing that this situation exists. The WUE has evolved and been confirmed through a comprehensive planning process including preparation and adoption of a Core Strategy, preparation and approval of supplementary planning guidance for the development and the granting of outline planning permission. Both Southern Water and the developer have been involved in every step of that process lasting some 8 years from the publication of Preferred Options. It was always clear that upgrading of sewerage infrastructure would be needed to meet the housing growth agenda. Importantly, as members will also be aware, development of Whitfield in a timely manner is extremely important to delivering the Council's 5 year housing land supply. Accordingly, officers will continue to work with both parties to find a long term strategic solution.
- 4.4 In the meantime, it is recommended that Committee agree with the above analysis in order that those arguments can be advanced by the Council at the forthcoming appeal.

g) **Recommendation**

- I That the Committee confirms that it would have refused to approve the details reserved by condition 51 submitted under application no DOV/10/01010/MM, had it been in a position to do so for the reasons set out in the report.
- II Powers be delegated to the Regeneration and Delivery Manager to settle the detailed wording of the case for the local planning authority in line with the issues set out in the report and as resolved by the Planning Committee.

Case Officers

Kim Bennett/Mike Dawson

**Appendices**

Appendix 1: Executive Summary, Proposed Development of Land – Whitfield Urban Extension Phase 1 Light Hill (excluding Sub-phase 1A), Foul Drainage Analysis – Discharge of Condition 51  
Utility Law Solutions August 2016

Appendix 2: Letter dated 18 March 2016 from Dover District Council to the applicant

## **APPENDIX 1**

### **Proposed Development of Land - Whitfield Urban Extension Phase 1 Light Hill (Excluding Sub-phase 1A) - Foul Drainage Analysis A. Executive Summary**

Utility Law Solutions (ULS) specialises in the application of water and sewerage law in relation to the housebuilding industry and has been appointed by Halsbury Homes (South East) Ltd (Halsbury). to advise on foul drainage matters relevant to its proposed development of land known as Whitfield Urban Extension Phase 1 Light Hill excluding Sub-phase 1A (WUE Phase 1).

The purpose of this report is to outline how WUE Phase 1 can be effectually drained without causing detriment to the existing public sewerage network and also to set out the legislative framework which governs the water and sewerage industry. Sewerage undertakers have statutory duties and powers designed to ensure they manage the public sewerage system in a way which can accommodate new development and a defined funding mechanism through which this can be achieved. Foul drainage does not represent a planning constraint for the proposed development and it would be unreasonable to refuse to discharge the foul drainage planning condition associated with WUE Phase 1 (Condition 51).

It is proposed that once developed WUE Phase 1 will comprise of up to 1156 residential dwellings (1250 units less the 94 units being constructed as part of Subphase1A) and that a foul water drainage system will be constructed and connected to the existing public sewerage network. This network is owned and operated by Southern Water.

WUE Phase 1 is part of a much larger development known as the Whitfield Urban Extension (WUE) which is the centrepiece of the Dover Core Strategy in relation to housing provision in the Dover District Council area for the next decade and beyond. The Dover Core Strategy was adopted by Dover District Council in February 2010. The WUE has a total planned capacity of at least 5,750 dwellings in Whitfield with a further 4,000 new dwellings in the sewerage catchment that serves Dover. WUE Phase 1 only represents some 11% of the overall housing provision that is planned to take place in the Dover sewerage catchment area. In planning capacity improvements to its public sewerage system, Southern Water must provide a holistic solution to accommodate the significant housing growth that will take place in its Dover catchment over the next decade and beyond.

Southern Water has carried out an assessment of its local sewerage network in order to understand the likely impact of introducing new foul flows from the whole of the WUE Phase 1 (1156 new dwellings). Although the foul flows from WUE Phase 1 could be accommodated in the public sewerage system during dry weather conditions and normal rainfall, existing capacity inadequacies may be exacerbated during infrequent, extreme rainfall events. Improvements to the existing, already inadequate, public sewerage network would need to be undertaken by Southern Water should WUE Phase 1 be connected to this part of the public sewerage system and to resolve the pre-existing issues.

In addition, following an application by Dover District Council pursuant to section 98 of the Water Industry Act 1991, Southern Water undertook a hydraulic modelling assessment of its public sewerage system to ascertain the impact of the foul flows from the 5750 dwellings that comprise the WUE. The assessment found that the foul flows from the WUE should ultimately be connected to the public sewerage network through the provision of new strategic pumping stations serving the whole of WUE (and possibly also including existing foul flows in Whitfield itself) to ensure no detriment occurs during extreme rainfall events. Southern Water has confirmed that the development of a Drainage Area Plan (DAP) of the

Dover catchment is currently underway with an anticipated completion date of March 2017. Based on the outcome of this DAP Southern Water will plan, fund and deliver wastewater treatment capacity required to serve new development through the water industry's price review process. The cost will be borne by Southern Water's existing and new bill paying customers and no developer contributions will be sought. ULS has suggested that a strategic solution to deal with the flows from the future development of around 9,750 new dwellings arising from the whole of the Dover Core Strategy should be pursued by Southern Water. This suggestion has not been dismissed and Southern Water pointed out that a similar approach (for the WUE) was offered to Dover District Council as a response to their section 98 application in 2014. With regard to sewerage network capacity (i.e. underground sewers and associated pumping stations), Southern Water has stated that it recognises that separate drainage for Whitfield to the wastewater treatment works is an option. This is also recognised in the adopted Whitfield Masterplan (paragraph 4.27). Southern Water has stated that it will further consider this option through the above mentioned DAP.

A sewerage undertaker will typically submit representations to local planning authorities resisting the discharge of planning conditions which, as demonstrated by this report and its appendices, is unreasonable. A detailed analysis of the duties and responsibilities of sewerage undertakers prescribed by the water industry statutory framework is set out in Appendix 5 of this report. The effect of these duties and responsibilities on whether it is necessary or reasonable to influence the imposition of planning conditions in relation to foul drainage is also examined.

The necessity or otherwise of foul drainage planning conditions has been tested in recent planning appeals in which ULS has been involved. Decisions from three of these cases are outlined below:

#### **Appeal Decision APP/Y2810/A/14/2228921**

The Planning Inspector received an analysis from ULS based on the same principles detailed in this report and also representations from a sewerage undertaker requesting that a foul drainage planning condition was imposed. The Inspector stated that a condition relating to the completion of off-site public sewer improvement works would be unreasonable as it would be at least 2 years before any houses would be occupied and discharging foul flows to the public sewerage network. The Inspector determined that these timescales gave the sewerage undertaker adequate time to implement any necessary improvement measures to the public sewerage network pursuant to the statutory framework that applies to the water and sewerage industry. The Inspector's full comments are set out in Appendix 5.

#### **Appeal Decision APP/F1610/A/14/2228762**

The Planning Inspector made the following comment at paragraph 56:-

*The foul sewage and the water supply systems involve infrastructure elements that are inadequate. The consultation response from Thames Water suggests that conditions should be imposed to require an assessment of the additional capacity that might be required and to indicate suitable connection points. However, there is a statutory duty to provide such connections under the requirements of the Water Industry Act 1991. Hence, there would be no need for planning conditions to duplicate powers available under other legislation, as the submitted notes confirm.*

#### **Appeal Decision APP/F2605/W/15/3137812**

The Planning Inspector included the following comments at paragraphs 26 and 31:-

*26. Many thought that the infrastructure in Watton would be unable to cope. Anglian Water has a duty to deal with foul sewage, through improvements to the system if necessary; the broad principle is that the situation should be no worse than before the development was constructed, not that development should resolve any existing problems.*

*31. A condition on foul sewerage (18) is unnecessary because it is the subject of other legislation.*

Case law has set a precedent relating to the consistency of decision making by planning authorities or inspectors, confirming that whilst a decision maker can depart from a previous decision which considered the same or similar facts, they must fully justify the reasons for doing so. (Fox Vs SoS [2012] EWCA Civ 1198).

Considering the timescales associated with this development site (as was the case with the Appeal sites referred to above where no foul drainage condition was imposed), it is clear that Condition 51 should be discharged. There is sufficient time for Southern Water to carry out measures that are necessary to accommodate the foul flows from the development in the public sewerage system. Southern Water is already aware of the nature of improvement works that may be required to accommodate the significant increase in foul flows that will arise from new development in the Dover sewerage catchment area. It is clear that these sewer improvement works could be implemented in a timescale to suit the increase in foul water discharges to the public sewerage network that will arise through the construction of the new housing planned under the Dover Core Strategy.

In summary, this report clearly demonstrates how WUE Phase 1 can be effectually drained without causing detriment to the public sewerage system. Matters relating to foul drainage have been properly assessed and are comprehensively addressed in other primary legislation, meaning there is no impact which would make the development unacceptable in planning terms thus allowing Condition 51 to be discharged.



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Our ref: ME/AFW/CON/10/01010/A  
Your ref:  
Date: 18 March 2016

Dear Mr Boother

**Whitfield Urban Extension Phase 1 – Application for Approval of Foul Drainage Proposals Under Condition 51 of Outline Planning Permission DOV/10/01010**

I refer to the above matter and, in particular, the broader arguments that you put forward in your application for approval of foul drainage details for Sub-Phase 1a, regarding the role the Local Planning Authority (LPA) in foul drainage provision. I set out below the LPA's understanding as to roles and responsibilities of the parties involved including the LPA, SW, Ofwat and the developer. I shall also be writing to SW to propose an urgent meeting for all parties to attend in order to see how best to deal with the various issues and progress matters as speedily as possible.

In addition I attach a copy of a letter from Southern Water dated 05/02/2016 for your kind and urgent attention, particularly in relation to the paragraph seeking an investigation of the effect of the proposed development on the public foul network.

By virtue of s.106 of the Water Industry Act 1991 ("the WIA") the owner of any premises is entitled to have his drains or sewers ("the private sewers") communicate with the public sewer and thereby to discharge foul water and surface water from those premises.

The LPA will assume that the private sewers on the Site will be built to the required standards (including any adjustments required under s.112 of the WIA at the behest of the sewerage undertaker), that there is nothing to stop the requisite agreement under s.106B of the WIA being entered into and that the Developer has sufficient private law land rights to construct the private sewers from its boundary up to the point of interconnection with the public sewer.

The effect of these provisions means that Developer here is entitled to connect to the public sewer at a point of his choosing (subject to any decision of the sewerage undertaker under s.107 to undertake the work itself and charge the Developer the costs of the connection): *Barratt Homes Limited v. Welsh Water* [2009] UKSC 13.

The burden of dealing with the consequences of the exercise of this right is shared by all who pay sewerage charges – *Barratt @* [23].

/...

Connection cannot be refused on the basis that it would cause a nuisance by virtue of overloading the public sewer system *Barratt @* [23]. Conversely the sewerage undertaker would not be liable for the consequences of such connection – the nuisance would not be created by the sewerage undertaker but by the exercise of the statutory right: *Smeaton v Ilford Corporation* [1954] Ch 450 and *Marcic v. Thames Water* [2003] UKHL 66; [2004] 2 AC 42.

It follows from s.106 – *Barratt @* [27] that the sewerage undertaker is bound by s.94 of the WIA to deal with any discharge that is made into their sewers under the statutory right to connect

However, importantly, enforcement of the s.94 duty is through s.18 of the WIA- namely by the Secretary of State or OFWAT. S.94 does not give a right to the Developer or the Council to force SW to upgrade the capacity of the public sewer in a particular timeframe.

In considering a complaint, OFWAT (or the Secretary of State) has to balance the interests of the person seeking the increased capacity and the impacts of not providing it with the people who would have to finance it.

In the context of a nationwide environmental problem (*Marcic @* [1]) caused essentially by housing development putting increased strain on a system built in an earlier time, it does not follow that a need for increased capacity automatically translates into a requirement on SW to provide it (*Marcic @* [15]). It is therefore perfectly possible for a connection to be lawfully made to a public sewer which does not have adequate capacity to handle it and therefore for the connection to cause or exacerbate existing flood problems which SW does not have an immediate liability to address.

Whilst it is agreed by the LPA that the Developer is lawfully entitled to connect to the existing Public Sewer under s.106 of the WIA and at a point of its choosing (*Barratt*), the planning authority cannot proceed on the basis that SW will have to increase capacity in a timeframe to meet the demands of the development and that therefore sewerage flooding will be avoided.

It is for this reason that the Supreme Court in *Barratt* recognised the essential interaction between the planning and water legislative schemes: *@* [58]<sup>4</sup>.

This is especially so on the basic facts here:

- a. there is insufficient capacity in the public sewer;
- b. absent major enhancements the sewage system will not be able to cope with the additional load;
- c. that the sewerage undertaker has no current plans or resources to deal with the capacity constraint and has not made provision for the works in the period to 2020;
- d. it is not clear whether or if so on what terms, OFWAT would exercise s.18 powers and in what time frame; and
- e. there is a risk (and on the facts it appears to be a high risk) that there will be a disconnect between the increased demand being placed on the system and any possibility of SW funding works to address it.

/...

In such circumstances, it is plain that the prospect of flooding by virtue of the lack of capacity of the public sewers and the lack of plans of the sewerage undertaker to increase capacity is capable of being a material planning consideration.

The Court of Appeal in *Barratt* assumed [43] that a *Grampian* condition along the lines of condition 10 in that case [49] would overcome the problem – either development would not occur until capacity was increased under s.94 or until a new sewer was requisitioned (and paid for) under s.98. This approach follows through to the national Planning Practice Guidance in paragraph 20 of the section on Water Supply, Wastewater and Water Quality.

The commentary by ULS in your application does not address the fundamental disconnect in the legislation identified in *Barratt* and its significance for planning control. ULS (and the decisions of inspectors on which it relies) proceed on the basis that just because there is time for SW to increase capacity, that it is under a duty to do so and the planning authority should proceed on the basis that it will do so. The LPA does not agree. That is to misunderstand the key logic of *Barratt* and the key scheme of the legislation. The sewerage undertaker has to accept the connection and the flows but does not have to necessarily increase capacity forthwith to meet the increased burdens placed on the system.

Whether or not the sewerage undertaker will in fact do so will turn on the facts, the extent of the flooding risk, competing priorities, other capital expenditure plans and the overall policy of OFWAT re: the balance between mitigating sewer and other flood risk and bills.

The LPA therefore concludes that your basic argument is flawed. There is a role for conditions and s.106 agreements in respect of upgrading off-site infrastructure to the extent that the development will lead to damaging capacity constraints. It is not correct that the right to connect to the public sewer and SW's statutory duties to provide a public sewer system obviate the potential need for developers to contribute to upgrading off-site infrastructure.

The core question therefore is whether the Phase 1 Permission and the accompanying s.106 agreement impose such an obligation here.

CP6 of the Core Strategy provides that development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either already in place or there is a reliable mechanism to ensure that it will be provided at the time it is needed. The infrastructure table in the Core Strategy highlights the need for new waste water infrastructure to serve WUE: see table following para 3.90 and para 4.54.

Any application for a separate phase of WUE has to include a phasing and delivery plan to show how it fits with the overall development – CP11 para iii. The SPD para 4.26 (and para 4.35) identifies the foul water constraints.

The 2010 Phasing and Delivery Strategy (required under CP11 para iii) for Phases 1 and 1A recognised the need for major new infrastructure [para 4.45]:

*"...the Phase 1 area as a whole will be served by the new low rise pumping station located in the NE corner of Phase 1. ... This will need to connect to the strategic pumping station... that will, subject to outcome of the s.98 determination [requisition of new sewer at developer's cost] be positioned to replace/support the existing Sandwich Road PS. This will connect via a rising main to Broomfield Bank WWTW which has the capacity to serve the WUE..."*<sup>5</sup>

/...

It was thus no surprise when SW advised that:

*“There is limited capacity within the local network to drain the proposed development. The likely solution is an on-site terminal pumping station and rising main discharging to Broomfield STW. Detailed Design Study will need to be undertaken in order to fully assess the potential required mitigation.”* (see 2012 Report to Committee).

*[You appeared to have accepted at the time that the developer would carry out work “as required by statutory undertaker” (appx 2 to 2012 Report to Committee). The viability reports at the time appear to have assumed major infrastructure expenditure on foul drainage services.]*

Outline permission for phase 1 of up to 1400 units was granted on 30th April 2015 (“the Phase 1 Permission”) and was not challenged. Its conditions are therefore lawful. The social infrastructure requirements were expressly less than they would otherwise have been because of the overprovision of service infrastructure in the s.106 agreements – see “Summary of Reasons for Grant of Planning Permission” paras 5 and 7.

Condition 51 provided as follows:

*“None of the dwellings within each phase or sub-phase shall be occupied until works for the disposal of sewage and foul water have been provided on the site to serve that phase or sub-phase and pipework shall be sized to serve 1933 units in accordance with details including a schedule and programme of works that shall be submitted to and approved in writing by the Local Planning Authority prior to the development of that phase taking place. The development shall be carried out in accordance with the agreed schedule and programme.”*

It is contended that this only concerns on site works.

However, schedule 3 to the s.106 agreement dated 30th April 2015 contains the developer’s obligations. Para 11.1 provides so far as relevant as follows:

*“Service Infrastructure Works<sup>6</sup>*

*11.1 The Owner shall carry out or procure the Service Infrastructure Works to secure the provision of the following on the basis and by the date of the event specified below:*

*Foul Water Drainage*

*(a) Provision of sufficient foul water drainage infrastructure to serve the Development and provide pipework capacity to serve a total of approximately 1933 Residential Units..... PROVIDED ALWAYS THAT the owner shall*

*(i) Not occupy or permit the Occupation of any Residential Unit unless and until the said foul water drainage works are provided from off-site to a point within the boundary of the Site,*

*(ii) Not occupy or permit the Occupation of any Residential Unit within the Sub-Phase unless and until the foul water drainage works within the Site are provided to the boundary of that Sub-Phase;*

*/...*

- (iii) *Not occupy or permit the Occupation of any Residential Unit unless and until the foul water drainage works are provided to that residential unit.*

.....

*AND FURTHER PROVIDED THAT:*

*The Owner shall prior to Commencement of Development submit details to the District Council for their approval of:*

- (a) *Any phased delivery of the Service Infrastructure Works stated in para 11.1(a) – (d) inclusive..; or*
- (b) *Such alternative suitable service infrastructure works other than those set out in paragraphs 11.1(a) – (d) above to serve the Development and any further part of [WUE] taking into account consultation with service providers, capacity requirements for phase development and engineering requirements.”*

The definition of Surface Infrastructure Works - “to and within the Site” - can only mean that the s.106 obligation includes off-site works. That also necessarily flows from para 11.1(a)(i) above – which is concerned with getting the appropriate services from off site, onto the Site.

The requirement is to provide “sufficient” infrastructure to “serve the Development”. In your application for approval of details under condition 51 it is apparently argued that as long as the link is made to a public sewer to which the s.94 duty on SW applies, that meets the requirement to provide “sufficient” infrastructure to “serve the Development”. That logic appears to flow from the misunderstanding of *Barratt* and *Marcic*. That “sufficiency” would be so even if one knows that the capacity of the public sewer to which the s.106 connection is made is “insufficient” to accommodate the flows; and/or that there was “insufficient” capacity in the pumping station or works to which it connects.

It seems to the LPA that in such circumstances (given *Marcic* and *Barratt*) the developer would not thereby have “procured”, “sufficient” infrastructure to serve the development but would be relying on the s.106 WIA right to connect to avoid having to do so. The section 106 was entered into after *Marcic* and *Barratt* - it has to be understood in the context of those cases. “Sufficient” infrastructure cannot mean connecting to a public sewer and relying on SW to upgrade it because there is no (immediate and enforceable) duty on them to do so.

The view reached by the LPA is supported by the use of the same phraseology in respect of “potable water”, “electricity” and “gas” supply. Different statutory schemes apply but, for example, if the potable water supply in the local mains was too low capacity or too low pressure, or if the gas main was of too low capacity; or if the local electricity sub-station was incapable of coping with demand, to serve the development, connecting into them would not secure sufficiency of infrastructure.

The LPA does not think “sufficient...infrastructure” can be limited to “sufficient private infrastructure up to the public sewer”. The LPA’s view is strengthened by the application of the standard approach to construction of such documents. Given what the LPA knows (see above) about the obligations of SW, the basic fact that SW has competing priorities and cannot be required to meet all drainage needs as and when they arise, it seems to the LPA that the para 11.1(a) can only be read as requiring the developer not SW to provide sufficiency of capacity to meet the demands the development will place on the whole system.

/...

The LPA thinks that construction is further strongly supported by the background which shows SW requiring further detailed work to be undertaken and the developer (in a Economic Viability Assessment to which the s.106 agreement refers) assuming major expenditure on the infrastructure to Broomfield.

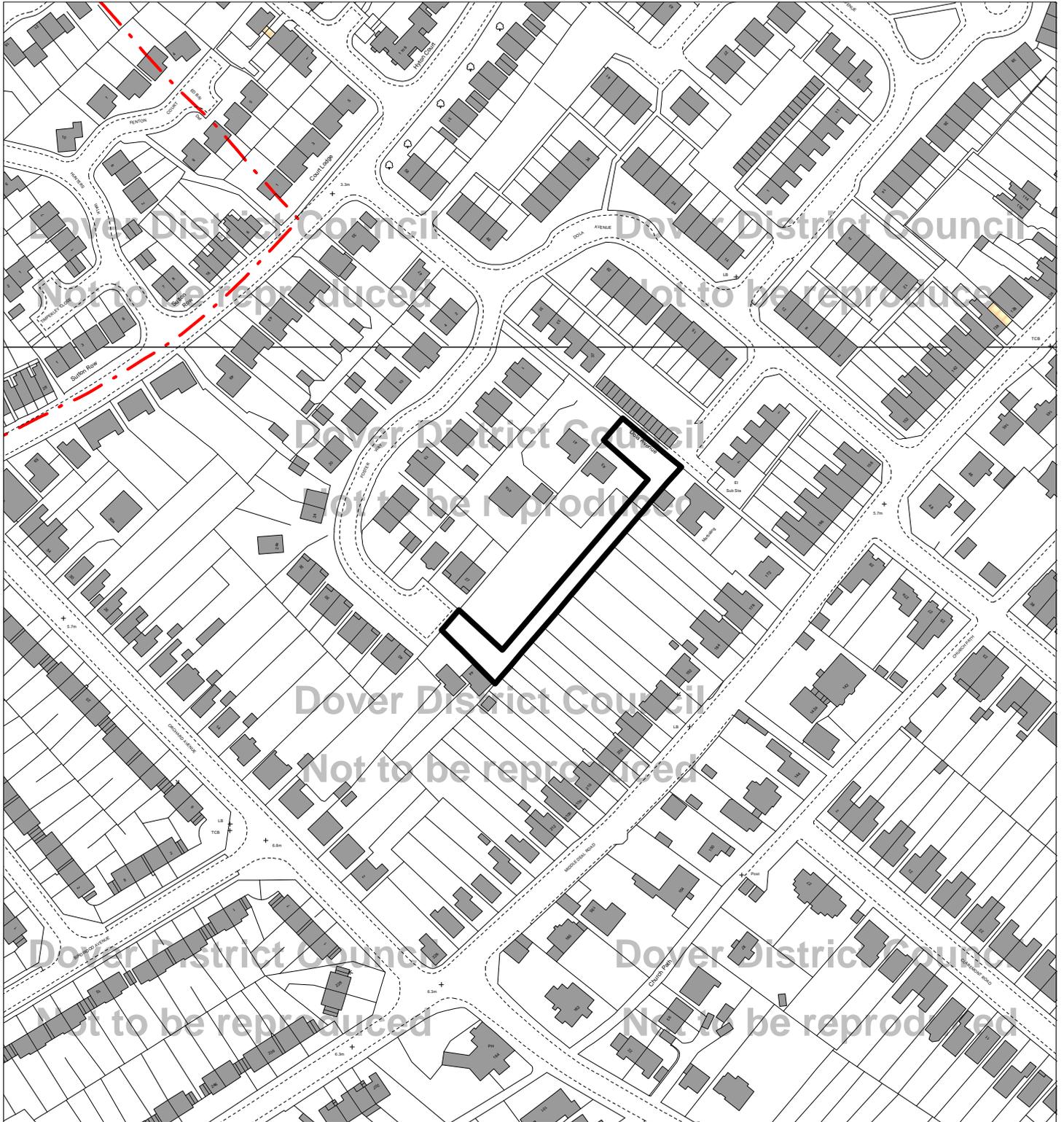
If you consider that the analysis which I have set out is wrong in any way then please let me know and please set out why.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mike Ebbs". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

**Mike Ebbs**  
Head of Regeneration and Development

Enc.



**Not to scale**

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**Note:** This plan is provided for purposes of site identification only.

**Application: DOV/16/01038**

**Site at 43 Dola Avenue**

**Deal**

**CT14 9QH**

**TR36725242**



- a) **DOV/16/01038 – Variation of condition 2 of Planning Permission DOV/15/00327 to allow amendments to the approved plans (amendments to the rear dormer roof extensions on chalet bungalows and alterations to fenestrations) (Section 73 application) - 43 Dola Avenue, Deal**

**Reason for report:** Number of contrary views.

- b) **Summary of Recommendation**

Planning Permission be granted.

- c) **Planning Policies and Guidance**

Core Strategy Policies

- CP1 – The location and scale of development in the District must comply with the Settlement Hierarchy. Deal is identified as a District Centre, which will be the secondary focus for development in the District; suitable for urban scale development.
- CP6 – Development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either in place, or there is a reliable mechanism to ensure that it will be provided at the time it is needed.
- DM1 – Development will not be permitted outside of the settlement confines, unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- DM11 – Development that would generate high levels of travel will only be permitted within the urban areas in locations that are, or can be made to be, well served by a range of means of transport.
- DM13 – Parking provision should be design-led, based upon an area's characteristics, the nature of the development and design objectives, having regard for the guidance in Table 1.1 of the Core Strategy.

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles which, amongst other things, seeks to: proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs; secure high quality design and a good standard of amenity for all existing and future occupants and buildings; encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value; and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.
- Chapter four of the NPPF seeks to promote sustainable transport. In particular, paragraph 29 states that “the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas”.

- Chapter six of the NPPF seeks to significantly boost the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.
- Chapter seven requires good design, which is a key aspect of sustainable development.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development.

d) **Relevant Planning History**

DOV/15/00327 - Erection of 9 chalet bungalows together with associated parking and vehicular access – Granted

DOV/16/00998 - Erection of two detached dwellings and creation of parking - Refused

The following applications, which relate to neighbouring sites, are of note in the assessment of the current application.

210 Middle Deal Road, Deal (Rear of Site with Access Proposed off Foster Way)

DOV/04/01318 – 2No. detached two storey 3 bedroom houses – Granted

Land Rear of 41 Dola Avenue, Deal

DOV/04/01287 – Erection of two detached bungalows – Refused and Dismissed at Appeal.

DOV/06/01461 – Erection of one detached chalet bungalow – Refused and Allowed at Appeal.

e) **Consultee and Third Party Responses**

Deal Town Council – Object. The development would be out of keeping with the surrounding area, would cause a major overbearing impact and encroach on neighbouring properties. The amended plans are contrary to the original consent which must be adhered to. The Council also recommends that planning committee undertake a site visit.

Environmental Health – No observations are made.

KCC Highways and Transportation – No comments. However, in relation to condition 6 (bike storage) and condition 12 (traffic signage) of permission DOV/15/00327, KCC have confirmed that no objection is raised to the submitted details.

KCC Lead Local Flood Authority – No comment to make on this application. However, in relation to condition 7 of permission DOV/15/00327, the LLFA have commented that the additional information which has been submitted has been reviewed and the LLFA confirm that they have no objections and advise the condition 7 can be discharged.

KCC Public Rights of Way – No comments on the proposals. However, in relation to condition 12 (traffic signage) of permission DOV/15/00327 KCC have confirmed that no objection is raised to the submitted details.

Southern Water – The comments provided in respect of application DOV/15/00327 remain valid. Should planning permission be granted, full details of foul and surface water sewerage disposal should be submitted and approved by the Local Planning Authority. This request should be secured by condition.

Public Representations – Seventeen letters of objection have been received, raising the following concerns:

- The windows are overbearing and cause overlooking
- The development would be out of character with the area
- The development has not been carried out in accordance with the approved drawings
- A wooden fence has been erected in the location where a brick wall was required under a condition of the previous approval

f) 1. **The Site and the Proposal**

1.1 The site lies within a wholly residential area of Deal. The area has a mixed character with linear and perimeter block development to the south east and winding cul-de-sacs to the north west. The scale and form of development is equally varied, with a mixture of detached, semi-detached and terraced properties of one, one and a half or two storeys in height.

1.2 The site itself currently contains one detached bungalow facing towards Dola Avenue to the north east. The former garden to this dwelling was granted planning permission, under application number DOV/15/00327 for nine dwellings, which are nearing completion. A Public Right of Way (ED21) runs along the north east boundary of the site.

1.3 This application seeks to vary condition 2 which was attached to planning permission DOV/15/00327, to amend the design of the approved chalet bungalows. The amendments to the design of each of these properties comprise the replacement of one pitched roof dormer window and one roof light to the rear roof slope with one wider flat roofed dormer window, together with the alteration to the side fenestrations of the building to reduce the size of a side window. As approved under the previous application, a total of fifteen car parking spaces would be provided, two for the existing dwelling, one for each of the proposed dwellings and four communal visitor spaces. These car parking spaces would be served by one vehicular access to Dola Avenue and an access road through the site, with a turning head to the south of the site.

2 **Main Issues**

2.1 The main issues are:

- The principle of the development
- The impact of the development on the character and appearance of the area
- The impacts of the development on the living conditions of neighbouring properties
- The impact on the highway network
- The provision of surface water drainage

Assessment

Principle

- 2.2 The site lies within the settlement confines of Deal, as defined by the Proposals Map. Within this area, having regard for Policy DM1, the principle of the proposed development is acceptable subject to other material considerations.

#### Character and Appearance

- 2.3 The proposal is the same as the previously approved scheme save for the replacement rear dormer and alterations to the side fenestrations. The layout of the development would continue to provide a linear form of development to create a small cul-de-sac, which would respond to the prevailing pattern of development within this part of Deal and provide a scale of building which responds to the building types within the area. It is therefore considered that the layout, pattern of development and scale of the proposed dwellings accords with the character of development in the area.
- 2.4 As identified by the report for the previous application, the design of properties in the area varies significantly. Distinct groups of buildings display a coherent design; however, each group of buildings differs from the next. The proposal would create a holistic and self-contained development which would produce a character of its own, whilst responding to the proportions of the neighbouring properties, in particular those in Foster Way. The proposed dwellings would provide a regular rhythm to their fenestrations, whilst detailing such as a red brick plinth under yellow brick walls, together with vertical glazing would add interest to the buildings.
- 2.5 The proposed dormer to the rear roof slope would be flat roofed and span the majority of the width of the building. These dormers would replace the approved, smaller, dormers and roof lights. It is considered that the dormers would be more pronounced features compared with the modestly sized dormers which have been approved. However, it is noted that similar dormer windows (albeit slightly narrower and having full size windows as opposed to high level windows) are present on No.'s 25, 27 and 26-40 (even) Foster Way. It is considered that the only public views of these rear elevations, other than very limited glimpse views, would be of the two dwellings to the south west of the row which would be visible from Foster Way. In these views, the properties would be seen in conjunction with No.'s 25, 27 and 26-40 (even) Foster Way and, consequently, would not appear incongruous or out of character.
- 2.6 The fenestration to the side elevation of each dwelling is also proposed to be amended from the approved scheme. The fenestration would remove the window located under the eaves of the building. Whilst the approved elongated window would have been an interesting feature on the buildings, the side elevations will be little seen from outside the site and, as such, this proposed change would not significantly impact on the appearance of the buildings or the character of the area.
- 2.7 Having regard for the mixed character of the area and the strong design of the development as a whole, it is considered that the proposed amendments would not unacceptably detract from the design of the scheme or the character and appearance of the area.
- 2.8 The development would retain the previously approved front garden areas and landscape margins along the sides of the access road. These areas include the provision of thirty-eight new trees which would significantly soften the site and provide maturity to the development. As was the case when determining the

previous application, it is considered that it would be reasonable to secure the provision and maintenance of the proposed landscaping by condition.

- 2.9 The dwellings are now nearing completion and the materials used are evident. These materials are considered to be acceptable and, as such, the condition requiring samples of the materials to be submitted for approval is no longer required.

#### Impact on Residential Amenity

- 2.10 The site is bounded by residential properties on all sides, with properties particularly close to the north west, north east and south west boundaries of the site.
- 2.11 The amended dormers would be located to the rear roof slopes of the buildings, facing north west. To the north west of the site are No.27 Foster Way and No.'s 41 and 41a Dola Avenue. The proposed row of dwellings would back onto the side boundaries of these properties, which enclose their rear gardens. Whilst the buildings would not be set any closer to these neighbours, the proposed dormers would be larger than those previous approved and, as such, regard must be had for whether the changes to these dormers would cause any additional and unacceptable harm.
- 2.12 The approved scheme included first floor dormer windows and roof lights to the rear roof slope, facing towards No.27 Foster Way and 41 and 41a Dola Avenue. The approved windows had been designed with cill heights of 1.7m above the finished floor level of the rooms they serve and, as such, it was concluded that they would not cause any unacceptable overlooking. The proposed windows would also have a cill height of 1.7m above finished floor level and would serve bathrooms. The applicant has confirmed that these windows would have obscure glazing. As such, the glazing would be comparable with that previously approved and would not cause any unacceptable overlooking.
- 2.13 Regard must also be had for whether the proposed dormer would cause unacceptable loss of light or sense of enclosure. Whilst the proposed dormers would be wider than the approved dormers, they would remain set back from the rear elevation of the building by around 1m, comparable with the approved dormers. The height (1.5m) and depth (1.8m) of the dormers would also be comparable with the approved dormers. As such, it is not considered that the increased width of the dormer would cause an unacceptable loss of light or sense of enclosure to properties to the north west.
- 2.14 The second change proposed is the reduction in size of the windows to the side elevations of the properties, removing the highest window, which would have been located just under the eaves. The window would also be cut by the canopy over the door. The removal of these windows would cause no additional overlooking and would not, therefore, cause any loss of amenity.
- 2.15 For these reasons, it is not considered that the proposed amendments would cause any additional harm to the amenities of neighbouring properties.
- 2.16 In considering the previous application, it was established that the living conditions of future occupiers would be acceptable. The proposed changes would not reduce the residential amenities of future occupiers and, as such, the living conditions for future occupiers are considered to be acceptable.

### Impact on the Highway

- 2.17 The proposed access and parking arrangement remain unchanged from that which was granted under application number DOV/15/00327, with the site accessed via a single means of access from Dola Avenue.
- 2.18 The access would incorporate a ramped speed table adjacent to where it joins onto Dola Avenue and would have visibility splays of 2m by 3m. The previous permission included a condition requiring that signage be erected at the entrance to indicate that pedestrians have priority and to lower the speed limit to 10mph. Details of these signs, together with details of the ramped speed table have been submitted and, following consultation with KCC Highways and Transport and KCC PRow, have been discharged. As such, it is considered that the proposed access and car parking, being consistent with the previous approval, is acceptable.
- 2.19 The previous permission also included a condition which required that a wall, 1.8m in height, be erected along the north western boundary of Unit 9, along the boundary with Foster Way. This condition required that the wall be erected prior to the development commencing. The reason for this condition was to ensure that construction traffic is prevented from entering or exiting the site from or to Foster Way. The development is nearing completion and the wall has not been erected. However, a 1.8m high fence has been erected along this boundary. Whilst this fence does not adhere to the requirements of the previous permission, it is considered that it provides the surety that no vehicles can enter or exit the site via Foster Way. It is, however, considered that it would be reasonable to include a condition requiring the fence is maintained in perpetuity.
- 2.20 The previous permission also included a condition which required details of cycle parking. These details have subsequently been approved and, as such, this condition can be amended to omit the requirement to submit details, but retain the need to provide the approved cycle parking, prior to occupation.

### Contributions

- 2.21 Core Strategy Policy DM5 requires that for schemes of 5 to 14 dwellings an on-site provision of affordable housing or an equivalent financial contribution (or a combination of both) will be required. The approved application was the subject of a legal agreement which secured a financial contribution of £89,977.50 towards the provision of off-site affordable housing, which is equivalent to 5% of the Gross Development Value of the scheme, in accordance with the Councils Affordable Housing SPD.
- 2.22 Policy DM27, which is included in the Land Allocations Local Plan (LALP), requires that planning applications for residential development will be expected to provide, or contribute towards the provision of, open space to meet the needs generated by the development. The legal agreement attached to the previous application also secured a financial contribution of £5,690 towards the provision of a dual use tennis and netball court at Victoria Park.
- 2.23 The legal agreement included a clause which stipulated that any subsequent approval under Section 73 or 73A of the Planning Act, such as the current application, would also be bound by the same requirements to provide financial contributions towards open space and affordable housing. It is considered that

these contributions remain reasonable and ensure that the development would meet the requirements of Policies DM5 and DM27 respectively.

### Trees

- 2.24 The site includes one tree to the southern corner of the site. This tree is a mature sycamore of around 13m in height, but is not covered by a Tree Protection Order. It is considered that, as the largest tree in the area, it provides a contribution to the visual amenity of the area. The granted application allowed for the felling of this tree, on the basis that the application proposed the provision of a total of thirty-eight trees. Whilst these trees would be significantly smaller than the Sycamore to be felled, it was concluded that overall they would provide an enhancement.
- 2.25 The current application also proposes to fell the Sycamore, whilst the proposed landscaping would remain unaltered. It is therefore considered that the loss of this tree is acceptable, subject to the condition requiring full details of all landscaping being reimposed.

### Surface Water Drainage

- 2.26 When the previous application (DOV/15/00327) was considered at Planning Committee, Members questioned whether the development could provide adequate surface water drainage. However, following the provision of additional information, the application was granted.
- 2.27 The proposal does not seek to amend the method of surface water drainage, which will continue to discharge surface water to ground via soakaways and through permeable hardstandings. The testing which took place under the previous application confirmed that such a method is feasible and, accordingly, a condition was added to the permission requiring full details of the sustainable drainage scheme, and full details of its subsequent maintenance. This application includes additional information relating to surface water drainage, which has calculated the surface water run-off from the site (based on a 1 in 100 year storm, plus 30% to account for climate change), the infiltration rates of the ground (which have been carried out to the relevant Building Research Establishment standards) and, consequently, the amount of surface water storage required to ensure that the rainfall in an extreme event can be slowly discharged to ground. The storage required under this design event is 37.33cu.m. The proposal includes the provision of 39cu.m. of storage. The design of the permeable hardstandings also allow water to be stored and slowly discharged to ground, having regard for the relatively slow infiltration rates. The Lead Local Flood Authority have confirmed that this additional information is satisfactory and has advised that condition 7 can be discharged. It is therefore considered that condition 7 can be amended to require that the agreed drainage scheme is carried out.

### Overall Conclusions

- 2.28 This application seeks to amend the previously approved scheme, enlarging the rear facing dormers and amending the window design to the side elevations of buildings. The application also includes details which address some of the conditions which were attached to the previous permission. It is considered that the development is acceptable in principle and in all material respects, subject to conditions. In particular, the proposed changes to the design of the development,

comprising amended dormer design and fenestrations, would cause no significant harm to the character and appearance of the area or the amenities of neighbouring properties and would be acceptable in all other material respects. It is therefore recommended that planning permission be granted.

g) **Recommendation**

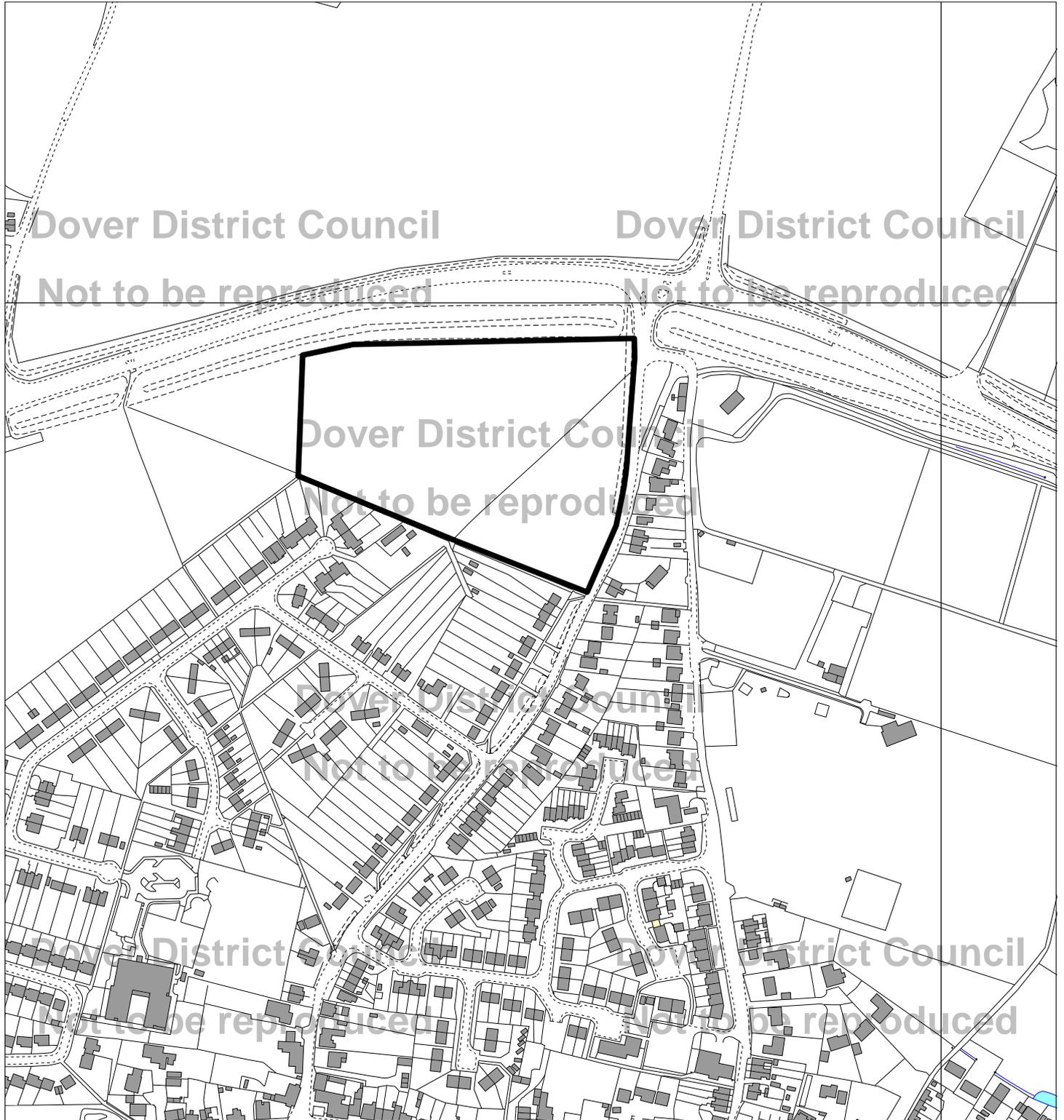
I PERMISSION BE GRANTED subject to conditions to include:-

i) approved plans; ii) details of landscaping; iii) provision and retention of car parking; iv) provision and retention of cycle parking; v) surface water drainage to be fully implemented; vi) visibility splays to be provided and maintained; vii) raised table to be provided; viii) the first floor windows in the north west roof slope of units 2 to 9 inclusive to have a cill height of 1.7m above finished floor level and shall be fitted with obscure glazing; ix) removal of permitted development rights for additions or alterations to the roof (including the provision or alteration of dormers or roof lights; x) the boundary fence which has been erected to the north west boundary of Unit 9, adjacent to Foster Way, shall be maintained as such at all times; xi) traffic warning signage to be fully implemented; xii) full details of foul drainage.

II Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Luke Blaskett



**Not to scale**

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**Application: DOV/16/01049**

**Land off Chequer Lane**

**Ash**

**CT3 2JF**

**TR28675888**



- a) **DOV/16/01049 – Outline application for the erection of 90 dwellings, new vehicular and pedestrian access from Chequer Lane, public open space and landscape buffer and associated infrastructure, with all matters reserved - Land off Chequer Lane, Ash**

**Reason for report:** Number of contrary views.

- b) **Summary of Recommendation**

Planning Permission be granted.

- c) **Planning Policies and Guidance**

**Core Strategy Policies**

- CP1 – The location and scale of development in the District must comply with the Settlement Hierarchy. Ash is a Local Centre, which is the secondary focus for development in the rural area; suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent communities.
- CP3 – Of the 14,000 houses identified by the plan 1,200 (around 8%) is identified for the rural area.
- CP4 - Developments of 10 or more dwellings should identify the purpose of the development in terms of creating, reinforcing or restoring the local housing market in which they are located and development an appropriate mix of housing mix and design. Density will be determined through the design process, but should wherever possible exceed 40dph and will seldom be justified ta less than 30dph.
- CP6 – Development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either in place, or there is a reliable mechanism to ensure that it will be provided at the time it is needed.
- DM1 – Development will not be permitted outside of the settlement confines, unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- DM5 – Development for 15 or more dwellings will be expected to provide 30% affordable housing at the site, in home types that will address prioritised need.
- DM11 – Development that would generate high levels of travel will only be permitted within the urban areas in locations that are, or can be made to be, well served by a range of means of transport.
- DM13 – Parking provision should be design-led, based upon an area's characteristics, the nature of the development and design objectives, having regard for the guidance in Table 1.1 of the Core Strategy.
- DM15 – Development which would result in the loss of, or adversely affect the character and appearance of the countryside will not normally be permitted.
- DM16 – Development that would harm the character of the landscape will only be permitted if it is in accordance with allocations made in Development Plan Documents and incorporates any necessary avoidance and mitigation measures or it can be sited to avoid or reduce harm and incorporate design measures to mitigate impacts to an acceptable level.

## Land Allocations Local Plan

- LA20 – Land to the West of Chequer Lane, Ash – Allocates the site which is the subject of the current application for housing, with an estimated capacity of 90 dwellings. There are six criteria which would need to be met under this policy, requiring that: the existing boundary hedgerows and vegetation are retained and landscaping, of no less than 15m in width, is established along the western boundary; the density of development along the western boundary is reduced to mitigate any landscape impact; the Public Rights of Way (EE112 and EE113) are enhanced and incorporated in the design and layout to improve cycle and pedestrian connections from Chequer Lane and Molland Lea; the main vehicular access will be from Chequer Lane with an emergency access off either Chequer Lane or Molland Lea; development should provide a connection to the sewerage system at the nearest point of adequate capacity and ensure future access to the existing water supply infrastructure for maintenance and upsizing purposes; and a mitigation strategy to address any impact on the Thanet Coast and Sandwich Bay Ramsar and SPA sites and Sandwich Bay SAC site is developed. The strategy should consider a range of measures and initiatives.
- DM27 - Residential development of five or more dwellings will be required to provide or contribute towards the provision of open space, unless existing provision within the relevant accessibility standard has sufficient capacity to accommodate this additional demand.

## National Planning Policy Framework (NPPF)

- Paragraph 14 of the NPPF requires that where the development plan is absent, silent or relevant policies are out-of-date development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or, specific policies in the NPPF indicate that development should be restricted.
- Paragraph 49 of the NPPF states that "housing applications should be considered in the context of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of housing sites.
- The NPPF has 12 core principles which, amongst other things, seeks to: proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs; secure high quality design and a good standard of amenity for all existing and future occupants and buildings; take account of the different roles and characters of different areas, promoting the vitality of our main urban areas, recognising the intrinsic character and beauty of the countryside; conserve heritage assets in a manner appropriate to their significance; and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.
- Chapter four of the NPPF seeks to promote sustainable transport. In particular, paragraph 29 states that "the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas".

- Chapter six of the NPPF seeks to significantly boost the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.
- Chapter seven requires good design, which is a key aspect of sustainable development.
- Chapter twelve requires that development has regard for its impact on the significance of heritage assets and their settings.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development.

d) **Relevant Planning History**

It is not considered that there is any planning history which is directly relevant to the determination of the current application.

e) **Consultee and Third Party Responses**

Environmental Health - No objection. Should permission be granted conditions should be attached requiring that any previously unidentified contamination found to be reported, investigated and remediated and a construction management plan be submitted for approval. It is also recommended that plug-in charging points for electric vehicles are provided within the development, where practical.

Natural England - As the site is for more than 15 dwellings, mitigation should be sought to manage the potential impacts of recreational pressure on the Thanet Coast and Sandwich Bay SPA and Ramsar Site. The potential for the development to impact upon protected species should be considered, having regard for Natural England's standing advice.

Southern Water - The existing sewerage infrastructure cannot meet the needs of the development without improvements to the sewerage infrastructure. It is therefore recommended that any permission be subject to a condition which requires full details of a drainage strategy, together with a timetable for the implementation of the strategy, to be submitted and approved by the Local Planning Authority. The application proposes the use of sustainable urban drainage systems. To ensure the effectiveness of these systems in perpetuity, a condition should also be attached requiring full details of this drainage. A water main passes close to the site, which should be protected at all times during construction works. Fresh water can be supplied to the site.

River Stour Internal Drainage Board – Provided the SuD's is designed in direct consultation with KCC's drainage and flood risk team, IDB interests should not be affected.

KCC Highways – *Initial response received 6<sup>th</sup> October 2016:*

The development is unlikely to cause a significant impact on the capacity of the highway network. However, several detailed comments are made. Chequer Lane is proposed to be widened to accommodate two HGV's passing each other. This is excessive and would encourage speeding. A carriageway width of 7.5m would be appropriate and allow for the retention of parking. The proposed vehicle crossing point should be would cause vehicles to obstruct the visibility of pedestrians. A build out should instead be provided at the existing crossing point. The development should include for the paving of the Public Right of Way (EE113). There should be no vehicular access to the site from Molland Lea, with the secondary emergency access provided from Chequer Lane. A joint transport

assessment for this application and the application for 112 dwellings on land at Sandwich Road, Ash (DOV/16/00800), taking into account the committed development at Discovery Park. A holding objection is placed until the above five points have been addressed.

*Subsequent response received 15<sup>th</sup> December 2016:*

The proposed access arrangements and highway alterations in Chequer Lane are now acceptable. I believe my original comments dated 6<sup>th</sup> October regarding surfacing a short section of PROW EE113 and not having a vehicular connection to Molland Lea have yet to be resolved, but I understand these are not within your remit.

Ash Parish Council - Support with reservation. Chequer Lane is a narrow access road which is the main link to the A257 and is therefore already traffic congestion on this road. The Parish therefore strongly recommend two vehicular accesses onto Chequer Lane, as this may help reduce the adverse impact of the development.

Kent Wildlife Trust - No objection. A contribution should be sought for the developments indirect impact on the Sandwich and Pegwell Bay SPA site. The existing field margins should be protected and enhanced, particularly to the north and north-west boundaries. The provision of gardens which back onto these boundaries does not provide a functional buffer strip. The detail of these buffer strips should be clarified, should include the use of native species of local provenance and should be provided in advance of any construction.

Southern Gas Networks - The development should ensure that no gas mains are damaged during construction.

Environment Agency - No objection, subject to two conditions being attached to any grant of permission. These conditions relate to previously unidentified contamination being reported, investigated and remediated and the restriction of surface water drainage to that which is expressly permitted. The Environment Agency have no objection to the use of surface water infiltration, provided that they discharge as shallow as possible and to unsaturated ground.

KCC Lead Local Flood Authority - The Flood Risk Assessment adequately demonstrates that the surface water can be managed within the site boundary, although the swale should be located where it can be easily maintained. Should permission be granted, it is recommended that three conditions are attached requiring that: details are submitted that demonstrate that surface water can be accommodated within the site; full details of surface water drainage are provided with the application for reserved matters; no occupation take place until details of the implementation of the surface water drainage strategy have been approved.

Highways England – No objection

Kent County Council Contributions – The development would give rise to additional demand for facilities and service which would require mitigation. In summary, this mitigation comprises: £212,486.40 towards Phase 1 of the new school at Discovery Park; £212,382 towards the first phase of expansion at Sir Roger Manwood Secondary School; £2,307.50 towards portable equipment for the new learners classes within the local area; £4,321.42 towards ash library for shelving and stock; £6,986.70 towards Sandwich Age UK. In addition it is recommended that one of the on-site affordable houses is wheelchair adaptable and that the new houses are provided with high speed fibre optic broadband.

NHS CCG – The GP surgery in the village is at capacity and requires enlargement to meet the needs of the development. A project for this expansion has been identified which would have a total cost of £78,660 and would increase the capacity of the surgery by 1000

patients. The development would give rise to an estimated additional 216 patients and, as such, a proportionate contribution for this project from this application would be £16,990.

Kent County Council Public Rights of Way – Public footpaths EE112 and EE113 are within or border the development site. The route of EE113 has been drawn incorrectly on the submitted plans, which requires clarification.

DDC Principal Ecologist – Ecology: no constraints, but in line with NPPF para 117, ecological enhancements should be sought. Those listed in Section 5 of the Ecological Appraisal would be sufficient.

Landscape: with the buffer proposed and reduced density to the west, there should be no constraints. It is noted that the appraisal considers the view from Cop Street and finds that the visual effect will be neutral.

Green Infrastructure: the applicant has considered the creation of a welcoming open space arrangement based on the extant footpaths. It is important at the design stage that the ambience of the footpaths is maintained, by avoidance of features that might be found to be oppressive (e.g. a reliance on close-boarded fencing boundaries adjacent to the paths).

EIA: Site falls below the threshold for housing development (5 ha/ 150 dwellings).

HRA: The only sensitive site which might be affected by this development is the Thanet Coast and Sandwich Bay SPA/Ramsar site, due to increased recreational pressure in combination with other developments in the district. Recommend the applicant subscribes to the TCMS which would satisfy HRA concerns.

DDC Principal Infrastructure Delivery Officer – The development would need to provide a contribution of £3,934.49 towards the Thanet Coast and Sandwich Bay Special Protection Area Mitigation Strategy. The development will also need to provide Open Space, in accordance with policy DM27. Discussions have been ongoing with the applicants over the course of the application.

The open space provided within the scheme would not be sufficient to meet the Open Space needs of the development. The nearest existing play area is located within 150m of the site. As such, contributions should be sought for off-site provision of Open Space, comprising £43,512 towards a Local Area of Play and £28,000 for sports provision.

The development also gives rise to a need to increase the capacity of the GP surgery in the village. A proportionate contribution from this development has been calculated to be £16,990.

The contribution requests received from KCC are considered to be reasonable.

DDC Head of Strategic Housing - The application acknowledges that the Council's planning policy in respect of affordable housing applies to the proposed development and I'm pleased that the planning application form includes a proposal to provide 27 social rented homes which is in line with the policy target of 30%. Affordable rented housing delivered in partnership with a Registered Provider of affordable housing would normally be let at affordable rent levels rather than social rent. I would also normally expect the affordable housing to comprise a mix of rented and shared ownership tenures. This would normally be in the proportion 70% rented and 30% shared ownership. I note that the proposal relating to the affordable housing does not include details of the dwelling types to be provided and this would need to be determined in consultation with the Council and potential Registered Providers.

DDC Principal Heritage Officer – The development does not present any Listed Building or Conservation Area issues.

Public Representations – Sixteen letters of objection have been received, raising the following concerns:

- Development should not take place outside of the village confines or on greenfield land.
- The development will increase pressure on infrastructure
- Inadequate infrastructure, including but not limited to schools, sewerage and the GP surgery, to meet the needs of the development
- Increased traffic and lack of car parking in the area
- All development in the village should be put on hold until a new plan is in place
- The layout shown on the submitted plans will encourage joy riding
- There is no need for additional housing
- Impact on neighbouring properties (loss of light and loss of privacy)
- Loss of the Scout hut
- The development will not provide any affordable housing
- The development will impact upon archaeological remains
- The development will harm wildlife
- Loss of Best and Most Versatile agricultural land
- The development will be too dense

In addition, one letter has been received which neither supports nor objects to the development. This letter raises the following points:

- Regard should be had for ensuring that access to the Scouts Building is maintained.

f)

## 1. **The Site and the Proposal**

- 1.1 The application site is located to the north of Ash, on a parcel of land which is situated to the south of the A257, to the west of Chequer Lane (beyond which are dwellings) and to the north of a residential area comprising Chequer Lane, Holness Road and Molland Lea. To the west of the site, and to the north, beyond the A257, is agricultural land.
- 1.2 The site lies within the settlement confines of Ash and is allocated by Policy LA20 for residential development, with an estimated capacity of 90 dwellings.
- 1.3 The site itself comprises predominantly agricultural land, with trees and other vegetation to its north and field boundaries to its east and south. Two Public Rights of Way run through or are adjacent to the site. The EE112 runs along the sites southern boundary, whilst the EE113 runs across the site from a yard, which is accessed from Molland Lea and Holness Road, to Chequer Lane. The land generally rises from south east to north west, with a maximum rise in levels of 2.8m.
- 1.4 This application has been submitted in outline, with all matters (access, appearance, landscaping, layout and scale) reserved. The application proposes the erection of 90 dwellings, together with vehicular and pedestrian access onto Chequer Lane, open space and associated landscaping, including a 15m wide landscape buffer to the west of the site.

## 2 **Main Issues**

2.1 The main issues are:

- The principle of the development
- The impact of the development on the character and appearance of the area
- The impacts of the development on the living conditions of neighbouring properties
- The impact on the highway network
- Contributions

#### Assessment

##### Principle

2.2 The application site is allocated for residential development under policy LA20 of the Land Allocations Local Plan. This policy supports the principle of residential use of the site, with an estimated capacity of 90 dwellings, subject to the following six criteria:

i. the existing boundary hedgerows and vegetation are retained and landscaping, of no less than 15m in width, is established along the western boundary;

ii. the density of development along the western boundary is reduced to mitigate any landscape impact;

iii. the Public Rights of Way (EE112 and EE113) are enhanced and incorporated in the design and layout to improve cycle and pedestrian connections from Chequer Lane and Molland Lea;

iii. the main vehicular access will be from Chequer Lane with an emergency access off either Chequer Lane or Molland Lea;

v. development should provide a connection to the sewerage system at the nearest point of adequate capacity and ensure future access to the existing water supply infrastructure for maintenance and upsizing purposes; and

iv. a mitigation strategy to address any impact on the Thanet Coast and Sandwich Bay Ramsar and SPA sites and Sandwich Bay SAC site is developed. The strategy should consider a range of measures and initiatives.

The application is for the 90 dwellings, in accordance with the estimated capacity. The above criteria all relate to detailed matters and will be considered under the relevant headings. Subject to meeting these criteria, it is considered that the principle of the proposed development accords with Policy LA20 and is therefore acceptable.

2.3 As the District cannot demonstrate a five year housing land supply and having regard for paragraphs 14 and 49 of the NPPF, significant weight should be given to the provision of housing whilst permission should be granted unless the development is unsustainable or specific policies in the NPPF direct that permission should be refused.

#### Character and Appearance

- 2.4 In assessing the character and appearance of the scheme, consideration has been given to the principles contained within the Kent Design Guide and Building for Life 12.
- 2.5 This application has been submitted in outline, with all matters (including appearance, layout, scale and landscaping) reserved. However, the application has been supported by an illustrative masterplan which indicates how the proposed development could be accommodated on the site.
- 2.6 The proposed development would provide a density of approximately 29 dwellings per hectare. The density of development within the area varies significantly. Some of the lowest densities are found directly to the south of the site, displaying a density of approximately 22 dwellings per hectare, whilst some of the highest densities (excluding the village core) are found to the east and south east, which display densities of between 27.5 and 33dph. Whilst the overall density of development is therefore considered to be acceptable, the densities of each part of the application site will need to respond to the characteristics of its particular context. The indicative masterplan shows that across the site the density would vary, with a higher density towards the middle of the site and lower densities to the peripheries. In particular, the masterplan shows that the density of the scheme would reduce significantly to the west of the site, adjacent to a landscape buffer. This reduction in density adheres to criterion 2 of policy LA20 which states that the density of development along the western boundary is reduced to mitigate any landscape impact. The density along the northern and eastern boundaries would also be relatively low. As a result, it is considered that the visual impact of the development would be substantially reduced in views from the wider area.
- 2.7 The indicative layout suggests that the buildings within the site would, broadly, be located around the peripheries of the site and within two blocks of buildings within the interior. The layout would provide for street fronting development, responding to the character of the development in the area, but would avoid a highway dominated scheme. The layout of scheme and the structure of its roads would provide a variety of 'spatial types', which would add interest to the interior of the site. Whilst some concerns are raised with this indicative layout, in particular relating to the relationships of some buildings with open spaces (for example where buildings back onto these spaces), it is considered that the layout is sufficient to demonstrate that the amount of development applied for could be successfully accommodated on the site, albeit with some amendments at the reserved matters stage.
- 2.8 The scale of the buildings would also vary across the site, incorporating buildings ranging from one and a half to two and storeys in height. Broadly, the heights of buildings would reduce from the south east to the south west. In assessing the acceptability of the heights of buildings, regard must be had to the topography of the site, which rises around 2.8m from south east to north west. It is also noted that Chequer Lane is set down from the level of the site. The majority of houses in the area are two storeys in height; however, it is not considered that two and half storey dwellings would appear incongruous and, whilst the changes in levels are not so significant that the development would appear unduly prominent, particularly given the opportunity to set dwellings in from the highway. As such, the indicative heights are not considered unacceptable. It is, however, considered that it would be reasonable to require that the reserved matters application be supported by details of building heights, floor and threshold levels, sections through the site and incorporating neighbouring building and street scene elevation drawings, so that the visual impacts of the detailed scheme can be fully assessed.

- 2.9 The site would include a 15m wide landscape buffer to the west of the site and would retain and reinforce the existing vegetation to the north and south of the site, in accordance with the requirements of the first criterion of Policy LA20, which states “the existing boundary hedgerows and vegetation are retained and landscaping, of no less than 15m in width, is established along the western boundary”. Buffer planting would also be provided either side of the Public Rights of Way which run along the southern boundary of the site and through the site respectively, in accordance with criterion 3 of Policy LA20. Within the site, generous areas of strategic landscaping and open space have been proposed, which would help to soften the visual impact of the buildings.
- 2.10 Overall, whilst all matters are reserved at this stage, the indicative masterplan provides confidence that the amount of development proposed can be successfully accommodated within the site whilst providing a high quality, attractive development.

#### Heritage Assets

- 2.11 Regard must be had for how the development would impact upon listed buildings, and their settings, having regard for the Planning (Listed Buildings and Conservation Areas) Act 1990 (The 'Act'). Section 66(1) of the Act states that, 'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.' As such, it is necessary to have 'special regard' for whether the development would preserve the listed buildings in the vicinity of the site, and their settings. Section 72(1) of the same Act, requires that 'special attention' is given to the desirability of preserving or enhancing the character or appearance of a conservation area. Additionally, the NPPF requires that regard must be had for whether the development would harm the significance of both designated and non-designated heritage assets and, where harm is identified (either substantial or less than substantial) consider whether this harm is outweighed by public benefits.
- 2.12 The nearest listed buildings, comprising a group of buildings located on, and adjacent to, The Street to the south, an isolated building called Molland to the west and Chequer Court (which is also a Scheduled Ancient Monument) to the north, are all located a significant distance from the site. All of these listed buildings are considered to have relatively localised settings, typically being two to three storeys in height and often closely confined by other buildings. However, the C15th tower and spire of the Grade I Listed Church of St Nicholas is a prominent feature in wider views, and forms an important landmark, of the village. The spire is visible in the distance along Chequer Lane, when travelling towards the village. The development would result in housing to the western side of Chequer Lane, which would alter the character of this section of the road. However, the illustrative masterplan demonstrates that the buildings within the scheme could be set back from Chequer Lane, reducing the urbanisation of the lane. Having regard for this, together with the separation distance between the site and the Church, it is considered that the development would not harm the setting of the Church.
- 2.13 The first edition Ordnance Survey map identifies that a windmill (described as the 'Good Intent' windmill) was located within the site along the southern boundary. The footpaths through the site are also shown on the same map. The archaeological report submitted with the application identifies that the site has, in particular, a moderate potential for medieval archaeology and a high potential for post-medieval archaeology. It is considered that there is a reasonable likelihood that the site contains heritage assets of archaeological significance and, as such, it

would be reasonable to attach a condition to any grant of permission requiring a programme of archaeological work to be undertaken in advance of development.

#### Living Conditions

- 2.14 The site is bounded by residential areas to its south and, beyond Chequer Lane, to the east.
- 2.15 The closest residential properties would lie to the south of the site, in particular No. 64 Chequer Lane and No.'s 50-60 (inclusive) Molland Lea. No.64 is set approximately 6m away from the boundary of the site. Whilst this relationship is relatively close, the indicative layout plan, in accordance with the proposed drainage strategy, shows that an infiltration basin will be located to the north of No.64, as this is the lowest point on the site. As such, dwellings within the development would be well separated from No.64 and would not, therefore, cause any unacceptable loss of amenity to that property. The properties on Molland Lea are located further from the application site, approximately 15m to the south. The development on site would be set at least a further 5m away, by virtue of the landscape buffer around the PRoW and, consequently, would be set a sufficient distance away to ensure that no unacceptable loss of amenity would be caused.
- 2.16 The dwellings to the east of site would be separated from the proposed dwellings by Chequer Lane. As such, these properties would be set at least 13m away from the edge of the application site and, subject to an acceptable layout being submitted at the Reserved Matters stage, would not be unacceptably impacted by the development.
- 2.17 It is not considered that any other dwellings would be unacceptably impacted by the proposed development. Notwithstanding this, Environmental Health have advised that it would be appropriate to include a condition on any grant of permission requiring the submission of a construction management plan. This plan would detail how hours of construction, noise, dust and vibration would be controlled, in order to ensure that the living conditions of neighbours are not unacceptably impacted during development.
- 2.18 The illustrative masterplan proposes that the dwellings would all be of generous sizes, whilst the proposed density would allow reasonable separation distances between properties. As such, it is considered that the application has demonstrated that the amount of development proposed could be successfully accommodated whilst providing acceptable living conditions for future residents.

#### Impact on the Highway

- 2.19 Policy DM12 of the Core Strategy requires that developments provide suitable access arrangements, whilst policy DM13, being informed by Table 1.1, requires that development provides a level of car and cycle parking which balances the characteristics of the site, the locality and nature of the proposed development and design objectives.
- 2.20 Access is reserved at this stage. Notwithstanding this, the indicative masterplan provides a suggested location for the access to the site, which would be located approximately centrally along the eastern boundary of the site, linking to Chequer Lane. A secondary 'emergency only' access would be provided to the north east of the site, also onto Chequer Lane. Both the location of the main access and emergency access accord with the requirements of criterion 4 of Policy LA20 and the principle of the proposed accesses are, therefore, accepted. It has therefore been demonstrated that site can be appropriately accessed. The masterplan

originally submitted with application, which has now been amended, had sought to provide an additional access onto Molland Lea. Whilst this access would also have accorded with criterion 4 of Policy LA20, following significant local concern the vehicular access in this location has been removed so that only footpath links would be provided.

- 2.21 The occupants of the proposed development would lead to an increase in vehicular movements on the surrounding road network. The application has been supported by a Transport Assessment, which has modelled the trips generated by the development and the consequential impact on the local highway network. Subsequently, additional information has been submitted which considers the in-combination effects of the development with the effects of another application which is currently under consideration at Land at Sandwich Road, Ash (DOV/16/00800). The development would produce approximately 50 trips within the AM peak hour and 60 trips within the PM peak hour, whilst approximately 95% of these trips would travel north, directly onto the A257. As such, the development would have little impact on traffic through the village. The impact on junctions and roundabouts has also been modelled, demonstrating that the development would have a negligible impact on these junctions and would not cause any junction to exceed its design capacity.
- 2.22 Following consultations, the applicant has proposed off-site highway works to ensure that Chequer Lane is appropriately altered to accommodate the development. The width of the road is to be increased towards the south of the site to improve the flow of traffic whilst retaining on street car parking. It is also proposed to provide a build out into the road, allowing for safer pedestrian crossing of Chequer Lane. This crossing point would be to the south eastern corner of the site and would serve the existing public right of right. The build out would produce a pinch point on Chequer Lane where only one vehicle could pass at any time. Signage would be erected and road markings painted to advise traffic that vehicles exiting the village have priority. Whilst this feature would be likely to cause some queuing, this would not be significant whilst the provision of a pedestrian crossing and the reduction in vehicle speeds which would result would improve highway safety. It is considered that these off-site highway works are required and should be secured by condition.
- 2.23 Policy DM13 of the Core Strategy requires that the provision of car parking should be a design led process, based upon the characteristics of the site, having regard for Table 1.1 of the Core Strategy. At this stage, with all matters reserved, details of car parking provision have not been provided, although the submitted Transport Assessment confirms that car parking provision would be provided in accordance with the guidance. Having regard for the density of the development it is considered that the site is capable of providing the necessary car parking, subject to acceptable details being provided at the Reserved Matters stage.
- 2.24 Details of cycling provision within the development have not been submitted at this outline stage. However, there is no reason to doubt that adequate provision could be made, particularly having regard for the potential size of gardens, as demonstrated by the indicative masterplan.
- 2.25 KCC Highways and Transportation have requested that a number of matters are secured by condition. It is accepted that all of the requests are reasonable and appropriate and should be secured by conditions.
- 2.26 Two Public Rights of Way pass through, or are adjacent to, the site, the EE112 and EE113. The second criterion of Policy LA20 requires that these Public Rights of Way are “enhanced and incorporated in the design and layout to improve cycle

and pedestrian connections from Chequer Lane and Molland Lea”. KCC PRow has commented that the footpaths shown on the indicative masterplan do not follow the alignment of the existing PRow. A revised parameter plan and revised indicative masterplan have been received which amend the alignment of the PRow through the site to accord with the Definitive PRow Map. The amended drawings also demonstrate that landscaping buffers will be provided along the routes of the PRow’s, whilst the indicative layout demonstrates that the proposed development is capable of providing an attractive setting to these routes. Consequently, it is considered that the proposal would meet the second criterion of Policy LA20. The development would also be likely to significantly increase the use of these PRow’s and it is therefore reasonable to require the development to provide a hard surface to routes. It is considered that it would be reasonable to include a condition on any grant of permission, requiring full details of works to the PRow’s and full details of the landscape buffers to PRow to be submitted with the application for Reserved Matters.

- 2.27 Concern has been raised that the layout shown would encourage joy riding. However, as this application has been submitted in outline, with all matters (including access and layout) reserved at this stage, the submitted plans are indicative only. The detailed layout of the scheme will be assessed at the reserved matters stage, when full details will be available for consideration, and regard will be had at that stage for whether the internal road layout would design out crime and anti-social behaviour.
- 2.28 Environmental Health have requested that electric charging points for cars are provided. Whilst the NPPF states that “developments should be located and designed where practical to...incorporate facilities for charging plug-in and other ultra-low emission vehicles” there is no policy within the development plan which requires such charging points. In the absence of any policy, and acknowledging that the provision of such charging facilities within a residential development would be impractical, it is not considered that it would be reasonable to require such provision.

#### Contamination

- 2.29 The application has been supported by a Phase 1 Ground Conditions Assessment, which has reviewed current and historic land uses, both on the application site and in the surrounding area. The site and its surroundings have, predominantly been in agricultural use since the earliest maps, whilst the surrounding residential uses to the south and east of the site typically date from between the 1930’s to the present. Based on these uses, the report concludes that there is no reason to believe that site is contaminated, having a very low to low risk. The report has been reviewed and accepted by Environmental Health. However, as a precautionary measure, it has been requested that a condition be attached to any grant of permission requiring the reporting and remediation of any previously unidentified contamination which is discovered. A similar condition has been recommended by the Environment Agency.

#### Ecology

- 2.30 In accordance with the Habitats Directive and the Wildlife and Countryside Act 1981, it is necessary to ensure the application (a ‘project’) does not harm a European Site. The Land Allocations Local Plan establishes that residential development across the district will cause in combination effects on the Pegwell Bay and Sandwich Bay SPA and Ramsar Site. However, the LALP also provides a suggested mitigation against these cumulative impacts of development, setting out a mitigation strategy to avoid potential impacts, comprising a financial contribution

to provide monitoring and wardening at Sandwich Bay and towards the Pegwell Bay and Sandwich Bay Disturbance Study. The applicant has agreed to pay this contribution, amounting to £3,934.49. Consequently, it is not considered that the development would cause a likely significant effect on the SAC or SPA. A legal agreement will be required in order to secure this contribution.

- 2.31 In furtherance to the impacts on the off-site Thanet Coast and Sandwich Bay, Ramsar, SAC and SPA, regard must be had for whether the development would cause any harm to habitats or species on or adjacent to the application site, having regard for Natural England's Standing Advice.
- 2.32 The application has been supported by an Ecological Appraisal for the site, which considers both the flora and fauna of the site.
- 2.33 The site includes plantation woodland, tall ruderal growth, semi-improved grassland and trees and hedgerows to the peripheries of the site, with cultivated land comprising the interior, and majority, of the site. No invasive species were identified. The majority of the flora on site is of low value; however, the vegetation to the northern boundary is of conservation value and should be retained. The Ecological Appraisal recommends that this vegetation is retained and provided by a landscape buffer. This could reasonably be secured by condition.
- 2.34 There are no records of Great Crested Newts in the area and there are no ponds within the application site. However, there are nine ponds within 500m of the site, five of which are to the south of the A257. The submitted report advises that, whilst these ponds could provide habitat for Great Crested Newts, the majority of the application site would be of negligible value for amphibians and the development would not, therefore, impact upon Great Crested Newts and no further surveys are required.
- 2.35 The trees, woodland and hedgerows to the peripheries of the site provide suitable habitat for birds, whilst nests were observed during the survey of the site. As such, any vegetation clearance, which has the potential to affect nesting birds, should be undertaken outside of the breeding bird season, unless the vegetation to be removed is checked by a suitably experienced ecologist in advance and any active nests protected until all broods have fledged. New landscaping should contribute towards mitigating for the loss of bird nesting habitat and bird boxes should be provided as enhancement.
- 2.36 No features of particular value for bats were observed during the survey work. Some features to the boundaries of the site provide foraging and commuting habitat for bats; however, overall the site provides low habitat suitability for bats. However, given the likelihood of bat foraging in the within the retained area of vegetation to the northern boundary, it is considered that, should permission be granted, a condition requiring full details of external lighting would appropriately ensure that bats are not unacceptably impacted by the development.
- 2.37 Whilst some areas of hedgerow on the application site could be used by dormice, these features provide sub-optimal habitat and, as such, the submitted report concludes that the site would not impact dormice.
- 2.38 The appraisal confirms that no records of badger have been identified within the vicinity of the site and no badger activity was recorded on the site. Badger are not, therefore, a constraint.
- 2.39 The peripheries of the site have some potential for reptile foraging, whilst spoil piles on the site could be used for hibernation. The site, therefore, provides

potential habitat for reptiles and, consequently, the applicants ecologist has undertaken a presence/likely absence survey. This survey concluded that the site does not support any large or important reptile population, as no reptiles were observed or recorded. Whilst there is no significant population of reptiles on site, it would be appropriate to ensure that precautions are taken during construction to ensure that individuals are not harmed. It is considered that these precautions can be secured by condition.

- 2.40 In addition to the mitigation and enhancement already identified, the submitted report recommends that new planting should comprise diverse, native species. Bat boxes and a hibernaculum should also be provided to the north of the site.
- 2.41 The Councils Principal Ecologist has confirmed that, subject to a condition being attached to any grant of permission requiring ecological enhancements, in line with those suggested within the submitted Ecological Appraisal, ecology does not present a constraint to development.

#### Contributions

- 2.42 Core Strategy Policy DM5 requires that for schemes of this scale, the Council should seek an on-site provision of 30% affordable housing. The applicant has confirmed that the development can support the delivery of this affordable housing, which will be provided on-site. A condition should be attached to any grant of permission requiring a detailed scheme for the provision of affordable housing to be submitted for approval.
- 2.43 In accordance with Policy DM27 of the Land Allocations Local Plan, the development would also be expected to provide Open Space on site, or a contribution towards off- site provision, to meet the Open Space demand which would be generated by the development. Whilst the development would provide pockets of open space, there is an existing play area within 150m of the site and so it would be undesirable to provide another play area on site. Furthermore, the areas of open space would be relatively small and not suited to providing strategic Open Space infrastructure, as required by Policy DM27. Accordingly, the Principal Infrastructure and Delivery Officer has advised that contributions should be sought for the off-site provision of infrastructure. In this instance, given the scale of development, the application would give rise to a need to provide a local area of play, the commuted cost of providing such an infrastructure project is £43,512. The development would also give rise to a need to provide outdoor sports facilities, a scaled contribution for which would amount to £28,000. The applicant has provided a heads of terms agreeing to such contributions. Subject to the provision of these contributions being secured by legal agreement, the development would therefore meet the requirements of Policy DM27.
- 2.44 Kent County Council have advised that the development would increase demand for local facilities and services and, where there is currently inadequate capacity to meet this need, contributions should be sought to provide infrastructure improvements proportional to meet the need generated. In this instance, KCC have advised that there is insufficient primary and secondary school provision to meet the needs of the development. Furthermore, given the constraints of its site, the closest school, the Cartwright and Kelsey CE Primary School, cannot be expanded. However, KCC have advised that this school currently has an intake which includes children from nearby Sandwich. As such, they have advised that a contribution towards phase 1 of the proposed new school at Discovery Park would free up places for children from Ash. A contribution of £212,486.40 has been requested from this application to meet the need identified. KCC have also requested a contribution of £212,382.00 for the expansion of Sir Roger Manwoods,

which is a nearby secondary school, a contribution of £4,321.42 towards increasing the capacity of Ash Library, a contribution of £2,307.50 be provided to pay for portable equipment for new learners classes at Cartwright and Kelsey CE Primary School and £6,986.70 towards increasing the capacity of Age UK in Sandwich, all of which would ensure that the needs generated by the development would be met. It is considered that each of these requested contributions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The applicant has confirmed that they are willing to provide these contributions and have submitted a legal agreement to secure them as part of the development.

- 2.45 In addition to the contributions requested by KCC, the NHS CCG have advised that the GP surgery in Ash is operating at capacity and could not, therefore, meet the additional demand generated by the development. A project has been identified to expand the existing surgery which would increase its capacity by 1000 patients. The total cost of this expansion would be £78,660. The proposed development would be likely to generate approximately 216 new patients and, as such, a proportionate contribution from the development would be £16,990. The applicant has agreed to provide this contribution.

#### Flood Risk and Drainage

- 2.46 The site lies within Flood Risk Zone 1, where there is the lowest risk of flooding. However, given the size of the site, it is appropriate to consider whether the development would be likely to lead to localised on or off-site flooding.
- 2.47 The NPPF, at paragraph 103, states that local planning authorities should ensure that flooding is not increased elsewhere, going on to say priority should be given to the use of sustainable drainage systems. In furtherance to this, the Planning Practice Guidance states that sustainable drainage systems are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible.
- 2.48 The submitted Flood Risk Assessment details the existing hydrology of the site and provides an outline drainage strategy. The site is currently undeveloped, with surface water being drained within the site naturally. Infiltration tests have been carried out which have demonstrated that surface water infiltration is feasible on the site as the head deposits of clay are relatively shallow. Consequently, the outline drainage strategy proposed to provide permeable paving to all private roads and drives and provide individual soakaways within the gardens of each property, which would accommodate water from roofs. Impermeable areas within the site, such as public roadways, would drain to an attenuation pond located to the south eastern corner of the site. The submitted outline drainage strategy demonstrates that the surface water run-off of a 1 in 100 year storm event, adjusted for climate change, could be accommodated, without increasing the risk of flooding on site or elsewhere. Notwithstanding this, it is considered that it would be reasonable to include a condition on any grant of permission requiring full details of the final surface water drainage scheme, together with details of its maintenance and a timetable for its implementation.
- 2.49 Criterion 5 of Policy LA20 requires that the development provides a connection to the sewerage system at the nearest point of adequate capacity. The application has been supported by a Utilities Appraisal, which has assessed the ability of the local sewerage infrastructure to meet the needs of the development. This appraisal is supported by level 1 and level 2 capacity checks, which have confirmed that the existing network will require upgrading in order to provide the additional capacity

required to meet the needs of the development. Consideration was given to providing on-site foul storage; however, this solution was found to be unfeasible. The improvement works suggested by the level 2 study comprise the provision of offline storage and upsizing an existing sewer in The Street from 225mm to 300mm.

- 2.50 In common with the submitted utilities appraisal, Southern Water have advised that the existing sewerage infrastructure cannot meet the needs of the development without providing improvements to the local infrastructure. A condition, requiring full details of the sewerage infrastructure improvements, which would include a timetable for the provision of these improvements, has been recommended. Subject to the imposition of such a condition, it is considered that the application has demonstrated that sewerage can be appropriately dealt with, without increasing the risk of localised flooding.

#### Other Matters

- 2.51 Concern has been raised that the development would necessitate the loss of the scout hut, which is located to the south of the site in a yard accessed from Molland Lea. The indicative masterplan submitted with the application suggested that an emergency access to the site could be routed via this yard to Molland Lea; however, whilst this option would accord with Policy LA20, the indicative masterplan and parameter plan have been amended to propose that both the primary access and the emergency access would both be from Chequer Lane. This option also accords with Policy LA20. As such, the development would not directly or indirectly, impact upon the existing scout hut.
- 2.52 Concern has also been raised regarding the loss of best and most versatile agricultural land. Whilst the development would lead to the loss of approximately 3ha of Grade 2 agricultural land, which is considered to be 'best and most versatile', this loss was accepted when the site was allocated for inclusion in the Land Allocations Local Plan.

#### Overall Conclusions

- 2.53 The site lies within the settlement boundaries on land which is allocated by Policy LA20 of the Land Allocations Local Plan for residential development of up to 90 dwellings. It is therefore considered that the principle of the development is acceptable. Furthermore, weight must be given in favour of the development by virtue of the council's lack of a five year housing land supply.
- 2.54 It is considered that the application has demonstrated that, subject to the submission of an acceptable application for approval of reserved matters, the development could be designed in such a way so as to cause no harm to the character and appearance of the area, the local highway network or the amenities of neighbouring properties. The application includes for the provision of affordable housing and contributions towards improvements to local infrastructure to meet the needs generated by the development. Furthermore, the development would be acceptable in all other material respects. For these reasons, it is recommended that planning permission be granted.

#### g) Recommendation

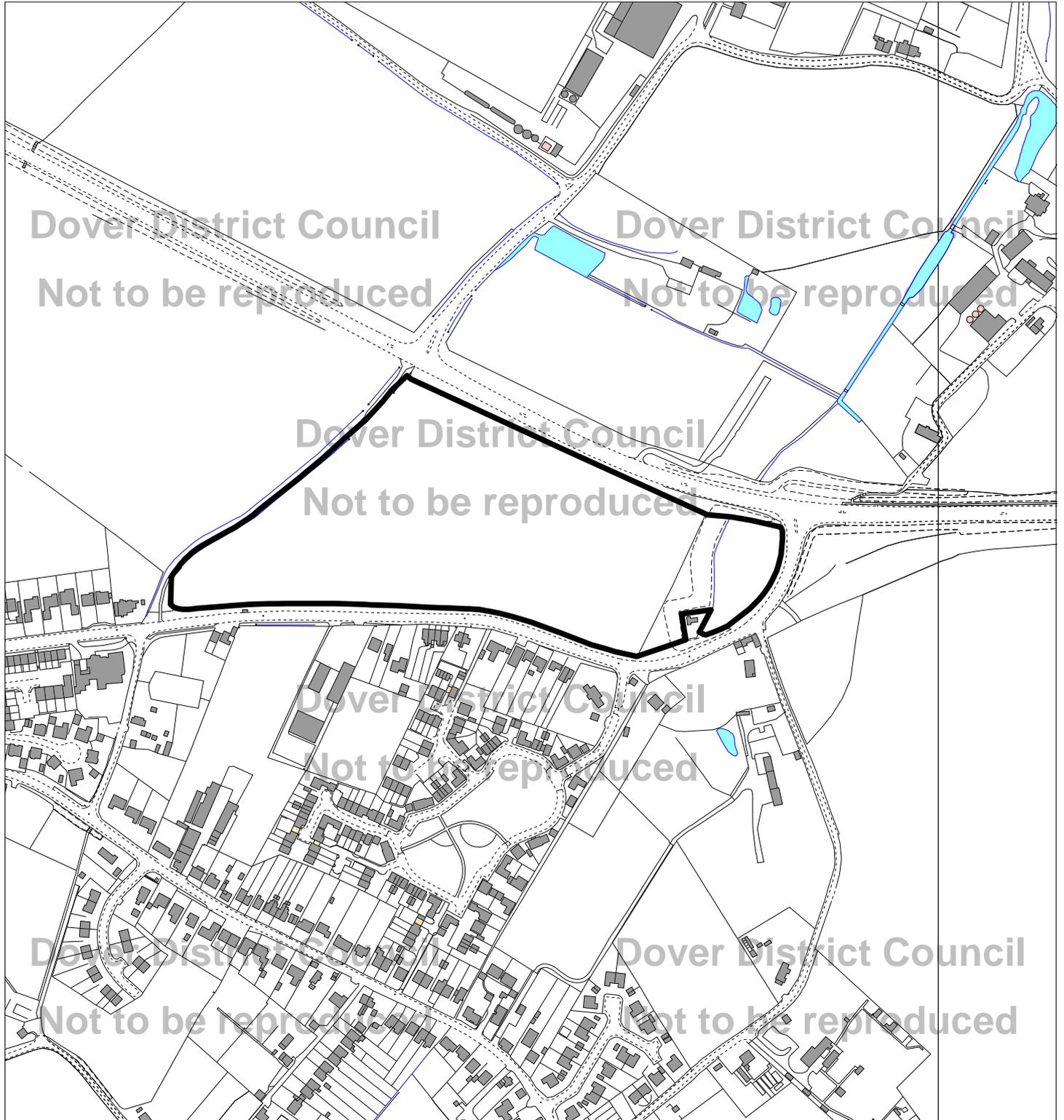
- I Subject to the submission and agreement of a s106 agreement to secure contributions, PERMISSION BE GRANTED subject to conditions to include:-

i) outline time limits; ii) approved plans; iii) affordable housing scheme; (iv) previously unidentified contamination, v) no infiltration of surface water other than that which is agreed; vi) construction management plan; vii) full details of surface water drainage, timetable for implementation and maintenance; viii) full details of foul drainage and timetable; ix) ecological mitigation and enhancements; x) lighting strategy; xi) full details of landscape buffer zones to northern and western boundaries; xii) full details of works to the Public Rights of Way (EE112 and EE113); xiii) full details of landscaping; xiv) details of boundary treatments; xv) archaeology; xvi) reserved matters to include sections of through the application site and adjoining land, floor levels and thresholds, roof heights, samples of materials and street scenes; xvii) details of all off site highway works and a timetable; xviii) completion of access road and emergency access; xix) provision of car parking; (xx) provision of cycle parking; xxi) completion of certain highway works prior to first occupation of each dwelling; xxii) provision of visibility splays; xxiii) measure of prevent discharge of water onto the highway; xxiv) use of a bound surface material for first 5m of access road; xxv) completion of certain highway works which are to first be approved.

- II Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning conditions and to agree a s106 agreement, in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Luke Blaskett



**Not to scale**

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**Note:** This plan is provided for purposes of site identification only.

**Application: DOV/16/00800**

**Land at Sandwich Road**

**Ash**

**CT3 2AF**

**TR29635851**



- a) **DOV/16/00800 – Outline application for the erection of 104 residential dwellings with associated commercial (B1) and nursery (D1) units, hard and soft landscaping, and associated infrastructure (all matters reserved except access) - Land off Sandwich Road, Ash**

**Reason for report:** Number of contrary views.

- b) **Summary of Recommendation**

Planning Permission be granted.

- c) **Planning Policies and Guidance**

Core Strategy Policies

- CP1 – The location and scale of development in the District must comply with the Settlement Hierarchy. Ash is a Local Centre, which is the secondary focus for development in the rural area; suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent communities.
- CP3 – Of the 14,000 houses identified by the plan 1,200 (around 8%) is identified for the rural area.
- CP4 - Developments of 10 or more dwellings should identify the purpose of the development in terms of creating, reinforcing or restoring the local housing market in which they are located and development an appropriate mix of housing mix and design. Density will be determined through the design process, but should wherever possible exceed 40dph and will seldom be justified ta less than 30dph.
- CP6 – Development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either in place, or there is a reliable mechanism to ensure that it will be provided at the time it is needed.
- DM1 – Development will not be permitted outside of the settlement confines, unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- DM5 – Development for 15 or more dwellings will be expected to provide 30% affordable housing at the site, in home types that will address prioritised need.
- DM11 – Development that would generate high levels of travel will only be permitted within the urban areas in locations that are, or can be made to be, well served by a range of means of transport.
- DM13 – Parking provision should be design-led, based upon an area's characteristics, the nature of the development and design objectives, having regard for the guidance in Table 1.1 of the Core Strategy.
- DM15 – Development which would result in the loss of, or adversely affect the character and appearance of the countryside will not normally be permitted.
- DM16 – Development that would harm the character of the landscape will only be permitted if it is in accordance with allocations made in Development Plan Documents and incorporates any necessary avoidance and mitigation measures or it can be sited to avoid or reduce harm and incorporate design measures to mitigate impacts to an acceptable level.

### Land Allocations Local Plan

- DM27 - Residential development of five or more dwellings will be required to provide or contribute towards the provision of open space, unless existing provision within the relevant accessibility standard has sufficient capacity to accommodate this additional demand.

### National Planning Policy Framework (NPPF)

- Paragraph 14 of the NPPF requires that where the development plan is absent, silent or relevant policies are out-of-date development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or, specific policies in the NPPF indicate that development should be restricted.
- Paragraph 49 of the NPPF states that "housing applications should be considered in the context of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of housing sites.
- The NPPF has 12 core principles which, amongst other things, seeks to: proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs; secure high quality design and a good standard of amenity for all existing and future occupants and buildings; take account of the different roles and characters of different areas, promoting the vitality of our main urban areas, recognising the intrinsic character and beauty of the countryside; and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.
- Chapter four of the NPPF seeks to promote sustainable transport. In particular, paragraph 29 states that "the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas".
- Chapter six of the NPPF seeks to significantly boost the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.
- Chapter seven requires good design, which is a key aspect of sustainable development.
- Chapter twelve requires that development has regard for its impact on the significance of heritage assets and their settings.

### The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development.

### d) **Relevant Planning History**

It is not considered that there is any planning history which is directly relevant to the determination of the current application.

e) **Consultee and Third Party Responses**

Environmental Health – The application is supported by a Phase 1 Environmental Report, which recommends further intrusive investigations. It is recommended that any permission is accompanied by a condition requiring such on-site investigation and, as necessary, remediation.

The application has also been supported by a noise report. Non-opening windows with mechanical ventilation, together with a perimeter fence have been proposed to mitigate road noise. These should be secured by condition and should be constructed such that they would accord with building regulations and environmental health criteria.

A condition should be attached to any grant of permission requiring the submission of a construction management plan, whilst the hours of construction should be managed. There should be no burning of material on site.

Natural England – Subject to avoidance and mitigation measures, no objection is raised to the development in respect of its impact on national and internationally designated sites. Furthermore, the development is unlikely to have a significant effect on any European Site, whilst the applicant has agreed to make the appropriate financial contribution to the Thanet Coast mitigation Strategy. The development will not damage or destroy SSSI interest features. The developments impact on protected species should be assessed having regard for Natural England's Standing Advice.

Southern Water – Southern Water cannot accommodate the needs of the development without the development providing additional local infrastructure. As such, it is requested that a condition be attached to any grant of permission requiring full details of a drainage strategy, together with a timetable for its implementation to be submitted to and approved by the local planning authority.

It might be possible to divert the foul rising main, so long as this would result in no unacceptable loss of hydraulic capacity and the work was carried out at the developers expense to the satisfaction of Southern Water. A condition should be attached to any grant of permission requiring details of measures to protect and divert the public sewers.

Southern Water supports the use of sustainable urban drainage systems, subject to being satisfactorily designed.

There should be no dwellings within 15m of the boundary of the existing pumping station, to ensure that they are not unacceptably impacted by noise, vibration or odour.

Southern Water can provide a water supply to the site.

KCC Highways – Initial advice received on 3<sup>rd</sup> August 2016:

A holding objection has been placed until matters of concern have been resolved. These matters are: count, speed and crash data for Sandwich Road; revision of the TRICS data relied upon; review and clarification of the distribution of traffic figures; assessment of the impact of the development on the Sandwich Road/A257 and A257/A256 junctions; demonstration that adequate visibility can be achieved; and proposals for the relocation of bus stops.

Further advice received 7<sup>th</sup> October 2016:

- Crash data has still not been submitted
- It would be appropriate to extend the 30mph zone to near the junction of Sandwich Road with the A257. The development should pay for these works, including signage and gateway features, which should be shown.

- Given the submission of an application for 90 dwellings at land at Chequer Lane, a combined impact assessment should be submitted.
- The proposed relocated bus stop should be moved further to the east.

Further advice received 19<sup>th</sup> December 2016:

I refer to the additional information submitted for the above and confirm the proposals are now acceptable. The proposals are likely to generate around 90-100 two-way vehicle movements in each of the network peak hours, however some of these movements (those associated with the proposed nursery) are already likely to be on the network as children are already being taken from the village to nurseries elsewhere. Bearing in mind the proximity of the site to the A257 the vast majority of movements are likely to be to and from this road. The impact of the proposals at the junction of Sandwich Road with the A257 has been assessed and is acceptable, with the junction still operating within capacity with the addition of the development. The A257/A256 roundabout junction has also been assessed and the impact of the additional development traffic is also acceptable.

Whilst there may be some vehicle trips from the development through the village to/from the school, these will not add to existing school trips as they will replace current trips by parents from further afield when school places are given to children living in the new development. Some children from the development may also be walked to and from school. There may also be some trips between the site and other services/amenities in the village but these are readily accessible by non-car modes and the number of these trips being done by vehicle is not anticipated to be significant or have a severe impact.

The proposed access arrangements are acceptable with suitable visibility being provided. The existing bus stop on the north side of Sandwich Road will be relocated to the east so that it is clear of the proposed access junction. A new footway connecting to the existing network will be provided along the site frontage up to the existing easternmost bus stop and a separate pedestrian/cycle/emergency services access from Sandwich Road is also provided towards the eastern end of the site. These works within the existing highway will be carried out by the developer under a s.278 agreement with the highway authority and include extension of the existing 30 mph speed limit eastwards to encompass the development. The proposed highway alterations have been subject to an independent safety audit.

Refusal on highway grounds is not, therefore recommended, subject to the following conditions:

- Provision of measures to prevent the discharge of surface water onto the highway.
- Use of a bound surface for the first 5 metres of private accesses from the edge of the highway.
- Provision and permanent retention of vehicle parking facilities prior to the use of the site commencing in accordance with details to be submitted to and approved by the Local Planning Authority.
- Provision and permanent retention of secure, covered cycle parking facilities prior to the use of the site commencing in accordance with details to be submitted to and approved by the Local Planning Authority.
- Completion of the accesses and associated alterations to Sandwich Road shown on the submitted plans or amended as agreed with the Local Planning Authority, prior to the use of the site commencing.
- The proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture to be laid out and constructed in accordance with details to be submitted to and approved by the Local Planning Authority.

- Completion of the following works between a dwelling and the adopted highway prior to first occupation of the dwelling:
  - (a) Footways and/or footpaths, with the exception of the wearing course;
  - (b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
- Provision and maintenance of the visibility splays shown on the submitted plans with no obstructions over 1 metre above carriageway level within the splays, prior to the use of the site commencing.
- Construction Management Plan to include the following:
  - (a) Routing of vehicles to/from the site
  - (b) Timing of HGV movements
  - (c) Parking and turning facilities for delivery and site personnel vehicles
  - (d) Wheel washing facilities

Ash Parish Council – Object, for the following reasons:

- The site lies outside of the village confines
- The site is not allocated, whilst other sites have been allocated for over 200 homes following consultation
- Impact on the local highway network
- Insufficient sewerage and drainage infrastructure
- Use of agricultural land
- Impact of the development on the viability of allocated sites

Kent Wildlife Trust - No objection. A contribution should be sought for the developments indirect impact on the Sandwich and Pegwell Bay SPA site. The existing field margins should be protected and enhanced. It is recommended that Dover District Council should seek clarification from Aspect Ecology for the lack of a breeding bird survey. Based upon Natural England Standing Advice, the desk study species records and the habitats identified on site during the Ecological Appraisal, this should have been provided. We would suggest that this should be carried out in order to properly inform mitigation measures. We would also recommend that a Lighting Strategy should be conditioned in order to avoid impact on bats, birds and invertebrates at existing field margins and hedgerows.

Southern Gas Networks – No comments

Environment Agency – No objection. The inclusion of SUD's features are welcomed, although above ground features are preferred to underground or pumped solutions. The details of the proposed system should be agreed by the local planning authority.

Any contaminated soils encountered should be disposed of as controlled waste.

KCC Lead Local Flood Authority – The principle of surface water drainage should be established at the outset. The submitted Flood Risk Assessment and Preliminary Surface Water Drainage Strategy achieves this, demonstrating that surface water can be accommodated and disposed of in a manner that seeks to mimic the runoff from the existing site. This strategy should be refined at the detailed design stage. It is recommended that, should permission be granted, a condition should be attached requiring full details of the surface water drainage strategy to be submitted and that no dwelling shall be occupied until details and a timetable for implementation have been agreed.

Highways England – No objection.

Kent County Council Contributions – The development would give rise to additional demand for facilities and service which would require mitigation. In summary, this mitigation comprises: £245,539.84 towards Phase 1 of the new school at Discovery Park; £245,419.20 towards the first phase of expansion at Sir Roger Manwood Secondary School; £2,666.56 towards portable equipment for the new learners classes within the local area; £4,994.08 towards Ash library for shelving and stock; £8,073.52 towards Sandwich Age UK. In addition it is recommended that one of the on-site affordable houses is wheelchair adaptable and that the new houses are provided with high speed fibre optic broadband.

NHS CCG – The GP surgery in the village is at capacity and requires enlargement to meet the needs of the development. A project for this expansion has been identified which would have a total cost of £78,660 and would increase the capacity of the surgery by 1000 patients. The development would give rise to an estimated additional 286 patients and, as such, a proportionate contribution for this project from this application would be £22,497.

Kent County Council Public Rights of Way – No objection; however, comments are made regarding ensuring the proposed lagoon does not impact on the public bridleway and the need for the provision of a safe crossing facility of the A257 and safe footpaths. Comments are also made regarding ensuring that the development does not harm the PRow during development or by virtue of planting.

Rural Planning Consultant – The development includes the loss of 5.73ha of agricultural land. No Agricultural Land Classification Study has been submitted with this application; however, the site has been provisionally mapped as being Grade 1 (excellent quality). Whilst the applicant has contended that the drainage of the site is poor, in the absence of definitive evidence, it is fair to assume that the site's provisional Grade 1 status is correct. The land is therefore Best and Most Versatile Agricultural Land (BMV). The NPPF states that "112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality".

The area of land that would be lost in this particular case is not particularly extensive, and as indicated in the submissions, the land is a discrete parcel, being bounded by the A257 to the north, Sandwich Road to the east and south, and by a hard surfaced public footpath to the west (albeit with open agricultural land beyond that). However losses of individual smaller parcels can accumulate and I do not agree with the submitted Planning Statement's suggestion that the land is a particularly difficult shape for agricultural cultivation and use. Aerial imagery shows many similar sized, irregularly shaped yet productive individual parcels of agricultural land in the area.

The Planning Statement's assertion that the site "does not represent a viable commercial proposition" (as agricultural land) is not supported by any evidence; if the suggestion is that the land is not a viable unit on its own, that would not be a relevant consideration in terms of Planning Policy relating to loss of BMV land. As indicated above, local authorities may still attribute significance to the loss of smaller areas.

In conclusion, therefore, as matters stand I consider it would be fair to conclude that the development would involve a significant loss of BMV agricultural land in this case. It would be for the Council to consider the weight to be given to this particular issue within the overall balance, including whether the loss has been shown to be "necessary" in accordance with the criteria in para 112

Further advice has been received following consideration of a submitted Agricultural Land Classification Study, it is agreed that the site is 5.6ha, of which 3.2 ha (57 %) is excellent

quality and 2.2ha (39%) is very good quality (i.e. 5.4 ha of Grade 1 and Grade 2 BMV land), leaving just 0.2 ha (4%) poor quality, non-BMV land.

DDC Arboricultural Officer – No objections

DDC Principal Ecologist – The site is predominantly an arable field with limited biodiversity interest. Boundary hedgerows are present which will support greater biodiversity and while it is noted that these will be retained, that bounding the A257 is likely to be disturbed by development, due to it being overgrown. In that respect the comments by the Kent Wildlife Trust are noted. However, the species noted of amber conservation concern (Kestrel and Green Woodpecker) do not breed in the habitats presented on site and as the hedges are relatively young and do not appear to support features required for nesting by these species a breeding bird survey would be onerous. As long as adequate safeguarding of the hedges is conditioned such that any breeding bird species will not be adversely impacted, there is no constraint on development due to birds.

The low level of reptile activity is noted and it is considered that the proposals to deter reptiles from encroaching into development area are noted. However, there should be some demarcation of the site, such as by Heras fencing to prevent vehicular movement or storage of materials on those areas which reptiles may still frequent.

With respect to badgers, the ecology report considers signs of badgers on the site together with records for badgers in the locality. Given the absence of any signs on site and the distance from any recorded findings, it is considered that, notwithstanding the East Kent Badger Group comment, that badgers would not be a constraint to development here. However, given that badgers do change territory, a condition requiring an updated badger survey to be supplied at the time of submission of reserved matters would be appropriate.

The ecological report also mentions a number of enhancements. These should be taken forward through a condition.

DDC Principal Infrastructure Delivery Officer – The development would need to provide a contribution of £5,051.92 towards the Thanet Coast and Sandwich Bay Special Protection Area Mitigation Strategy. The development will also need to provide Open Space, in accordance with policy DM27. Discussions have been ongoing with the applicants over the course of the application.

Based on the adopted standards in DM27, the development would give rise to a need for 0.57ha of accessible green space, 0.3ha of outdoor sports facilities, 0.016ha of children's equipped play space and 0.05ha of allotments/community gardens. The open space proposed on site exceeds the total overall space requirement and, as such, could meet the Open Space needs of the development, subject to a condition requiring full details of the Open Space (which should include an equipped play area and high quality landscaping, and should meet the need for outdoor sports facilities).

The development also gives rise to a need to increase the capacity of the GP surgery in the village. A proportionate contribution from this development has been calculated to be £22,497.

The contribution requests received from KCC are considered to be reasonable.

DDC Head of Strategic Housing – The provision of 33 affordable dwellings would adhere to the council's affordable housing policy; although there has been no contact from the applicant to discuss this provision.

DDC Principal Heritage Officer – The site sits within the setting of the Grade I Listed St Nicholas Church. In particular, the spire is visible from Sandwich Road, which is the historic route from Sandwich to Canterbury. Collar Makers Hole, a Grade II listed building is also close to the site, but would not be impacted by the development, as it is set back from the road and heavily screened. Equally, there would be no impact on the two conservations areas in the vicinity of the site.

Consequently, it is recommended that the reserved matters ensures that the setting of the Grade I listed church is protected with consideration given to layout that ensures views are enhanced, and for the design, bulk and massing of the development and in particular the nursery building are sensitive to the rural setting of the church. It is recommended that the decision notice includes an informative to the effect that the illustrative layout is not considered to be acceptable in respect of impact on the setting of the church.

Kent Fire and Rescue – No observations to make

River Stour Internal Drainage Board - It is essential that post-development surface water runoff be restricted to no more than that of the predeveloped site, and that the receiving watercourse is of adequate capacity and condition. I therefore note and fully support the comments made by KCC's Flood Risk Project Officer on 12 August 2016, in particular that details of the SuDS and its future maintenance must be approved by the LPA in direct consultation with KCC's drainage and flood risk team and that offsite runoff be restricted to a maximum rate of 16.38l/s with onsite storage made available to accommodate the 1 in 100 year rainfall event plus Climate Change.

Stagecoach – Object. The level of information submitted with the application is disappointing. There are only two buses per hour past the site and not three as stated by the applicant. The existing bus shelter would likely be within the visibility splay of the access and, as such, should be relocated and upgraded as part of this application. Additional footpaths should also be provided to link the site to bus stops. Additional vehicle movements through the village would be likely to have a detrimental effect on the timekeeping of bus services.

KCC Archaeology – Whilst there are some shortcomings in the submitted archaeological report, it is sufficient to assess the developments potential impact on archaeology. The area is generally rich in archaeological remains, being adjacent to a Roman Road. It is therefore recommended that, should permission be granted, a condition is attached requiring that archaeological works take place in advance of development.

Public Representations – 112 letters of objection have been received, raising the following concerns:

- Increased traffic and congestion and harm to highway safety
- The development would harm the settings of listed buildings, including the Grade I Listed Church of St Nicholas
- Harm to the character and appearance of the area and of the countryside
- The development site is outside of the settlement confines
- Loss of tranquility
- There is no need for additional housing
- Light pollution
- Harm to wildlife and their habitats
- Increased pressure on local drainage and sewerage
- Other more preferable development sites exist (including allocated sites)
- The site is not sustainably located
- The development will impact upon PRow's
- The development will turn Ash from a village into a town

- Insufficient local facilities and services
- Loss of trees
- The development will impact upon archaeology
- There is no need for additional commercial floor space
- The site is poorly served by public transport.
- Harm to air quality
- Disruption during construction
- Noise and disturbance

The objection letters included a petition with 400 signatories.

In addition, 122 letters of support have been received, raising the following points:

- The site is in a highly sustainable location
- The site is of low aesthetic and ecological value
- This development would be deliverable
- Enhancement of the sites ecological value
- Provision of employment
- Provision of much needed affordable housing
- The development includes social infrastructure
- The scheme would provide a reasonable density of development
- Additional housing is much needed
- The site is well placed to minimize traffic impacts
- The scheme is of a high quality
- Provision of green space
- The development will attract new people to the village who will help to support existing facilities and services

- f)
1. **The Site and the Proposal**
    - 1.1 The site lies to the south of the A257 which is a main road between Sandwich and Canterbury via Wingham. To the south east is Sandwich Road, the southern side of which is bounded by residential properties. To the west is No.44 Sandwich Road, a residential property, and to its north agricultural land. Between No.44, the agricultural land and the site is a public right of way (bridleway), the EE466.
    - 1.2 The site is outside of the settlement confines of Ash, which terminate to the southern side of Sandwich Road and the eastern boundary of No.44 Sandwich road to the west. The site is not within any planning designation. Two parcels of land to the south are the subject of policy designations. No's 67 to 99 Sandwich Road have been brought within the confines of Ash, following a change to the settlement confines. A parcel of land, commonly known as the Agrii site, has been designated for residential development under policy LA21 of the Land Allocations Local Plan. This site has an estimated capacity of 95 dwellings.
    - 1.3 The site is currently in use as arable farmland and sits slightly below the level of Sandwich Road. The site itself is relatively flat, with only a very gentle fall in levels from south to north. To the east of the site, around the water pumping station, the relative flatness of the site gives way to more undulation, although this part of the site is not shown as being developed.
    - 1.4 This application has been submitted in outline with appearance, landscaping, layout and scale reserved. Approval is, however, sought for the access to the development.

- 1.5 The application is for the erection of 104 dwellings, 186sqm of Use Class B1 offices and 278sqm of Use Class D1 non-residential institution, together with associated car parking, roads, footpaths and landscaping. The development would also require the provision of surface water attenuation ponds.

## 2 **Main Issues**

- 2.1 The main issues are:

- The principle of the development
- The impact of the development on the character and appearance of the area
- The impacts of the development on the living conditions of neighbouring properties
- The impact on the highway network
- Contributions

### Assessment

#### Principle

- 2.2 The site lies outside of the settlement boundaries, where Policy DM1 applies. This policy states that development will not be permitted on land outside of the confines, unless it is specifically justified by other development plan policies, or it functionally requires such a location, or is ancillary to existing development or uses. The development is not supported by other policies in the development plan. Dwelling houses do not functionally require a rural location, whilst the development would not be ancillary to the existing uses or development at the site. The development is therefore contrary to Policy DM1.
- 2.3 However, as the District cannot demonstrate a five year housing land supply and having regard for paragraphs 14 and 49 of the NPPF, significant weight should be given to the provision of housing whilst permission should be granted unless the development is unsustainable or specific policies in the NPPF direct that permission should be refused. The assessment of sustainability is a comprehensive exercise, having regard to the three dimensions of sustainable development and paragraphs 18 to 219 of the NPPF, and will be addressed under the relevant heading.
- 2.4 The proposal also includes the provision of a non-residential institution use (described as a children's nursery or scout hut) and offices. Policy DM3 states that such uses should be within confines, unless no suitable alternative sites exist. The proposed location for these uses would be outside of, but adjacent to, the confines of the village. The applicant has provided an addendum to the submitted planning statement which specifically addresses the commercial units in relation to Policy DM3. The settlement is defined as a Local Centre and, as such, it is considered that it is appropriate for additional, small scale, commercial uses, such as those proposed. Whilst outside of the confines of the village, the proposed location of the commercial building is directly adjacent to the settlement. The applicant has considered whether there are any other suitable locations within the confines which could accommodate the proposed uses. In undertaking this assessment, the applicant has applied a threshold of 1,200sqm in their search. Given the nature of the uses and the requirement that such uses would have for car parking, it is considered that this assumption is reasonable. The settlement confines of Ash are drawn tightly around the built up areas of the village, with few undeveloped or vacant site sufficient size for the proposed commercial uses. The sites which would be of sufficient size are predominantly allocated as Open Space or allocated for the provision of housing. Having consideration for the information which has

been submitted by the application, it is concluded that it has been demonstrated that no suitable sites exist within confirms and, as such, the principle of the commercial uses is accepted.

#### Loss of Agricultural Land

- 2.5 Paragraph 112 of the NPPF states that "local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality".
- 2.6 The applicant has submitted an agricultural land classification report which demonstrates that the 5.6ha of agricultural land within the site comprises 3.2 ha (57 %) of Grade 1 (excellent quality) and 2.2ha (39%) of Grade 2 (very good quality) (i.e. 5.4 ha of Grade 1 and Grade 2 BMV land), whilst the remaining 0.2 ha (4%) is poor quality, non-BMV land.
- 2.7 It is acknowledged that the site is a discrete parcel of land, with housing or roads boarding most of the boundaries of the site, albeit, further agricultural land links to the north western corner of the site. However, given the classification of the land, together with its size and shape, it is not considered that it has been demonstrated that the land cannot be economically cultivated. Whilst there is no definition for 'significant development of agricultural land', on balance, taking into consideration the particular circumstances of this case, it is considered that the development would comprise significant development of agricultural land.
- 2.8 The use of areas of lesser quality agricultural land has not been explored by the applicant; however, it is acknowledged that the Council does not have a five year housing land supply. Furthermore, whilst it is clear that the loss of agricultural land carries significant weight, it does not necessarily follow that it is grounds for refusal. However, such loss should be weighed in the balance when assessing whether the development is 'sustainable'.

#### Character and Appearance

- 2.9 In assessing the character and appearance of the scheme, consideration has been given to the principles contained within the Kent Design Guide and Building for Life 12.
- 2.10 The layout, scale, appearance and landscaping of the proposal are reserved at this outline stage. Access is not reserved at this stage, with the proposed plans showing a vehicular and pedestrian access towards the west of the site and a pedestrian and cycle access towards the center of the site, both of which link to Sandwich Road to the south of the site. A footpath is also proposed to the southern boundary of the site along Sandwich Road.
- 2.11 The applicant has submitted an indicative layout plan, which suggests that the development would provide a perimeter block layout (six blocks in total) with street fronting properties. The commercial unit would be located to the western corner of the site, adjacent to the confines, with parking to its east. A large open space (described as a village green) is proposed to the south of the site, whilst the perimeters of the site, which would also be 'green' would provide SUD's features (wetland basins) and walking paths.
- 2.12 Having regard for the indicative layout, it is considered that the proposed development could be provided on the site at a relatively low density which would

be comparable to that of the existing area towards the south west of the site, before reducing in density towards the north and east of the site, where the development would form a new edge to the village. The indicative layout also demonstrates that the scheme could be designed to a regular pattern of development which responds to the prevailing spatial character of development within the area.

- 2.13 The development would undoubtedly alter and urbanise the entrance to the village from Sandwich Road, which would be bounded by development on either side of the road. Some views of the site would also be gained from the A257. The provision of a village green to the north of Sandwich Road would, however, provide an attractive, open and vegetated buffer to Sandwich Road which would reduce the visual impact of the development in views from that road. Furthermore, the existing and proposed landscaping to the northern boundary would limit the visual impact from the A257. Whilst the proposed layout is indicative only, it does demonstrate that the amount of development applied for could be accommodated on site in a manner which would minimize harm to the character and appearance of the area, whilst responding to the existing character of the area and ensuring that adequate separation is provided to the A257, the existing pumping station and wetland areas. The residual harm to the character and appearance of the area, which inevitably results from developing such a site and cannot be mitigated, needs to be weighed in the balance when considering whether the development would be 'sustainable'.
- 2.14 Whilst scale is reserved at this stage, the indicative details suggest that the dwellings would be two to two and a half storeys in height (between 8m and 11m above finished ground level) whilst the commercial building would be 1 storey in height (between 8m and 9m above finished ground level) These heights would respond to the predominant height of buildings within this part of the village and is considered to be acceptable. No details of design or elevation detailing has been provided at this stage, with appearance reserved.
- 2.15 The indicative masterplan shows that the northern boundary of the site would retain the thick vegetative screening between the site and the A257, whilst a bund and acoustic fence would be constructed within the site towards this boundary. Across the site, the build development would be set in from the boundaries of the site, providing opportunities for meaningful soft landscaping.
- 2.16 Whilst only limited details are available at this outline stage regarding the layout and appearance of the proposed development, the indicative masterplan demonstrates that the number of dwellings applied for could be comfortably accommodated on the site, whilst the location and height of the buildings, together with the indicative boundary treatments would ensure that the development would not appear out of character with the village and would not be overly prominent within the wider countryside.

#### Heritage Assets

- 2.17 Regard must be had for how the development would impact upon listed buildings, and their settings, having regard for the Planning (Listed Buildings and Conservation Areas) Act 1990 (The 'Act'). Section 66(1) of the Act states that, 'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.' As such, it is necessary to have 'special regard' for whether the development would preserve the listed buildings in the vicinity of the site, and their

settings. Section 72(1) of the same Act, requires that 'special attention' is given to the desirability of preserving or enhancing the character or appearance of a conservation area. Additionally, the NPPF requires that regard must be had for whether the development would harm the significance of both designated and non-designated heritage assets and, where harm is identified (either substantial or less than substantial) consider whether this harm is outweighed by public benefits.

- 2.18 The nearest listed building to the site is Collar Makers Hole, which is Grade II listed. As concluded by the Principal Heritage Officer, this listed building is considered to have a relatively localized setting, being set back from the road and well concealed. Given its location and scale, it is not considered that this building, or its setting, would be harmed by the development. Whilst set a significant distance from the site, the development does have the potential to impact upon the setting of the Grade I Listed Church of St Nicholas, the C15th tower and spire of which is a prominent feature in wider views, and forms an important landmark of the village. Long views of the spire provide a visual link to the historic core of the village and would have been an important landmark for travelers along the Sandwich Road between Canterbury and Sandwich. Whilst views of the Church along Sandwich Road are limited, due to the existing buildings between the site and the Church, the development would be seen in the context of these views. However, it is considered that modest alterations to the internal layout of the scheme would be sufficient to ensure that the setting of the Church is not harmed. This matter would be assessed in detail at the reserved matters stage, once the final layout of the scheme is known. For the purposes of this outline application, it is considered that the site provides scope to allow for a development which would not harm the setting of this important listed building.
- 2.19 The site lies adjacent to the likely route the Roman Road between Richborough and Canterbury (Sandwich Road). In addition, there have been a number of archaeological finds within the vicinity of the site, in particular of Romano-British date. As such, it is considered that there is a reasonable likelihood that the site contains heritage assets of archaeological significance and, as such, it would be reasonable to attach a condition to any grant of permission requiring a programme of archaeological work to be undertaken in advance of development.

#### Living Conditions

- 2.20 The proposed site is well separated from neighbouring properties, with Sandwich Road to the south and a PRoW to the west. In addition to the separation afforded by these transport links, the indicative layout plan shows that the buildings could be set away from the boundaries of the site, further increasing separation. As a result, the majority of the development would be set in excess of 40m from neighbouring properties. There is one exception to this general separation distance. The indicative masterplan shows that the proposed commercial building would be set approximately 14m away from the northern elevation of No.53 Sandwich Road; however, it is considered that this separation distance is sufficient to ensure that no unacceptable loss of light, sense of enclosure or overlooking would be caused to the occupiers of No.53, given the height of the commercial building. As such, the development would not cause any unacceptable harm to the living conditions of neighbours.
- 2.21 Environmental Health have advised that the development has the potential to cause unacceptable harm to the amenities of neighbouring properties during the construction phase and have consequently recommended that a construction management plan be required by condition to mitigate this potential harm. The construction management plan would limit the construction hours, provide dust management and ensure that mud is not deposited on the public highway. No

concerns have been raised in relation to noise and disturbance following occupation and, given that the scale and nature of the proposed uses, it is not considered that an unacceptable degree of noise and disturbance would be caused.

- 2.22 The proposed density of development would allow for the provision of reasonably sized and reasonably separated houses, each with a private rear garden. As such, it is considered that the site could be developed such that a reasonable standard of accommodation would be provided.
- 2.23 Notwithstanding the above, the north of the site is adjacent to the busy A257 which has the potential to cause noise and disturbance to future occupiers. The application has been supported by a Noise Impact Assessment, which concludes that, without mitigation, future occupiers of the development would be subjected to fairly high levels of road traffic noise, above WHO guidelines. The proposed development has sought to mitigate this potential harm by proposing an earth bund and acoustic fence adjacent to the northern boundary of the site. The use of non-opening windows and mechanical ventilation has also been proposed as mitigation. Environmental Health have been consulted and are satisfied that, subject to being secured by condition and appropriately detailed, these recommendations are acceptable. As the detailed layout of the development is yet to be finalized, it is considered that it would be appropriate to attach a condition to any grant of permission requiring full details of the proposed mitigation to be submitted for approval.

#### Impact on the Highway

- 2.24 Policy DM12 of the Core Strategy requires that developments provide suitable access arrangements, whilst policy DM13, being informed by Table 1.1, requires that development provides a level of car and cycle parking which balances the characteristics of the site, the locality, the nature of the proposed development and design objectives.
- 2.25 Details of the proposed access have not been reserved and, consequently, full details of the proposed vehicular access to the site have been provided. One vehicular access has been proposed, which would be located around 80m from the western boundary of the site. The access would be 6m wide, widening to a bell-mouth junction. The geometry of this access road would be sufficient to allow vehicles to both enter and exit the site easily. A second access would also be provided to the east, which would be suitable for pedestrians and cyclists, together with emergency vehicles if necessary. The vehicular access would be flanked by footpaths, whilst a new footpath would be provided along the northern side of Sandwich Road.
- 2.26 Vehicular movements to and from the site have been modelled and, following amendments, verified by KCC Highways and Transportation. The development would be likely to generate around 90-100 two-way vehicle movements during each peak hour, the majority of which would be routed via the A257. The impact on this junction has also been modelled which has demonstrated that the development would not result in this junction exceeding its designed operating capacity. The onward impact of the development on the roundabout serving the A257 and A256 has also been modelled, demonstrating that the proposals would not to have an unacceptable impact. It is important to note that the impacts of the development have taken into account the cumulative impacts of the concurrent application at Chequer Lane, Ash (DOV/16/01049).

- 2.27 Concerns have been raised by third parties that the development would significantly increase traffic through the village, particularly in relation to trips to and from the primary school. However, as advised by KCC, the capacity of the school is not proposed to be increased with the additional school children generated by the development replacing children who currently travel into the village. Consequently vehicular traffic through the village would be unlikely to significantly rise, whilst the proximity of children to the school would present an opportunity for walking trips. For these reasons, it is not considered that the development would be likely to cause unacceptable harm to the local or strategic highway networks. It should be noted that neither KCC Highways and Transportation or Highways England have objected to the application.
- 2.28 Following consultation, the applicant has proposed to move the 30mph speed limit further to the east, reducing the speed of vehicles along the vast majority of Sandwich Road. Given that Sandwich Road already has residential development along most of its southern side and the development will provide housing to its northern side (albeit set a significant distance away from the road), it is considered that such a reduction in speed is necessary. The works to alter speed limits have passed an independent safety audit and the costs will be borne by the applicant.
- 2.29 Policy DM13 of the Core Strategy requires that the provision of car parking should be a design led process, based upon the characteristics of the site, having regard for Table 1.1 of the Core Strategy. Whilst the layout of the development has not been submitted at this stage, the indicative details demonstrate that car parking can be provided in close association with the proposed dwellings, whilst a small car park can be provided to serve the commercial units. At this stage, with matters reserved, details of car parking provision have not been provided, although the submitted Transport Assessment confirms that such provision will be made, in accordance with guidance. Having regard for the density of the development it is considered that the site is capable of providing the necessary car parking, subject to acceptable details being provided at the Reserved Matters stage.
- 3.30 Sandwich Road, directly to the south of the application site, provides bus stops which are served by the No.'s 13, 13A and 14 which, together, provide two services in each direction per hour. These services travel between Walmer, Deal, Eastry, Sandwich, Ash, Wingham and Canterbury. Concern has been raised that the proposed location for the access road would result in an existing bus shelter being located within the visibility splay of the access and, as such, the bus shelter would need to be moved further to the east. The provision of a replacement bus shelter can be secured by condition. The nearest train station, in Sandwich, is around 2.7 miles away and provides regular services to Thanet, Dover, Canterbury, Medway, Ashford International and London. This station can be reached by bus. Having regard for the rural location of the site, it is considered that it is reasonably served by public transport, providing an alternative means of transport.
- 3.31 The site is bounded by a Public Right of Way to the west of the site. The indicative masterplan demonstrates that the development could be accommodated on the site whilst retaining a reasonable separation between the proposed uses and the footpath. The areas between the built elements of the proposal and the footpath are shown to be soft landscaping which would provide an appropriate setting to the PRoW. The proposed wetland basin would also be set away from the PRoW and, subject to its detailed design, would not prejudice use of the bridleway.
- 3.32 Should the application be granted, KCC Highways have requested that a suite of conditions be attached to ensure that the development would not cause harm to the local highway network. These conditions require that: full details of the roads,

footways, parking and associated infrastructure to be submitted for approval; details of car and cycle parking are provided and subsequently carried out; the access, and its visibility splays, is completed in accordance with the approved details; certain works are completed prior to the occupation of each dwelling; and a construction management plan is submitted for approval. It is considered that all of these conditions are reasonable. In addition, it is considered that an additional condition is necessary, requiring full details to be submitted for the off-site highway works, comprising the provision of a replacement bus shelter, provision of footpaths and relocation of the 30mph speed limit.

### Contamination

- 2.33 Whilst the application site has predominantly been used for agricultural purposes, the surrounding area has been used for processes which may have caused contamination. Whilst this risk has been assessed as being 'moderate', the proposed end use, residential, is relatively susceptible to risks of contamination. As such, the submitted report recommends that further investigations are undertaken, including soil sampling and gas monitoring to ensure that future occupants, ground water or the environment are not unacceptably harmed. Should any contamination be identified, it would require remediation. The report also recommends that, given the coal mining which occurred in the area, a coal mining report should be obtained.
- 2.34 Environmental Health have reviewed this report and concur with its findings. Consequently, it is considered that, should permission be granted, a condition should be attached requiring that a site investigation and risk assessment be undertaken and, if necessary remediation, prior to the commencement of the development.

### Ecology

- 2.35 In accordance with the Habitats Directive and the Wildlife and Countryside Act 1981, it is necessary to ensure the application (a 'project') does not harm a European Site. The Land Allocations Local Plan establishes that residential development across the district will cause in combination effects on the Pegwell Bay and Sandwich Bay SPA and Ramsar Site. However, the LALP also provides a suggested mitigation against these cumulative impacts of development, setting out a mitigation strategy to avoid potential impacts, comprising a financial contribution to provide monitoring and wardening at Sandwich Bay and towards the Pegwell Bay and Sandwich Bay Disturbance Study. The applicant has agreed to pay this contribution, amounting to £5,051.92. Consequently, it is not considered that the development would cause a likely significant effect on the SAC or SPA. A legal agreement will be required in order to secure this contribution.
- 2.36 In furtherance to the impacts on the off-site Thanet Coast and Sandwich Bay, Ramsar, SAC and SPA, regard must be had for whether the development would cause any harm to habitats or species on or adjacent to the application site, having regard for Natural England's Standing Advice.
- 2.37 The application has been supported by an Ecological Appraisal for the site, which considers both the floral and faunal use of the site.
- 2.38 The site is overwhelmingly arable farmland, with areas of: semi-improved grassland; rank grassland/tall ruderal growth; scrub; hedgerows; trees; and ditches towards the peripheries of the site. These areas are considered to be of low ecological value, with the exception of the semi-improved grassland, which is of low-moderate value, and the hedgerows, which are of moderate value. These

features would be little impacted by the development, which is concentrated towards the centre of the site.

- 2.39 In relation to bats, the report confirms that, following inspection, the trees around the peripheries of the site do not contain features which would provide for roosting. Furthermore, whilst the margins of the site, in particular the hedgerows, may provide some potential for foraging and commuting, the site is unlikely to be significant for local population and, as such, no further surveys are required. However, mitigation in respect of light has been recommended.
- 2.40 Whilst there are no records of Badger within the 1km by 1km OS square which contains the site, there have been records of badger within 5km of the site. A survey of the site and its environs was undertaken by the ecologist during which no badger setts, latrines, dung pits or signs of foraging or commuting were found. Whilst the site provides some potential for badger foraging, there is an abundance of alternative habitat in the area. As such, the development would be unlikely to affect badger.
- 2.41 The site is considered to be unsuitable for dormouse, water vole or otter and no evidence of any protected, rare or notable mammal was recorded within the site. The site does, however, have potential for hedgehog and brown hare and, as such, precautionary safeguards for these species have been recommended.
- 2.42 The locality of the site contains numerous ponds and there is therefore a potential for amphibians. Four surveys were undertaken to establish whether any of these ponds support amphibians. These surveys, each undertaken on different days across two months, identified one smooth newt in ponds 4 and 5, common frog in ponds 2, 4 and 5 and common toad in pond 4. No great crested newts or palmate newts were recorded. Given the low numbers and common status of the amphibians identified, it is concluded that amphibians are not a constraint to development, albeit mitigation during construction has been recommended.
- 2.43 The boundaries of the site provide potential for reptiles and accordingly a series of surveys of the site were undertaken. These surveys identified a peak adult count of four common lizards. One juvenile slow worm was observed, whilst grass snakes and other reptile species were absent. The margins of the site are, consequently, considered to be of low to moderate value to common lizard. These areas are to be retained and enhanced. Reptiles will also be safeguarded during construction and, as such, would not be harmed.
- 2.44 Numerous birds were observed on the site during the Phase 1 survey, of which Kestrel and Green Woodpecker are amber listed. Whilst the surrounding areas are likely to support a variety of farmland birds, the intensively farmed arable land which accounts for the vast majority of the site is unlikely to be of significant value. However, as breeding birds may nest in the wooded areas to the peripheries of the site, safeguards have been recommended.
- 2.45 Given the habitat composition, it is considered unlikely that the site is of significant invertebrate interest.
- 2.46 The ecological appraisal recommends a series of seven mitigation measures, to ensure that: hedges and trees are retained; pollution of the environment is avoided; lighting is designed to minimize impact on bats; and safeguards are put in place to avoid harm to mammals, reptiles and birds during construction. Additionally, a series of seven ecological enhancements have been proposed, comprising the creation of new habitat; the provision of bat boxes and bird boxes; enhancements

for reptiles; and the creation of wood piles to provide opportunities for invertebrates.

- 2.47 The Councils Principal Ecologist (formal comment yet to be received) has confirmed that, subject to the mitigation and enhancement measures proposed, together with an updated badger survey being provided at the reserved matters stage and measures to ensure that vehicles do not disturb areas which may be used by reptiles, being secured by condition, the findings of the submitted ecological appraisal are accepted and it is agreed that the development would cause no significant harm to any species or habitat.

### Contributions

- 2.48 Core Strategy Policy DM5 requires that for schemes of this scale, the Council should seek an on-site provision of 30% affordable housing. The applicant is proposing to provide the required affordable housing, which would amount to 31 dwellings. Whilst the details of these affordable units have not been submitted at this stage, an indicative plan has been submitted which shows that these dwellings would comprise pockets of between four and seven units, spread throughout the scheme and would include two four-bed units, sixteen three-bed units and thirteen two-bed units. It is considered that, subject to being secured by a condition requiring full details of the affordable housing to be submitted for approval, the development would accord with Policy DM5.
- 2.49 In accordance with Policy DM27 of the Land Allocations Local Plan, the development would also be expected to provide Open Space on site, or a contribution towards off-site provision, to meet the Open Space demand which would be generated by the development. Given the scale of the development, it would give rise to a need for 0.57ha of accessible green space, 0.3ha of outdoor sports facilities, 0.016ha of children's equipped play space and 0.05ha of allotments/community gardens. The application proposes the provision of a large 'village green' adjacent to Sandwich Road, which would contain a children's playground. The overall size of this open space is approximately 1.3ha, of which around 0.9ha would be useable. It is considered that the location of this facility would allow it to be used by both the occupants of the development and existing residents of the village. Whilst this space would not provide outdoor sports facilities or allotments, it is considered that it would provide a valuable local resource which meets the needs of Policy DM27. It will be necessary to require, by condition, full details of the hard and soft landscaping, boundary treatments, piece of play equipment and other items to be provided within the Open Space, together with a timetable for the implementation of these works and details of its long-term maintenance, to ensure that the area is of a high quality.
- 2.50 Kent County Council have advised that the development would increase demand for local facilities and services and, where there is currently inadequate capacity to meet this need, contributions should be sought to provide infrastructure improvements proportional to meet the need generated. In this instance, KCC have advised that there is insufficient primary and secondary school provision to meet the needs of the development. Furthermore, given the constraints of its site, the closest school, the Cartwright and Kelsey CE Primary School, cannot be expanded. However, KCC have advised that this school currently has an intake which includes children from nearby Sandwich. As such, they have advised that a contribution towards phase 1 of the proposed new school at Discovery Park would free up places for children from Ash. A contribution of £245,539.84 has been requested from this application to meet the need identified. KCC have also requested a contribution of £245,419.20 for the expansion of Sir Roger Manwoods, which is a nearby secondary school, a contribution of £4,994.08 towards

increasing the capacity of Ash Library, a contribution of £2,666.56 be provided to pay for portable equipment for new learners classes at the Cartwright and Kelsey CE Primary School and a contribution of £8,073.72 towards increasing the capacity of Age UK in Sandwich, all of which would ensure that the needs generated by the development would be met. It is considered that each of these requested contributions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The applicant has confirmed that they are willing to provide these contributions and have submitted a legal agreement to secure them as part of the development.

- 2.51 In addition to the contributions requested by KCC, the NHS CCG have advised that the GP surgery in Ash is operating at capacity and could not, therefore, meet the additional demand generated by the development. A project has been identified to expand the existing surgery which would increase its capacity by 1000 patients. The total cost of this expansion would be £78,660. The proposed development would be likely to generate approximately 286 new patients and, as such, a proportionate contribution from the development would be £22,497. The applicant has agreed to provide this contribution.

#### Flood Risk and Drainage

- 2.52 The site lies within Flood Risk Zone 1, where there is the lowest risk of flooding. However, given the size of the site, it is appropriate to consider whether the development would be likely to lead to localized on or off-site flooding.
- 2.53 The NPPF, at paragraph 103, states that local planning authorities should ensure that flooding is not increased elsewhere, going on to say priority should be given to the use of sustainable drainage systems. In furtherance to this, the Planning Practice Guidance states that sustainable drainage systems are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible.
- 2.54 The Preliminary Surface Water Drainage Strategy confirms that, due to slow infiltration rates (which have been established following ground investigations), infiltration drainage is not suitable on this site. Whilst the proposed drainage features, such as swales, would allow some infiltration, primarily water would be drained into two attenuation ponds which would then discharge into existing watercourses at a managed rate to replicate the existing discharge into these features. The Lead Local Flood Authority have commented that the submitted drainage strategy demonstrates that surface water can be adequately disposed of, and this disposal would mimic existing run-off rates. However, in order to ensure that such discharge takes place, they have recommended that a condition be attached to any grant of permission requiring full details of the final drainage strategy, together with a timetable for its implementation and details of maintenance, to be submitted to and approved by the LPA. The River Stour Internal Drainage Board supports these comments and agrees that such a condition is necessary, as do the Environment Agency. It is considered that, subject to this condition, the surface water drainage from the site would not be likely to cause localised flooding.
- 2.55 Regard must also be had for the disposal of foul sewerage from the site. The application has been supported by a Preliminary Services Appraisal which assesses the availability of, amongst other services, foul sewerage provision. A level 2 capacity check has been carried out which demonstrates that the existing network does not have the capacity to meet the needs of the development. However, a scheme to upgrade the local network to facilitate the needs of the

development has been formulated which, provided it is demonstrated that it would not result in any loss of hydraulic capacity and the works are carried out at the developers expense, would ensure that the sewerage needs of the proposed development would be met, without prejudicing the network. Southern Water have requested that a condition be attached to any grant of permission requiring full details of the proposed drainage strategy, together with a timetable for the implementation of the works, to be submitted and approved. Such a condition, which would need to be discharged before works commence, would ensure that the development would cause no harm to the local sewerage network and would not increase the risks of flooding.

2.56 Southern Water have confirmed that a water supply to the site can be provided.

#### Sustainability Overview

2.57 Paragraph 49 of the NPPF states that "housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites". At present, the council is unable to demonstrate a five year supply of housing land. As such, it is considered that the Councils relevant policies for the supply of housing are out of date and, in accordance with paragraph 14 of the NPPF, planning permission must be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies" of the NPPF, or where specific policies of the NPPF "indicate development should be restricted".

2.58 Sustainability is defined in the NPPF, at paragraph six, as paragraphs 18 to 219 of the NPPF taken as a whole. However, the assessment of sustainability can also be separated into three dimensions: economic, social and environmental.

2.59 Whilst the NPPF must be assessed as a whole, two paragraphs (29 and 55) are considered to be particularly relevant to this application.

2.60 Paragraph 29 of the NPPF states that "the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel". This paragraph goes on to acknowledge that "opportunities to maximise sustainable transport solutions will vary from urban to rural areas".

2.61 The site is directly adjacent to the built up confines of Ash, with the confines extending along the southern side of Sandwich Road and around the curtilage of No.44 Sandwich Road, which lies to the west of the application site. The development would provide a new footpath along the northern side of Sandwich Road whilst footpaths extend from the site into the centre of the village. As such, the development would be well linked to the existing pedestrian routes in Ash and the facilities and services of the village. Ash is defined by the Settlement Hierarchy at Policy CP1 or the Core Strategy as a Local Centre, which is the secondary focus for development in the rural area and suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent communities. The village provides a wide range of services and facilities including a primary school, a church, a doctor's surgery, a pub, a village hall (with library), and open spaces, together with a range of shops, including a post office.

2.62 There several bus stops adjacent to the site, which Stagecoach have advised are served by two bus services per hour linking to Deal, Sandwich and Canterbury. The nearest train station, in Sandwich, is around 2.7 miles away and provides

regular services to Thanet, Dover, Canterbury, Medway, Ashford International and London.

- 2.63 It is considered that, having regard for the facilities and services which are available, the distances to these facilities and services in settlements and public transport links, occupants of the dwellings would be able to walk or cycle to facilities and services and utilise public transport. Consequently, the development would not be solely reliant on private modes of transport, providing a choice of means of transport, including more sustainable forms. As such, it is not considered that the dwellings would be isolated.
- 2.64 Paragraph 55 of the NPPF states that, in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and continues to say that new isolated homes in the countryside should be avoided, except where special circumstances exist. As addressed previously, the site is not considered to be isolated, whilst the development would help to sustain the facilities and services of the village. In addition, the development would provide contributions towards the upgrading of existing facilities and services to ensure that the needs of future occupiers could be accommodated.
- 2.65 Whilst paragraphs 29 and 55 of the NPPF indicate that the location of the development is acceptable, it is necessary to consider the NPPF as a whole, splitting down the material considerations into the three dimensions of sustainable development.
- 2.66 The development would provide a short term, transitory, economic benefit by providing employment during the construction phase. Whilst the dwellings would be well located in relation to the village, the development would result in the loss of approximately 5.4ha of Best and Most Versatile agricultural land, which weighs against the development.
- 2.67 With regards to the social role, the development would provide one hundred and four additional dwellings which would provide a significant contribution towards the Districts need for housing supply. The development would be located in a relatively accessible location, where it would help to enhance or maintain the vitality of a rural community. Whilst the detailed layout and appearance of the buildings are unknown at this stage, the density of development would allow scope for a detailed design to be formulated which could contribute towards the creation of a high quality built environment, including the provision of generous soft landscaping, which minimizes its impact on visual amenity.
- 2.68 Turning to the environmental role, the application has demonstrated that the development could be designed so as to respond to the built and historic environment, albeit, the development of the site would cause some harm to the character of the natural environment. The development would cause no harm to ecology and would incorporate ecological enhancements, subject to conditions. Finally, the development would have the potential to contribute towards reducing pollution and climate change, by facilitating the use of sustainable modes of transport.
- 2.69 Whilst the development would produce some disbenefits, most notably the significant loss of Best and Most Versatile agricultural land, which must be weighed in the balance, it is not considered that these disbenefits would outweigh the significant benefits of the development. Where there is a lack of five year housing land supply, the relevant test is to grant permission unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits". In this instance, it is not considered that the disbenefits significantly and

demonstrably outweigh the benefits. It is therefore considered that the development represents 'sustainable development' and is supported by the provisions of paragraph 14 of the NPPF.

#### Overall Conclusions

- 2.70 The site lies outside of the settlement confines of Ash, on agricultural land which is considered to be Best and Most Versatile. However, the Council is unable to demonstrate a five year housing land supply whilst it is considered that the application has demonstrated that, subject to the submission of an acceptable application for approval of reserved matters, the development could be designed in such a way so as to cause no harm to the character and appearance of the area, the local highway network or the amenities of neighbouring properties. The application would provide 30% affordable housing on site and contributions towards improvements to local infrastructure to meet the needs generated by the development. Furthermore, the development would be acceptable in all other material respects. Whilst the consideration of this application is balanced, it is not considered that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the scheme and, as such, having regard for paragraph 14 of the NPPF, it is recommended that planning permission be granted.

#### g) Recommendation

- I Subject to the submission and agreement of a s106 agreement to secure contributions, PERMISSION BE GRANTED subject to conditions to include:-
- i) outline time limits; ii) approved plans; iii) details of noise mitigation; iv) contamination; v) coal mining report; vi) construction management plan; vii) full details of surface water drainage, timetable for implementation and maintenance; viii) full details of foul drainage and timetable; ix) ecological mitigation and enhancements; x) lighting strategy; xi) full details of measures to protect boundary vegetation; xii) full details of public open space, play equipment, means of enclosure, hard landscaping, benches and bins to be provided within the open space; xiii) full details of landscaping; xiv) affordable housing scheme; xv) archaeology; xvi) samples of materials; xvii) details of all off site highway works and a timetable; xviii) completion of access road and emergency access; xix) provision of car parking; xx) provision of cycle parking; xxi) completion of certain highway works prior to first occupation of each dwelling; xxii) provision of visibility splays; xxiii) measure of preventing discharge of water onto the highway; xxiv) use of a bound surface material for first 5m of access road; xxv) completion of certain highway works which are to first be approved.
- II Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning conditions and to agree a s106 agreement, in line with the issues set out in the recommendation and as resolved by Planning Committee.

#### Case Officer

Luke Blaskett

REPORT TO PLANNING COMMITTEE – 26 JANUARY 2017

PLANNING APPEALS

1. There were 13 appeals determined between October and December 2016. Two appeals were against non-determination where the Planning Committee had deferred a decision, one appeal against a Planning Committee decision and the remainder against delegated decisions.

Five of the appeals were upheld. There were three successful appeals against Committee decision (including the two appeals for non-determination) and two successful appeals against delegated decision.

2. Members have been issued with the full decisions, but in brief the reasons were:

2.1 Red Lion, Canterbury Rd (including listed building app)

Members had, following submission of the appeal against non-determination, decided that, had the application come back to Committee, it would have been approved with conditions. Costs have been awarded.

2.2 New Dover Road

An application on an allocated site for 40 dwellings. Members refused this application because the proposal was out of character with the surrounding area. The Inspector concluded that the effect on the character of the surrounding area would be limited. Partial costs have been awarded, in relation to a submitted unilateral undertaking that the Council had accepted, but had not informed the Inspectorate and therefore the applicant provided experts to attend the hearing that were not required.

2.3 Brookestreet

An application for an extension over a garage. The issue was the effect on the character and appearance of the host property and surrounding area. The Planning Inspector disagreed.

2.4 Barnsole Road

An application for a change of use of a barn to residential dwelling refused under Class Q of the GPDO. The main issues being design and external appearance and impact on a grade II listed building. The Inspector was of the view that the proposals met the conditions of Class Q and should be permitted development.

3. Learning Points

The Barnsole Road application could raise issues as to whether application under the GPDO were being dealt with in accordance to the regulations. However, this application was also accompanied by a request for costs that was dismissed. The Inspector concluding that the Council was not unreasonable in refusing the application.

4. The annual target is that a maximum of 15% of appeals are upheld. The overall performance is 44% - significantly over target.

Year to date	All appeals	Number Upheld	Number Dismissed	% Upheld
2016	34	15	19	44

At a previous Committee meeting Members were advised that a review of Quarter 2 appeals would be undertaken. That report is attached.

5. Members may be interested to note that there is currently an appeal lodged against the Council's refusal to approve the Whitfield phase 1 drainage condition and that is currently scheduled as a public enquiry although no date has been set. There is also an appeal lodged against non-determination of Phase 2 Whitfield, which again is to be a public enquiry.

Dave Robinson, Planning Delivery Manager

#### Attachments

1. Breakdown of all appeal cases 2016/17
2. Officer report on Q1 2016/17 appeals

## 2016/17 APPEAL CASES

### Quarter 1

2016

Case	Address	Delegated/Committee	Dismissed/Upheld	Against officer Rec
15/01065	Bewsbury Crescent	COM	Dismissed	Yes
13/01106	Engine Shed Field	COM	Dismissed	No
15/00634	Agester lane	DEL	Upheld	
15/00895	Beech Tree Ave	DEL	Dismissed	
15/00971	College Road	DEL	Upheld	
15/00926	105 Mill Hill	DEL	Upheld	
ENF/DOV/12/109	London Rd	Enforcement	Dismissed	

### Quarter 2

2016

Case	Address	Delegated/Committee	Allowed/Dismissed	Against officer Rec
15/639	Kingsdown Rd	COM	Allowed	Yes
15/640	Kingsdown Rd	COM	Allowed	Yes
15/336	Denne Court	COM	Part Allowed	Appeal against condition
15/730	Church Path	COM	Allowed	Yes
15/795	The Beach	DEL	Dismissed	
15/981	Oast House	DEL	Dismissed	
15/1152	56 Poets Walk	DEL	Dismissed	
15/936	Outrigger	DEL	Allowed	
15/1196	Cannon Street	DEL	Dismissed	
16/0009	Nursery Lane	DEL	Allowed	
16/69	The Crescent	DEL	Dismissed	
16/196	Bailand	DEL	Dismissed	
16/434	Sandwich Rd	DEL	Dismissed	
15/01210	Farthingloe Cottage	DEL	Allowed	

**Quarter 3**

**2016**

Case	Address	Delegated/Committee	Allowed/Dismissed	Against officer Rec
15/293	Canterbury Rd	COM	Allowed	Non-Determination
15/292	Canterbury Rd	COM	Allowed	Non-Determination
15/525	New Dover Rd	COM	Allowed	Yes
13/776	Queen St	DEL	Dismissed	
15/1119	Court Lane	DEL	Dismissed	
15/1281	Brooke Street	DEL	Allowed	
16/48	Barnsole Road	DEL	Allowed	
16/192	Burgess Rd	DEL	Dismissed	
15/742	Archers Court Rd	DEL	Dismissed	
15/1202	Princes St	DEL	Dismissed	
16/25	Molland Lane	DEL	Dismissed	
16/270	Willow Waye	DEL	Dismissed	
16/369	Sondes Rd	DEL	Dismissed	

## DOVER DISTRICT COUNCIL

### ANALYSIS OF APPEAL DECISIONS JULY–SEPTEMBER 2016

Of the 14 appeal decisions allowed in the 2<sup>nd</sup> Quarter of 2016 (July – September), 8 were either allowed or part allowed. Given that is significantly higher than usual, I have been asked to look at the cases allowed and comment as to whether there is any suggestion of the Council being out of sync with the Planning Inspectorate in terms of its decision making, or whether there are other lessons to be learned.

The following are the cases concerned:

#### **1 & 2. Kingsdown Road, St. Margarets at Cliffe – 15/639 and 15/640 – Committee Decision**

2 appeals relating to the same scheme for the conversion of Old School house into 2 dwellings, extension of Curfew House for supported living use and 1 new dwelling.

Appeal A – Primarily in connection with lack of parking and impact on local highway network. The Inspector found that there would be no significant increase in parking demand given existing and previous use of the site, and overall provision of parking was reasonable.

Appeal B – The Inspector found that the proposals would represent an appropriate reuse of a listed building and any limited harm would be outweighed by the public benefits of bringing the building back into use

**Assessment** – Given the previous use of the site as a school and the fact that there was no change of use involved to Curfew House, it was always going to be difficult to argue that the proposal would result in harm to the surrounding area from a highways point of view. I can, therefore understand the Inspector's decision on Appeal A.

Appeal B was more technical, the argument being that because the overall scheme was refused, there was no public benefit arising to mitigate the small level of harm that had been identified to the Listed Building, and it was therefore contrary to the legislative requirements. Whilst I think that was a reasonable stance, it might also have been possible to construct an argument that in LB terms alone, the overall physical alterations in terms of removing unsightly structures at the rear, might in itself have offset the limited harm and was therefore of public benefit. Either way, although the appeal is recorded as being allowed, it is clear that the Council would have granted LBC if planning permission had been granted for the main development.

#### **3. Denne Court Farm, Woodnesborough – 15/336 – Original decision by Committee**

Appeal against 3 conditions relating to cycle storage, removal of permitted development rights and the need to keep a register of holiday lets. Original permission was in relation to 3 holiday lets, 1 detached and 1 pair of semi-detached dwellings.

The Inspector supported the conditions relating to permitted development and the register. He also supported the principle of a condition for cycle storage but felt that 18 spaces was too onerous given that 3 of the units were for holiday lets. He therefore imposed a reduced level of 10 spaces.

**Assessment** – As noted above, the principle of a condition was accepted; it was the number of spaces that was the issue. The figure of 18 is derived from KCC standards relating to one space per bedroom. Given that 3 of the units were holiday lets and one was provided with a substantial garage, I can see why the Inspector considered 18 was excessive. It

demonstrates the need to assess any particular standards to the specific proposal and site circumstances

#### **4. Church Path Deal 15/730 – Committee Decision**

Appeal relating to one detached dwelling on a corner plot, involving loss of a tree covered by a TPO.

The Inspector felt there was no harm to the character and appearance of the area and that replacement planting would provide for a more suitable and longer lasting alternative than the existing tree did. He did not consider there would be any harm arising from the lack of parking provision.

**Assessment** - Although the arguments were finely balanced in my view, the decision to refuse permission was not unreasonable given that a previous appeal had supported the retention of the tree, albeit that there had been a change in the health and appearance of the tree since that time. The argument on setting of a listed building was less clear, given that as the Inspector noted, the extent of harm was not really identified by the Council other than concern over views. The reason relating to lack of parking was unlikely to succeed given that only one dwelling was proposed and no evidence was produced to show that there would be 'severe' harm as required by the NPPF.

A point worth noting, which I have seen in other decisions, is that the reasons for refusal made no mention of conflict with Development Plan policy, and the appeal was therefore assessed against the NPPF.

#### **5. Farthingloe Cottages, Folkestone Road – 15/1210 – Delegated Decision**

Appeal relating to a two storey side extension. The Inspector felt that given its matching design and that it was enclosed within an area of hardstanding, it would not harm the character of the AONB

**Assessment** - Such cases often turn on matters of judgement, particularly where there is lack of any character appraisals to assess against. The original decision seems reasonable given that the proposal would turn a semi-detached property into a terrace of three. However, I can find no fault with the inspector's reasoning to reach an alternative view in terms of impact on the wider AONB.

#### **6. Nursery Lane, Eythorne - 16/0009 – Delegated Decision**

Appeal relating to an infill plot for one dwelling. The Inspector felt that there would be no adverse effect on the local character because of the diverse character that existed in the locality already. Although the access would be alongside a recently approved dwelling, it was being used already and he did not consider one additional two bedroom bungalow would generate significant extra movements.

**Assessment** – I am not too surprised regarding the Inspector's conclusions on character given that we had approved an infill plot immediately next door and that a previous appeal had already concluded that the character of the immediate area was diverse. Although backland development, there was already existing development to the rear from adjoining roads. The question of loss of residential amenity from extra traffic is again a question of judgement on an individual case, which can go either way.

#### **7. The Outrigger, Chapel Lane, Ashley 15/00936 – Delegated Decision**

Appeal relating to one detached dwelling. The Inspector felt that the site was surrounded by housing and within the curtilage of the host property. Although no services within Ashley, he

noted it was adjacent to other small settlements with services. He considered it was consistent with para 55 of the NPPF (sustainable development in rural areas where there are groups of smaller settlements) and therefore sustainable overall. He found no adverse effect on character and that trees TPO trees could be protected.

**Assessment** – Perhaps a case of where we have taken a rigid interpretation of what is or is not sustainable given its location within a well-established group of existing houses and proximity to services in nearby settlements. There also didn't appear to be any evidence to demonstrate that there would be adverse effect on trees which could not be dealt with by condition.

### **8. 11 The Crescent, Eythorne 16/0069 – Delegated Decision**

Appeal relating to a single storey rear extension. The Inspector felt that proximity of a boundary fence and the mass of an existing extension to the rear, would not affect outlook of the neighbour. Although he acknowledged that the 45o rule was a useful tool, each case had to demonstrate material harm if it was infringed.

**Assessment** - As with Farthlingloe cottages above, these sorts of cases turn on individual judgment. The original decision was well reasoned but did not carry sufficient weight with the Inspector.

### **Some Thoughts On Above**

Apart from perhaps a couple of instances where arguably we have taken too rigid a line and not established what the real harm would be, the principle of the cases were arguable and there is no consistent theme to suggest we are out of synch with Planning Inspectorate decision making.

The Denne Court case reinforces the need that conditions have to satisfy the six tests based on the individual case and that you can't just rely on standards.

Where refusals are based around highway reasons in particular, it is important to have evidence of harm, particularly where the Highway Authority is supporting the scheme. Generalised observations such as the Kingsdown Road and Church Path (in relation to parking) cases are likely to fall foul of the NPPF where the test is 'severe' harm.

Although not a specific issue here, and mentioned in passing in the Church Path case, is the absence of reference to conflict with Development Plan policies. This is often in relation to design/amenity type cases where there is no specific policy in the Core Strategy to refer to. Consequently there is reference to NPPF which inevitably is more generalised. I'm not sure on the background as to why such policies were not included in the Core Strategy and it may be something worth addressing (together with design guidance) in any review.

There is a danger of dealing with small numbers of cases statistically. Although over 50% of the quarter's cases were allowed, it amounted to only 8 cases, and of those the principle of one was upheld (Denne Court) and another was more of a technical refusal (LB at Kingsdown Road). Perhaps it would be useful to include previous years statistics in any quarterly report so that longer term trends can be seen.

It is questionable whether the target of a maximum of 15% of appeals being upheld is a reasonable one. An analysis of national statistics as noted below may be a preferred indicator to use.

Analysis with other Kent Authorities and at a national level suggests we are not out of synch (see tables below) and such statistics might also be useful to include in an annual report for example. I have included pre and post NPPF for comparison

.S.78 Appeal Statistics nationally			
	Major	Minor	Householder
2010/11	37% allowed	24% allowed	35% allowed
2015/16	46% allowed	25% allowed	38% allowed
April/June 2016	48% allowed	27% allowed	39% allowed
June/Sept 2016	39% allowed	26% allowed	40% allowed

Source – Planning Inspectorate Statistics – Table 5.1 – decisions by LPAs

Kent decisions April 2015–March 2016				
	S.78 cases – major & minor		Householder cases	
	No of cases	% allowed	No of cases	% allowed
Ashford	23	39	5	0
Canterbury	25	32	8	50
Dartford	18	50	6	60
<b>Dover</b>	<b>25</b>	<b>20</b>	<b>5</b>	<b>0</b>
Gravesham	16	13	4	0
Maidstone	55	24	16	13
Medway	28	21	15	27
Sevenoaks	40	23	33	24
Shepway	6	0	0	0
Swale	37	59	14	43
Thanet	17	53	3	33
Tonbridge & Malling	25	48	7	0
Tunbridge Wells	32	34	6	33

Source - Planning Inspectorate Statistics – Tables 2.5 & 2.6 – Major, minor and HH decisions

Based on S.78 cases Dover's success rate on appeal compares favourably with other Kent Councils. Numbers on HH cases seem surprisingly low and need to be compared over a number of years to be statistically valid. Notwithstanding, there seems to be a good case for reviewing the annual targets.

A further factor to be considered is the Government's intention to use appeal decisions as one indicator to determine whether an authority will be 'designated' as poor performing. For appeals, this will take effect from 2018 but will be based on an analysis of decisions taken between April 2015 and March 2017. The indicator is no more than 10% of total decisions taken during that period (Note: not number of appeals lodged) being overturned on appeal. Going forward, it does demonstrate the importance of considering the likely chances of succeeding on appeal when refusals are being considered. It will also be important to make members aware of such considerations in any future training.

Kim Bennett  
23 November 2016