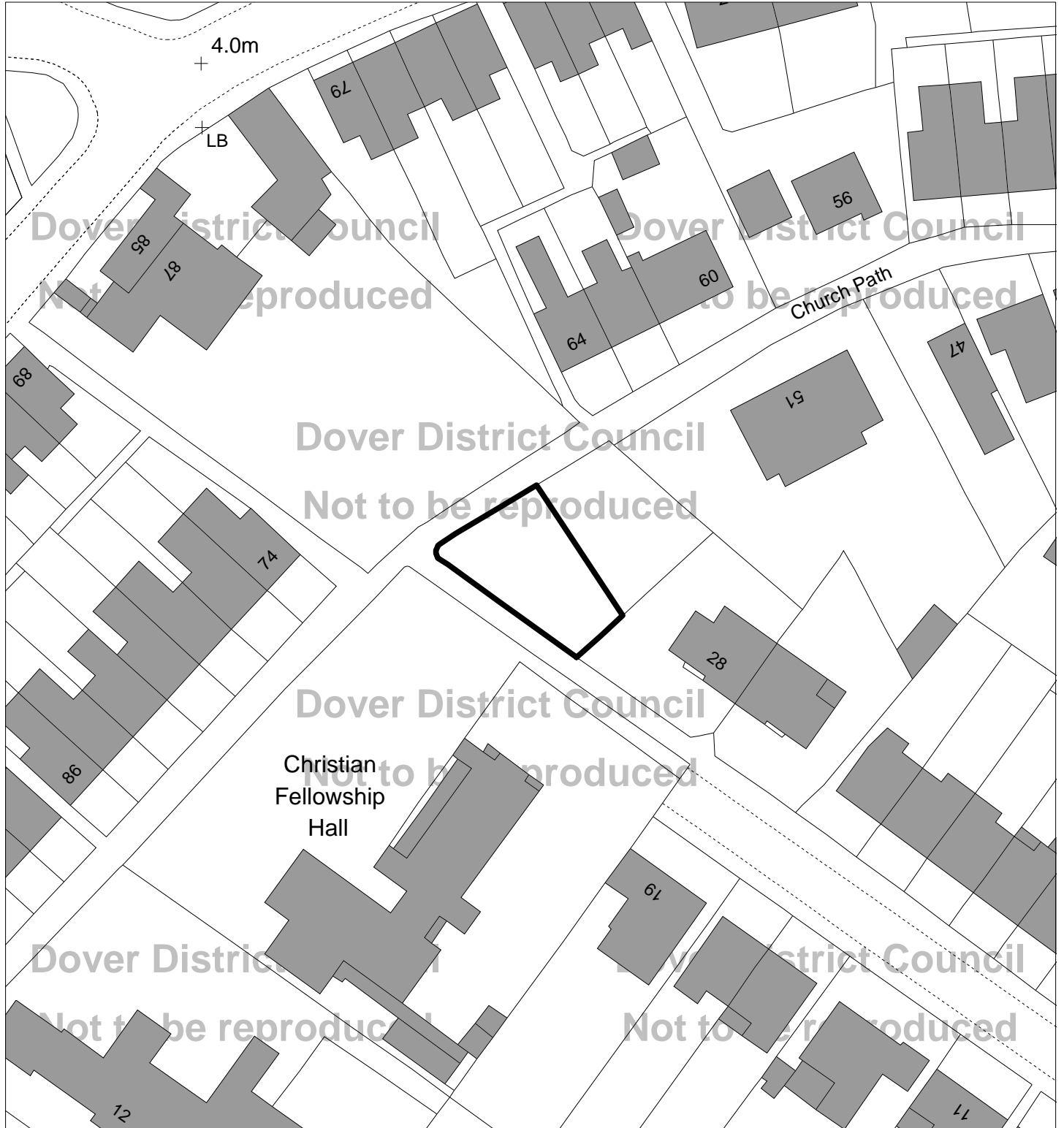


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Application: DOV/15/00730

Land Adjacent to 53 Church Path

Deal

CT14 9TH

TR37085263



a) **DOV/15/00730 - Erection of a detached dwelling - Land adjacent to 53 Church Path, Deal**

Reason for report – the number of third party contrary representations

b) **Summary of Recommendation**

Grant permission.

c) **Planning Policy and Guidance**

Development Plan

The development plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act (2004) comprises the Dover District Council Core Strategy 2010, the saved policies from the Dover District Local Plan 2002, and the Land Allocations Local Plan (2015). Decisions on planning applications must be made in accordance with the policies of the development plan unless material considerations indicate otherwise.

In addition to the policies of the development plan there are a number of other policies and standards which are material to the determination of planning applications including the National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG) together with other local guidance.

A summary of relevant planning policy is set out below:

Dover District Core Strategy (2010)

Policy DM1 – Settlement boundaries.

Policy DM13 – Parking provision.

“Provision for parking 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...”

Saved Dover District Local Plan (2002) policies

None applicable.

Dover District Land Allocations Local Plan (2015)

None applicable.

National Planning Policy Framework (NPPF)(2012)

“17. Core planning principles... planning should...

- not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives...
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings...”

“56. The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people...”

“128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected,

including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary..."

"129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal."

Other Considerations

Listed building - Berkeley House, 87 and 87A, Middle Deal Road – Grade II listed, 1949

"An irregular shaped house, mostly C18 in date but perhaps part of it earlier. The east front is the latest part, probably early C19. This has 2 storeys and 3 windows. Red brick. Slate roof with eaves cornice. Venetian shutters to windows".

Planning (Listed Buildings and Conservation Areas) Act 1990

Section 66(1) – "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 which it possesses".

d) **Relevant Planning History**

DOV/00/01198 – Erection of a detached dwelling – REFUSED, APPEAL DISMISSED.

DOV/02/00156 – Erection of detached bungalow and creation of pedestrian access – REFUSED, APPEAL DISMISSED.

DOV/09/00283 – Erection of a pair of semi-detached dwellings – REFUSED, APPEAL DISMISSED.

DOV/13/00951 – Erection of a detached dwelling – GRANTED – this included a condition which allowed a maximum of a 20% crown reduction of the protected sycamore tree

During the same period applications were received regarding a sycamore tree on the land.

DOV/11/00537 – Remove one sycamore tree – REFUSED.

DOV/14/00562 – Fell one sycamore tree – REFUSED, APPEAL DISMISSED.

e) **Consultee and Third Party Responses**

Tree Officer

“The tree itself is not of particularly good form following the recent reduction. There was presence of many decayed limbs at the extremities during my inspection, which was my reasoning behind allowing the contractor to reduce the tree further than the agreed 20%.

Incidentally, permission is not required to remove diseased and dead limbs, so a reduction of the limbs by more than 20% could have been performed, irrespective of any planning conditions.

The tree is not considered by me to be of any unusual or cultural value. I do not necessarily disagree with the inspectors report mentioning that the tree is not in a severe condition, however, I do believe that the tree will never be an attractive, retention worthy specimen and a properly maintained replacement Hornbeam of at least 6m Heavy-Extra heavy standard would be a suitable and long lasting alternative. I have recommended the Hornbeam as it is native to the UK, moderate growth rate and can in the right setting, reach sizes of 20m in height, making it ideal for this situation.

My reasoning for this is as an attempt to preserve the amenity value of the area for a prolonged period of time 30-40-50 years in the future and not just 10-20 years. It would be much more beneficial to have a tree of good form and condition, that can be conditioned as part of the planning process to ensure the continued maintenance of the tree is adhered to.

Also I am certain that there will be continued application and pressure to have the current tree removed due to its poor form and its position in relation to the previously damaged wall. With the new replacement being located at the rear of the plot, these pressures can be reduced and the perceived future damage to the wall can be avoided.”

Deal Town Council

Objects as the property would be overbearing in relation to the piece of land available.

KCC Highways – Public Rights of Way (PROW) officer

No objections in principle but points out that the site is adjacent to footpath ED24 and therefore has concerns regarding how this will affect the surface of the footpath during construction. The PROW officer has asked for an informative to the applicant relating to highway authority consent should the proposed development impact on the use or condition of the footpath.

Environment Agency

No objection to the proposal, subject to inclusion of a condition relating to the height of the finished floor level, which should be 300mm above ground level.

In relation to the included flood risk assessment:

“Whilst we accept the findings of the Flood Risk Assessment (FRA) in that the site is unlikely to be subject to inundation under a breach of the defences north of Sandown Castle or an overtopping event, the area remains in FZ3 and may be subject to over-land flow.”

Southern Water

No objection. Requests condition relating to foul and surface water drainage.
Requests informative relating to connection to public sewerage system.

Public representations

A total of twenty (20) representations were received opposed to the proposal and eleven (11) were received in support.

In summary **the objections** on material planning grounds are as follows:

- Questions the strength of any future TPO on new trees.
- Sycamore is a healthy tree.
- Hornbeam would be immature and not an immediate replacement.
- Reference to TPO appeal and the amenity value that the existing sycamore provides.
- Lack of parking will cause pressure on Middle Deal Road and Sutherland Road.
- Overdevelopment of the site.
- Land should be a garden to 53 Church Path.
- Concern about deliveries accessing the dwelling.
- Concern about construction of the dwelling and access to the site.
- Drainage of the site.
- More than permitted 20% of the sycamore has been removed.

In summary **the supporters** made the following points:

- Land has been derelict for years, was a dumping ground.
- 53 Church Path has improved the area.
- Sensible to transfer TPO to Hornbeam.
- Sycamore is multi-stemmed and causing damage to the wall and the adjacent footpath.
- Development of the area needs to be completed.
- Better here than on a greenfield site.

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

1.1. **The site**

The site comprises a rather overgrown parcel of land which was to form part of the garden area of the house permitted by DOV/13/00951, now 53 Church Path. The land does not appear to have ever been part of that garden and has now become somewhat overgrown and unkempt.

1.2. Dimensions of the site are:

- Width (taken from north west frontage) – 13.5 metres.
- Depth – 18 metres.

1.3. To the north east of the site is the recent built three bedroom house, 53 Church Path. To the rear (south east) is a semi-detached house with its flank wall about 8 metres from the site boundary. To the south west side is a public footpath comprising part of the designated cycle route and major urban footpath (ED24 on the definitive map) the opposite side of which is a church hall, used by the Deal Christian Fellowship, within fairly large grounds. On this flank a brick wall about

1.8 metres high runs alongside the footpath and adjacent to this wall, in the southern corner of the site, is a mature sycamore tree that is the subject of Tree Preservation Order 9 of 2000, which has relatively recently had fairly extensive crown reduction work.

- 1.4. To the front of the site (north west) lies the footpath/cycleway known as Church Path and which is also part of the designated cycle route and major urban footpath ED24. On the other side of this cycle/walkway lies a grade II listed building, Berkeley House with a large garden containing a number of mature trees. A number of holm oak trees within the boundary of the listed building curtilage, adjacent to Church Path have recently been removed.
- 1.5. The Environment Agency flood map indicates this site as being located within flood zone 3a.
- 1.6. Proposed development
The proposal is for a three bedroom house that would be sited next to 53 Church Path, adjacent to its south western boundary. It would be a very similar design with the L shaped footprint laid out as a mirror image to number 53.
- 1.7. The dwelling would be laid out on a north west/south east axis.
- 1.8. At the front (north west elevation) of the dwelling, there would be a bay window, pedestrian access via the front door and one window on the first floor, as well as a dummy window. The proposed front boundary treatment would be in part a 900mm tall brick wall immediately in front of the dwelling and in part a continuation of the 1800mm brick wall from the south west boundary.
- 1.9. The south west elevation would incorporate a number of windows providing the outlook for the first floor bedrooms, as well as a secondary window to the ground floor lounge. A two storey section is included incorporating a bay window to a ground floor kitchen/dining room and a bay window to the first floor master bedroom.
- 1.10. The south east elevation incorporates French doors to the living room and to the kitchen/dining room at ground level and an obscure porthole window to the first floor master bedroom.
- 1.11. On the north east elevation obscure windows are incorporated to the stairwell and to a first floor ensuite.
- 1.12. Dimensions of the dwelling are:
 - Width – 8.1 metres.
 - Depth – 10.1 metres.
 - Eaves height – 4.9 metres.
 - Ridge height – 7.6 metres.
- 1.13. The sycamore tree in the southern corner of the site is proposed to be removed. Two 6m heavy/extra heavy standard hornbeam replacement trees are proposed – these would be located at the western corner of the site and at the southern corner of the site.
- 1.14. No off street parking is proposed.

1.15. *Plans will be on display.*

2. Main Issues

- 2.1. The main issues to consider are:
- Principle of development.
 - Flood risk.
 - Design and the street scene..
 - Tree issues.
 - Heritage.
 - Residential amenity.
 - Highways and access.

3. Assessment

3.1. Principle of development

The site is within the Deal settlement boundary, so the principle of development is acceptable in this location, subject to the details of the proposal and the consideration of the suitability of the site in terms of flood risk.

3.2. Flood risk

The site is within flood zone 3a as defined by the Environment Agency flood maps. Accordingly the National Planning Policy Guidance (NPPG) requires that a sequential test, relating to the suitability of the site for development is undertaken.

3.3. Application DOV/13/00951, for the erection of what is now 51 Church Path, included a sequential test which demonstrated that there were no sequentially preferable sites available for a comparable development within the search area – Deal. That test, which extended across this application site, was resubmitted with this application.

3.4. Given that this site passed a sequential test and exceptions test within the last two years, it is considered that the results of the tests submitted under the previous application are material in the consideration of this application and that the suitability of the site will not have altered significantly within that time. The submitted flood risk assessment (FRA) models the extent of likely flooding events, and with the benefit of recent sea defence works at Deal concludes that the risk of flooding at the site has now reduced to a level comparable with flood zone 2.

3.5. The Environment Agency has accepted the findings of the FRA, although it still classifies the site as being within zone 3 due to the potential effects of overland flow i.e. the pooling of water in lower lying locations. The Agency has requested a condition specifying the finished floor level to be located 300mm above external ground level. Having reviewed the plans with the architect, it is considered that the 300mm requirement could be accommodated without affecting the external appearance of the proposed dwelling.

3.6. Further information submitted with this application points to the most recent Dover Annual Monitoring Report (AMR) (December 2015), which identified that the district cannot meet its five year housing

supply requirement. The AMR states that the council will be taking an approach that reviews whether sites previously rejected for housing development may now be acceptable in light of changes to the Environment Agency's strategic flood risk maps.

- 3.7. Having considered the FRA and the information submitted under DOV/13/00951, in combination with the Environment Agency raising no objection, it is considered that the proposed development would be safe for its lifetime and would not lead to an increased risk of flooding elsewhere.
- 3.8. Design and the street scene
The proposed development is located on the south eastern corner of Church Path, adjacent to footpath ED24, of which Church Path also forms one part. The dwellings in the immediate area, on Church Path and on Sutherland Road, are in the main characterised by their close knit, high density layout. In this sense, the proposed dwelling, by being built in close quarters to 53 Church Path would not necessarily look out of place or appear as an over development of the site as it would be consistent with the grain and context of the area.
- 3.9. Materials proposed would be traditional brick with a natural slate roof. Amenity space would be limited, however, again taking reference from the existing dwellings, this is not out of character with the area and it could reasonably be said that whoever was looking ultimately to purchase the dwelling would have the choice about whether to proceed.
- 3.10. The existing 1.8m brick wall alongside the Sutherland Road footpath would be retained to enclose the rear garden and as a feature would continue into Church Path at a height of 0.9m alongside the front garden
- 3.11. In other respects the proposed dwelling has been designed in a similar architectural style to 53 Church Path. The proposed dwelling incorporates design features and characteristics, such as a steep pitched roof and bay window similar to those more characterful dwellings in the vicinity.
- 3.12. It is considered that the design, appearance, siting and scale of the proposal is acceptable in this location.
- 3.13. Tree issues
The amenity value of the existing sycamore tree to local residents is evident by the level and nature of objections received through the public consultation. The tree in its current location provides a natural end to Sutherland Road, which can be read in association with the beginning of the footpath at the same point.
- 3.14. In February 2015, in considering an appeal against the refusal of Dover District Council to allow the felling of the sycamore tree the Inspector considered in summary, that the tree made an important contribution to the amenity of the locality, street scene and wider landscape and its loss would cause demonstrable harm. He also said that it is not so ill suited to the location or poses any particular risk to

the property (53 Church Path) or neighbouring properties that overrides its benefits.

- 3.15. In this previous case a replacement was proposed, however it was not considered that this would have compensated for the loss of the existing tree.
- 3.16. Permitted works to reduce the crown of the tree by a maximum of 20% started at the end of March/beginning of April 2015. Following a call from a concerned resident, works ceased and the Dover tree officer visited the site. As part of the visit the officer assessed the tree using a TEMPO (tree evaluation method for preservation orders) methodology. The tree officer assessed the condition of the tree as poor, with a recommendation to revoke its TPO, although this has not to date been processed.
- 3.17. Following discussion with the tree officer, the applicant later undertook works to reduce the crown of the tree (in late April 2015). The works reduced the crown of the tree by more than the permitted 20%. However, the tree officer advises that these further works involved the removal of dead and diseased wood, which in any case, does not need permission.
- 3.18. The tree in question is now in a poor condition – although it does still afford some amenity value. The tree officer is of the opinion, however, that to secure long term amenity value at this location i.e. for a period of 30-40-50 years, a new tree would provide a better solution than retaining the existing tree, which due to its form is considered would likely fail ahead of that time.
- 3.19. Subsequent to the tree officer's advice, the approach proposed to and agreed by the applicants is for the existing tree to be removed and for two replacements to be planted, each a hornbeam. The existing TPO would be transferred to cover both new trees. In the right conditions, hornbeams can grow to 20 metres, with a sufficient form to re-provide the amenity function of the existing sycamore, albeit in time rather than immediately. The replacements would be located at the front (western corner) of the site and the rear (south eastern) end of the site. The tree to the rear, which is intended to provide the more direct replacement for the existing sycamore tree, would be located away from the brick wall as a means to limit the roots affecting its foundations.
- 3.20. The replacements would be conditioned to be of a sufficient size to ensure their initial health and the beginnings of contributing to local amenity. A condition would also require a like for like replacement of either tree within the first five years of having been sited and the development having been occupied, this meaning species, condition and size, should either tree die or be damaged, for whatever reason.
- 3.21. Heritage
A heritage statement has been submitted in respect of the listed building, Berkeley House, which is located north west of the site. The council's heritage officer considered that the statement is proportionate and offers sufficient information in respect of that listed building.

- 3.22. The statement considers that the proposed new dwelling would have no immediate impact on the setting of Berkeley House, stating that:

“... it will be remote from the building itself and being on the opposite side of Church Path to the garden it will not impact on the setting of the house and garden. The wider setting of the house is already compromised by the extensive 20th century development that has taken place in Middle Deal Road and in Church Path...”

- 3.23. The statement further considers this point:

“Public views of the listed building are limited to close range views from Church Path itself and from those views the two buildings, new and old, will not be seen together, the new building will therefore not diminish the historic value of Berkeley House as a heritage asset.”

- 3.24. The statement concludes that the proposal therefore does not cause harm to the designated heritage asset. Having had regard to section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 and given the heritage officer’s acceptance of this statement, it is considered that in relation to the heritage asset, the proposed development is acceptable.

- 3.25. Residential and other amenity

Overlooking. Potential overlooking is achievable to the north east (existing dwelling 53 Church Path, granted permission under DOV/13/00951), south east (28 Sutherland Road) and north west (87 Middle Deal Road). Windows with the potential to overlook or be perceived to overlook 53 Church Path and 28 Sutherland Road are shown to be obscure glazed and fixed shut, these would be conditioned as such. With regard to the listed building, 87 Middle Deal Road, Berkeley House, the facing window to bedroom 2 is shown as a bricked up dummy window and the other first floor facing window in the north west elevation is shown as obscure glazed, being for a bathroom.

- 3.26. The windows proposed in the south west elevation overlook the church hall and its grounds. This is, however, not used for residential purposes and as such this part of the proposal is considered acceptable.

- 3.27. **Overshadowing.** 28 Sutherland Road and 53 Church Path are the closest dwellings to the application site. 28 Sutherland Road is located to the east-south-east of the proposed dwelling at a distance of 11 metres, which means that overshadowing is unlikely to be an issue throughout the year. The only likely time that the proposed dwelling might cast a shadow on to the private amenity area at 28 Sutherland Road would be late into the evening during summer months. This shadow, however, would be cast on to a garage and side garden and would not occur for a substantial amount of time before the sun sets.

- 3.28. 53 Church Path is located immediately north east from the proposed dwelling, at a distance of two metres. In the south west elevation of 53 Church Path, at ground floor level, is a dining room window and a kitchen window. The location and proximity of the proposed

development means that beyond midday on any typical day, a shadow would be cast on to 53 Church Path. At first floor level in the same elevation there is a bathroom window and an ensuite window, although being at first floor level more light, including sunlight, is likely to enter the rooms.

- 3.29. This is of a concern, however the applicant lives at 53 Church Path and has undertaken a detailed design process with the knowledge of the effects that the proposed dwelling might give rise to. Additionally, for natural light, the kitchen/dining area does have further openings in its south east and north east facing elevations which would alleviate the issue to some degree.
- 3.30. It is considered on balance therefore that as an issue, the overshadowing caused to 53 Church Path is acceptable.
- 3.31. **Outlook.** The new dwelling would be located at a distance of two metres from 53 Church Path. The ground floor kitchen and dining room windows in the south west elevation of 53 Church Path would have their outlook restricted to a large degree. However, as noted above, these windows do not provide the sole/primary outlook from the kitchen/dining area, with there being additional openings in the south east and north east elevations at number 53.
- 3.32. Highways and access
The proposed development is for one dwelling not situated on a classified road. It does not provide off street parking. The guidance to policy DM13 recommends that for three bedroom dwellings on the edge of the town centre, one parking space should be provided.
- 3.33. DOV/09/00283 for a semi-detached pair of dwellings, was refused and appealed, which itself was subsequently dismissed. The Inspector considered car parking and access in that appeal, and recognised the restricted opportunity for local provision. The Inspector concluded that the additional car parking that could be generated by this development could lead to increased competition for local spaces at certain peak use times. However, the Inspector concluded that the potential harm would not be such to provide an overriding objection to the proposed development.
- 3.34. The current proposal falls outside of the KCC Highway consultation protocol, however, informal discussion with the highways officer indicates that for parking purposes, the proposed provision of zero spaces can be considered acceptable in an edge of town centre location. In effect, "saturation parking" occurs with residents parking on a first come, first served basis.
- 3.35. The wording of policy DM13 recognises circumstances where the recommended provision of parking spaces cannot be met: "Provision for parking 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..." Taking into account the immediate locality, much of the dwellings on Church Path do not have their own off street parking provision, so this is not an uncommon character of local development.

- 3.36. The closest on street parking to the site is at Sutherland Road (south east), Church Path (south west), The Grove (south west), Albert Road (south east) and Middle Deal Road (north west). This indicates that there are local options for parking.
- 3.37. The effect of parking on amenity is a consideration, but taking the availability of local on street parking, in combination with the edge of town centre location of the proposed development i.e. a reasonably close proximity to the town centre, services and facilities, as well as public transport options, the conclusion of the Inspector under the appeal for DOV/09/00283 is considered to still be valid. The lack of off street parking is considered regrettable, but not considered to provide an overriding objection to the proposed development.
- 3.38. Conclusion
On the balance of a number of important considerations, this proposal is considered acceptable.
- 3.39. The FRA submitted with the proposal concludes that with the benefit of recent sea defence works, the site is no longer at risk of flooding. The Environment Agency has accepted the findings of the FRA and accordingly, the development is considered acceptable in this respect.
- 3.40. The existing sycamore tree, which is subject to a tree protection order, provides amenity to nearby residents, particularly those living at the northern end of Sutherland Road and to pedestrians passing the site on Church Path. This is illustrated by the dismissed appeal to fell the sycamore tree.
- 3.41. The council tree officer, however, following further assessment, considers that the condition of the tree is such that the likelihood of it providing ongoing local amenity is significantly diminished. The proposal to replace one sycamore tree with two hornbeam trees is considered an acceptable approach that addresses many of the concerns that were raised during the public consultation and one which would provide for long term amenity to local residents. The existing TPO would be transferred to these trees and as such, this element of the proposal is considered a benefit.
- 3.42. The proposed dwelling has been designed in a similar manner to that which was permitted adjacent at 53 Church Path. It is considered a contemporary and acceptable design, that would add to the street scene and in doing so, would also benefit local amenity by securing a long term solution to an untidy site.
- 3.43. Highways and access issues are important in considering the development proposal. However, on balance and following informal discussion with the Kent highway officer, the assessment that the Inspector made under DOV/09/00283 is still considered to be applicable to the current proposal.

g) **Recommendation**

- I. Planning permission be GRANTED, subject to conditions including: (1) Plans (2) Time limit (3) Tree removal/replacement – 5 years (4) Materials (5) Obscure glazed windows, fixed shut – north east

elevation and first floor south east elevation (6) PD restrictions – alterations to openings first floor, extensions, alterations to roof, alterations and improvements to boundary wall (7) Boundary treatment (8) Hard and soft landscaping (9) Construction management plan (10) Footpath during construction (11) Finished floor level – 300mm above ground level (12) Details of drainage.

- 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

Darren Bridgett