

- a) **DOV/17/00388 – Erection of two detached dwellings (existing agricultural building to be demolished) – The Black Barn, Great Knell Lane, Ash**

Reason for report: The application has been 'called in' by a Councillor

- b) **Summary of Recommendation**

Planning permission be refused

- c) **Planning Policies and Guidance**

Core Strategy Policies

- 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.
- DM4 – Beyond the settlement confines, the re-use or conversion of structurally sound, permanent buildings will be granted: for commercial uses; for community uses; or for private residential use in buildings that are adjacent to the confines. In all cases the building to be converted must be of a suitable character and scale for the use proposed, contribute to the local character and be acceptable in all other respects.
- 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

None relevant

National Planning Policy Framework (NPPF)

- Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental.

- Paragraph 11 states that “planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise”.
- Paragraph 12 states that the NPPF does not change the statutory status of the development plan. Development which accords with an up-to-date development plan should be approved and development which conflicts should be refused unless other material considerations indicate otherwise.
- Paragraph 17 of the NPPF sets out 12 Core Planning Principles which, amongst other things, seeks to: proactively drive and support sustainable economic development; secure high quality design and a good standard of amenity for all existing and future residents; recognise the intrinsic character and beauty of the countryside and support thriving rural communities within it; and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, conserve heritage assets and focus significant development in locations which are or can be made sustainable.
- 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.
- Chapter three of the NPPF seeks to support a prosperous rural economy.
- Chapter six of the NPPF seeks to significantly boost the supply of housing, requiring Local Planning Authorities to identify specific deliverable sites sufficient to provide five years’ worth of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development. Of particular note, is paragraph 55 which directs housing in rural areas to be located where they will enhance or maintain the vitality of rural communities. New isolated homes in the countryside should be avoided, unless they would: provide essential rural worker housing; provide the optimum viable use of a heritage asset or would secure the future of a heritage asset; re-use redundant or disused buildings and lead to an enhancement of the immediate setting; or be of an exceptional quality or innovative design. Such a design should be: truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflect the highest standards in architecture; significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.
- Chapter seven requires good design, which is a key aspect of sustainable development.
- Chapter eleven requires the that the planning system contributes to and enhances the natural and local environments, by protecting valued landscapes, geological conservation interests and soils, recognising the value of ecosystems, minimising impacts on, and where possible enhancing, biodiversity, preventing pollution and remediating contamination.

The Kent Design Guide (KDG)

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

d) **Relevant Planning History**

DOV/04/1001 – Conversion and refurbishment of existing buildings to provide workshop units, holiday accommodation and single dwelling – Refused – Appeal Dismissed, for the following summarised reasons;

There is a clear objection in principle to the use of residential in this area. It would have an unacceptable impact on the free and safe flow of traffic on Knell Lane. It would promote an unsustainable form of travel in the countryside

DOV/12/00104 - Retrospective planning application for the erection of a building for use as ancillary residential storage, following the demolition of an agricultural building – Refused, for the following reason:

The site lies within a rural area well outside the confines of any village or urban area and the proposal would result in a building intended for residential purposes which would lead to undesirable development in the countryside, introducing an uncharacteristic and intrusive form of development, unrelated to demonstrable need and without justification that might otherwise allow the development. Accordingly, the development is contrary to Dover District Core Strategy policy DM1 and the sustainable development aims and objectives of the National Planning Policy Framework.

DOV/14/01055 – Prior Approval for the change of use from an agricultural building into two residential dwellings – Prior approval is not required (Change of use can occur under permitted development).

DOV/14/01059 – Prior Approval for the change of use of an agricultural building to a residential dwelling – Prior approval is not required (Change of use can occur under permitted development).

e) **Consultee and Third Party Responses**

Principal Ecologist: Has confirmed that the Bat survey completed in October 2014 is still reliable and the recommendations in the report should be implemented.

Environmental Health: No objection subject to conditions relating to land contamination, hours of construction and no burning of waste materials.

Ash Parish Council : No objection; permitted development for conversion to two residential units is in place and as this application would keep to the original footprint that the two units would retain the look and external design to the original building and that the design would seek to incorporate some of the material from that building, the consideration was there would be greater over-all benefit than detriment.

Southern Water: No objection but advises the applicant to consult with the Environment Agency and Building Control Officers.

Third Party: One letter of objection received the comments are summarised as follows;

- Two new dwellings on the site of an old agricultural barn would be totally out of keeping with the rest of the buildings in the immediate surroundings.
- It is totally different to put up two new houses constructed of new materials.
- It would be sacrilege to see an Old Kent Barn circa 1880 (see design and access statement) demolished in order for a new building to be built.

- These old agricultural buildings are part of our rural heritage and must be kept, if at all possible in their original design and construction, even if converted into residential accommodation.
- The application is an easy way to achieve a very economically viable scheme.
- A more measured approach in the conversion of the old barn would be far more satisfactory and feasible.

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

- 1.1 The application site lies outside any settlement boundaries and is within the open countryside. It has a site area of approx. 0.4ha and lies some 1.25km to the north of the A257 Ash By Pass, from which it is reached by a single track unclassified road (Molland Lane). To its south are long established dwellings (Great Knell Farm House and Great Knell Cottage). The Cottage is owned and occupied by the applicant (owner of the farm). The site is otherwise surrounded by farm land.
- 1.2 The site accommodates a range of farm buildings of varied sizes essentially arranged on three sides of a rectangle. Access is gained via a gated drive from Molland Lane and there is effectively vehicle access around the periphery of the buildings. Access from the applicant's dwelling is also possible.
- 1.3 The buildings are disused and the farmyard is not in operation.
- 1.4 The buildings are not listed or of any particular architectural merit, being similar in scale, construction and condition to many older agricultural buildings in the rural area, they have an affinity with the rural unspoilt character of the area and are not out of context in this locality.

2. **Main Issues**

2.1 The main issues are:

- The principle of the development
- The impact on the character and appearance of the area
- The impact on neighbouring properties
- The impact on the highway network

Assessment

Principle

- 2.2 The site lies outside of the settlement boundaries, where Policy DM1 applies. Having regard to the wording of this policy, the erection of dwellings in this location would be contrary to Policy DM1, as the development is not supported by other development plan policies, does not functionally require a rural location and would not be ancillary to existing development or uses.
- 2.3 Following publication of the Authority Monitoring Report 2015/2016 (March 2017), the Council is able to demonstrate a five year housing land supply. Specifically, the report confirms that the Council has a 6.02 year supply of housing land. As such, the Council's housing policies are up-to-date and carry full weight.

- 2.4 Paragraphs 11 and 12 of the NPPF, expanding upon Section 70(2) of the Town and Country Planning Act, confirm that applications must be determined in accordance with the development plan unless material considerations indicate otherwise, whilst development that conflicts with an up to date plan should be refused unless other material considerations indicate otherwise. The pre-ambule to Policy DM1 states that any development which “would be a departure from this policy (sic) would require unusual and compelling justification for permission to be given”. Whilst the principle of the new dwellings is contrary to the development plan, regard will be had to whether there are any material considerations which indicate that permission should be exceptionally granted in this instance.
- 2.5 An important material consideration is the NPPF, which must be carefully considered to determine whether it provides any “unusual and compelling justification” to depart from the development plan. 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”. 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. As confirmed above, the Council can demonstrate a five year housing land supply and it is in this context that the NPPF must be read.
- 2.6 Of particular relevance is paragraph 55 of the NPPF. This paragraph states that isolated dwellings in the countryside should be avoided, although it also provides examples of unusual circumstances where new dwellings in the countryside may be supported. It is therefore first necessary to consider whether this site is isolated, in relation to facilities and services and, in particular, the extent to which the development would support existing facilities and services in rural settlements. This consideration also links to paragraph 29 of the NPPF, which requires that development provides people with a real choice about how they travel (albeit, opportunities will vary from urban to rural areas).
- 2.7 The nearest defined settlement, Ash, is located 1.5km to the south. The route to Ash (1.5km by road) does not include footpaths or street lighting along the vast majority of its length. Given the distance and the attractiveness of the route for walking or cycling, it is considered that it is highly unlikely occupants of the development would travel to Ash by means other than a car. Consequently, the site is isolated from facilities and services.
- 2.8 Now that it has been established that the site is in an isolated location, it is necessary to consider whether the application meets any of the exceptional circumstances identified by paragraph 55 of the NPPF. These circumstances include:
- where there is the essential need for a rural worker to live permanently at or near their place of work in the countryside;
 - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
 - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or

- where the development would be of exceptional quality or innovative design; reflect the highest standards of architecture; significantly enhance its immediate setting and be sensitive to the defining characteristics of the area.
- 2.9 The first criterion is not relevant to the determination of the current application. The second and third criteria are also not relevant to the circumstances here, relating to new build dwellings.
- 2.10 The final criterion relates to the development being of an exceptional quality or innovative nature. Such design should itself meet four criteria, requiring the design to:
- Be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
 - Reflect the highest standards in architecture;
 - Significantly enhance its immediate setting; and
 - Be sensitive to the defining characteristics of the local area.
- 2.11 These four criteria must be jointly achieved. No substantive case has been made in respect of the fourth criterion. The applicant has confirmed that some sustainable features will be incorporated into the build. However, these features are well established technologies, the sum of which falls significantly below the threshold of 'truly outstanding or innovative' envisaged by paragraph 55. Consequently, it is not considered that the development meets the high threshold of being of exceptional quality or exceptionally innovative. As such, the new build element of the application does not meet any of the special circumstances specified by paragraph 55 to substantiate granting permission for a new isolated home (in this case, homes) in the countryside.
- 2.12 The site is considered to be previously developed land and the preference is that previously developed or brownfield land is developed before non-previously developed land. This adds some weight in favour of the development, but is marginal when set against the conflict with the Development Plan and remoteness of the site.
- 2.13 Turning to the environmental role, the development would cause some harm to the countryside character as a consequence of the inevitable domestication of the location, arising in part from: The appearance of the buildings necessary to facilitate residential use, such as domestic sized window openings; generous sized gardens to each unit; and the emergence of domestic paraphernalia. The development would mitigate the potential impacts on protected species (bats). The development would re-use a previously developed site and would provide some features which would help to minimise energy consumption (PV, Air source heat pumps and exceeding the Building Control energy efficiency standards). However, the location of the site would necessitate journeys to access day-to-day facilities and services.
- 2.14 The development would be located within the countryside in an isolated location. Whilst the development would provide benefits, it is not considered that these benefits, either alone or in combination, are of sufficient weight to justify the application as a departure from the development plan, which requires "unusual and compelling" justification.
- 2.15 Whilst the NPPF has been considered holistically to reach this conclusion, in particular, it is considered that the development is contrary to NPPF

paragraphs 29, which seeks to facilitate sustainable modes of transport, and 55, which seeks to direct housing in rural areas to locations at settlements and restricts isolated residential development in the countryside.

Character, Appearance and Heritage

- 2.16 The site lies within the countryside, where Policy DM15 applies. This policy states that development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted in exceptional circumstances. In addition, Policy DM16 generally resists development which would harm the character of the landscape.
- 2.17 The location and general outline of the dwellings are not dissimilar to the existing barn. The main difference is the reduced width and ridge height of the buildings – with the scale reduced to be more akin to a two storey residential dwelling. The proposed plans indicate that the roof would be finished in natural slate, the elevations would be horizontal timber boarding, rain water goods would be cast iron and timber joinery. This material palette is considered appropriate to the location and if permission was forthcoming would be acceptable.
- 2.18 The siting of the two dwellings would help to maintain the characteristics of the historic farm yard setting. In 2004 the Conservation Officer noted that the buildings were generally in a very poor state of repair, of no particular historic or architectural merit and did not enhance the landscape. The buildings are not considered to be heritage assets.
- 2.19 The introduction of two dwellings at this location would introduce a significant amount of domestic paraphernalia, such as garden sheds, washing lines, trampolines etc, which would lead to a suburbanising effect on the character of the countryside if the current level of vegetation on the boundaries of the site is not maintained.
- 2.20 The plans indicate that two small buildings on site would be demolished; the demolition of these buildings would help to enhance the appearance of the site. If permission is granted a condition should be imposed requiring demolition prior to first occupation.

Impact on Residential Amenity

- 2.21 The nearest residential dwelling is the applicants property 'Great Knell Farm Cottage'. It is sufficient distance away from the proposed dwellings for harm not to occur to amenities.
- 2.22 Another agricultural building sited to the south west of the proposed dwellings has a Prior Approval permission to be converted to a single dwelling. Due to the separation distance and the siting of the buildings it is unlikely for any significant harm to residential amenities to arise.

Impact on the Local Highway Network

- 2.23 Within this rural location Table 1.1 of the Core Strategy advises that three bedroomed dwellings should be provided with a minimum of two car parking spaces each, with an additional two communal spaces provided for visitors; although, it must be noted that this table is for guidance only, whilst Policy

DM13 states that parking provision should be a design led process. The proposed dwellings would be provided with this requirement.

- 2.24 Kent County Council Guidance SPG4, which is referenced within Policy DM13, recommends that dwellings provide one cycle parking space per bedroom for residential development. It is considered that the site contains ample space for the provision of cycle parking facilities, with both dwellings having, a private garden. Consequently, it is considered that it would be reasonable to attach a condition to any grant of permission to require details of the provision of secure, covered cycle parking spaces.
- 2.25 It is no longer protocol to involve KCC Highway Services in applications such as these, however KCC commented on application DOV/14/01055, which also proposed two dwellings, and confirmed no objection. Comparing the unrestricted agricultural use with residential dwellings on the same site, it could easily be concluded that there is no material traffic impact arising from the change of use. Moreover, the removal of slow moving agricultural vehicles could be seen as a significant benefit on the existing access. There would be no material increase in traffic using the access and it has been used safely for many years without any accidents. However, the new use of the site would result in trips going further to access amenities (which agricultural vehicles would not have done), as paragraph 2.7 concludes above the site is not within a sustainable location and would be contrary to policy DM11.

Ecology

- 2.26 The site was originally surveyed for protected species in 2014 and an updated assessment has been provided for this application. It concludes that the protected species potential is for bats and birds.
- 2.27 It is considered that the methodology and findings of the ecological report are acceptable. Brown long eared bats are still roosting in the Black Barn, as they were in 2014. However it is recommended that the exact roost status will need to be determined by further survey work. Pipistrelle bat droppings were also found in the barn this indicates roosting or feeding in the bar.
- 2.28 The reports advises that further actions are required; a follow up bat emergence survey, pro-active vegetation management strategy and a nesting bird watch brief is required during all future development related works.
- 2.29 A bat mitigation plan has been submitted for consideration. This advises that a European Protected Species Mitigation Licence (EPS) will be required from Natural England. The mitigation scheme will compensate bats during the stated works, the aim will be to provide a net gain in the number of roosting sites available for the bats, but critically provide like-for-like mitigation. A dedicated bat roof void (5m x 5m x 2.8m) will be provide in the adjacent barn together with the installation of 4 x bat boxes on mature trees adjacent to the existing building. Members should note that the barn which would accommodate the bats is within the applicants ownership but has not been included within the redline of the site, it has been outlined in blue and therefore it is still possible to impose a condition. The Council's Principal Ecology officer has been consulted and has confirmed that he is satisfied with the report and the recommendations.

Contamination

- 2.30 Environmental Health have suggested that a condition should be imposed to require a contaminated land watching brief, this is in light of the previous commercial uses and the proposed sensitive residential use.

Drainage

- 2.31 Southern water have been consulted and have raised no objections. They have advised that the applicant contacts the Environment Agency directly regarding the use of a sewerage treatment plant which disposes of effluent to sub soil irrigation.
- 2.32 They also advise that if a sewer is found on the site an investigation of the sewer will be required to ascertain its condition, the number of properties served and potential means of access before any further works commence on site.
- 2.33 If permission is given this should be an informative on the decision notice.

Other Material Considerations

- 2.34 Planning permission was refused and subsequently dismissed at appeal (reference DOV/04/1001) in August 2005 for the conversion and refurbishment of existing buildings to provide workshop units, holiday accommodation and a single dwelling at the site. As part of this proposal the Inspector noted the clear objection to the residential element of the proposal. As the buildings proposed for residential use would have needed to have been rebuilt, the development was contrary to policy where there was a very strong presumption against residential units. The former Granary would also have required major reconstruction and this was contrary to policy.
- 2.35 It is clear that two new dwellings in this location is contrary to policy and there are no material circumstances to justify granting permission.
- 2.36 It should be noted that a Prior Approval permission under Class MB (DOV/14/01055) remains extant to convert the Black Barn to two residential units with three bedrooms. The amount of residential floor space permitted is similar to what is being proposed, however due to the vast scale of the building and restrictions in the Permitted Development regulations, the amount of useable floor space is limited to the ground floor. Thus the main volume of the Black Barn would remain unutilised.
- 2.37 The applicant has advised that they have marketed the building with the Prior Approval permission and have received no offers. (the application has not been supported by a marketing statement), the planning statement advises that the site has been on the open market from 23rd March – 7th June 2016 and that the feed back confirms that self-builders would prefer to introduce energy efficient measures and create a more energy efficient dwelling as opposed to conversions. In effect the applicant is advising that the Prior Approval permission is not economically viable to implement. It is therefore reasonable to conclude that the permission DOV/14/1055 is not a fall back position.
- 2.38 The applicant has drawn officers attention to two cases in nearby authorities, where it has been held that a Prior Approval permission has formed a fall back position. These cases have been reviewed and concluded that there are

material differences between each case and do not set a precedent. Members are advised that the details of both cases can be found on file.

Overall Conclusions

- 2.39 The principle of constructing two new dwellings in this isolated, countryside location is contrary to the development plan (in particular policies CP1 and DM1) and the NPPF and is considered to be an unsustainable form of development.
- 2.40 In order to set aside the overriding policy objection, the Core Strategy states that there must be “an unusual and compelling justification for permission to be given.”
- 2.41 Reference has been made in this report to two recent ‘prior approval’ submissions which in effect enable the existing building to be converted to two dwellings under permitted development. Critical to their relevance as a material planning consideration in this case is whether these prior approval schemes would be likely to constitute a ‘fall-back’ position. In other words, are they capable of being implemented? If so, then the local authority would be obliged to weigh this likelihood against the merits of the current proposal. The case officer met with the agent and the applicant and it was verbally advised that the conversion was not economically viable to developers. The agent speculated that this is because of the vast scale of the barn and the limitations in the floor area (applied by the permitted development order). The analysis in this report however is that the balance of the evidence suggests these conversions are not capable of being brought forward. In the circumstances, it must be concluded that at present there is no credible ‘fall-back’ position that could weigh against the policy harm/position identified.
- 2.42 It’s appreciated that the prior approval process enables residential development to take place in locations which might otherwise be contrary to established national and local planning policy. There is nothing in planning policy/guidance however that suggests, because of these prior approval provisions that the Development Plan policy shouldn’t continue to be the starting point for determining planning applications. On the contrary, the Development Plan remains the basis on which decisions should be made. The availability of the prior approval provisions can be a material planning consideration in assessing how much weight to give to policy in any one particular circumstance, but they should only have a material impact on decision making where there is a reasonable prospect that these provisions would deliver a comparable scale/type of development. In this case, there is no current likelihood that such a comparable scheme could be delivered.
- 2.43 The Committee will appreciate that in order to deliver consistency and certainty in the operation of the Development Management service, an appropriate level of rigour must be applied to ensure Development Management policies are fairly operated. Given the relatively wide spread opportunity for rural buildings to now benefit from ‘prior approval’ for residential uses, it will be appreciated that where planning applications for new build residential come forward, in lieu of the use of these prior approval rights, that a proper understanding of the ‘fall-back’ must form an essential part of the planning assessment.
- 2.44 Whilst the development is acceptable in other material respects (materials, parking etc) and would provide some minimal benefits, it is not considered that

these outweigh the fundamental policy objection relating to the erection of new dwellings in the countryside contrary to Core Strategy Policies CP1, and DM1. It is therefore recommended that this application is refused permission.

g)

Recommendation

I PERMISSION BE REFUSED for the following reasons:

(i) The site is located outside of any urban boundaries or rural settlement confines, in an isolated rural location. If permitted, the construction of two dwellings, by virtue of their location, would represent an unjustified, unsustainable and inappropriate form of development within the countryside, contrary to Dover District Core Strategy Policies CP1, DM1, and DM15 and the National Planning Policy Framework paragraphs 17, 29, 55, 56, 58, 61 and 64.(ii) The proposal would lead to the generation of additional use of private car and, accordingly, would be contrary to policy DM11 Dover District Core Strategy and contrary to the sustainability objectives set out in chapter 4 of the NPPF.

(iii) No evidence has been provided to suggest that any material planning considerations exist, such as a viable 'fall-back' position, that would warrant the setting aside of the Policy presumption against the erection of new residential development in this location.

Case Officer
Rachel Humber