

- a) **DOV/16/01469 – Outline application for up to 142 dwellings (comprising up to 99 market dwellings – including 30 retirement dwellings, and up to 43 social rented dwellings), Use Class A1 shops, Use class D1 medical facilities, country park, attenuation pond, primary school car park and access, associated infrastructure, and creation of access (appearance, landscaping, layout and scale of development to be reserved) - Land to the north of New Dover Road, Capel-le-Ferne**

Reason for report – number of contrary representations

- b) **Summary of Recommendation**

Refuse 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 CP1 – Settlement hierarchy.

Policy DM1 – Settlement boundaries.

Policy DM5 – Provision of affordable housing.

Policy DM11 – Location of development and managing travel demand.

Policy DM15 – Protection of the countryside.

Policy DM16 – Landscape character.

Saved Dover District Local Plan (2002) Policies

None.

Dover District Land Allocations Local Plan (2015)

None.

National Planning Policy Framework (NPPF)(2012)

7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right

places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

8. These roles should not be undertaken in isolation, because they are mutually dependent...

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise...

14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- 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.

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;
- proactively drive and support sustainable economic development to deliver the homes... and thriving local places 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... recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it...

28. 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:

- promote the retention and development of local services and community facilities in villages, such as local shops, meeting places...

49. Housing applications should be considered in the context of the presumption in favour of sustainable development...

61. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

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.

109. The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils...

115. 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. The conservation of wildlife and cultural heritage are important considerations in all these areas...

116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:

- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Other Considerations

Kent Downs AONB
Kent Downs AONB Management Plan 2014-2019

Relevant policies SD1, SD2, SD3, SD8, LLC1.

d) **Relevant Planning History**

DOV/16/00487 – Screening opinion – for a residential development – ENVIRONMENTAL STATEMENT NOT REQUIRED.

e) **Consultee and Third Party Responses**

DDC Regeneration and Delivery – Objection

Informal discussion – application not supported – outside of settlement boundary.

Land allocation site forms (preparation for Land Allocations Local Plan 2015)
“At the scale put forward development would be unacceptable to both the AONB and its setting. Any development of this site would seek to urbanise a very rural landscape, particularly given that there are no natural boundaries to the north east of the site...

Consider for inclusion in the submission document? No.”

DDC Principal Infrastructure Delivery Officer – No objection, subject to contribution

Thanet Coast and Sandwich Bay – SPA – seeks £7,048.48 for mitigation scheme.

Comment on KCC contribution requests

- Education primary – Need for contribution is accepted.
- Education secondary – Need for contribution is accepted.
- Library – Nominate mobile library.
- Community learning and skills – Need for contribution is not accepted.
- Social care contribution – Need for contribution is accepted.

Open Space – Development would meet the accessible green space standard.

The application does not adequately address the need for outdoor sports facilities. A MUGA is proposed, which would be located very close to the existing Parish Council facility, but insufficient justification is given in the Design and Access Statement for such a facility; it merely states that in response to consultation feedback a MUGA will be provided. No information is provided about the number of people who requested a MUGA. We do not have an adopted standard for MUGA provision, but two in a settlement the size of Cape le Ferne seems excessive and would be higher than similar sized settlements in the district. If the specification of the existing facility is not considered adequate, then an off-site contribution should be made to increase its capacity (if the Parish Council is in agreement), but long term maintenance of two MUGAs in Capel would be an un-necessary burden on local residents. In any case, this proposed MUGA would not meet the additional need for formal sports facilities.

DDC Environmental Health – No objection subject to conditions

DDC Landscape and Ecology – Objection

The Kent Downs AONB Landscape Assessment prepared by the Countryside Commission (1995 CCP 479) identified 13 Landscape Character Areas (LCA) in the AONB and the proposed development that is subject to planning application 16/01469 is, except for the a small area to the northwest, within and is integral to the Alkham: East Kent Downs LCA. The landscape to the east of Capel le Ferne is typical of the ‘key’ plateau feature of that LCA. Typically, such plateaux are farmed landscapes, predominantly under arable crop with long views.

The field pattern of the site dates back at least to Victorian times and is classified as ‘prairie’ in the Kent Historic Landscape Characterisation. The original settlement of Capel le Ferne was loosely based around St Mary’s Church, further inland than the current village. The modern village of Capel le Ferne appears to be based on a road layout planned in Edwardian times, which terminated in an eastern direction at Green Lane (Public Bridleway ER252). This boundary has held since 1960.

The condition of the local landscape has not changed significantly since the Kent Downs AONB was first designated in 1968, apart from a temporary location of a fuel station to the east of the application site and the recently approved development south of the New Dover Road which is within the setting of the AONB. The latter (DOV/15/00525) was required to present a sympathetic frontage to New Dover Road to mitigate harm to the setting of the AONB. Further east, the A20 (constructed in response to the Channel Tunnel) is just visible as a horizon feature, and can be heard, from local lanes.

The proposal, despite being of interest in terms of layout and provision of green infrastructure, will inevitably result in a change of the local landscape, resulting in its loss of part of the 'key' AONB feature of a plateau farmed landscape to urbanisation and coalescence with what are currently isolated older developments. In addition, there would be adverse visual effects on views from the local roads and, more sensitively, from the local public rights of way. As such, the proposal could not conserve or enhance the landscape and scenic beauty of this part of the Kent Downs AONB, contrary to NPPF paragraph 115.

The applicant cites the presence of caravan parks and telecommunications masts as detractors, weakening the value of this area. They were present at the time of designation.

The proposed development is 'major' and paragraph 116 of the NPPF is pertinent. From the NPPF:

Consideration of such applications should include an assessment of ... any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

In respect of landscape, the proposed development and its landscaping cannot provide any moderation of the detrimental effect to the nationally protected landscape, since it would result in a change of character from one associated with its precise location to one found widely. As such the proposal would be contrary to NPPF paragraph 116.

COMMENT ON ADDENDUM TO LVIA

The DDC Landscape and Ecology Officer notes the further information in respect of the AONB and proposed mitigation.

DDC Housing – No objection, subject to delivery of affordable housing

The council would normally seek 70% of the affordable housing to be provided as rented homes and 30% for sale on a shared ownership basis.

KCC Highways – No objection, subject to highway works and conditions

I refer to the additional highway information submitted for the above application on 21st March and 13th April. The proposals are likely to generate approximately 90-100 two-way vehicle movements through the proposed New Dover Road access in the network peak hours, including some existing trips to/from the primary school reassigned to the proposed drop-off/pick-up area within the site and trips associated with the proposed medical facilities and shop.

The proposed access, which includes a new right turn lane, can accommodate the anticipated number of movements. Most of the movements generated will be to/from destinations outside Capel le Ferne and the impact of these movements has therefore also been assessed on the A20 junction to the east and the Dover Hill and Canterbury

Road roundabout junctions to the west, and there is no severe impact as a result of the proposals. The proposed access position also accommodates the access proposals for the permitted residential development on the south side of New Dover Road.

In the 5 years to the end of June 2016 there was no cluster or pattern of recorded personal injury crashes in New Dover Road to indicate that there is a particular problem with the highway layout or that it could not accommodate the additional vehicle movements associated with the development.

The proposals also include a connection to the existing bridleway along the western edge of the site, allowing additional pedestrian and cycle connection to/from the school, village hall and wider pedestrian/cycle network.

The proposed access has visibility splays of 133 metres x 2.4 metres x 133 metres, which are appropriate for the measured speeds in New Dover Road. The measured speeds and the change to a more built-up environment as a result of the development proposals indicate that the existing 40 mph speed limit in New Dover Road can be extended eastwards to the junction with Winehouse Lane, encompassing the site and the approaches to the access. This extension of the 40 mph speed limit is included in the highway alteration works to be carried out by the applicant.

The proposed highway alterations also include a new signal controlled crossing in New Dover Road and a cycleway between the site access and Helena Road, providing improved crossing facilities and access to the existing footway network and cycle routes. The proposed crossing requires relocation of the existing eastbound bus stop approximately 40 metres to the east. All of the proposed highway alterations will be carried out by the applicant through an agreement with the highway authority under section 278 of the Highways Act.

I would therefore not recommend refusal on highway grounds. The following should be secured by condition:

- Construction Management Plan to include the following:
 - a) Routing of construction and delivery vehicles to / from site
 - b) Parking and turning areas for construction and delivery vehicles and site
 - c) personnel
 - d) Provision of wheel washing facilities
 - e) Details of site access point(s) for construction
 - f) Temporary traffic management / signage.
- Provision of measures to prevent the discharge of surface water onto the highway.
- Use of a bound surface for the first 5 metres of each private access from the edge of the
- highway.
- 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.
- 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.
- Completion of the highway alterations shown on drawings numbers 4780/001 Rev. F and 4780/003 or amended as agreed by the Local Planning Authority, prior to the use of the site commencing.
- Provision of a pedestrian and cycle connection to the existing Green Lane bridleway in accordance with details, including a timescale for the connection, to be submitted to and approved by the Local Planning Authority.

- 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 drawing number 4780/001 Rev. F with no obstructions over 1 metre above carriageway level within the splays, prior to the use of the site commencing.
- Provision and maintenance of 1 metre x 1 metre pedestrian visibility splays behind the footway on both sides of the access with no obstructions over 0.6m above footway level, prior to the use of the site commencing.

KCC Infrastructure – Seeks the following contributions

- Primary education – £372,288 – towards White Cliffs Primary School.
- Secondary education – £264, 297 – towards phase 1 expansion of Dover Grammar School for Girls.
- Community learning – £3640 – towards Dover Discovery Hub and adult education centre.
- Libraries – £15,381 – towards Dover Library and stock for mobile library, which attends Capel le Ferne.
- Social Care – £11,023 – towards Dover Discovery Centre Social Care Hub, and 2x wheelchair adaptable homes as part of the on-site affordable housing.

Informative related to delivery of high speed fibre optic broadband.

KCC PROW – No objection, subject to conditions

KCC LLFA – No objection, subject to condition

NHS CCG – Seeks off site contribution

Kent Downs AONB Unit – Objection

Conclusion

The application site lies within the Kent Downs AONB, a nationally protected landscape and comprises open countryside made up of arable fields that lies outside of the settlement of Capel le Ferne. This is demonstrated not only by its exclusion from within the settlement boundary as defined on the Dover District Proposals Map but also in terms its physical characteristics which are considered to be typical of the Alkham local character area of the East Kent Downs Character Area within which it is located.

The AONB Unit disagrees with the conclusion of the LVA that the effects of the development on the character and visual appearance of the open countryside and Kent Downs AONB will not be significant or harmful. The introduction of built form comprising 140 new dwellings together with the proposed commercial units would result in significant harm to the intrinsic rural character and appearance of the area

and detract from the natural appearance and beauty of the AONB that could not be satisfactorily mitigated by landscaping or other methods.

As such, it is considered that the proposal would weaken and disregard the primary purpose of the AONB designation, namely the conservation and enhancement of its natural beauty. Accordingly the proposal is considered to be in conflict with the NPPF, in particular paragraphs 115 and 116 which provide that great weight should be given to conserving landscape and scenic beauty in AONBs and that major development should not be permitted except in exceptional circumstances and where public interest can be demonstrated; it is the view of the Kent Downs AONB Unit that the stringent tests set out at paragraph 116 of the NPPF have not been met. The application is also felt to be contrary to policies DM15 and DM16 of Dover's Local Plan which are considered to remain up to date under paragraphs 14 and 49 of the NPPF. The material change of use of the land is also considered to be contrary to policies SD1, SD2, SD3, SD8 and LLC1 of the Kent Downs AONB Management Plan.

COMMENT ON ADDENDUM TO LVIA

The additional information, comprising an Addendum Report to the Landscape and Visual Appraisal, does not alter our views on the proposal as set out in our original response dated 1st February 2017. The Kent Downs AONB Unit remains of the view that the introduction of built form comprising 140 new dwellings together with the proposed commercial units would result in significant harm to the intrinsic rural character and appearance of the area and detract from the natural appearance and beauty of the AONB that could not be satisfactorily mitigated by landscaping or other methods.

Please find below our comments in response to the Addendum Report, using the paragraph numbering of this report:

1.5 It is contended that the site area forms only a very small proportion of the total area of AONB in Dover District. This is not considered a reason to justify the acceptability of the scheme. The site area is some 17.3 ha, which is a considerable size and the proposals themselves constitute major development and as such need to be assessed under para 116 of the NPPF. As previously advised by the AONB Unit, this is considered an inappropriate way to justify proposals in the AONB, and if accepted could be repeated, leading to cumulative effects and further erosion of the Kent Downs AONB.

Section 2 – We do not disagree that it is possible to sub-divide the Alkham: East Kent Downs LCA into more local character areas, however this is true of most landscape character areas. We have revisited the site and consider it to represent an intact landscape and maintain our view that it is representative of the LCA in which it is located and that the sub-area identified in the LVA as area E, within which the application site is located, shares similar characteristics to area C, comprising open, predominantly arable farmland in irregular shaped fields occupying plateau top land with limited woodland cover. (Contrary to the assessment in the addendum report, we consider area C to be made up of a mix of both regular and irregular shaped fields).

3.3 (i) Policy SD3 of the Kent Downs AONB Management Plan is quoted out of context; this does not state that all new development will be opposed per se, rather, it will when it disregards the primary purpose of the Kent Downs AONB.

3.3 (ii) A comprehensive review of the Landscape Character Assessment of the Kent Downs AONB has been commissioned and commenced last week, the results of which we anticipate publishing later in the year.

3.3 (v) The Kent Downs AONB Unit accepts, as stated in our original submission, that the landscaping proposals would reduce the visual impact of the proposal, however we maintain our view that the proposed landscaping would be out of character with the local landscape as existing woodland planting in this landscape character area is limited to along valley sides. The Character Areas Plan at Appendix B of the Report usefully illustrates how existing woodland blocks/trees are to the large part limited to valley sides while the open top plateau remain largely devoid of such features and therefore how the proposed structural planting would not conform with the local landscape character. As such the proposal is considered to be contrary to policy SD8 of the AONB Management Plan.

3.3 (vi) Consideration of major proposals in the AONB are required to include an assessment of any detrimental effect on, among other things, the landscape and the extent to which that could be moderated, not, as stated, 'para 116 only requires impacts to be moderated'.

3.3 (vii) Reference is made to the 'planning balance'. Paragraph 116 of the NPPF states that planning permission should be refused for major developments, except in 'exceptional circumstances' and where it can be demonstrated that development is in the public interest. Specific considerations include "the need for the development, including in terms of any national considerations" and "the cost of and scope for, developing elsewhere outside the designated area". Paragraph 116 is not an ordinary or standard balancing exercise, which would involve balancing the exceptional circumstances and public interest against the harm to the AONB. It is a weighted one in which there is a strong presumption against development and the conservation of the AONB landscape is to be given great weight, with the CRoW Act Section 85 Duty of Regard representing a material consideration that further tips the balance in favour of refusal. The NPPF, at paragraph 115, confirms that great weight should be given to conserving scenic beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty. The Courts have confirmed that this places the conservation of the landscape and scenic beauty of an AONB into a special category of material consideration (*R Mevagissey Parish Council v Cornwall Council*).

In respect of the proposed supplementary hedge and tree planting, we are of the view that these proposals would not overcome the harm that would arise from the development. As previously advised we have concerns that woodland planting would not be in keeping with the local landscape character and we query the appropriateness of some of the proposed hedgerow planting locations. We also note that the legend on the Supplementary Hedge and Tree Planting Plan appears to have mistakenly transposed the labels relating to the proposed hedge/woodland planting...

As such the Kent Downs AONB Unit remain of the view set out in our original consultation response, that the proposal would weaken and disregard the primary purpose of the AONB designation, namely the conservation and enhancement of its natural beauty. Accordingly the proposal is considered to be in conflict with the NPPF, in particular paragraphs 115 and 116 which provide that great weight should be given to conserving landscape and scenic beauty in AONBs and that major development should not be permitted except in exceptional circumstances and where public interest can be demonstrated; it is the view of the Kent Downs AONB Unit that the stringent tests set out at paragraph 116 of the NPPF have not been met. The application is also felt to be contrary to policies DM15 and DM16 of Dover's Local Plan which are considered to remain up to date under paragraphs 14 and 49 of the NPPF. The material change of use of the land is also considered to be contrary to policies SD1, SD2, SD3, SD8 and LLC1 of the Kent Downs AONB Management Plan.

Environment Agency – No objection, subject to condition

Natural England – Objection

SUMMARY OF NATURAL ENGLAND'S ADVICE/OBJECTION

Natural England objects to this proposal. As submitted we consider it will have a significant impact on the landscape character of Kent Downs AONB, and hence have a detrimental effect on its special qualities.

Natural England's advice on this and other natural environment issues is set out below. The reasons we have reached this view are set out below, and expanded upon in more detail in an annex to this letter:

- Given the scale and size of the proposal within the boundary of the Kent Downs AONB, Natural England is concerned that it would have a significant adverse impact on the special qualities of the AONB.
- We consider that the scale of the proposal represents major development in the AONB and, therefore, should be assessed in accordance with the three tests set out in paragraph 116 of the National Planning Policy Framework (NPPF).
- We understand that Dover District Council now has a 5-year housing supply; therefore, the policies in the Land Allocations Local Plan (2015) can be considered up-to-date. This document allocates sites for residential development in Capel le Ferne of 90 dwellings. Therefore, as the need in the local area, and the wider Dover District, can be met with the allocations already provided for in the local plan, we consider there is not a need for development within the AONB. The proposals contradict policies contained in the Kent Downs AONB Management Plan and related policies in Dover District Council's Core Strategy (2010) DM15 – Protection of the Countryside and DM16 – Landscape Character.
- We consider there are significant shortcomings in the Landscape and Visual Appraisal Report (LVAR, November 2016):
 - It fails to give sufficient weight to the value of the application site as part of the AONB, underplays the magnitude of change resulting from the proposal, and hence underplays the significance of the impact.
 - As there are no photomontages we consider there is an incomplete evidence base on which the Council can verify the conclusions reached in the LVAR.
 - Within the LVAR there is an absence of any assessment of the proposals against the special qualities of the AONB and the aims of the AONB Management Plan.
- We note that the AONB Unit has provided a detailed response to this proposal. Given their considerable local knowledge, Natural England would recommend great weight is given to their comments and concerns regarding the impacts of the proposal on the landscape character and visual amenity of the AONB.

COMMENT ON ADDENDUM TO LVIA

SUMMARY OF NATURAL ENGLAND'S ADVICE/OBJECTION

Natural England maintains its objection to this proposal. As submitted we consider it will have a significant impact on the purposes of designation of Kent Downs AONB. The additional information regarding landscape character assessment and planting proposals do not change this conclusion...

Summary of advice on the Addendum Report:

- Additional landscape character assessment is provided. Natural England considers that it is not appropriate to subdivide the part of the Alkham: East Kent Downs Landscape Character Area south of the A20 from that to the north, as the

two areas share many characteristics. Our view is that it is this subdivision that downplays the significance of the impact of the development proposal on landscape character.

- Additional planting around Capel le Ferne is proposed, with the aim of minimising the visual impact of existing built development. However, no rationale is given for the design of the scheme, nor any information on the visual receptors that may benefit from the screening proposed. Furthermore, the woodland planting proposals are out of keeping with the landscape character of the area, so whilst there may be some visual benefit, there may be a detrimental impact on landscape character.

Rural Planning Adviser – Observations

Para 112 of the NPPF states: “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”.

In the High Court judgement in *Telford & Wrekin v Sec State etc. & Gladman Developments Ltd.* [2016] EWHC 3073 it was held (para. 38) that NPPF 112:

“is simply an instruction (i) to “take into account” the economic and other benefits of the best and most versatile agricultural land which does not confer any particular level of protection and (ii) to “prefer” the use of poorer quality land if significant development of agricultural land is necessary, which applies to all agricultural land, not just BMV land. It is not a prohibition on the use of BMV agricultural land, nor a restriction on development in principle; it does no more than to encourage the relocation of proposed development onto poorer quality agricultural land if available”.

It was noted, in para. 42 of the judgement, that much of the surrounding land around Telford is BMV land – as appears to be the case in the Capel le Ferne area – and that *“no alternative site comprising poorer quality land was put forward”.*

This High Court decision was also a case where the Council concerned (like Dover) has already approved/allocated housing sites on other BMV land – two examples being DOV/13/00945 at Sholden, and the land at Campbell Road/Spitfire Way, Hawkinge.

From this court judgement, and from other recent planning appeal decisions in which relatively little significance has been placed on the loss of BMV land, it appears that to successfully argue loss of BMV land as a reason for refusal, a Council would have to be able to demonstrate that the development is unnecessary, as it could take place on sufficient other feasible sites, of lower quality land than the application site.

I am not personally aware whether or not there are sufficient alternative feasible sites of lower land quality.

In summary, the significance of the loss of this BMV land, having regard to the availability or otherwise of other suitable alternative sites, as well as the availability or otherwise of a robust 5-year local housing land supply, are matters for the Council to take into account in the overall planning balance, and I do not believe I can assist further in this instance.

Crime Prevention Design Advisor – No objection

Affinity Water – No comment made

Southern Water – No objection, subject to condition

EDF Energy – No comment made

Southern Gas Networks – No objection

Capel Parish Council – Objection

Capel le Ferne Parish Council objects to the outline planning proposal for the following reasons:

The area is designated as an Area of Outstanding Natural Beauty

The Parish Council feel strongly that this land should remain open countryside and are pleased that Dover District Council has expressed a similar desire, as shown in recent statements relating to the LALP for two pieces of land that face this site:-

- In relation to the site on New Dover Road which is situated directly South of this proposed site, Dover District Council stated in the Land Allocation Local Plan adopted 2015, Policy LA 24:
 - ii. Development proposals are sensitively designed in terms of height and massing in order to ensure the development does not have an impact on the AONB and countryside.
- Dover District Council also turned down planning application for LA 26, DOV/15/01284 dated 01/09/2016 for 4 detached dwelling at the junction of Winehouse Lane and Capel Street. This site is situated directly North of the proposed site. The main reason being: “The development, if permitted, by virtue of its design, layout, scale, form. appearance, bulk and siting, would result in an intrusive, incongruous, unsympathetic form of development which would be poorly related to the adjacent development, harmful to the characteristics of the street scene and inappropriate in respect to its harmful impact on the AONB within which the site is located and would adversely affect the character and appearance of the countryside and landscape.”

The area is an Agricultural Green Field Site

The Parish Council objects to the loss of this valuable arable land. The land has been cropped for many years and is classified by the Department for Environment Food & Rural Affairs as Grades 2 quality and is described as land of best and most versatile agricultural quality. Why should we lose good agricultural land?

Road safety issues

During the last two years, many drivers have chosen to use the B2011 (New Dover Road) through Capel le Ferne, as opposed to the A20 between Folkestone and Dover. This has in part been due to the decision to the implementation of TAP and the resultant parking of HGVs on the A20 at busy times together with the associated speed restrictions. The result has been a noticeable increase in traffic through Capel le Ferne and an increase in the number of road traffic accidents. 143 Dwellings and the associated traffic entering and leaving the site will only aggravate the problem.

The proposed development is too large for Capel le Ferne

Capel le Ferne Parish Council accepted the LALP 2015 which when completed would increase the population by around 10%. This development would increase the population by a further 20%. The Parish Council feel that this expansion is unacceptable as it would change the social dynamics of this close knit community. The proposed development will bring little benefit to the Community.

The Parish Council have always supported efforts to encourage parents to walk children to school. Capel le Ferne Primary School has a walking bus and there are plans to hard surface the bridle path that runs adjacent to this site from New Dover Road to Capel Street in an effort to reduce the number of vehicles on the school run. The installation of a new access road to the school, not only flies in the face of this objective, but also encourages more traffic onto the New Dover Road and creates a security problem for the school by introducing a second access point.

Capel le Ferne does not require a second MUGA. The existing MUGA is under CCTV surveillance, a second MUGA would not have this protection and could risk encouraging anti-social behaviour. It is also difficult to see why a country park is needed in what is already beautiful countryside. The upheaval of this landscape will also be hugely detrimental to the local flora and fauna.

Parish Council do not believe that the commercial aspects of this application are viable in this situation and in the current economic climate. It is also difficult to see how a Dental and GP Practice would be viable when there are existing facilities with associated pharmacies within a 10 minute car or bus ride.

Parishioners Feedback

Quinn Estates Design and Access Statement mentions their three exhibitions and the feedback gained. Naturally they focused on the points raised that they could respond to in a positive way. The Parish Council also handed out questionnaires to Parishioners at the exhibitions and similar comments could be seen. However the overall response to the development was:

16% Support, 9% Undecided, 75% Against

Shepway District Council – Objection

The Council is concerned about the effect of such a large development on a village which adjoins its border.

Health Facilities

It is the council's experience that the majority of Capel Le Ferne residents come to Folkestone to visit GP and dental services (the nearest GPs are less than two miles from the village). It is understood from the Clinical Commissioning Group that this development would not generate enough requirement for a GP practice to be viable in Capel. If Dover District Council is minded to permit this application we would suggest that a sum of money equivalent to the cost of providing medical facilities on site is secured by a Section 106 agreement and given to the CCG in order that they may invest it appropriately for the benefit of Capel residents.

Road Safety Issues

The council is concerned about the effects of the increased traffic on the New Dover Road during construction and following completion. Please refer to Kent Highways regarding this issue.

Kent Downs AONB

Shepway are also concerned at the impact of the proposal on the AONB given that it forms part of the East Kent Downs character area. The proposed development is in the AONB. The applicant's statement claims:

"The total proportion of AONB to be built on therefore amounts to 0.1% of the district's AONB, representing a de minimis effect on the overall quantum of AONB within the District."

This is not an appropriate argument to justify building a major development in the AONB and ignores the cumulative effect of such development on the AONB. Further it is not in accordance with NPPF paragraphs 14 (footnote 9), 115 and 116 of the NPPF.

Schools

Given the size of the development the Council is concerned at the impact on the capacity of Capel Le Ferne Primary School and nearby secondary schools.

Public representations – Support x 50, Object x 63, Neutral x 2

Support

- Broadly in agreement with outlined style of housing.
- New jobs – retail and construction/will bring prosperity.
- Capel needs a variety of new properties.
- Direct access to B2011 is preferable to access through existing estate roads.
- List of benefits.
- Lack of new homes restricts families/children being able to stay in area.
- Will take away heavy traffic from Capel Street.
- New community facilities.
- Will diversify community and bring in young families.
- Investment in rural community is crucial to keep it active and healthy.
- AONB is low grade in terms of landscape quality.

Object

- Development too large for village.
- Infrastructure unable to cope.
- Loss of best and most versatile agricultural land.
- Exceeds requirement identified in Land Allocations Local Plan 2015.
- Traffic congestion in conjunction with development south of New Dover Road.
- Profiteering without concern for villagers.
- Already have facilities in Folkestone and Dover.
- Change to the character of the settlement.
- Does not think that the development could justify/support a new surgery.
- Will become a town like Hawkinge.
- Negative impact on property values.
- Road safety concerns – history of accidents.
- Concerns about knock on impact on West Hougham.
- Represents increase of over 50% of built up area compared to what is existing.
- No parking provision identified for country park.
- No need for country park – already in country in AONB.
- SUDS not viable.
- Questions if community can support existing food store and new convenience store.
- Homes will be too expensive for those that need them.
- AONB designation.
- Manicured lawns and parkland will not support wildlife/habitats/ecosystem.
- Attraction of Capel is that it is a quiet location.
- Surface water flooding.
- No jobs in area – another dormitory development.
- Need to preserve land for future generations.
- Land not allocated.
- Should be brownfield first.
- Should be a footpath to rear of school instead of a road.
- Heritage Coast – preserve and protect.

- Will increase dependency on private motor vehicles.
- Not enough school spaces to accommodate pupils from new development.
- Loss of agricultural land is irreversible.
- Do not want to lose any more footpaths.

Neutral

- Needs to consider traffic impact.
- Needs to minimise impact on AONB.
- Retail and community facilities need to be provided with new homes and not last.

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

The site is located on the northern side of New Dover Road in Capel le Ferne. It is located outside of and adjacent to the Capel le Ferne settlement boundary, which wraps around the site to the west and north. The site is comprised of primarily flat arable land, with some undulations, which is crossed by hedgerow. Public footpath ER241 crosses the site west to east; ER242 crosses part of the site and forms part of its northern boundary; and public bridleway ER252 (also known as Green Lane) runs along the western boundary of the site.

- 1.1. West of the site is existing residential development, comprising the rear of Helena Road, as well as the termination of Beatrice Road where it meets ER252. Towards the north west is the rear of the recreational ground, Elizabeth Drive and Capel le Ferne primary school. The northern boundary runs adjacent to an equestrian field and cuts across an open arable field. The eastern boundary of the site is formed equally by Winehouse Lane, which affords intermittent hedgerow screening; and by two fields, one comprising two tall antennae and associated communications equipment, and the other which contains the site of a former petrol filling station and fronts New Dover Road. Opposite the site, south of New Dover Road is land allocation LA24, which in 2016 was the subject of an allowed appeal for the erection of 40 dwellings.
- 1.2. Excepting a small field located adjacent to the rear of the primary school (western corner of the site), the site is located wholly within the Kent Downs AONB.
- 1.3. Site dimensions are:
 - New Dover Road frontage – 173 metres.
 - Depth (New Dover Road to Capel le Ferne primary school) – 420 metres.
 - Width (Green Lane ER252 to Winehouse Lane) – 475 metres.
 - Area – 17.3 hectares.

1.4. Proposal

The proposed development is outline in form for up to 142 dwellings. Of the dwellings 99 would be market dwellings, including 30 retirement dwellings, and 43 would be affordable (social rented) dwellings.

- 1.5. 396m² (317m² net internal) of A1 floor space is proposed in the form of a convenience store. 396m² of D1 floor space is also proposed in the form of a GP surgery/dental facilities. It is suggested that 36 full time equivalent (FTE) positions would be created (using the Homes and Communities Agency Employment Density Guide 2015 (retail) and past experience (GP/dental)).
- 1.6. Detailed access proposals show the proposed vehicular access to the site approximately half way along the New Dover Road frontage. Highway works

associated with this access would include a right turn lane in the centre of the carriageway and the extension of the 40 mph speed limit eastwards to the junction of New Dover Road and Winehouse Lane.

- 1.7. Given that the proposals are outline in form, there is no definitive layout, however, an indicative layout submitted with the application shows the following features:
 - ER241 south to New Dover Road – residential area, including retirement homes and shop, dental surgery and possible GP adjacent to New Dover Road.
 - ER241 north and west to Capel le Ferne primary school – multi use games area (MUGA), land given over to the school as car parking, drop off zone, and general use. Also residential zone.
 - Eastern portion of site adjacent to Winehouse Lane – subject to a covenant for no further residential expansion, includes a country park and an attenuation pond.
- 1.8. The developer proposes soft landscaping measures (hedge and woodland buffer planting) on land outside of the application site to the west, north and east. Soft landscaping measures are also proposed within the application site, between the site and neighbouring properties on Helena Road, along the New Dover Road frontage and along much of the western site boundary, including to Winehouse Lane.

2. Main Issues

- 2.1. The main issues to consider are:
 - Principle
 - AONB, countryside impact and street scene
 - Agricultural land classification
 - Ecology and trees
 - Highways and travel demand
 - Environmental health
 - Residential amenity
 - Affordable housing and planning obligations
 - Drainage
 - Utilities

3. Assessment

3.1. Principle

The proposed development is located outside of, adjacent to, the Capel le Ferne settlement boundary.

- 3.2. Policy DM1 of the 2010 Dover District Core Strategy states that development will not be permitted outside of the rural settlement confines 'unless specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses'.
- 3.3. No other development plan policies justify the location of the proposed development and it is not considered to functionally require such a location or be ancillary to existing development or uses.

- 3.4. The site was put forward to the call for sites which formed the basis for the Dover District Strategic Housing Land Availability Assessment (SHLAA), which in turn formed the basis of the 2015 Land Allocations Local Plan (LALP). The site was not taken forward for inclusion in the LALP due primarily to the impact of development on the AONB.
- 3.5. The most recent (March 2017) published Dover District Annual Monitoring Report concludes that there is a 6.02 year supply of deliverable housing land in the district – in excess of the necessary five years required by government in the NPPF. This means that under the terms of NPPF paragraphs 14 and 49, relevant policies for the supply of housing in the local plan are considered to be up to date. Decisions should therefore be made in accordance with those policies.
- 3.6. Accordingly, under the terms of policy DM1, the development is considered to be unacceptable in principle.
- 3.7. AONB, Countryside Impact and Street Scene

The site is located in the Kent Downs Area of Outstanding Natural Beauty, within the Alkham East Kent Downs landscape character area, and accordingly is afforded the highest status of protection in relation to landscape and scenic beauty.

- 3.8. Comments have been provided by the DDC Landscape and Ecology Officer, the Kent Downs AONB Unit and Natural England, each objecting to the proposal on a number of grounds (each noted in the comments section). In terms of the AONB and countryside impact, the relevant determining policies are DM15 and DM16 of the Core Strategy and paragraph 116 of the NPPF. The Kent Downs AONB Management Plan provides further criteria to assist in determining the proposal.
- 3.9. Policy DM15 is concerned with the protection of the countryside and resists its loss. In order for a proposal to be permitted, it needs to be in accordance with allocations made in the local plan, or justified by the needs of agriculture, or justified by a need to sustain the rural economy or a rural community. The application site is not allocated, and the proposal is not needed for agriculture. It is questionable to suggest that the proposal is needed to sustain the rural economy or a rural community. Policy CP1 of the Core Strategy has identified Capel le Ferne as a local centre and the Land Allocations Local Plan (LALP) has made adequate allocations which support that role. Subject to meeting one of those criteria, which it is not considered the proposal does, it must also not be able to be accommodated elsewhere and not result in the loss of ecological habitats. The proposal, however, could be accommodated elsewhere – the LALP has made allocations across the district to meet the adopted housing need set out in the Core Strategy, without the need for developing in the AONB. In terms of ecological impact, given that the site is primarily an arable field there is no harm, however, overall, the proposal does not accord with policy DM15 and as such, is unacceptable. The proposal would result in the unjustified loss of countryside.
- 3.10. Policy DM16 is concerned with landscape character. In order for the scheme to be permitted, the proposal either has to be in accordance with allocations in the local plan and incorporate necessary mitigation, or be sited to avoid or reduce harm and/or incorporate design measures to mitigate the impacts to an acceptable level. As noted, the site is not allocated, so the consideration is whether the proposal has been sited to avoid or reduce harm and/or incorporate design measures to mitigate the impacts. It is not considered that this proposal

satisfactorily mitigates any impacts arising and due to the outline nature of the application detailed design measures are not available for consideration. The proposal is in effect the change of AONB designated landscape to a suburban neighbourhood – as the DDC Landscape and Ecology officer notes “it would result in a change of character from one associated with its precise location to one found widely”. Natural England comments in regard to the proposed hedgerow and woodland mitigation that “no rationale is given” for its design and that, specifically, the woodland planting proposals are “out of keeping with the landscape character of the area”. The proposal is therefore unacceptable and does not accord with the aims and objectives of policy DM16.

- 3.11. Natural England directs that the proposal be considered against the criteria of the NPPF paragraph 116, those being:
- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
 - the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
 - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
- 3.12. **First bullet.** The need for the development is not proven. Dover District Council can demonstrate a five year supply of deliverable housing land and allocations have been made in Capel le Ferne other than this site, which itself was dismissed. The applicant has stated that the proposed development would create 102 direct [temporary] construction jobs and 72 indirect [temporary] jobs, and that when completed it would create 15 FTE jobs related to the proposed GP and dental surgeries, and 21 FTE jobs in the supermarket. It is also suggested that 158 economically active people would reside on the estate, 147 of which would be employed (based on national representative data), representing an economic output of £6.4 million per annum (147 x £43,550 per person (Experian)).
- 3.13. Jobs created during the construction period (assumed at 36 months) are temporary in nature, however, the impact of the proposal on the AONB would be permanent. It is unclear how many of the 158 residents would be new and how many would come from concealed households existing in the area that might already pay into the local economy. In terms of the £6.4 million economic output, again it is unclear how many of these people might already contribute to the local economy, particularly with regard to Dover District, in addition to whether this represents a resident economic output or work place economic output i.e. it is not known how many of these people would commute outside of the district and create their gross value added elsewhere.
- 3.14. In any case, the proposed value arising from the loss of AONB landscape does not appear exceptional. The consideration in this case is not one of simple balance, the assessment is whether this creates a case worthy of allowing landscape of the highest status, the protection of which in turn is given the greatest weight, to be lost. The case put forward in this respect is considered insufficient.
- 3.15. **Second bullet.** The cost of developing outside of the designated area is likely to be comparable to the cost of developing inside the designated area. The site is green field and would incur typical opening up costs but there is no obvious advantage or disadvantage, in financial terms, to developing this site. The true cost would be the loss of undeveloped AONB landscape. It is questionable

whether there is indeed a need for this development. The council has allocated sites in the LALP to meet its housing requirement and is currently running a call for sites as part of its review process. There is no clear need for this development.

3.16. **Third bullet.** The DDC Landscape and Ecology officer notes that the fundamental change in the nature of the landscape i.e. from that which is particular to this location to that which can be found widely, means that there is no moderation which could be applied this scheme. Hedgerow and woodland planting is proposed, but this disregards the essence of the proposal i.e. harm to the AONB.

3.17. In considering the proposal against the criteria of NPPF paragraph 116 it is clear that there is no strong or overriding need for the development. This would need to be the case on non-designated land outside of the settlement boundaries, let alone in the AONB. The AONB Unit notes in relation to the tests under paragraph 116 that:

“Paragraph 116 is not an ordinary or standard balancing exercise, which would involve balancing the exceptional circumstances and public interest against the harm to the AONB. It is a weighted one in which there is a strong presumption against development and the conservation of the AONB landscape is to be given great weight.”

3.18. The Kent Downs AONB Management Plan has been held to be material in the determination of planning applications and appeals. Policies SD1, SD2, SD3, SD8 and LLC1 are relevant in the case of this application and relate to the following: conserving and enhancing the natural beauty of the AONB; conserving and enhancing the local character; qualities and distinctiveness of the AONB; opposing new development which would disregard or run counter to the primary purpose of the AONB; opposing proposals which have negative effects unless they can be satisfactorily mitigated; and pursuing/supporting the protection, conservation and enhancement of the special characteristics, qualities, natural beauty and landscape character of the AONB.

3.19. The character of the street scene on the north side of New Dover Road, east of confines is open and spacious in nature, typical of such a transition area (beyond confines). The site currently has an undeveloped quality and appearance which is indicative of the wider landscape beyond and which contributes significantly to the character of the street scene. It should be borne in mind that there is a site opposite which is currently being developed (part allocated land and allowed on appeal). The engineering works associated with the new access arrangements, along with the scale and density of the development proposed and the cumulative effect with the development opposite would lead to a consolidation of built form and an intrusive urban incursion into an otherwise undeveloped area of the landscape, which it is considered would adversely affect the street scene.

3.20. There is no sound argument that has been put forward which would justify an exception being made to overriding countryside and AONB protection policy. The site is outside confines, it is in the AONB which is afforded the greatest weight of protection. It would result in harm to the setting, appearance and character of the AONB and the street scene. The development is not sustainable development, as defined. The proposal is contrary to the aims and objectives of the NPPF and is unacceptable

3.21. Agricultural Land Classification

A detailed agricultural land survey of the site was undertaken in August 1989, with a report published in September 1992. The survey identifies the site as wholly (17.3 hectares) being within the grade 2 category. The land therefore is classed as best and most versatile agricultural land, the definition of which encompasses grades 1, 2 and 3a. The applicant concurs with this assessment in the submitted agricultural land review document.

- 3.22. 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...” and “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.”
- 3.23. No further guidance is available regarding what would constitute a significant development of agricultural land. The dictionary definition of significant is: “... sufficiently great or important to be worthy of attention; noteworthy.” It is considered that 17.3 hectares would appear to be a significant quantity of land.
- 3.24. Aside from this, however, the rural adviser notes the outcome of a High Court case from 2016, in which paragraph 112 is determined to be “simply an instruction” to take account of the economic and other benefits of best and most versatile agricultural land, rather than explicitly conferring any protection.
- 3.25. The rural adviser notes that, “From this court judgement, and from other recent planning appeal decisions in which relatively little significance has been placed on the loss of BMV land, it appears that to successfully argue loss of BMV land as a reason for refusal, a council would have to be able to demonstrate that the development is unnecessary, as it could take place on sufficient other feasible sites, of lower quality land than the application site”.
- 3.26. The comments of the rural adviser are taken into account. Such a position may be difficult to take, given that the council has on past occasions permitted residential developments on BMV land. However, it is considered reasonable to account for the loss of BMV land as part of a wider/cumulative reasoning that also addresses the loss of countryside and loss of protected landscape that would occur if permission were granted.

3.27. Ecology and Trees

The site is primarily used for arable farming and reflects this, where on the open sections of land there are fewer opportunities for habitats to establish themselves. Areas of hedgerow are predominantly found adjacent to the site boundaries, with one hedgerow following the line of ER241 between the recreational ground and the campsite east of Winehouse Lane.

- 3.28. The existing hedgerow is recognised as a much stronger potential area for habitat, including its function as a habitat corridor, and is not proposed to be significantly altered, albeit acknowledging the outline form of the application. Ecological mitigation measures are proposed as necessary e.g. works affecting habitats not coinciding with nesting season. However, in general terms, it is recognised that the proposed development in ecological terms could provide the potential for ecological enhancements, given the current use of the site.

3.29. Highways and Travel Demand

The development proposal is in outline form, but does contain detailed access proposals for a single site access located approximately half way along the

frontage onto New Dover Road. This access would be staggered from the permitted access for the site south of New Dover Road, and would incorporate a right turn lane located east of the permitted right turn lane for the site to the south.

3.30. The highways officer requested further information relating to:

- Capacity calculations for roundabouts on the A259/A260, A260/B2011 and A20/B2011, information relating to HGV movements and consideration of movements from south of New Dover Road to north of New Dover Road for the purpose of accessing the proposed new school car park/drop off and collection point.
- Updated crash data.
- Dimensions of proposed highway alterations (right turn lanes, running lands, new traffic island and toucan crossing).
- Vehicle swept paths for access to accommodate potentially, articulated delivery vehicles.
- Amendments to the proposed removal of a traffic island and the subsequent assessment by a safety auditor.

3.31. The applicant submitted further information. The highways officer notes that:

- The proposals are likely to generate 90 to 100 two way vehicle movements at the access at peak hours.
- The proposed access with new right turn lane can accommodate the anticipated number of movements.
- Most movements will be to/from destinations outside of Capel le Ferne, meaning that the impacts have also been assessed at junctions at the A20 to the east, and Dover Hill and Canterbury Road to the west – there is no severe impact. This incorporates movements expected from the permitted development south of New Dover Road.
- Crash data indicates that there is no particular problem at this location and nothing indicates that the additional movements could not be accommodated.
- A connection is proposed to the existing bridleway ER252, allowing wider connections to the existing pedestrian and cycle network.
- Visibility splays of 133 metres x 2.4 metres x 133 metres are proposed, which are appropriate.
- The 40 mph limit would be extended eastwards to the Winehouse Lane junction.
- A signal controlled crossing and cycleway is proposed between the site access and Helena Road – this would involve the relocation of the existing eastbound bus stop 40 metres further east.
- All of the proposed highway alterations would be carried out by the applicant through an agreement with the highway authority under section 278 of the Highways Act.

3.32. The highways officer is satisfied that the proposed access could accommodate the anticipated movements and that there would be no severe impact.

3.33. Subsequently, the highways officer does not recommend refusal on highways grounds, subject to a number of standard conditions relating to the proposed highways works, and is satisfied that the highways network could accommodate a development of this magnitude.

3.34. In highway engineering terms, the proposal could therefore be accommodated. Policy DM11 of the Core Strategy, relating to the location of development and managing travel demand, sets a test for development related to settlement

boundaries.

3.35. The policy states that:

“... Development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies...”

3.36. The site is located outside of rural confines, however, for practical purposes and taking a pragmatic approach, in transport terms it would be difficult to differentiate the travel movements coming from the development as materially harmful, compared to those coming from the existing settlement.

3.37. Environmental Health

The Environmental Protection Officer has not objected to the scheme, subject to conditions relating to contaminated land, noise mitigation and a construction management plan.

3.38. Of particular concern is the potential for dust emissions resulting from development and any pre-development works. It is considered that were it necessary, this could be controlled by the use of a suitable planning condition.

3.39. Residential Amenity

The development proposal is in outline form, meaning that issues of residential amenity are difficult to consider in detail. It is likely that, were it necessary, any residential amenity issues could be effectively addressed through detailed design and necessary conditions.

3.40. Affordable Housing and Planning Obligations

In order to make the development acceptable in planning terms, a number of planning obligations in the form of on site and financial contributions are necessary. The restrictions of CIL regulation 122 should be noted – the obligation may only be accepted as a reason for granting permission if it is:

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

3.41. In addition, no more than five contributions can be made towards a specific project, or type of infrastructure.

3.42. **Affordable housing.** Policy DM5 of the Core Strategy requires that for residential developments of 15 or more dwellings, 30% of the total homes should be affordable homes. The council's housing officer has commented that the 43 proposed affordable homes is 30% of the proposed total of 142, therefore the development would comply with policy DM5. The housing officer comments that the council would normally seek a 70%/30% split between rent and shared ownership. The applicant has proposed that all 43 dwellings would be social rent, however, in reality the final tenure split would depend on negotiations with registered providers and would be based on their financial ability to take on the different types of tenures.

3.43. **Open space.** The DDC Principal Infrastructure and Delivery (PID) Officer comments that accessible green space provision is acceptable. The parish council has not sought additional contributions towards the improvement of the

existing play area.

- 3.44. Members will note the comments of the PID Officer in regard to an additional MUGA. If permission were granted, the local planning authority would be likely to seek contributions towards off site sports provision.
- 3.45. Kent County Council has requested the following contributions:
- 3.46. **Primary education – £372,288** – towards an identified scheme at White Cliffs Primary School (in Coombe Valley). The DDC Principal Infrastructure and Delivery Officer has commented that this request is acceptable.
- 3.47. **Secondary education – £264,297** – towards the identified phase 1 expansion of Dover Grammar School for Girls. The DDC Principal Infrastructure and Delivery Officer has commented that this request is acceptable.
- 3.48. **Community learning – £3640** – towards Dover Discovery Hub and adult education centre. The DDC Principal Infrastructure and Delivery Officer has commented that this request is **not acceptable** and appears to be a tariff request. It is also not clear how the requested sum could provide any meaningful difference to the provision of community learning, given the limit of five obligations.
- 3.49. **Libraries – £15,381** – towards Dover Library and stock for mobile library, which attends Capel le Ferne. The DDC Principal Infrastructure and Delivery Officer has commented that this request is acceptable, although suggests that the nomination should be solely for the mobile library to reduce the accumulation of pooled contributions, given the upper limit of five.
- 3.50. **Social care – £11,023** – towards phase 1 of the Dover Discovery Centre Social Care Hub. A request is also made that The DDC Principal Infrastructure and Delivery Officer has commented that this request is acceptable.
- 3.51. The Kent County Council requested planning obligation amounts to £666,629, with **£662,989 considered to be acceptable**.
- 3.52. **South Kent Coastal Clinical Commissioning Group (CCG) (NHS) – £122,688** – towards the improvement and renovation of existing surgeries in Folkestone, within Shepway district. The CCG has stated that the proposed development is not large enough to constitute the establishment of a new surgery. The DDC Principal Infrastructure and Delivery Officer has commented that this request is likely to be acceptable, subject to provision of further details.
- 3.53. **Thanet Coast and Sandwich Bay SPA – £7,048** – towards the identified, and previously contributed to, ecological mitigation scheme.
- 3.54. **The total of all planning obligations, considered to be acceptable, amounts to £792,725.** The developer has indicated agreement to all of the requested development contributions.
- 3.55. The developer has proposed a gift of land towards Kent County Council/Capel le Ferne Primary School, which is proposed to be used as the main pupil drop off location/a general extension to the school grounds. KCC has indicated that it welcomes this proposal, however, the contributions it requested are for White Cliffs Primary and Dover Girls Grammar. Correspondence with KCC confirms that this remains the case and subsequently, the conclusion is that any gift of land to Capel Primary would not meet the tests of CIL regulation 122. Therefore,

the proposed land gift cannot be considered as part of any legal agreement.

- 3.56. The conclusion is that obligations put forward by the developer are on the whole considered to be acceptable, except where referred to above and could be dealt with by a legal agreement in this case.

3.57. Drainage

KCC as the local lead flood authority is satisfied that site drainage details could be dealt with through condition.

3.58. Utilities

Southern Water has indicated that foul water and sewage drainage details should be sought through condition.

- 3.59. Affinity Water has not responded to the consultation, however, it is unlikely that the development could not be served with clean water. Details of clean water can be sought through condition.

- 3.60. EDF Energy has not responded to the consultation, however, it is unlikely that the development could not be provided with means of power. Details of this can be sought through condition.

3.61. Sustainability Assessment and Conclusion

There are three dimensions to sustainable development: economic, social and environmental. Planning therefore needs to perform roles in respect of these, and each development proposal needs to be considered on that basis. They cannot be considered in isolation – development proposals must meet all three tests.

- 3.62. **Economic** – the development would represent the loss of best and most versatile agricultural land, a topic that also transcends into environmental issues. This means that there would be an economic impact in terms of lost agricultural productivity. Countering this, for the construction phase of the project (lasting 36 months), 174 construction and indirect jobs are expected to be created. When completed, 36 FTE jobs are expected to arise from the development, related to the proposed GP and dental surgeries and the supermarket. The development is also expected to accommodate up to 158 economically active people.

- 3.63. Employment arising from the construction phase of the project is considered to be transitory. Jobs arising from the completed development are considered to be a more accurate indication of economic benefits, as is the resident population of economically active people. However, it is unclear how many of these people reside in the area already and where they might be employed or support other aspects of the economy with household spending i.e. inside or outside of the district.

- 3.64. The applicant has also advised that the development would deliver a New Homes Bonus which would total £1.2 million over a six year period whilst the development, once built, would provide £259,000 (based on average council tax values for bands B to G – £1,825 per dwelling) of additional council tax payments and £53,000 in business rates (based on an estimated value for the location of the relevant businesses and their size, multiplied against the business rates multiplier of 49.7p). The LPA must have regard for local financial considerations, as far as they are material to the application. In this case, the suggested New

Homes Bonus, council tax and business rates receipts would not make the development acceptable in planning terms and, as such, are not material considerations in the determination of this application. In reaching this conclusion, it is noted that the Planning Practice Guide states that “it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body”. Therefore this is not a material consideration and cannot be attributed weight.

- 3.65. In addition, the applicant advises that the development might accommodate a community with an equivalent spending power of around £2.7 million per annum, across convenience, comparison and leisure goods and services.
- 3.66. **Social** – the development would create an extension of Capel le Ferne, which would increase the resident population of the settlement. Residents could be expected to contribute to the local community in some degree, not least as it is likely that some of them would already be existing within it, perhaps as concealed households i.e. where adult children form their own identifiable family unit while still living with their parents. Capel le Ferne has been identified as a local centre, however, the LALP identifies land allocations LA24 – Land south of New Dover Road, LA25 – Land at the junction of Capel Street and Winehouse Lane and LA26 – Land between 107 and 127 Capel Street, as a means of supporting that role in the settlement hierarchy and fulfilling the social needs of the community.
- 3.67. **Environmental** – the environmental effects of the development are almost entirely negative and harmful. The site is situated within the Kent Downs AONB and accordingly, the proposal has been objected to by the DDC Landscape and Ecology Officer, the Kent Downs AONB Unit and Natural England. Assessed against paragraph 116 of the NPPF, the need for the development is not adequately justified and the case is not adequately supported, the development could be accommodated outside of the AONB which has been demonstrated by the LPA in allocating land elsewhere throughout the district. The moderation of the detrimental effect of the development is ultimately an exercise which is very difficult to achieve. The proposed development would see a distinct landscape of the highest status being transformed into a housing estate, which could be located and found widely, such housing estates are typical of urban locations and this proposal brings nothing to this nationally protected landscape. The loss of AONB landscape in this respect is not justified. The coalescence and expansion of built form and the urbanisation it would bring to this unspoilt location is unduly and unnecessarily harmful.
- 3.68. The conclusion, in accordance with NPPF paragraph 14, is that the proposed development is not sustainable. The adverse impacts of granting planning permission would significantly and demonstrably outweigh any benefits.
- 3.69. It is noted that the applicant sought pre-application advice from the council in 2016 and was advised at that time, on broadly the same basis as considered in this report, that the development would be “strongly resisted”. Since the time of that advice being issued and in addition to it, the council is now in a position of being able to demonstrate a five year supply of deliverable housing land. The development is not sustainable. A grant of planning permission would be contrary to legislation as set out at section 38(6) of the Planning and Compulsory Purchase Act 2004. There are no overriding material considerations which indicate that planning permission should be granted – the development is contrary to the development plan and the NPPF.

3.70. In June 2016, the council issued a screening opinion that an environmental statement was not required. This stated that the necessary considerations to allow determination could be dealt with as part of the application process. These considerations have been addressed above, and all comments submitted to the consultation process have been considered in making this recommendation.

g) **Recommendation**

- I. Planning permission be REFUSED for the following reason: The proposed development if permitted by virtue of its location outside of settlement confines, would result in an unsustainable, unjustified form of urbanising development in the protected AONB, leading to a loss of BMV land and countryside, which would be significantly harmful to the scenic beauty and landscape quality of the local and wider area and the street scene, where there are no overriding public benefits, contrary to Core Strategy policies DM1, DM15 and DM16 and the aims and objectives of the NPPF in particular at paragraphs 8, 9, 11, 12, 14, 17, 112, 115 and 116 and the Kent Downs AONB Management Plan policies SD1, SD2, SD3, SD8 and LLC1
- II. Powers to be delegated to the Head of Regeneration and Development to settle the precise reasons for refusal, in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Darren Bridgett