

- a) **DOV/17/01022 – Erection of a detached dwelling with associated parking and creation of vehicular access - Land adjacent to 44 Foster Way, Deal**

Reason for report: Called to Planning Committee by Cllr Gardner

- b) **Summary of Recommendation**

Planning Permission be refused.

- c) **Planning Policies and Guidance**

Core Strategy Policies

- CP1 – Requires that the location and scale of development complies with the Settlement Hierarchy. Deal is identified as a District Centre, which is the secondary focus for development in the District; suitable for urban scale development.
- CP6 - Development that generates a demand for infrastructure will only be permitted if the necessary infrastructure is either already in place, or there is a reliable mechanism to ensure that it will be provided at the time it is needed.
- DM1 - Development will not be permitted outside of the settlement confines, unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- DM11 - Development that would generate high levels of travel will only be permitted within the urban areas in locations that are, or can be made to be, well served by a range of means of transport.
- DM13 - Parking provision should be design-led, based upon an area's characteristics, the nature of the development and design objectives, having regard for the guidance in Table 1.1 of the Core Strategy.

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles which, amongst other things, seeks to: proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs; secure high quality design and a good standard of amenity for all existing and future residents; to reduce pollution; and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
- Chapter four of the NPPF seeks to promote sustainable transport. In particular, paragraph 29 states that "the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel".
- 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.

- Chapter seven requires good design, which is a key aspect of sustainable development.

The Kent Design Guide (KDG)

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

d) **Relevant Planning History**

DOV/15/00327 – Erection of 9 chalet bungalows, associated parking and vehicular access – Granted

DOV/16/00998 – Erection of two detached dwellings and creation of parking – Refused and Dismissed at Appeal

DOV/16/01038 – Variation of condition 2 of planning permission DOV/15/00327 to allow amendments to the approved plans (amendments to the rear dormer roof extensions on chalet bungalows and alterations to fenestrations) (section 73 application) – Refused and Allowed at Appeal

DOV/17/00194 – Variation of condition 2 of planning permission DOV/15/00327 to allow amendments to the approved plans (amendments to the rear dormer roof extensions on chalet bungalows and alterations to fenestrations) (section 73 application) – Refused

DOV/17/00514 - Variation of condition 2 of planning permission DOV/15/00327 to allow changes to approved plans (application under section 73) – Granted

DOV/17/00832 – Erection of detached dwelling – Granted

e) **Consultee and Third Party Responses**

KCC Highways and Transportation – The development does not meet the criteria to warrant the involvement of the Highways Authority.

Southern Water – A formal application should be made to connect to the public foul sewer system. The Councils building control officers should consider the adequacy of soakaways to dispose of surface water.

Deal Parish Council – Object. The application is over development of the site which may cause a tunnelling effect, overbearing to neighbouring property and the additional dwelling will cause limited parking in Foster Way. Deal Town Council fully support the Inspectors Report in the Appeal Decision.

Neighbours – Thirty two letters of objection have been received, raising the following concerns:

- Regard should be had for the previous refusals and dismissed appeal
- Overdevelopment
- The proposal would result in a density which is too high
- Harm to the character and appearance of the area
- The development would be out-of-keeping with the properties in Foster Way
- Loss of openness
- Loss of a green/landscaped space
- The development would cause overlooking to neighbours and a loss of privacy
- Sense of enclosure to neighbours
- The sense of enclosure which led to the appeal being dismissed was a result of the proposed dwelling, not the boundary wall

- The boundary wall is not owned by the applicant and therefore it cannot be reduced in height
- Insufficient car parking provision
- Vehicular access from Foster Way is unacceptable
- The location of the access onto Belvedere Gardens is unsafe
- The site should be properly maintained by the developer

In addition, two letters of support have been received, raising the following comments:

- The existing site could become a dumping ground
- The development would make an outlook that would match existing properties
- The development would not put a strain on the cul-de-sac, the road or incoming services
- The development would improve outlook, compared to a 6ft wall
- The development will add to Foster Way
- There will be enough parking space

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

- 1.1 The site lies within a wholly residential area of Deal. The area has a mixed character with linear and perimeter block development to the south east and winding cul-de-sacs to the north west. The scale and form of development is equally varied, with a mixture of detached, semi-detached and terraced properties of one, one and a half or two storeys in height, although distinctive styles of dwellings are typically found grouped together.
- 1.2 The site itself lies at the end of a row of nine dwellings which have recently received part retrospective planning permission and are nearing completion (some of these dwellings appear to have been occupied). The access road is now known as Belvedere Gardens.
- 1.3 Planning permission was recently granted for the erection of a further dwelling to the north east of Belvedere Gardens, adjacent to Dola Avenue. This dwelling is similar to one of the two dwellings which was previously dismissed at appeal under application DOV/16/00998, whilst the current application represents the second of the two plots previously considered.
- 1.4 The site was previously intended, under the original application (DOV/15/00327, as amended) and subsequent Section 73 application to provide residential garden. However, the development has not been completed and the site remains vacant. More recently, trenches have been dug and concrete slabs (which have the appearance of foundations) have been poured on site.
- 1.5 This application seeks permission for the erection of one detached one and a half storey chalet bungalow which would be located towards the Foster Way (south west) end of the site. The dwelling would be provided with one car parking space which would be accessed directly from Foster Way. It is important to note that the dwelling which is the subject of the current application is similar to one of the two dwellings which was refused and subsequently dismissed at appeal, under application number DOV/16/00998. The Inspectors decision and the changes which have been made will be important considerations in the assessment of this application.
- 1.6 An amended drawing (EB/1001/PD/103 G) has been received which amend the design of the dormers to the north west roof slope; removes a ground floor window to the north east elevation and removes the boundary walls to the north

west and south west boundaries. The application has been assessed on the basis of the amended drawing.

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 the local highway network
- The impact on living conditions

Assessment

Principle

2.2 The site lies within the settlement confines of Deal, as defined by the Proposals Map. Within this area, having regard for Policy DM1, the principle of the proposed development is acceptable subject to other material considerations.

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. It is a statutory requirement to determine the application in accordance with the development plan unless material considerations indicate otherwise, as required by the Section 38(6) of The Planning and Compulsory Purchase Act 2004.

Character and Appearance

2.4 The previous application for the site was refused, in part, due to the harm it would cause to the character and appearance of the area. The reason for refusal read:

“The proposed development, by virtue of the location, layout, scale and design of the dwellings, together with their relationship with adjoining properties, would create a cramped and congested form of development, out of character with the pattern of development within the area. Consequently, the development would fail to integrate into, and cause harm to, the character and quality of the area, contrary to paragraphs 17, 58, 59, 60, 61 and 64 of the National Planning Policy Framework”.

2.5 This decision was subsequently dismissed at appeal. In respect of the proposed dwelling on the current application site, the Inspector commented at paragraphs 6, 7 and 8 of her Appeal Decision:

“No 24 would occupy a plot at the end of a run of new semi-detached chalet this run of buildings and would have very limited effect on the street scene from Dola Avenue, being separated by some distance. I am again advised that the plot was proposed to form a garden area under the permitted scheme, which would give a pleasant, spacious character to this end of the development. However, given that the siting, scale and design of No 24 would reflect that of the adjacent new buildings, I consider that the character and appearance of the wider development, of itself, would not be significantly altered by the introduction of this additional unit.

Notwithstanding, this end of the development, and particularly the plot which would accommodate No 24, is clearly visible from Foster Way. From there, the plot offers separation between the individual style of the new development and existing houses in Foster Way, particularly Nos 44 and 42. This gap provides a sense of openness between the two streets and is currently dominated by a tall tree. No 24 would significantly erode this openness, partially obscuring the tree from Foster Way, which would result in a cramped appearance to this end of the development when viewed from Foster Way. Furthermore, No 24 would present a rear elevation to Foster Way, bounded by a wall enclosing the dwelling from the road, which would be generally out of keeping with the front elevations interacting with the road in this vicinity. For these reasons, No 24 would appear out of keeping with the general form and pattern of development of the surrounding area.

In light of the above, I conclude that the proposed development would significantly harm the character and appearance of the area. This would be contrary to the aims of the National Planning Policy Framework (the Framework), in particular Paragraphs 17, 58, 60 and 64 which among other things seek high quality design that responds to local character, promotes local distinctiveness and takes opportunities to improve the character and quality of an area. Paragraphs 59 and 61 are of no significant relevance to this appeal in that they respectively relate to design codes and policies and to connectivity between people and places”.

- 2.6 In summary, the Inspector concluded that the development would cause no harm to the visual amenity of Belvedere Gardens or Dola Avenue. However, the Inspector considered that: the dwelling on the current application site would be clearly visible from Foster Way; the gap created by the site provides an important sense of openness; the loss of this gap would cause a cramped appearance to the development when viewed from Foster Way; and the design of the development would be out-of-keeping with the properties in Foster Way. This application will need to overcome these concerns (and not create any additional harm).
- 2.7 The size and general form of the building is similar to the previously dismissed scheme. The building has been located around half a metre further from the side elevation of No.22 Belvedere Gardens and consequently closer to the boundary with No.44 Foster Way; however, this modest repositioning would not be particularly noticeable (or of significance) in views of the site from Foster Way. The development would, therefore, still result in the loss of openness at the end of Foster Way, creating a cramped appearance. The location, layout and scale of the development is therefore unacceptable.
- 2.8 The design of the dwelling has changed. Whilst the overall appearance of the building would remain consistent with the overall appearance of the dwellings in Belvedere Gardens, the development would be rotated such that it would address Foster Way, although its front door would remain to the side elevation. From Foster Way, the north west elevation would be visible. This would contain two windows at ground floor level and two flat roofed dormer windows within the roof slope. Whilst this amends the previous design of this elevation, it is not considered that the changes are significant. The Inspector criticised the lack of an active frontage to Foster Way, the wall enclosing the site and the lack of consistency with the design of properties in Foster Way. The proposal has removed the boundary wall which, visually, is positive. However, the proportions and materials would remain wholly at odds with the distinctive and cohesive design of properties in Foster Way. The detailed design is therefore unacceptable.

- 2.9 As such, the development has not overcome the previous reason for refusal or the concerns of the Planning Inspector, causing significant harm to the character and appearance of the area.

Impact on Residential Amenity

- 2.10 Application DOV/16/00998 was refused, in part due to the impact of the proposed chalet bungalow on No.44 Foster Way. The reason for refusal cited that the development would “cause an unacceptable sense of enclosure to that property, resulting in an unacceptable loss of amenity, contrary to paragraphs 17, 58, 59 and 61 of the National Planning Policy Framework”. Moreover, in dismissing the appeal, at paragraphs 11 and 12 of the appeal decision, the Inspector considered that:

“No 24 would be positioned fairly close to the common boundary with No 44. No 44 is set back from Foster Way and is significantly set back from its immediate neighbour 42 Foster Way (No 42). The new chalet bungalow would be positioned closer to the road in Foster Way than No 42, and substantially closer than No 44. The result of this would be a tunnelling effect to No 44, which would result in an unacceptable sense of enclosure affecting the outlook from the front elevation of that house, where there are principal windows to habitable rooms. However, given that No 24 would be orientated roughly to the north of No 44, no significant loss of light would occur. I also note that No 44 has a long garden at the rear but this does not alter my concerns regarding the effect of the proposed development at the front of the property.

For these reasons, I conclude that the proposed development would significantly harm the living conditions of the occupiers of nearby dwellings, with particular regard to outlook. This would be contrary to the aims of the Framework, in particular Paragraph 17 which among other things seeks to ensure a good standard of amenity for all existing and future occupiers of land and buildings, and Paragraph 58 which among other things seeks to ensure comfortable places to live, work and visit”.

- 2.11 The size of the building has not changed since the previous application and appeal were considered. However, the building has been located around 0.5m closer to the south western boundary of the site (its common boundary with No.44 Foster Way). As such the building would be located around 3.2m away from No.44, whilst the previous application proposed a dwelling around 3.7m away from No.44. The design of the building has also changed, although its general form is the same. The south western elevation (which faces towards No.44 has been amended to now include the entrance door and a small window at ground floor level and a window serving a landing at first floor level (the previous scheme proposed just a ground floor window). The size, shape and location of dormers in the north western and south eastern roof slopes have also changed. The final change to the scheme which has the potential to impact upon the developments relationship with No.44 is the proposed changes to the boundary treatments, with both the south western and north western boundary treatments being removed. Overall, the development would continue to cause a ‘tunnelling’ effect on No.44, which would be sandwiched between No.42 and the full depth of the gable elevation of the proposed dwelling. It is not considered that the removal of the wall would mitigate this harm, particularly as the side elevation of the proposed dwelling would be even closer to No.44 than the dismissed scheme. The development would therefore cause an unacceptable sense of

enclosure and corresponding loss of outlook to No.44 Foster Way, contrary to paragraphs 17 and 58 of the NPPF.

- 2.12 In agreement with the Inspectors previous findings, it is not considered that any unacceptable loss of light would occur.
- 2.13 The current application proposes a first floor window in the south western elevation of the dwelling. Such a window was not proposed in the previous, dismissed scheme. This window, which would serve a stairwell and landing, would face towards the front garden/parking area of No.44 and the side elevation of No.42. The window would provide clear views of the front garden/parking area; however, this area is readily visible from Foster Way such that no loss of privacy would result. Some angled views from the window would be possible towards the windows to the front elevation of No.44. Whilst some views would be possible and there would be a perception of overlooking, it is considered that due to the angle of views and the limited use of the area to which the window serves, overlooking would be very limited. It would be proportionate to include a condition on any grant of permission to require the window to be obscure glazed and non-opening.
- 2.14 The side elevation of No.42 does not contain any windows and, as such, it is not considered that this property would suffer from overlooking.
- 2.15 Notwithstanding the concerns raised above, third parties have contended that the wall to the south west boundary of the site is not within the ownership of the applicant and, as such, cannot be reduced in height or removed. It is concluded that the unacceptable harm caused to No.44 does not result from the retention of the wall, but with the additional harm caused by the proposed dwelling itself. As such, the determination of the application does not turn on the ownership of the wall. Were the reduction in the height or removal of the wall to be consequential, it is noted that the application is made on the basis that the wall is reduced and the applicant has signed Certificate A. As such a pre-commencement condition could to be attached, were it to be necessary.
- 2.16 It is not considered that the living conditions of any other dwellings would be unacceptably impacted by the development.

Living Conditions of Future Occupiers

- 2.17 The dwelling proposed would be of a reasonable size, would be naturally lit and ventilated and would have access to a private external amenity area. An area is shown on the submitted drawings for the convenient and discrete storage of refuse. Consequently, it is considered that the living conditions of future occupiers would be acceptable.

Impact on the Highway

- 2.18 The application proposes the provision of one car parking space, which would be accessed directly from the turning head at the end of Foster Way.
- 2.19 The application proposes one car parking space. The dwelling is shown to provide two bedrooms at first floor level, whilst a study at ground floor level could provide a third bedroom. Within a suburban location such as this 2-bed dwellings will be expected to provide 1 allocated car parking space whilst 3-bed dwellings will be expected to provide 1.5 allocated car parking spaces. In either case, an additional 0.2 spaces should be provided for visitors. As such, the development would give rise to a need for between 1.2 and 1.7 car parking spaces.

Consequently, the development would be deficient in car parking, albeit by a fraction of a space. It is acknowledged, as set out by third parties, that car parking in Foster Way is constrained, particularly in the evenings and at weekends. Whilst the development would be likely to increase pressure for visitor parking in Foster Way, it is not considered that this additional pressure would amount to a severe cumulative impact, which is the relevant test within the NPPF. Third parties have also commented that the proposed access would remove parking spaces on Foster Way. The access would join Foster Way at its turning head, which is already largely surrounded by vehicular accesses and dropped kerbs. Any parking in the turning head would be likely to limit the ability of cars to turn and prevent access to driveways. As such, it is not considered that the turning head provides safe and convenient parking. The introduction of one additional access would not, therefore, be harmful.

- 2.20 It is proposed to remove the existing boundary wall adjacent to Foster Way. This would allow pedestrians using the footpath to be seen by drivers exiting the driveway, as KCC typically require visibility splays to have no obstructions over 0.6m in height. Subject to the removal of the wall being secured by condition, adequate pedestrian visibility would be achieved.
- 2.21 The submitted drawings show the provision of vertical cycle storage, consistent with the storage which has been provided for the approved dwellings in Belvedere Gardens. This provision is considered to be acceptable, subject to a condition ensuring that the storage is provided at the time of occupation.

Other Material Considerations

- 2.22 An important material consideration is the NPPF, which must be carefully considered to determine whether it provides justification for granting planning permission.
- 2.23 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". As previously confirmed, the Council can demonstrate a five year housing land supply.
- 2.24 Sustainability is defined in the NPPF, at paragraph six, as paragraphs 18 to 219 of the NPPF taken as a whole. However, the assessment of sustainability can also be separated into three dimensions: economic, social and environmental.
- 2.25 The development would provide a short term economic benefit, by providing employment during the construction phase. The development would also provide a small increase in the local population and, accordingly, spending power.
- 2.26 The development would provide an additional dwelling which would, to a minor degree, contribute towards the Districts housing supply and would accord with the aim of significantly boosting the supply of housing, albeit the site does not fall within the definition of a windfall site. However, this benefit is qualified by the Councils ability to demonstrate a housing land supply of 6.02 years. The development would be located in a sustainable location, which allows for the use of range of modes of transport and access to facilities and services. However, the application would not secure a high quality built environment, causing a significant adverse impact on the character of the area.

- 2.27 The development would fail to protect and enhance the built environment. The development would also result in the development of a non-previously developed site.
- 2.28 Overall, balancing each of the three dimensions, it is considered that, whilst the development would provide some modest benefits, it is not considered that these benefits, either alone or in combination, are of sufficient to outweigh the substantial harm which has been identified. It is therefore concluded that the development is not sustainable.
- 2.29 It is not considered that there are any other material considerations which outweigh the harm identified.

Conclusion

- 2.30 Whilst the principle of the proposed development is acceptable, it is not considered that the development has overcome the concerns which led to the refusal of application DOV/16/00998 and the subsequent dismissal of the appeal in relation to the same, insofar as they relate to the development of the current application site. In particular, the development would cause unacceptable harm to the character and appearance of the area and harm to the residential amenity of No.44 Foster Way.
- 3.31 For these reasons, it is recommended that planning permission be refused.

g)

Recommendation

- I Planning Permission BE REFUSED for the following reasons:-
- (1) The proposed development, by virtue of the location, layout, scale and design of the dwellings, together with their relationship with adjoining properties, would create a cramped and congested form of development, out of character with the pattern of development within the area. Consequently, the development would fail to integrate into, and cause harm to, the character and quality of the area, contrary to paragraphs 17, 58, 59, 60, 61 and 64 of the National Planning Policy Framework.
- (2) The proposed dwelling, by virtue of its location, scale and relationship with No.44 Foster Way, would cause an unacceptable sense of enclosure to, and corresponding loss of outlook from, that property, resulting in an unacceptable loss of amenity, contrary to paragraphs 17, 58, 59 and 61 of the National Planning Policy Framework.
- II Powers to be delegated to the Head of Regeneration and Development to settle any reasons for refusal, in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Luke Blaskett