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3 March 2014

Dear Councillor

NOTICE IS HEREBY GIVEN THAT a meeting of the **PLANNING COMMITTEE** will be held in the Council Chamber at these Offices on Thursday 13 March 2014 at 6.00 pm when the following business will be transacted.

Members of the public who require further information are asked to contact Kate Batty-Smith on (01304) 872305 or by e-mail at katebatty-smith@dover.gov.uk.

Yours sincerely

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

Chief Executive

Planning Committee Membership:

Councillor F J W Scales (Chairman)
Councillor B W Butcher (Vice-Chairman)
Councillor J S Back
Councillor T A Bond
Councillor P M Brivio
Councillor J A Cronk
Councillor B Gardner
Councillor K E Morris
Councillor R S Walkden
Councillor P M Wallace

AGENDA

1 **APOLOGIES**

To receive any apologies for absence.

2 **APPOINTMENT OF SUBSTITUTE MEMBERS**

To note appointments of Substitute Members.

3 **DECLARATIONS OF INTEREST**

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

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

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

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

Note to the Code:

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

4 **MINUTES** (Pages 5 - 12)

To confirm the attached Minutes of the meeting of the Committee held on 13 February 2014.

5 **ITEMS DEFERRED** (Page 13)

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

ITEMS WHICH MAY BE SUBJECT TO PUBLIC SPEAKING

(Pages 14 - 17)

- 6 **APPLICATION NO. DOV/13/001007 – LAND AT THE STRAND, WALMER**
(Pages 18 - 23)

**APPLICATION NO. DOV/13/001007 – ERECTION OF 20 BEACH HUTS ON
LAND AT THE STRAND, WALMER**

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

- 7 **APPLICATION NO. DOV/13/0916 - 57 CASTLE AVENUE, DOVER, CT15 1EZ**
(Pages 24 - 30)

**APPLICATION NO. DOV/13/0916 - ERECTION OF A DETACHED TWO STOREY
BUILDING INCORPORATING A GARAGE AND SUMMERHOUSE AND
CREATION OF A VEHICULAR ACCESS - 57 CASTLE AVENUE, DOVER, KENT
CT15 1EZ**

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

ITEMS WHICH ARE NOT SUBJECT TO PUBLIC SPEAKING

- 8 **APPLICATION NO. DOV/13/00163 – CERTIFICATE OF LAWFULNESS
(PROPOSED) - 55 WESTCOURT LANE, SHEPHERDSWELL** (Pages 31 - 33)

**APPLICATION NO. DOV/13/00163 – CERTIFICATE OF LAWFULNESS
(PROPOSED) FOR THE ERECTION OF A DETACHED GAMES ROOM AND
HOME OFFICE AND DETACHED GARAGE WITHIN THE CURTILAGE OF 55
WESTCOURT LANE, SHEPHERDSWELL**

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

- 9 **APPEALS AND INFORMAL HEARINGS**

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

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

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

Access to Meetings and Information

- Members of the public are welcome to attend meetings of the Council, its Committees and Sub-Committees. You may remain present throughout them except during the consideration of exempt or confidential information.

- All meetings are held at the Council Offices, Whitfield unless otherwise indicated on the front page of the agenda. There is disabled access via the Council Chamber entrance and a disabled toilet is available in the foyer. In addition, there is a PA system and hearing loop within the Council Chamber.
- Agenda papers are published five clear working days before the meeting. Alternatively, a limited supply of agendas will be available at the meeting, free of charge, and all agendas, reports and minutes can be viewed and downloaded from our website www.dover.gov.uk. Minutes are normally published within five working days of each meeting. All agenda papers and minutes are available for public inspection for a period of six years from the date of the meeting. Basic translations of specific reports and the Minutes are available on request in 12 different languages.
- If you require any further information about the contents of this agenda or your right to gain access to information held by the Council please contact Kate Batty-Smith, Democratic Support Officer, telephone: (01304) 872305 or email: katebatty-smith@dover.gov.uk for details.

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

Minutes of the meeting of the **PLANNING COMMITTEE** held at the Council Offices, Whitfield on Thursday, 13 February 2014 at 6.00 pm.

Present:

Chairman: Councillor F J W Scales

Councillors: J S Back
T A Bond
P M Brivio
B W Butcher
J A Cronk
B Gardner
K E Morris
R S Walkden
P M Wallace

Officers: Principal Planner (Development)
Senior Planner
Senior Planner
Solicitor to the Council
Democratic Support Officer

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

<u>Application No</u>	<u>For</u>	<u>Against</u>
DOV/13/00762	Mr Duncan Smyth	–
DOV/13/00941	Ms Louise Claringbould	Mr Stan Stores
DOV/13/00998	Miss Leanne Wood	–
DOV/13/00951	Mr Nigel Brown	Mr Bob Frost
DOV/13/00872	Mr Clive Tidmarsh	Mr Tim Synge

488 APOLOGIES

It was noted that there were no apologies for absence.

489 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that no substitute members had been appointed.

490 DECLARATIONS OF INTEREST

There were no declarations of interest from Members.

491 MINUTES

Subject to the inclusion of Councillor R S Walkden as an attendee, the Minutes of the meeting held on 16 January 2014 were approved as a correct record and signed by the Chairman.

APPLICATION NO DOV/13/00762 - ERECTION OF AN ATTACHED GRANNY ANNEXE AND DETACHED GARAGE AT YEW TREE INN, BARFRESTONE, EYTHORNE, DOVER

The Committee viewed photographs and plans of the site. The Principal Planner advised that the proposal was for the erection of a granny annexe measuring 11 metres deep by 5.6 metres wide to the rear of a dwelling which had been converted from a public house in 2011. It was also proposed to erect a detached double garage measuring approximately 6.5 by 6.5 metres.

The Principal Planner advised Members that the site occupied a prominent, elevated location within a Conservation Area and was in close proximity to a Grade 1-listed church. The open character of the site was important to the setting of the Conservation Area, and contributed to the sense of undeveloped open space around the listed building. The proposed extension was considered to be oversized and would block views of the church which contributed significantly to the character of the Conservation Area. In essence, the proposed development would compete with, and detract from, the setting of the listed building.

Councillor B Gardner expressed sympathy with the applicant's desire to accommodate his elderly mother, but was not in favour of the application due to the size of the extension and inclusion of the garage. Councillor J A Cronk referred to material planning grounds, stating that the proposed development was outside the settlement confines and would have a detrimental impact on the church. Councillor K E Morris was of the opinion that the garage had been 'tacked' on to the application and was unrelated to the needs of the applicant's mother.

Councillors T A Bond and R S Walkden questioned from what distance the church could be seen when approaching the hamlet, and stated that they would support the inclusion of a garage if one had been there previously, as was indicated by the remains of a concrete base. Councillor Walkden added that, in his opinion, the harm that would be caused by the development was not so significant that it outweighed the need for the accommodation.

The Principal Planner clarified that there was no documentary evidence on the origins of the garage base which was likely to have been erected at a time when planning permission was not needed. In any case, the Committee was required to consider the application against current planning policies. It was explained that hedge screening was not normally considered to be an acceptable form of mitigation where a proposal would cause demonstrable harm. Furthermore, planting was only really effective in the summer months. It was accepted that the church could only be glimpsed from certain approaches, but these were important glimpses. In response to queries, it was confirmed that pre-application advice had not been sought by the applicant, and that the Council's Conservation Officer had supported the grounds for refusing the application.

RESOLVED: That Application No DOV/13/00762 be REFUSED on the following grounds:

- (a) The site is located within a rural area, outside any settlement confines, and within a conservation area. The proposed extension and garage, by virtue of their scale, design and siting, would be prominent and strident features which would detract from the intrinsic character and appearance of this rural and

historic area. They would neither preserve nor enhance the character or appearance of this part of the conservation area. As such, they would be contrary to Core Strategy policies DM1 and DM15 and the aims of the National Planning Policy Framework which seek developments of high quality design and the conservation and enhancement of historic environments.

- (b) The proposed extension and garage would, by virtue of their scale, design and siting, be a substantial and unacceptable encroachment of built development towards the adjoining churchyard. They would be visually prominent and, as such, would detract from the setting of the adjacent Grade 1-listed church building, contrary to the aim of protecting heritage assets as required under the National Planning Policy Framework.
- (c) No information has been submitted to justify an annexe extension of the location, design and scale proposed which might outweigh the harm identified to the character and appearance of the area and the setting of the adjacent Grade 1-listed building. The proposals are therefore contrary to policy DM9 of the Core Strategy.

493 APPLICATION NO DOV/13/00941 - RETROSPECTIVE APPLICATION FOR THE CREATION OF A SAND SCHOOL AND RE-SURFACING OF EXISTING ACCESS AT OWL HOUSE STABLES, STATION ROAD, ST MARGARET'S-AT-CLIFFE, DOVER

Members were shown photographs and plans of the site. The Senior Planner advised that the application was a retrospective one for the creation of a 22-metre by 40-metre sand school and the resurfacing of existing access. Although the site was outside the rural settlement confines, the school was ancillary to the existing business, required a rural location and was not inconsistent with the types of developments found in rural locations. The site was well screened and there would therefore be no visual impact on the wider landscape. Furthermore, given the distance of 'Pauldene' from the sand school, and the size of its garden, it was considered that the proposal would not be detrimental to the residential amenity of the neighbouring property. However, the hours of use described by the applicant and reproduced in the report contradicted those given by a neighbour.

Councillor Morris stated that the proposal was worthwhile, but a balance needed to be struck in order to preserve the residential amenity of the occupants of 'Pauldene'. Councillor Gardner suggested that a condition should be added to specify the hours of use permitted and the condition relating to floodlighting tightened up. The Senior Planner advised Members that conditioning specific hours of use might be considered unreasonable given that there was a requirement within the National Planning Policy Framework (NPPF) to support a prosperous rural economy. However, several Members agreed that it was important to condition the hours of use in order to mitigate the impact on the neighbouring property.

Discussions followed about the possible re-location of the sand school within the site which would obviate the need to condition the hours of use. However, the Senior Planner advised that, as a retrospective application, this was not an option and would have cost implications for the school. Planners had had no input in to the location of the sand school, first learning of it from Planning Enforcement officers investigating a reported breach of planning control. On screening, Members were advised that it would be difficult to enforce a condition which specified a minimum height requirement. However, a landscaping plan could be required to indicate what additional planting was proposed and what screening would be retained.

RESOLVED: (a) That Application No DOV/13/00941 be APPROVED, subject to the following conditions:

- (i) Standard time limit;
- (ii) Development to be carried out in accordance with approved plans;
- (iii) No floodlighting to be installed or brought onto the site, whether permanent or temporary;
- (iv) Hours of use to be limited to 4 hours on weekdays and 3 hours on Saturdays and Sundays, a schedule of use to be agreed by Officers with the applicant in consultation with the Chairman of the Planning Committee;
- (v) Submission of a Landscaping Plan indicating screening to be retained and additional planting.

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

494 APPLICATION NO DOV/13/01007 - ERECTION OF 20 BEACH HUTS ON LAND AT THE STRAND, WALMER

Members viewed photographs and plans, and were advised by the Senior Planner that the proposal related to the erection of twenty 3-metre high beach huts measuring 2.1 by 2.6 metres. The huts would be of a similar design to the existing huts and would be arranged at random in relation to them. Whilst the site formed part of a designated open space, it had not always been used for that purpose, and it was therefore considered that there would be no tangible loss of open space.

Several Members raised concerns about the Portaloo, the impact on parking and the random layout proposed for the huts. Members were advised that the toilet would be small in scale, covered in timber cladding and access keys would be issued to tenants. It would be emptied by the supplier, with routine maintenance carried out by a company appointed by Dover District Council. It was suggested that the proposed layout of the huts might have been influenced by the wish to retain views of the sea, and by the layout of existing huts and other associated

paraphernalia on the seafront. Kent Highways and Transportation had not commented on parking, but in Officers' opinion it was likely that prospective tenants were already using the beach on a regular basis so a significant increase in traffic and parking need was not envisaged.

Councillor Butcher was of the opinion that the Committee could not make an informed decision as there was insufficient information in the report on the Portaloo and parking. Councillor Gardner added that the Committee must be especially scrupulous when determining the application as it had been submitted by its own authority.

RESOLVED: That Application No DOV/13/001007 be DEFERRED on the following grounds:

- (a) To receive further information on the siting, scale, maintenance and usage of the Portaloo;
- (b) To receive further information on parking, including potential impact, and outline details of where waiting list applicants reside.

495 APPLICATION NO DOV/13/00998 - RETROSPECTIVE APPLICATION FOR THE ERECTION OF A TIMBER CABIN TO BE USED AS A SHOP (USE CLASS A1) AT DELF NURSERY, DEAL ROAD, SANDWICH

The Committee viewed photographs of the site. The Principal Planner advised that the application related to the siting of a 4.5 by 2.4-metre timber cabin on a concrete apron at Delf Nursery. A previous, identical application had been refused by Officers using delegated powers. It was clarified that comments had been received from Sandwich Town Council in time for the report and it fully supported the application.

The Principal Planner advised that the previous application had been assessed and refused purely on policy grounds. In respect of Core Strategy policy DM1, no evidence had been submitted as to why the business functionally required a rural location which would justify development outside urban confines. Furthermore, the sale of second-hand clothes could not be considered as ancillary to the nursery or its associated business activities. With regards to Core Strategy policy DM3, no evidence had been presented to demonstrate that no suitable site existed within the confines of Sandwich. The NPPF supported businesses and sustainable development in rural areas but, in the case of local shops, suggested that these be located in villages. In policy terms, the proposal before Committee would be more appropriately located in Sandwich town centre. No objections had been raised to the application on highways or landscaping grounds.

Notwithstanding the policy issues, Members' attention was brought to the statement in the application submission which indicated that the applicant was a highly motivated 17-year-old who had invested her entire savings into the proposal. On this basis, it was understood that refusal of the application could result in a significant financial loss for the applicant. Personal hardship associated with financial loss was capable of being a material planning consideration, although it was not usual practice to attach any significant weight to it such as to override normal planning policies. Accordingly, such a course was not recommended in this case.

Councillor Butcher stated that he strongly supported the development which was a small retail outlet that enhanced the site. The application had attracted several letters of support and Sandwich Town Council had voted unanimously in favour of it. It was recognised that the development was outside the town confines but, rather than taking trade away from the town centre, it was more likely to encourage people to visit it.

Councillors Gardner and Morris stressed that, if planning permission were granted, it should not set a precedent for other development on the site. Councillor Morris suggested that, given that the applicant was closely related to the nursery owners, it was unlikely that she would be able to find another site so readily at a reasonable rent within the town confines. Councillor Bond was of the view that the proposed business was complementary to the nursery's activities, and the building was modest in size and in character with others at the site.

RESOLVED: (a) That, notwithstanding the Officer's recommendation, Application No DOV/13/00998 be APPROVED on the following grounds:

- (i) The personal circumstances of the applicant who has developed a start-up business which will bring economic benefits to Sandwich;
 - (ii) The personal financial hardship that would be caused to the applicant by refusal of planning permission;
 - (iii) The small-scale nature of the proposed business.
- (b) Informative: The permission hereby given stems from the personal circumstances of the applicant and does not commit the Council to the favourable consideration of any other retail proposal at the site, which is outside the town of Sandwich in a location where retail planning policies normally prohibit such uses.

496 ADJOURNMENT OF MEETING

It was agreed to adjourn the meeting at 8.10 pm for a short break. The Committee reconvened at 8.14 pm.

497 APPLICATION NO DOV/13/00951- ERECTION OF A DETACHED DWELLING - LAND ADJACENT TO 51 CHURCH PATH, DEAL

The Committee viewed photographs of the site. The Senior Planner advised that the proposal was for one two-storey dwelling on a site which had been the subject of a number of applications that had either been refused or dismissed at appeal. A number of public representations had been received. Those supporting the application referred to the site as an eyesore and stated that development of the site would enhance the area.

The Committee was informed that historic issues associated with the site included the lack of parking, the impact of development on a tree which was the subject of a

Tree Preservation Order (TPO) and its location within a Flood Zone 3 area. However, parking was no longer relevant since the Inspector, at the most recent appeal, had raised no concerns relating to parking for the two dwellings proposed. In addition, Kent Highways and Transportation had raised no objections to the current application on parking or traffic grounds. The dwelling would no longer have an impact on the TPO tree as only one dwelling was proposed which would stand at some distance from the tree. Furthermore, the applicant had submitted evidence that a search had been carried out to check the availability of other sites at lower risk of flooding which had enabled the Local Planning Authority to undertake a Sequential Test. The application now passed the Sequential Test.

Councillor Cronk indicated his support for the application now that parking and access were no longer an issue. The development would greatly improve an unsightly area. Councillor Gardner also indicated his support for the application but requested that condition (iii) be tightened up to ensure that the tree was protected. However, Councillor F J W Scales advised that the tree would be adequately protected by virtue of being subject to a TPO.

RESOLVED: (a) That Application No DOV/13/00951 be APPROVED, subject to the following conditions:

- (i) Standard time limit;
- (ii) Approved plans;
- (iii) Tree Protection measures (if necessary);
- (iv) Cycle provision;
- (v) Flood-proofing measures;
- (vi) Floor levels;
- (vii) Surface water drainage scheme;
- (viii) Construction Management Plan;
- (ix) Material samples;
- (x) Soft and hard landscaping details;
- (xi) Boundary treatment.

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

498 APPLICATION NO DOV/13/00872 - ERECTION OF A DETACHED DWELLING, CONSTRUCTION OF A VEHICULAR ACCESS AND ERECTION OF A REPLACEMENT GARAGE FOR SWANNINGTON - LAND FRONTING SWANNINGTON, CHURCH CLIFF, KINGSDOWN

The Committee was shown photographs of the site which was the subject of an application to erect a dwelling and garage in the front garden of an existing dwelling known as Swannington. A previous application for outline planning permission had been refused in 2007 on the grounds that the proposal would be detrimental to the setting of the nearby church, and the wider setting and character of the adjacent Conservation Area.

Councillor Cronk agreed that the proposed dwelling would overshadow the church and have a detrimental impact on the Conservation Area. Councillor Gardner stated that the applicant had not addressed the previous reasons for refusal and the application should therefore be refused.

RESOLVED: That Application No DOV/13/00872 be REFUSED on the following ground:

The proposal, by way of its size, design, siting and close relationship with St John's Church, would result in the loss of an important open space and would have a detrimental impact on the setting of the Conservation Area (a designated heritage asset) and on the setting of St John's Church (a non-designated heritage asset). As such, the proposal would be contrary to the National Planning Policy Framework.

499 APPEALS AND INFORMAL HEARINGS

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

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

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

The meeting ended at 8.55 pm.

DOVER DISTRICT COUNCIL

REPORT OF THE HEAD OF REGENERATION AND DEVELOPMENT

PLANNING COMMITTEE – 13 MARCH 2014

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

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

1. DOV/13/01007 **Erection of 20 Beach Huts, Land at The Strand, Walmer (Item 7, 13 February 2014).** Reported elsewhere on the agenda.

Background Papers:

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

MIKE EBBS

Head of Regeneration & Development

The Officer to whom reference should be made concerning inspection of the background papers is Abi Robinson, Support Supervisor, Planning Section, Council Offices, White Cliffs Business Park, Dover (Tel: 01304 872471).

APPLICATIONS WHICH MAY BE SUBJECT TO PUBLIC SPEAKING

The Reports

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

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

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

Details of the abbreviated standard conditions, reasons for refusal and informatives may be obtained from the Planning Technician (telephone 01304 872471).

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

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

Site Visits

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

The following criteria will be used to determine usefulness:

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

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

Background Papers

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

The Officer to whom reference should be made concerning inspection of the background papers is Abi Robinson, Planning Technician, Planning, Council Offices, White Cliffs Business Park, Dover (Telephone: 01304 - 872471).

IMPORTANT

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

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

The Development Plan

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

The South East Plan 2009
Dover District Core Strategy 2010
Dover District Local Plan 2002 (saved policies only)
Kent Minerals Local Plan : Brickearth 1986
Kent Minerals Local Plan : Construction Aggregates 1993
Kent Minerals Local Plan : Chalk and Clay and Oil and Gas 1997
Kent Waste Local Plan 1997

Human Rights Act 1998

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

The key articles are:-

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

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

Account may also be taken of:-

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

Article 10 - Right to free expression.

Article 14 - Prohibition of discrimination.

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

(PTS/PLAN/GEN) HUMANRI

PUBLIC SPEAKING AT PLANNING COMMITTEE

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

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Application: DOV/13/01007

- Beach Huts**
- Walmer Seafront**
- The Strand**
- Walmer**

TR37815144



a) **DOV/13/001007 – ERECTION OF 20 BEACH HUTS ON LAND AT THE STRAND WALMER**

Reason for Report – Level of public interest

Report update

Members will recall that this application was deferred at the Meeting of 13th February for further information regarding highways issues, details of the waiting list for beach huts and the proposed management of the portaloo.

As noted below, KCC Highways has now confirmed that there is no highway objection given the parking controls and on street parking available. Whilst it is acknowledged that there may be some increase in on street parking, officers remain of the view that this is unlikely to be significant in the context of overall parking along the seafront.

Further information on the waiting lists for beach huts reveal that the outstanding list for the Kingsdown area currently stands at 88 with 78 for the St. Margaret's area. In the case of Kingsdown, some persons have been on the list since the mid 1990s and 70% of persons are from the local area.

The portaloo has now been omitted from the proposal and the plans amended accordingly.

In view of the above, officers are still of the view that given the demand for beach huts and the difficulties of finding suitable sites, the proposal would be in keeping with the character of the immediate area and would address a local demand. Whilst there may be some increased demand for on street parking, that also needs to be balanced against the issues above and the likely wider advantages to local traders. Accordingly officers remain of the view that the proposal is supportable in planning terms.

b) **Summary of Recommendation**

Planning Permission be granted

c) **Planning Policy and Guidance**

Core Strategy

- Key objective to maintain District's bio diversity.
- DM25 – Proposal for loss of open space not permitted unless small scale development and ancillary to enjoyment of open space. Site should have no overriding visual amenity interest, environmental role, cultural importance or nature conservation value.
- CP7 – Protect and enhance integrity of Green Infrastructure Network

Dover District Local Plan (Saved Policies)

- OS7 – Proposals for outdoor recreational facilities will be permitted if well related to urban edge of Deal, provide opportunity to access facility by public transport and would not cause harm to residential amenity through noise or illumination.

National Planning Policy Framework

- Conserve Heritage Assets – Reflects statutory guidance to preserving or enhancing character or appearance of Conservation Area.

d) **Relevant Planning History**

No relevant planning history.

e) **Consultee and Third Party Responses**

Kent County Council – Highways – No objections. Acknowledges that provision may generate some additional demand but unlikely to be significant with both the A258 and the Beach subject to parking controls with on street parking available.

Kent County Council Public Rights of Way – No objections

Natural England – No objections but points out that regard should be had to any local designations

Environmental Protection – No objections

Environment Agency – No objections but notes that area prone to damage from sea conditions. Consideration should be given to anchoring structures to ground.

Ecological Officer – Site Inspection reveals no ecological interest nor on adjoining Beach area side of site. Ecological survey not required and no ecological harm identified.

Kent Wildlife Trust. – Notes that development is within boundaries of Kingsdown and Walmer Beach Local Wildlife Site. Rare species have been found elsewhere on the Wildlife site. Beach huts would intensify activity and lead to disturbance of plant species. Will also reduce area of open space. Contrary to objectives of Core Strategy to promote bio diversity and also polices CP7 and DM25. Considers ecological survey required. Following response from ecological officer, maintains that survey should be carried out in May/June or July.

Public Representations - 5 public representations object on following grounds:

- Too many huts proposed and out of character with area.
- Would lead to additional parking problems.
- Would impact upon parking for sailing club
- Vulnerable to weather and anti social behaviour
- Portaloo not acceptable
- Compounds should be kept for boat club
- Waste of public money as public unlikely to want beach huts

Walmer Parish Council – Objects on grounds of insufficient information on guidelines for beach hut use; maintenance of portaloo; increase in on street parking a concern; beach huts would appear cramped; would affect expansion for sailing club.

One letter in support – Need for more beaches and good way of bringing more trade into the town

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

1.1 The site comprises two former boat compounds located immediately to the north of Down Sailing Club and to the south of some fishermen's huts. The compounds are enclosed by low picket fences on three sides and are currently underused for boat storage purposes. They are surfaced in pebbles and the eastern side of the compounds extends into the main beach area. The promenade adjoins the site to the west. The fishermen's huts are white painted with black felt roofs and are arranged in a random fashion with various items of fishing equipment and winches amongst them.

1.2 The site is included within the Conservation Area and at the very northern end of the Kingsdown and Walmer Beach Local Wildlife site which stretches for some distance along the beach to the south.

1.3 The proposal is to erect 20 beach huts on the site with 10 in each compound area. They will be white painted with black bitumen roofs to match the existing huts, and arranged in random order to maintain the character of those existing huts. A portaloo is shown at the rear of the site although no details are provided at this stage. The applicant points out that the boat compounds have been underused for a number of years and there are waiting lists for beach huts in St. Margaret's and Kingsdown. The applicant confirms that pre application consultations were carried out with the sailing club.

2. **Main Issues**

2.1 The main issues are; the effect of the proposal on the character and appearance of the Conservation Area; the effect on the provision of open space; the effect on the Local Wildlife Site; the effect on local parking issues.

3. **Assessment**

Effect on character and appearance of the Conservation Area

3.1 The site forms part of the wider Deal Conservation Area, of which the beach frontage forms part, and consequently there is a diverse character of built form and open space throughout. The immediate area is characterised by the existing fishermen's huts to the north, which are sited close together, and the large flat roofed sailing club building immediately to the south. The proposed huts have been deliberately sited to respond to the random arrangement of the existing huts and the design and size of huts will be very similar. The huts will not extend into the active beach area on the seaward side and there will still be views to the sea between the huts when walking along the promenade. It is therefore considered that the

visual impact will be acceptable and in character with the area. The character of the Conservation Area will be preserved which is the statutory test required in the primary planning legislation.

Effect on Open Space

- 3.2 Similar to the Conservation Area designation above, the site forms a small part of a much wider area of open space stretching to the north and south which is primarily aimed at protecting the open nature and accessibility of the coastal frontage. However, given the former use of the site for boat compound use, it has not actively been used for open space in the past. Indeed arguably, the opening up of the area for active recreational use will be beneficial and contribute to the objectives behind the open space designation. There will be no impact on the promenade to the rear or open beach to the front and it is therefore considered there will be no conflict with Policy DM25 which seeks to prevent loss of open space

Impact on ecology

- 3.3 The site forms a very small part of the much larger Local Wildlife Site and is located at its northern end. Although the Kent Wildlife Trust has referred to nationally important species having been found on the site in the past, this relates to the wider area rather than the current planning application site. The designation stems largely from the shingle beach backed by rough grassland which is found in evidence to the south. The application site on the other hand has been used for boat storage for many years and therefore is unlikely to have been of any significant ecological value. Even with it being underused recently, there seems little evidence of any new ecological value and on that basis it is not considered that there will be any adverse impact from an ecological point of view. That position is unlikely to change in the summer months and it is considered unreasonable to delay consideration of the application for a further survey during that time in the absence of any significant evidence that the site would increase in ecological value.

Impact on Parking

- 3.4 There is on street parking along the sea front and in the nearby car park off Kingsdown Road. The site is also easily accessible by persons using public transport. Users of the beach huts may well already be using the beach frontage generally and although there may be a slight increase in the demand for on street parking, it is not considered that it would be so significant to justify refusal in that respect. This is particularly so when weighed against the advantages of the beach huts in terms of meeting a local need and providing further opportunities for economic activity within the town.

Other Matters

- 3.5 The proposal would not affect the future ability of the sailing club to expand should it ever wish to do so, and it is understood that events held by the club are mainly on surrounding grassed areas rather than within the application site. The sailing club has raised no objections to the proposal.
- 3.6 Although a portaloo is shown on the plans, the applicant has not finally decided whether this will be part of the scheme or not. However if it is provided the applicant has confirmed that it could be clad in boarding to match the huts which would make it visually acceptable. Details of this could be secured through condition. The applicants have also confirmed

that the huts will be attached to railway sleepers and that safety calculations have shown that will be sufficient in times of inclement weather. Finally, other matters raised such as maintenance and allocation of beach huts, are operational matters for the applicant rather than land use considerations.

Conclusion

- 3.7 Given the difficulties of finding suitable sites for beach huts along the sea front, it is considered that the proposed site would be a good location in terms of limited visual impact upon the character of the area and having no other adverse environmental impact. There is clearly a need for additional huts and the location in close proximity to the town is likely to be to the advantage of local traders. The application is therefore supported.

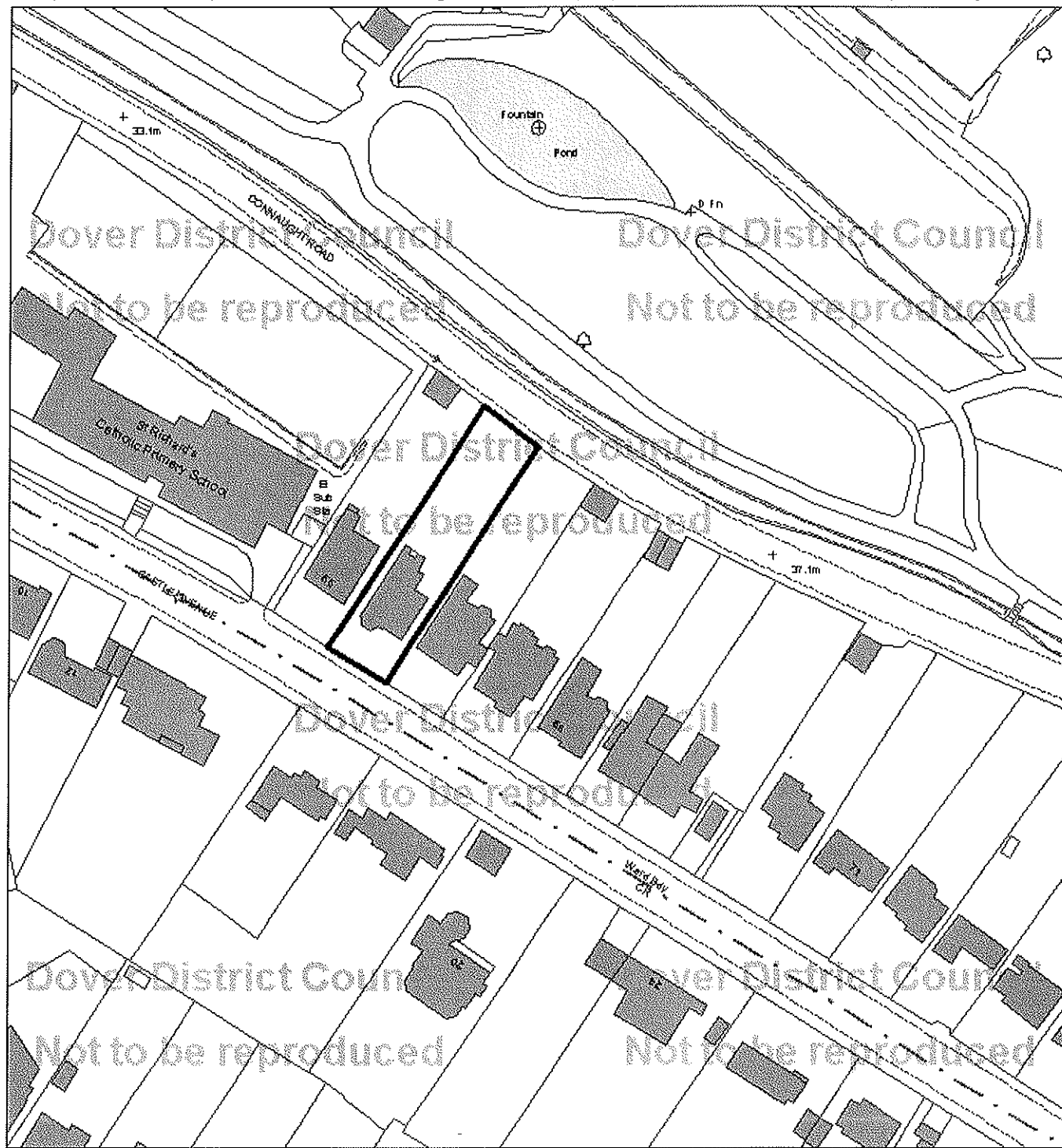
g) **Recommendation**

- I PERMISSION BE GRANTED subject to: 1) standard time limit; 2) development to be carried out in accordance with approved plans; 3) anchoring of huts to be carried out prior to first being used and thereafter maintained.

- II Powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions and matters in line with the issues set out in the recommendation and resolved by the Planning Committee.

Case Officer Kim Bennett

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Application: DOV/13/00916

57 Castle Avenue

Dover

TR31804225



- a) **DOV/13/0916 – ERECTION OF A DETACHED TWO STOREY BUILDING INCORPORATING A GARAGE AND SUMMERHOUSE AND CREATION OF A VEHICULAR ACCESS - 57 CASTLE AVENUE, DOVER, CT15 1EZ**

Reason for report: The level of public interest in the application.

- b) **Summary of Recommendation**

Planning permission be granted.

- c) **Planning Policy and Guidance**

Dover District Core Strategy (DS)

- Policy DM1 states that development will not be permitted outside of the urban boundaries and rural settlement confines unless specifically justified.
- Policy DM13 states that provision for parking should be a design-led approach based upon the characteristics of the area, the nature of the development and design objectives.

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles which amongst other things always seek to secure high quality design and a good standard of amenity for all existing and future occupants.

Policies contained within Sections 7 (Requiring good design) and 11 (Conserving and enhancing the natural environment) are considered to be applicable.

The Kent Design Guide

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

- d) **Relevant Planning History**

There is no planning history of relevance on this site.

It is considered to be material that planning permission was refused for the erection of a single-storey one bedroom dwelling below an existing double garage at No. 63 Castle Avenue (DOV/12/00818). An appeal against this refusal was subsequently dismissed in August 2013.

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

Amended plans were received on the 6th February 2014 and a further period of public consultation carried out. The last date for comments to be submitted is the 7th March 2014, after the preparation of this report. Any additional representations will be reported verbally at the Committee meeting.

KCC Highways and Transportation: Refer to the amended plans submitted and confirm they have no objections in respect of highway matters. Adequate

visibility is available at the access and the parking arrangements are now acceptable. Note the concerns expressed regarding vehicles reversing on/off Connaught Road, however there is adequate visibility both for drivers approaching the garages and for drivers exiting the garages. The proposed arrangements are similar to those for existing garages and parking areas in Connaught Road.

Dover Town Council: No objection (in response to the amended plans).

Public Representation: Eight letters of objection have been received from residents in Castle Avenue, Prestwich, Guildford, and from The Dover Society. These raised the following concerns:

- The building is far too big for a two car garage. It is an attempt to build a new house on the garden which is evidenced by the size, design and provision of plumbing.
- The size of the building is unnecessary for a summerhouse and out of keeping with the neighbourhood. Materials would not be sympathetic.
- The building would alter the semi-rural character of the area. The natural and historic environment comprising Castle Avenue should be preserved.
- A garage presents dangers on what is already a busy and dangerous road and has the potential to cause traffic accidents.
- A number of mature trees have been removed.
- The development would set an unacceptable precedent for garden development.
- The proposal would result in a loss of privacy and amenity for neighbouring residents.
- Previous appeal decisions are applicable to this application particularly in respect of conclusions regarding to adverse impact of development upon the character of the area.

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

- 1.1 The site is located within the urban confines of Dover and consists of the end of the garden of No.57 Castle Avenue, a large three-storey residential property. The rear garden is a substantial size and backs onto Connaught Road, along with the neighbouring properties Nos.55-75 (odd). The rear gardens are well below the level of Connaught Road, with the garden level being approximately 3.2m below the pavement level.
- 1.2 Connaught Road has timber fencing along the rear garden boundaries with three sets of flat roofed garages also visible, although it appears that these are used relatively infrequently for parking purposes. Behind a number of the fences are prominent trees. The southern side of the road behind the houses and the adjacent school consists generates minimal activity. The northern side of the site consists of the wooded Connaught Park.
- 1.3 The garden rises up significantly from the patio level at the rear of No.57 itself. The bank at the rear of the site has been cleared of trees and vegetation. At the top of the site is timber fence which defines the rear site boundary. The site has various incidental domestic structures including a shed and play equipment. The side boundaries are defined by a timber fence adjacent to No.55 and a hedgerow with No.59.

1.4 *Plans will be on display.*

2. **Main issues**

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

- The principle of the development;
- The impact upon the character and appearance of the area;
- The impact upon neighbouring residential amenity; and
- Parking and highway safety.

3 **Assessment**

The principle of the development

3.1 The application site is located within the urban boundary of Dover, a Secondary Regional Centre as identified by the Settlement Hierarchy identified in policy CP1 of the Core Strategy. The principle of development in this location is therefore considered acceptable subject to the consideration of site specific matters.

The character and appearance of the area

3.2 The application proposes a two-storey building consisting of two distinct elements. At garden level a 6m x 11m summerhouse, also containing a W.C. and store is proposed. This would be 3.2m above the existing ground level and would involve excavation into the bank at the rear of the site to obtain a level threshold. The summerhouse would have a flat roof and would be clad with Cedar boarding.

3.3 Above the summerhouse, a garage is proposed. This would be 8.2m x 7.3m and approximately 3m above the Connaught Road pavement level. The overall height of the garage and summerhouse combined would be 6.2m. The garage would also have a flat roof and would be constructed using yellow stock brickwork. The garage would be open-fronted and would have internal stairs to access the summerhouse below.

3.4 There are a number of other garages in evidence along Connaught Road interspersed with timber fencing along the rear garden boundaries of the Castle Road properties. There are also a number of prominent trees in the rear gardens of these properties which contribute positively to the character and appearance of the street scene.

3.5 In terms of the introduction of an additional garage at the rear of No.57, it is not considered that this would be significantly out of keeping with the character of the area given the presence of similar development in the immediate locality. Whilst the proposal would involve the introduction of a built form in place of the existing timber fence, there would be no demonstrable harm as a result of this.

3.6 It is noted that there is evidence that some trees have been removed from the rear of the site, and the semi-rural character has been eroded as a result, however these were not subject to a Tree Preservation Order and no control over their removal was possible.

- 3.7 Concern has been raised that if the Local Planning Authority were to approve this latest scheme, that such a decision would be inconsistent with a previously refused proposal for the erection of a single-storey one bedroom dwelling below an existing double garage at No.63 Castle Avenue. This refusal was dismissed at appeal.
- 3.8 The Inspector identified harm through the introduction of a significant level of new activity in a location where there is currently very little. The dwelling would have had an entrance at street level and the external stairs would have been readily apparent. A house number would also have been needed and lighting at night. Refuse and cycling arrangements were also needed and periodic on-street parking by visitors and for deliveries would have been likely. He felt that the use as a dwelling would have been readily apparent and out of character, being isolated from the nearest traditional dwelling house.
- 3.9 He also felt that the removal of the entrance doors would be in contrast to the other closed up garages in the road and would be a discordant feature. He also identified the concerns that the open garages could lead to potential problems. In combination it was felt that these reasons would have caused significant harm to the character and appearance of the area.
- 3.10 The garage is now proposed to be open-fronted as a result of the concerns of Kent Highways regarding parking on the highway whilst the doors were opened. It is not considered that in itself this would cause significant harm to the character and appearance of the area and that whilst the garage would be different to those nearby there would not be demonstrable harm. Any issues with potential anti-social behaviour would be restricted to No.57 and would not cause harm to the general amenity of the wider locality.
- 3.11 The issues identified with the provision of a dwelling on the frontage of Connaught Road and the change in character as a result of a previously perceived significant level of activity would not be applicable to this scheme which involves the proposal for a simple incidental structure only which would generate activity related to its use as a parking space, not as excessive as movements and activity associated with an independent dwelling. On balance, whilst material considerations, it is considered that the reasons for the appeal on a nearby site being dismissed are overcome by this proposal and are not so overriding as to warrant refusal.
- 3.12 In terms of the summerhouse, it would cover an area of the garden at the rear of the site. Notwithstanding this, a large area of garden would be retained and it is not considered that it would represent the unacceptable overdevelopment of the plot as a result. There are outbuildings visible at the rear of properties in Castle Avenue, and whilst the summerhouse and garage above would be larger than those elsewhere, it is considered they can be accommodated without unacceptable harm to the character and appearance of the area.
- 3.13 Some glimpsed views of the summerhouse and garage above would be possible from Castle Avenue however it is not considered that the structure would be so prominent that it would be detrimental to the street scene. The scale and form of the summerhouse is domestic and whilst the footprint is large it would retain a degree of separation from the adjoining neighbouring boundaries. The design approach taken is considered to be acceptable and

would add interest to the elevations as a result of the contrast between the garage and the summerhouse.

- 3.14 For the reasons outlined above it is felt that the development would conform with the general design principles as contained within the National Planning Policy Framework and the Kent Design Guide.

Neighbouring residential amenity

- 3.15 The building would be approximately 22m away from the rear elevation of No.57 Castle Avenue and a similar distance from the rear of the immediately adjoining neighbours. In addition to this it would be sited to the north of their rear elevations and private garden areas.
- 3.16 As a result of this degree of separation and the orientation, it is not considered that the development would result in any significant loss of natural daylight and sunlight and would not appear unacceptably overbearing and oppressive when viewed from them. Whilst alterations to the outlook from neighbouring properties would occur, this would not equate to demonstrable harm to amenity.
- 3.17 No windows are proposed in the rear elevation of the garage. Whilst doors are proposed to the rear elevation of the summerhouse, the site boundaries are screened by existing hedgerow and fencing and despite the fact it would be on higher ground, any views towards neighbouring properties would be oblique and only partial in any event due to the screening. It is not considered that there would be an unacceptable impact upon amenity as a result.

Parking and highway safety

- 3.18 Kent Highways raise no objections to the proposal in respect of highway matters. Adequate visibility is available at the access and the parking arrangements are now considered acceptable. The concerns expressed regarding vehicles reversing on/off Connaught Road are noted however there is adequate visibility for drivers approaching the garages and for drivers exiting the garages. The proposed arrangements are similar to those for existing garages and parking areas in Connaught Road.

Other matters

- 3.19 Concern has been raised over drainage measures that would need to be incorporated however this would be a matter that would be dealt with at the Building Regulations stage to ensure surface water is suitably disposed of. Any foul sewer connections required or alternative means of disposal would again need to be agreed during construction.

Conclusion

- 3.20 The principle of the development is considered to be acceptable and in accordance with the objectives of the NPPF and policies in the Core Strategy. The scale, form and design of the development and its siting would not harm the overall appearance and character of the area. The impact on the residential amenities of the surrounding occupiers would be acceptable. The Highway Engineer has confirmed that the development would not harm highway safety.

3.21 Consideration has been given to all other matters raised but it is considered that none outweigh the conclusion to grant planning permission.

3.22 In respect of the Public Sector Equality Duty under the Equality Act, the recommendation is not considered to disproportionately affect any particular group.

g) Recommendation

I PERMISSION BE GRANTED subject to the following conditions: 1) standard time limit; 2) in accordance with approved plans; 3) no garage doors to be installed.

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

Case Officer
Ben Young

Subject: DOV/13/00163 – CERTIFICATE OF LAWFULNESS (PROPOSED)
FOR THE ERECTION OF A DETACHED GAMES ROOM AND
HOME OFFICE AND DETACHED GARAGE WITHIN THE
CURTILAGE OF 55 WESTCOURT LANE, SHEPHERDSWELL

Meeting and Date: Planning Committee – 13 March 2014

Report of: Head of Regeneration and Development

Members are advised that the decision to grant a Certificate of Lawfulness for this development as decided at Planning Committee on 5 September 2013 is being overturned.

Contact Officer: Dave Robinson, extension 2121.

1. Summary

The application is being reported to Planning Committee as it was previously called in by a Councillor and the Head of Regeneration and Development considers that Members should be provided with an update.

2. Relevant Planning History

2.1 55 Westcourt Lane has an extensive planning history, the most recent as follows:

DOV/05/00924 – Alterations to existing vehicle access and formation of new access (involving excavation works) and erection of garage (existing to be demolished) – Withdrawn

DOV/05/01276 – Formation of new vehicle access (involving excavation works) – Granted

DOV/08/00577 – Erection of a detached dwelling – Refused (Dismissed at appeal)

DOV/09/00924 – Erection of a detached dwelling – Withdrawn

DOV/10/00202 – Retrospective application for the widening of the existing vehicular access – Granted

DOV/10/01115 – Certificate of Lawfulness (Proposed) for the reduction in levels and the widening of existing driveway – Granted

DOV/11/00361 – Erection of a detached bungalow and garage (existing barn to be demolished) (amended plans) – Granted

DOV/11/00361/A – Amendments to approve planning permission DOV/11/00361 – construction of partial basement – Refused

DOV/12/00569 – Extension to driveway – Granted

DOV/13/00605 – Section 73 application to vary condition 2 of planning permission DOV/11/00361

3. Third Party Responses

- 3.1 Whilst applications for Certificates of Lawfulness (Proposed) are not statutorily advertised, the Council received one letter from a third party expressing concern over the proposed future use of the outbuilding and garage. Since the application was reported to Planning Committee a number of neighbours have complained about the Council's decision to grant the Certificate of Lawfulness.

4. The Site

- 4.1 The site lies within the village confines of Shepherdswell. 'Twenty Acre Shaw', which is designated as a Site of Nature Conservation Interest (SNCI), lies to the southwest corner of the site and extends in a southerly direction away from the site.
- 4.2 The form and pattern of development along this part of Westcourt Lane comprises a mixture of bungalows and two storey dwellings, set about 10m – 15m back from the roadside frontage. Most of the dwellings are sited within large plots which extend to the rear. The site is within the village confines, which runs along the rear boundaries of the residential curtilage of the properties either side of Westcourt Lane.
- 4.3 The gardens along the southern side of Westcourt Lane and to the east of the application site are linear in pattern and fairly uniform in length. No. 55 is a two-storey detached dwelling. The garden at no. 55 has a length of about 140m from the edge of Westcourt Lane to its rear boundary.
- 4.4 Planning permission was recently granted under DOV/11/00361 for a detached bungalow in part of the rear garden of 55 Westcourt Lane. The new dwelling would be sited between the existing dwelling and the remainder of the garden to 55 Westcourt Lane. The existing access to the existing dwelling, the new dwelling and the remainder of the rear garden that still serves 55 Westcourt Lane would be shared and not altered. The entire curtilage of 55 Westcourt Lane was outlined in red and identified as the application site. One of the conditions attached to the grant of planning permission removed all Permitted Development rights for the entire site, including 55 Westcourt Lane.
- 4.5 Until the development for the new dwelling commenced 55 Westcourt Lane would have still enjoyed its normal permitted development rights. Fencing was erected to enclose an area of garden land immediately to the rear of 55 Westcourt Lane. This means of enclosure could have been erected under the owners permitted development rights and did not comprise a start to the proposal for the dwelling permitted under DOV/11/0361. The remainder of the garden land, including the site of the new dwelling remains open and provides the residential garden or domestic curtilage to 55 Westcourt Lane.
- 4.6 The application submitted was for a Certificate of Lawfulness (Proposed) under Section 192 of the Town and Country Planning Act (As Amended) and is only to be determined on matters of fact. Applications of this nature are determined solely by reference to Schedule 2 Part E and E 1 of the Town and Country Planning (General Permitted) Development Order 1995 (as amended) which sets out those developments within the residential curtilage (garden) of a dwelling house which may be undertaken without the need for planning permission (i.e. as permitted development). The determination of a Certificate of Lawful Development (Proposed) is based on matters of fact and evidence. Planning merits are not material and have no relevance. Such applications are not subject to consultation. A decision is solely a question of whether or not planning permission is required for the proposed works and whether it is development permitted by the Order.

- 4.7 When this matter was reported in September 2013, legal advice had been sought on the relevance to the determination of the application of 'intention' (how the building might be intended to be used) and the enclosure of part of the land by the erection of fencing. The advice confirmed that that intention was not a material factor here as there was no material evidence concerning the intended use of the building which contradicted the proposed use being for purposes incidental to the enjoyment of the dwellinghouse. The enclosure of part of the garden land would also be immaterial as the means of enclosure (fence) would have been permitted development and the fenced land would remain part of the residential curtilage.
- 4.8 Following the report to Planning Committee and prior to issuing the Certificate of Lawfulness, it became clear that development had started on the bungalow approved under DOV/11/00361. The Council sought further legal advice on this matter which confirms that the commencement of DOV/11/00361 has removed permitted development rights in accordance with the condition attached to the planning permission. Legal advice confirms that the subsequent variation of condition permission (DOV/13/0605) had not affected that decision.

5 The Proposal

- 5.1 The application seeks a lawful development certificate for the erection of a detached games room and home office and garage within the rear garden of 55 Westcourt Lane. The games room and home office and garage would be used for residential purposes to provide incidental (or additional) accommodation to the dwelling house.

6. The Legislation

- 6.1 The development falls to be considered under the General Permitted Development Order 1995 (as amended) at Schedule 2 Class E, which identifies circumstances under which curtilage buildings can be erected under permitted development.

7. Recommendation

- 7.1 Having considered all of the relevant criteria, it is considered that as a matter of fact as a condition attached to a planning permission removed permitted development rights from the entire curtilage of 55 Westcourt Lane in respect of the erection of a new dwelling and this development had been implemented before the development referred to in the Certificate of Lawful Development had been carried out that for the reasons outlined in this report, planning permission is now required for the proposed games room, home office and garage and that the Certificate of Lawfulness (Proposed) cannot be granted.

8. Background Papers

None