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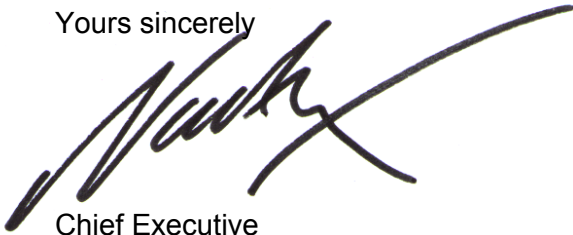
14 September 2016

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 22 September 2016 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) 872303 or by e-mail at kate.batty-smith@dover.gov.uk.

Yours sincerely



Chief Executive

Planning Committee Membership:

F J W Scales (Chairman)
B W Butcher (Vice-Chairman)
J S Back
T J Bartlett
T A Bond
D G Cronk
B Gardner
D P Murphy
A F Richardson
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** (Page 4)

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

4 **MINUTES**

To confirm the Minutes of the meeting of the Committee held on 25 August 2016 (to follow).

5 **ITEMS DEFERRED** (Pages 5-6)

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

ITEMS WHICH ARE SUBJECT TO PUBLIC SPEAKING
(Pages 7-10)

6 **APPLICATION NOS DOV/15/00292 AND DOV/15/00293 - THE RED LION, CANTERBURY ROAD, WINGHAM** (Pages 11-78)

DOV/15/00292 – Change of use and conversion to two dwellings (1 x 5-bedroom and 1 x 4-bedroom), works to create car parking and erection of boundary treatment, including the demolition of existing lean-to, toilet block and outbuilding (Planning Application)

DOV/15/00293 – Internal and external alterations to facilitate conversion into two dwellings including the erection of party wall, blocking of existing doorway and insertion of new window to ground-floor south elevation, demolition of existing lean-to, toilet block and curtilage-listed outbuilding (Listed Building Application)

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

7 **APPLICATION NO DOV/15/01100 - LAND TO THE SOUTH OF HAWARDEN PLACE, CANTERBURY ROAD, WINGHAM** (Pages 79-110)

Erection of 15 care units (Use Class C2), comprising 9 terraced houses and 6 apartments; conversion and extension of Goose Barn to provide communal facilities to include manager's office, guest suite and activities room; provision of vehicular and cycle parking, together with internal access arrangement works and junction improvements; and associated landscaping and tree work

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

8 **APPLICATION NO DOV/16/00442 - THE THREE TUNS, THE STREET, STAPLE** (Pages 111-122)

Erection of nine dwellings, change of use and conversion of the existing public house into a single residential dwelling, creation of vehicular access, parking area and associated works

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

ITEMS WHICH ARE NOT SUBJECT TO PUBLIC SPEAKING

9 **PLANNING ENFORCEMENT** (Page 123)

To consider the attached report of the Planning Delivery Manager.

10 **APPEALS AND INFORMAL HEARINGS**

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

11 **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 will be published on our website as soon as practicably possible after each meeting. All agenda papers and minutes are available for public inspection for a period of six years from the date of the meeting.
- 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) 872303 or email: kate.batty-smith@dover.gov.uk for details.

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

Declarations of Interest

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered 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.

Other Significant Interest (OSI)

Where a Member is declaring an 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.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or 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 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.

DOVER DISTRICT COUNCIL

REPORT OF THE HEAD OF REGENERATION AND DEVELOPMENT

PLANNING COMMITTEE – 22 SEPTEMBER 2016

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 reasons for their deferral have not yet been resolved.

1. **DOV/15/00292 & DOV/15/00293** Change of use and conversion to two dwellings (1 x 5 bed and 1 x 4 bed), works to create car parking and erection of boundary treatment, including the demolition of existing lean-to, toilet block and outbuilding – The Red Lion, Canterbury Road, Wingham (Planning Application) (Agenda Item 6 of 16 June 2016)

Internal and external alterations to facilitate conversion into 2 dwellings including the erection of party wall, blocking of existing doorway and insertion of new window to ground floor south elevation, demolition of existing lean-to, toilet block and curtilage-listed outbuilding – The Red Lion, Canterbury Road, Wingham (Listed Building Consent Application) (Agenda Item 6 of 16 June 2016)

2. **DOV/15/01100** Erection of 15 care units (Use Class C2), comprising 9 terraced houses and 6 apartments; conversion and

extension of Goose Barn to provide communal facilities to include manager's office, guest suite and activities room; provision of vehicular and cycle parking; together with internal access arrangement works and junction improvements; and associated landscaping and tree work – Land to the south of Hawarden Place, Canterbury Road, Wingham (Agenda Item 6 of 25 August 2016)

These applications are dealt with elsewhere on the agenda

3. **DOV/16/00576** Outline application for the erection of two detached dwellings, alterations to the existing access and car parking – Land adjacent and fronting Roseacre, East Langdon Road, Martin (Agenda Item 13 of 21 July 2016)

Background Papers:

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

MIKE EBBS

Head of Regeneration and Development

The Officer to whom reference should be made concerning inspection of the background papers is Alice Fey, Planning Technician, Planning Section, Council Offices, White Cliffs Business Park, Dover (Tel: 01304 872468).

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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Not to scale

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Note: This plan is provided for purposes of site identification only.

Application: DOV/15/00292 and DOV/15/00293

**Red Lion
Canterbury Road
Wingham
CT3 1BB**

TR24305737



DOV/15/00292 - Change of use and conversion to two dwellings (1 x 5 bed and 1 x 4 bed), works to create car parking and erection of boundary treatment, including the demolition of existing lean-to, toilet block and outbuilding (Planning Application) – The Red Lion, Canterbury Road, Wingham

DOV/15/00293 - Internal and external alterations to facilitate conversion into 2 dwellings including the erection of party wall, blocking of existing doorway and insertion of new window to ground floor south elevation, demolition of existing lean-to, toilet block and curtilage-listed outbuilding (Listed Building Application) – The Red Lion, Canterbury Road, Wingham

Reason for Report:

1. These applications were considered by the Committee at its meeting on 16 June 2016 when the following was resolved:

“That notwithstanding the Officer’s recommendation, Application Nos DOV/15/00292 and DOV/15/00293 be DEFERRED for three months for the following reasons:

(i) To allow the community group(s) to submit a viable plan
(ii) To enable Officers to obtain a report on the marketing exercise/viability issues from an independent expert.”
2. The resolution therefore requires an updated report on the applications to be brought to this (September) meeting of the Committee.
3. Committee also needs to be advised that since the 16 June resolution the applicant has made appeals to the Planning Inspectorate against non-determination in relation to both applications. The decision on the applications now rests with the Planning Inspectorate. However, the Committee is now asked to resolve what decisions it would have made had it still been required to determine the applications. That resolution will then form the basis of the Council’s case to the Planning Inspectorate.
4. The 16 June report to Committee is attached to this report at Appendix 1. An extensive speaking note submitted by a public speaker at the 16 June meeting is attached at Appendix 2. The 16 June report had an earlier report to the 26 May Committee meeting appended to it and this is reproduced as Appendix 3 to this report.

Update on the Reasons for Deferral

Reason (i)

5. At the time of preparing this report a plan has not been received from any community group.
6. An email was, however, sent on 13 July 2016 from the Save the Red Lion group to members of the Planning Committee that indicated there were two potential buyers but the property had been taken off the market and that no access for viewing or surveys was being allowed by the owner. It requested that the three month deferral period should start from when viewings took place, made further criticisms of the marketing exercise and requested that the Committee ask the applicant to undertake a further period of marketing.
7. The validity of the requests in this email hinge on whether or not the marketing already undertaken by the applicant is sufficient. This issue is dealt with below under the second reason for deferral.

8. In addition to this a further 68 objections to the planning application have been received. All of these make the same points that: the Red Lion is of significant value to the community, its historic interest cannot be fully appreciated from the outside, it adds character to the village, it is a tourism attraction and source of employment, converting it will not add to the social fabric of the village – saving it will, and its loss would be of huge detriment to the community. One further representation has also been received in relation to the listed building consent application. This asserts that the loss of the Red Lion as a pub would affect the conservation area.
9. These additional representations do not raise any points that have not already been considered in the previous reports to Committee but they obviously add considerably to the volume of representations received.

Reason (ii)

10. An independent review of the marketing undertaken by the applicant has been commissioned from a suitably qualified and experienced person and is attached at Appendix 4.

In summary the review concludes that:

- The marketing meets the criteria in Policy DM24
- The asking price, although slightly ambitious, is within the range that could be considered to be acceptable
- Reopening as a pub may provide an operator with an income at minimum wage rates however given the significant capital required to be invested the return is a nominal profit and an prudent investor would obtain better returns elsewhere without the risk that attaches to a public house business.
- It is quite conceivable that the works needed to bring the property back into use as a pub could easily amount to a total cost in excess of £150,000.

Conclusion

11. The independent expert review of the marketing undertaken by the applicant has clearly found that it complies with the Council's requirements, as expressed in Policy DM24 and its supporting text. There is, therefore, in the view of Officers no basis for requesting the applicant to undertake further marketing or to provide any further period for offers to be formulated as requested by Save the Red Lion.
12. Notwithstanding this, the deferral period allowed by the Committee has not to date brought forward a viable plan to bring the Red Lion back into a pub use. While this may have been hampered by the inability of prospective purchasers to view the interior of the property, on the basis of the conclusion above, there is no planning reason for the applicant to have provided such opportunity.
13. Taking account of the above and all other relevant matters it is considered that the recommendation set out in the 16 June 2016 report stands for the reasons set out in the preceding reports. For ease of reference the recommendation is set out below.

I In respect of DOV/15/00292 PLANNING PERMISSION BE GRANTED, subject to conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) materials to be submitted, iv) Details of cycle and refuse storage areas shall be submitted to and approved in writing by the local planning authority and put in place before the first occupation of the dwellings commences and maintained

for such purposes thereafter, v) sample panel of brickwork to show bonding, type and style of pointing, for the proposed boundary wall, vi) any conditions requested by KCC Highways, vii) archaeological watching brief

II In respect of DOV/15/00293 LISTED BUILDING CONSENT BE GRANTED, subject to the following conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) The works shall not be carried out otherwise than in accordance with detailed drawings; iv) such drawings to be submitted to and approved by the Local Planning Authority in writing to show details of any mechanical ventilation, flues, soil vent or other pipes and joinery details for new window; v) no cleaning of internal or external timbers, vi) the Sessions Book will remain *in situ* and shall not be removed or relocated without formal approval from the local planning authority.

III Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning permission/listed building consent conditions in line with the issues set out in the recommendation and as resolved by Planning Committee.”

14. As set out in paragraph 3 the decision on these applications no longer rests with the Committee but the Committee does need to resolve what its decision would have been had it still been determining the applications. This will enable the Council to present its case to the Planning Inspectorate.

Recommendation

The Committee resolves that had it been determining the applications it would have granted planning permission subject to the conditions summarised in paragraph 13 part I of this report and granted listed building consent subject to the conditions set out in paragraph 13 part II of this report.

Case Officer

Andrew Wallace

Appendix 1

DOV/15/00292 - Change of use and conversion to two dwellings (1 x 5 bed and 1 x 4 bed), works to create car parking and erection of boundary treatment, including the demolition of existing lean-to, toilet block and outbuilding (Planning Application) – Red Lion, Canterbury Road, Wingham

DOV/15/00293 - Internal and external alterations to facilitate conversion into 2 dwellings including the erection of party wall, blocking of existing doorway and insertion of new window to ground floor south elevation, demolition of existing lean-to, toilet block and curtilage listed outbuilding (Listed Building Application) – Red Lion, Canterbury Road, Wingham

Reason for Report:

1. A report on these applications was on the agenda to be considered by the Committee at its meeting on 26 May 2016 but was withdrawn in response to a large set of public submissions that were received on the evening of 25 May. The submissions, which included a speaking note and a legal opinion, raised many material considerations that could not be addressed in the short amount of time before the meeting. This report is supplemental to the one prepared for the 26 May meeting (which is attached at Appendix 1) and addresses matters raised in the submissions and takes into account further information that has been supplied by the applicant in response to the submissions. This report summarises the matters raised in the Speaking Note and legal opinion and, although the full submission was sent to all District Councillors, they are attached at Appendix 2 to this report for ease of reference. In addition, Committee is advised that three further letters of objection have been received in relation to the planning application that do not raise any new issues and one letter of support that requests that hours of work should be controlled if the application was to be permitted. KCC Archaeology has requested a condition to secure an archaeological watching brief should permission be granted. Two further letters of objection have been received in relation to the listed building consent application that do not raise any new issues and one letter of support raising the same point regarding hours of work.
2. It should also be clarified that the heritage elements of the report have been prepared by the Council's Principal Heritage Officer.

Planning Policies and Guidance

3. The submissions refer to various policies that were not referenced in the May report but, for the reasons set out in the following section, it is not considered that they are relevant.
4. Policy DM24 is central to consideration of these proposals and the submitted legal opinion is critical of the approach taken towards the policy in the May report. For ease of reference the policy and its supporting text are set out in full below:

“Retention of Rural Shops and Pubs

1.76 Rural shops and pubs are of great importance to the economic and social well-being of rural communities and are factors in determining the position of a settlement in the Settlement

Hierarchy. The loss of these facilities can be a severe blow to the local community.

1.77 When applications are submitted for the change of use of a rural shop or pub account will be taken of its importance to the community that it serves and the range of other facilities and services that would remain. Permission for alternative uses will not be given if the community would be left without any local shops or facilities, or the range would be seriously diminished, unless the applicant has established that a shop or pub use is no longer commercially viable.

1.78 The Council will have regard to the way in which the shop or pub has been managed. The Council's study into rural shops found that viability issues were often closely related to management techniques and a failure to keep up with competitors. The Council will also wish to see that adequate and genuine attempts have been made to market the premises for shop or pub use, as appropriate, but have failed to produce a viable offer. Marketing should be through an appropriate agent and for a period of time that fully tests demand having regard to the buoyancy of prevailing market conditions.

Policy DM 24

Retention of Rural Shops and Pubs

Planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed.”

5. Response to Matters Raised in the Submissions

Effect of the loss of the Red Lion as a Pub

6. Paragraph 3 in the Speaking Note states that the Red Lion complements rather than competes with the other two pubs in Wingham, that they have long co-existed serving different needs and elements of the community. Paragraph 38 furthers this argument by claiming that the term “range” in policy DM24 embraces variety and that the loss of variety represented by the change of use of the Red Lion would therefore cause harm under DM24.

7. In response the applicant has provided the following additional information:

“Indeed, with reference to DM24, your report could strengthen the case for the existing economic and social viability of Wingham (with the Red Lion closed) being evidenced by the role of the Anchor as a village pub. A visit reveals:

- Its attractiveness as a venue (listed building, old beams and panelling, stone and timber floors, eclectic collection of chairs and tables, hops and hanging tankards);
- An attractive and traditional ground floor layout with separate drinking and eating areas, a lounge area and a separate small area for darts etc;
- Its obvious good use by local people for meeting, drinking, eating and socialising generally;
- Its popularity as a place to dine (approximately 30 covers);
- A wide-ranging menu throughout the week, including meal offers for children and senior citizens, the menu stating *“we don’t pretend to be a gastropub but a traditional pub restaurant serving traditional pub food”*;
- Three real ales on tap;
- A bar billiards table in excellent condition (increasingly rare in pubs);

- A darts board;
 - Well-maintained bat and trap and petanque pitches;
 - An extensive garden with tables and chairs;
 - Regular quiz evenings;
 - Live music on occasions.
8. There are evidently darts and bar billiards league teams. This is the sort of characterful pub which tourists seek out.
 9. The Dog has aimed at a slightly different market. The range of functions provided by the two pubs is quite exceptional for a village of Wingham's size.
 10. Between them, the pubs provide such a range of functions that it is particularly difficult to identify what additional features a re-opened Red Lion could bring to the village. In other words, the social and economic benefits which the two pubs provide are substantial and no harm would arise with the permanent loss of the Red Lion. Furthermore, it should be noted that the Politician's Daughter, referred to in your report, is located very close to the Red Lion, has opened since the latter's closure, and provides teas, coffees and lunches."

Officer Response:

11. The applicant's additional information provides more expansive information on the facilities/services offered by the remaining two pubs and the Politician's Daughter. On this basis the applicant's conclusion "that it is particularly difficult to identify what additional features a re-opened Red Lion could bring to the village" appears to be reasonable and the contention in the Speaking Note that loss of variety would occur is not substantiated.
12. Paragraph 2.15 in the 26 May report deals with the matter of whether DM24 should be construed as meaning variety when it refers to range. It is concluded that that if it had been intended to include loss of variety as a test it would have had to be made clear in the Core Strategy, and it was not.

Conflict with Heritage Considerations

13. Paragraphs 6(1) and 26 in the Speaking Note claim that the proposed change of use represents a debasing of the intrinsic quality of Wingham's historic environment and brings it into conflict with Objective 10 in the Core Strategy. Paragraphs 6(5) and 66-68 states that by emptying the building of communal value the application will effect substantial harm to the significance of the heritage asset and given the absence of any countervailing public benefits would be contrary to the NPPF and legal requirements. Paragraph 8 puts forward that the proposals will replace a publicly accessible use with a private use that will preclude any public enjoyment of its listed features. Paragraph 24 states that paragraphs 2.33 and 2.34 in the May report do not faithfully reflect the legal requirements for assessing the effect of the proposals on the conservation area.

Officer Response:

14. English Heritage's Conservation Principles- policies and guidance for the sustainable management of the historic environment (2008), which are reflected in the District Heritage Strategy, identified that the value of a heritage asset can be defined as more than its historic or architectural character, and that its significance can include less tangible attributes such as the 'meaning' that the building has for local communities: the communal value. This can simply be that it is a building with which

they have grown up, a building which is a familiar part of their personal landscape. The Red Lion has great historic and architectural significance, as evidenced by its listing at grade II*. In addition, in contributing positively to the street scene and the wider conservation area in respect of its noted architectural character and appearance the Red Lion has significant communal value.

15. Paragraph 129 of the NPPF (2012) states that a local authority should identify and assess the 'particular significance' of a heritage asset and take this into account to avoid any conflict between the conservation of the asset and the development proposals. The communal value of the Red Lion as a public house is only one aspect of its interest. The May report details other aspects, such as the Eighteenth Century staircase and the Sessions Room; features of significance which are protected in the proposal from any changes that could have potential to cause harm. Officer view is that the change of use from public house to private residence will not diminish the communal value of the building to an extent that its significance will be substantially harmed. The loss of the communal value of the use of the listed building as a public house as a result of the proposal is limited. Many listed buildings are in residential use with no public access but this does not prevent our enjoyment of them in our historic villages and towns. The communal value of the Red Lion is not dependent on it being publically accessible; it will continue to be able to be appreciated by the public as it will continue to be an imposing and important building in the street scene. For this reason, and in addition to the minor harm to the historic planform which is detailed in the May report, it is considered that the works do not constitute substantial harm to the significance of the listed building. It is therefore considered that the minor loss of communal value, through loss of public internal access, constitutes less than substantial harm. The NPPF requires the local planning authority to consider whether the public benefits outweigh the harm caused by the proposed works; these have been outlined in the conclusion of the May report. There are significant benefits to bringing the grade II* listed building back into a viable use that is consistent with its conservation, and the minor loss of public internal access does not preclude the enjoyment of the building, therefore it is considered that the requirements of the NPPF have been fully assessed and met.
16. The May report has noted that the proposed external works, including the demolition of the outbuilding, would cause no harm to the conservation area. For the avoidance of any doubt, it is also considered that the proposals would preserve the special architectural or historic character or appearance of the conservation area and thereby meet the legal requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Conflict with Policy CP1

17. Paragraphs 6(2) and 27 in the Speaking Note claim that the proposal would diminish the role of Wingham as a provider of services and bring it into conflict with policy CP1.

Officer Response:

18. Paragraph 2.10 in the 26 May report concludes that this would not be the case. This conclusion is strengthened by the findings under the "Effect of the Loss of the Red Lion as a Pub" section above.

Conflict with Policy DM2

19. Paragraphs 6(3), 6(7), 34 and 49 in the Speaking Note claim that the proposal would destroy employment land and buildings contrary to policy DM2 and also conflict with saved paragraphs 3.13, 3.14 and 3.69 of the 2002 Local Plan.

Officer Response:

20. Paragraph 1.9 of the supporting text to the policy and the Glossary to the Core Strategy make it clear that the policy only relates to B class uses, whereas a pub use falls within the A class of uses. The policy is not therefore relevant to this case.
21. Paragraph 3.02 of the 2002 Plan makes it clear that the term employment is only concerned with B class uses. The conversion of the pub to residential would not therefore result in the loss of an employment site. Paragraph 3.69 is no longer saved.

The Proposals Would Degrade the Area as a Tourism Asset

22. Paragraphs 6(8) and 51 of the Speaking Note state that the proposed conversion to residential would conflict with Saved 2002 Local Plan paragraphs 3.100 and 3.69.

Officer Response:

23. The effect of the proposals on tourism is considered in paragraph 2.18 of the 26 May report. This did not refer to the above 2002 Local Plan paragraphs as they are no longer saved.

Housing Issues

24. Paragraph 6(9) of the Speaking Note contends that there is no housing need in the area that justifies the proposed change of use. In support of this paragraph 62 refers to the 2009 Strategic Housing Land Availability Assessment (SHLAA) which had identified land with potential for 19,244 units against a Regional Spatial Strategy target of 10,100 units. Paragraphs 28 to 33 state that the 26 May report misrepresents the Council's housing policies and fails to set them all out in the report.

Officer Response:

25. The SHLAA is a background study to the Core Strategy and its purpose was to assess in broad terms whether there was likely to be land with sufficient capacity for housing development to meet the emerging Strategy targets. The SHLAA does not allocate land for development; this has been done through the Core Strategy and the Land Allocation Local Plan (LALP). In the event, and after much closer scrutiny, the Council was not able to allocate sufficient suitable sites to meet the target. This is set out in Table 3.1 of the LALP. The Table identifies a shortfall of land for 130 dwellings in the rural area of the District. This was addressed through an evidenced assumption about the likely contribution of windfall sites of 135 over the plan period. Applications such as the one the subject of this report would, if permitted, be counted towards the windfall contribution. In this sense there is a continuing need to permit a flow of windfall permissions. In addition to this there is an NPPF requirement to maintain a five year supply of housing land. This is addressed in paragraph 2.24 of the 26 May report. Currently the District cannot demonstrate a five year supply and there is a need to address this by permitting proposals that comply with the presumption in favour of sustainable development, as set out in the NPPF, in order to help achieve the Government's objective of boosting the supply of housing.

26. The Speaking Note criticises the May report for not referring to housing policies DM5 to DM10 or the LALP allocation policy LA33. These were not referred to because they are not relevant. They relate, respectively to affordable housing, rural exception affordable housing, provision for gypsies and travellers, replacement dwellings in the countryside, accommodation for dependent relatives, and self-contained accommodation for dependent relatives. None of the matters dealt with in these policies arises in relation to the proposed change of use. Policy LA33 allocated three sites for residential development at Wingham, none of which relates to the application site. It is therefore not relevant to this application.
27. The Core Strategy does, however, include policy DM4 in order to provide policy guidance for the determination of applications for hitherto unforeseen changes of use to buildings in the rural area. That is directly relevant to the application and has been identified and considered in the May report, for example, paragraphs 2.21 and 2.22 where it is concluded that the proposed change of use would accord with the policy.
28. The Speaking Note, at paragraph 32, refers to paragraph 3.348 in the LALP. This states, amongst other things, that Wingham's heritage assets limit development opportunities in the village. The Speaking Note concludes that this means the conservation area and listed buildings in Wingham are contradistinguished from the additional housing that may be formed in the village – presumably meaning that they should not be a source of any further housing. This paragraph is, however, written in the context of the Plan's search for new sites to allocate for housing and, indeed, the following paragraph says that the constraints have led to only three small-scale development sites being identified. None of this implies anything about applications for changes of use of existing buildings which would fall to be considered on their merits under policy DM4 and relevant heritage policy and law.

Source of Employment

29. Paragraph 6(10) of the Speaking Note states that the Red Lion is an economically viable employment source.

Officer Response:

30. This matter is considered in paragraph 2.17 of the May report. It certainly has to be accepted that if it re-opened as a pub it would create employment. While it is contended that it is an economically viable employment source the marketing exercise has indicated that those who viewed the property thought that, for various reasons, it was not a viable proposition for them to pursue.

Social, Cultural, Economic and Environmental Benefits

31. Paragraphs 6(11), 74, 76, 77 and 78 of the Speaking Note relate to the wider social, cultural, economic benefits and environmental benefits associated with a pub use as opposed to a residential use. These paragraphs refer to studies that have been undertaken into the role of pubs in rural areas which have identified many benefits of pubs, such as, villages with a thriving pub are 40 to 50 per cent more likely to also have community social events, pubs provide a meeting place where social networks are strengthened, pubs add more value to local economies than beer sold through shops and supermarkets simply because they generate more jobs.

Officer Response:

32. While there is no submitted information to cause doubt about the findings of these studies the issue for the Committee is how they apply to the specifics of this particular application in a situation where two other pubs are operating together with other facilities and services within the village and where, bearing in mind the Red Lion has not been trading for around two years, the impacts of its closure would have manifested themselves. In the absence of such specific information it is considered that this submission is of little weight.

Consideration under Policy DM24

33. Paragraphs 6(4) and 35 to 42 of the Speaking Note put forward arguments that the loss of the Red Lion as a pub would cause harm under DM24 and that the application does not adequately demonstrate that the use is no longer commercially viable and that genuine and adequate attempts to market the premises as a pub have failed. It is said that the marketing efforts have been desultory, that an attractive offer to purchase the building was not followed through and that the May report is founded on a misunderstanding of DM24 and a selective examination of the material. The legal opinion is directed at two issues, a failure to deal properly with DM24 in the May report and a failure to advise the Committee of an offer to purchase the pub and concludes that a decision made in reliance on the report would be exposed to legal challenge.

Officer Response:

34. The legal opinion (paragraph 8) criticises the May report (paragraph 2.7) for effectively re-writing DM24 in that it advises that the issue is whether the proposal would seriously diminish the range of facilities in Wingham and thereby harm the economic and social viability of the community, whereas the policy refers to whether the loss of a pub would harm the economic and social viability of the community. The report was however, as is explained in paragraphs 2.4 and 2.7, drawing on supporting paragraph 1.77 to the policy where there is an explanation of the tests to be applied to decide if harm would be caused. Notwithstanding this, having considered the submissions above and the further information supplied by the applicant, this supplemental report has not identified any specific economic or social harm that would arise from the proposal that is sufficient to justify a recommendation of refusal. It is therefore considered that the first part of DM24 has been satisfied as well as the text in the supporting paragraphs.
35. Paragraphs 11 and 12 criticise the May report for advising that on the basis of the officer view that the first part of DM24 had been met that there was no need to consider the second part. Whilst this approach may be correct if the decision was an officer delegated one it does not, as the legal opinion points out, cover the eventuality that the Committee does not agree with the officer view and concludes that harm would be caused to the economic and social viability of the community. The May report does actually give some consideration to the second part of the policy but not for the reason set out in the legal opinion and this needs to be addressed. In addition, the second issue raised in the legal opinion is that the May report fails to advise the Committee that an offer to purchase was made. In response to this the applicant has submitted additional information and clearly, for all these reasons, further assessment of the proposals against the second part of DM24 is needed.

Viability

36. The first consideration in the second part of DM24 is whether it has been adequately demonstrated that the use is no longer commercially viable.
37. The applicant has stated (letter dated 25 May) that the Red Lion was purchased as a de-licensed non-trading freehold in April 2014 after failing for many years. The previous owners, Punch Taverns, had tried to make the pub a success but due to its size, fire regulation restrictions that restricted lettable bedrooms to three and divided the bar and restaurant areas into sections with overbearing partitions, restrictions imposed by its grade 2* listing, and competition it was no longer viable to continue. The applicant also states "the myth of major pub companies bankrupting tenants is entirely untrue as if this were the case their business plan would be fatally flooded (sic). They need pubs to generate income, this is their business and only future - a pub is only sold as a last resort when all other avenues have been pursued."
38. The May report (paragraph 2.8) sets out the reasons for not making an offer given by the four individual people who viewed the property during the marketing period. These include not enough space for sufficient covers, the cost of work required to get the business back up and running and of meeting regulatory requirements, and too much competition in the local area. The May report (paragraph 2.9) considered the fire regulation restrictions which result in only three bedrooms being capable of commercial letting and the consequent implication for potential revenue. It is understood that a further three bedrooms cannot be used for letting due to the fire regulation restrictions.
39. Against this, the Speaking Note (paragraphs 80 to 93) provides a description of the three basic operating models for pubs, as a freehouse, a tenanted/leased pub and as a managed pub. With a freehouse the individual licensee owns the pub, controls the business, makes the buying decisions and takes the profits. With a leased/tenanted pub a licensee pays rent to the owner and is often required to buy at least some categories of products through the landlord – known as being tied. The managed pub is owned by a company that specifies what is sold in it and hires a salaried manager to run it. The Note then sets out findings from a House of Commons Select Committee report from 2009 relating to pub companies or "pubcos" regarding the tied model of operating and in particular the findings that lessees considered a main cause of their financial difficulties was the rent charged by the pubco and the price they had to pay for their beer from their pubco. This was in contrast to evidence provided by pubcos, including Punch Taverns, that argued the general trading environment was the primary issue rather than the tied lease model. The Speaking Note argues in paragraph 89 that "an economic viability assessment of a tied pub is thus a distorted representation of the viability of a pub in the open market." and in paragraph 90 that, "The developer has not put forward statistics or appraisals to demonstrate that The Red Lion Inn would be unviable if it were operated other than as a tied pub.
40. Paragraph 90 of the Speaking Note also refers to national Planning Practice Guidance (PPG) advice on viable uses for heritage assets. This is set out in more detail in paragraphs 71 and 72 of the Note. Paragraph 71 refers to parts of paragraph 015 in the PPG's section on Decision Taking: Historic Environment and, in summary, the advice that the optimum viable use is the one likely to cause least harm to the significance of the asset over a period of time, it may not be the most profitable one, it could be the original use but that may no longer be economically viable or even the most compatible with the long-term conservation of the asset, if from a conservation point of view there is no real difference between viable uses then the choice of use is a decision for the owner, and, harmful development may

sometimes be justified in the interests of realising the optimum use of an asset. Paragraph 72 of the Note refers to PPG paragraph 016 which advises appropriate marketing is required to demonstrate the redundancy of a heritage asset with the aim of reaching all potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward there is no obligation to sell to them, but redundancy will not have been demonstrated. The Speaking Note contends that the applicant has failed to put forward convincing evidence to address these matters.

Officer Response:

41. It is considered that the applicant has, as set out above, put forward information to show that the pub use is no longer viable. DM24 requires this to be an adequate demonstration and supporting paragraph 1.78 states that the Council will have regard to the way in which a pub has been managed when determining this. The argument in the Speaking Note is that the pub's failure was influenced by its tied pub operating model and that no information or appraisal to show it would be unviable if it were operated other than as a tied pub has been submitted.
42. The submitted marketing material makes it clear that the property was offered for sale on a freehold basis. This would enable anyone to make an offer based on any of the three operating models, yet none of the parties recorded as viewing the property proceeded to an offer (but see following section). It should also be noted that the marketing material confirms that all four of those who viewed were experienced public house and restaurant operators. The application falls, on this matter, to be determined on this basis. The issue of the influence of the operating model remains a rather generalised one as no specific information is available other than the results of the marketing process. It is a matter of judgement as to whether or not the applicant's information amounts to an adequate demonstration that the use is no longer commercially viable. The officer conclusion is that, taking into account the marketing material, there has been an adequate demonstration.
43. With regard to the PPG advice on viability relating to heritage assets, which provides advice on applying paragraph 134 in the NPPF, it should be noted that paragraph 015 also advises that "putting heritage assets to a viable use is likely to lead to the investment in their maintenance necessary for their long-term conservation." and that "It is important that any use is viable, not just for the owner, but also for the future conservation of the asset. It is obviously desirable to avoid successive harmful changes carried out in the interests of repeated speculative and failed uses." There has been no argument against the likelihood that residential use provides a good prospect for a settled future of the listed building with attendant maintenance and, as assessed elsewhere in this and the May report, with only very limited aspects of less than substantial harm arising. Continued use as a pub, were that possible, is likely to offer a less certain future. From the heritage perspective the proposed residential use appears to be a viable one. The only other alternative put forward is the possibility of re-introducing the pub use but the conclusion from this report is that it has not been shown to be commercially viable. This would indicate that the proposed residential use is the optimum viable use and accords with NPPF paragraph 134.
44. With regard to paragraph 016 of the PPG which is referenced in the Speaking Note, this is only applicable to cases where substantial harm would be caused to the heritage asset. The officer assessment, elsewhere in this report, is that the proposals would not cause substantial harm, in which case this paragraph would not be applicable. Furthermore, this paragraph is headed "What evidence is needed to demonstrate that there is no viable use?" This is clearly not the situation here as the

applicant's case is that residential is viable and objectors consider that a continuing pub use would be viable. The contention, however, in the Speaking Note is that the harm would be substantial due to the loss of communal value and, despite the officer view, it is possible for the Committee to agree with this. The Committee should, however, bear in mind that the PPG (paragraph 016) says that substantial harm is a high test and may not arise in many cases and that an important test would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. Should the Committee identify such a serious impact it would then need to consider the applications against PPG paragraph 016 and NPPF paragraph 133 which states:

45. "133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
- the nature of the heritage asset prevents all reasonable uses of the site; and
 - no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
 - conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
 - the harm or loss is outweighed by the benefit of bringing the site back into use."
46. Committee members will, however, have noted the clear advice of the Council's Principal Heritage Officer that the loss of communal value would be minor and constitutes less than substantial harm – see paragraph 15 of this report.

Marketing

47. The Speaking Note considers the marketing undertaken by the applicant to be desultory and not the genuine and adequate attempts required by DM24. It is said that an offer was expressly made by someone "willing to invest the money in the building and purchase it in order to run it as a pub again" but that the offer was not followed through by the owner. The legal opinion adds to this and states at paragraphs 17 to 19:
48. "17. Startlingly, however, Members are not told of the offer made by a member of our Client Group to purchase the pub on 24 October 2014 for £240,000 to which no reply was received. Members are also not told that our Client chased the Applicant on 8 September 2015 via an email to their solicitors, Pocock's. They received an acknowledgment from Pocock's and an undertaking to pass the offer along to the applicant. No further response was received.
49. We are unable to think of a legitimate reason why this information should have been concealed from Members. It is obviously highly relevant to policy DM24.
50. The result of the failure to inform Members of this highly material consideration is the analysis at paragraphs 2.7-2.8. Those paragraphs suggest there were no offers made to purchase the pub, and that the reasons for no offers having been made are summarised at paragraph 2.8. That is a deeply misleading representation of the true facts on a highly material question before the Committee. Absent satisfactory explanation, it undermines the credibility of the report and its author."

Officer Response:

51. The May report to Committee was based upon the marketing material compiled on behalf of the applicant by a company called Sidney Phillips and, specifically an initial report from October 2015 and a final report dated 5 January 2016. As set out in the May report to committee the marketing reports stated that none the four viewings that took place produced offers on the property. The submission of the Speaking Note was the first time that officers had been made aware of a claim that an offer had been made.
52. Since that time an email dated 31 May was received from the applicant's agent which states:
- "It is the case that my client's solicitor received an unsubstantiated offer from Mr Lister in October 2014. There was no reference to such important matters as funding or a business plan. The property, at that time, was not being marketed.
 - The offer was effectively discounted by Dave Randall when allowing the appeal against the ACV (see para 49 of the attached decision). This is surely material. So too is his conclusion to the effect that the pub could not be run by the community (para 48). These are objective statements and nothing material has been produced to change his conclusions.
 - The follow-up offer of September 2015 was a reiteration of the earlier one with no additional information. It was not made through the selling agents. Given, inter alia, Dave Randall's comments, the applicant was quite justified in not taking any action.
 - The property was marketed May 2015 – February 2016, with offers invited.
 - It is known that Mr Lister visited the property to view in July 2015. He was accompanied by a publican who determined that re-opening was not viable. This key point is not mentioned in the opinion you have received. Please see attached letter dated 31 May 2016 in confirmation."
53. Paragraph 49 of the letter from David Randall, the Council's Director of Governance and Monitoring Officer, states:
54. "Both Mr. Walton and I have evidence of an offer by an undisclosed purchaser to purchase the Red Lion for £240,000. This was provided in an email from Alex Lister to Andrew Lawrie (the owner's marketing agent) on 27 October 2014. Mr Towns didn't respond to this offer, because he felt that it lacked substance and was made to thwart the planning process. I have given very little weight to this offer, as it is from an undisclosed source and doesn't articulate how the property could be run as a viable exercise."
55. The letter referred to dated 31 May 2016 is from Sidney Phillips which states:
- "I can confirm that Mr Alex Lister of the "Save the Red Lion" campaign group attended a viewing with Mrs D Playford on 29 July 2015. I was also in attendance at this viewing. Feedback provided was that the property and scheme to open The Red Lion as a public house again would require too much investment in order to get the business up and running again. Subsequently, no offer has been forthcoming from Mr Lister nor the campaign group, despite the property remaining on the market for a further 6 months. Mr Lister and the campaign group have had ample opportunity to bid for the property, however have not produced anything realistic supported by a proof of funds and are acting in an obstructive manner.
56. As a member of the Association for Valuers of Licensed Property, BII and RICS, whom specialises in valuation and sale of licensed premises in the South East, I

should comment, as stated in the previous correspondence, that the Existing Use Value of The Red Lion stands in the region of £425,000 to £450,000, and holds a required CAPEX investment in the region of £150,000 to £200,000 in order to bring the property into a safe and workable condition for reopening as a public house."

57. Further information in David Randall's letter indicates that the current owner bought the property for £282,500 ex. VAT (paragraph 24(g)). VAT was not payable as the property was no longer in use as a pub but were that use to be resumed VAT would become payable which would take the current owner's investment (with fees) to around £360,000.
58. From this the indications are that the offer of £240,000 is below the price paid by the current owner, was not made through the selling agent, was by an undisclosed purchaser and means of funding was unsubstantiated. For these reasons the applicant did not further it. Paragraph 1.78 supporting DM24 refers to marketing having "failed to produce a viable offer" while the policy itself states "genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed."
59. While it would have been preferable for the offer to have been made and assessed through the selling agent, it was not, and a conclusion has to be reached on the basis of the available information. The officer view is that an offer that is below the price paid for the property and some £200,000 below the professionally assessed Existing Use Value is not likely to induce a sale. Aside from that, the strength of the offer is unknown. It is considered that these factors could reasonably be taken to indicate that the offer was not viable and that, overall, the marketing process has failed. The May report has already concluded that the marketing exercise represented a genuine and adequate attempt and that view remains.

Conclusion

60. The assessment of the additional material that has been received since the publication of the May report has not identified any reasons for officers to change the recommendation to approve both applications. In response to comments received from KCC Archaeology after the May report was published it is recommended that approval of the planning application is also subject to condition to secure an archaeological watching brief.
61. For ease of reference the recommendation from the May report is reproduced below but with the additional recommended condition mentioned in the preceding paragraph.

Recommendation

- I In respect of DOV/15/00292 PLANNING PERMISSION BE GRANTED, subject to conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) materials to be submitted, iv) Details of cycle and refuse storage areas shall be submitted to and approved in writing by the local planning authority and put in place before the first occupation of the dwellings commences and maintained for such purposes thereafter, v) sample panel of brickwork to show bonding, type and style of pointing, for the proposed boundary wall, vi) any conditions requested by KCC Highways, vii) archaeological watching brief
- II In respect of DOV/15/00293 LISTED BUILDING CONSENT BE GRANTED, subject to the following conditions set out to include, in summary: i)

commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) The works shall not be carried out otherwise than in accordance with detailed drawings; iv) such drawings to be submitted to and approved by the Local Planning Authority in writing to show details of any mechanical ventilation, flues, soil vent or other pipes and joinery details for new window; v) no cleaning of internal or external timbers, vi) the Sessions Book will remain *in situ* and shall not be removed or relocated without formal approval from the local planning authority.

- III Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning permission/listed building consent conditions in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer
Andrew Wallace

To each Member of the Planning Committee
Dover District Council

Thursday, 26 May 2016

The Red Lion Inn
Canterbury Road
Wingham
CT3 1BB

Application for change of use and conversion from pub to two residential dwellings (Class C3) and a car park and associated listed building consent application.

Applications DOV/15/00292 and DOV/15/00293

Speaking Note Opposition to the Proposed Development

Presented by: Alex Lister
On behalf of: The residents of Wingham and environs

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Speaking Note

Introduction and summary

1. I am grateful to the Planning Committee for allowing me to address it on these two related applications, one for planning permission and the other for listed building consent ("**the Application**"). On behalf of all those for whom I speak, I thank the Planning Committee for this opportunity.
2. I am conscious that this is the second occasion this year that this Committee has met to consider an application to convert a longstanding public house into residential accommodation. The earlier application concerned the Chequer Inn at Ash. Although the officer report recommended granting permission, this Committee refused that application. The developer did not appeal. The Chequer Inn remains. Whilst the application to convert the Red Lion Inn has similarities, there are differences. Whilst we recognise that the Committee must, of course, decide each application on its own merits, there needs to be a consistent approach. As will be seen, the merits of this application are weaker than those that propped up the Chequer Inn application.
3. The development proposed by the Application is a matter of deep and enduring concern to those whom I represent. As a Grade II* listed building, the Red Lion Inn is a particularly valuable "heritage asset." For centuries the building has been associated with its current use — see Appendix 3. For those living in the Wingham area, the Red Lion Inn is a landmark pub in a landmark location. The Red Lion complements, rather than competes with, the two other pubs in Wingham — "the Dog Inn" and "the Anchor." The Red Lion is the archetypal English heritage pub: a refined, intimate space, enhanced by architectural features and centuries of association, the use of which breathes uniquely English life into its village setting. The Dog Inn is more along the lines of a B&B; and the Anchor features regular live music (rock, jazz etc), darts, billiards and so forth. All three have long co-existed, serving different needs and elements of the community.
4. As is conventional with such applications, having allowed the building to deteriorate, the developer now tantalises the committee with the promise of returning it to repair. This is used as the sweetener by which to entice the committee to do what is otherwise unpalatable: transplanting a domestic use into what is an obviously non-domestic building. In this way, the body is preserved but the spirit is lost. A proud building with a proud, living heritage will be converted into a domestic nonentity.
5. The allure of the promised "preservation work" cannot mask the discordance between use and structure. The conversion of this listed building from public house to private home will be irreversible. The consequences of this change of use will have to be lived out by both current and later generations. The irrevocability of this proposal imposes a heavy responsibility on the Planning Committee. For this reason alone, the material supporting the Application must be compelling; the planning merits must be overwhelming; this planning committee must be in no doubt.
6. But the Application is not compelling; the planning merits are not overwhelming; and the Application is not substantiated. Rather, the Application contradicts planning applicable planning policies and the vast preponderance of material considerations weigh against it:
 - (1) In debasing the intrinsic quality of the historic environment of Wingham by extinguishing the historic use for which The Red Lion Inn was designed and replacing it with one that does not belong, the Application will conflict with District Objective 10: see §26 below.
 - (2) In depriving Wingham of a longstanding public house in a village within a rural setting, the proposed development will diminish the role of Wingham as a provider of services to its home and adjacent communities, conflicting with Policy CP1 in the Core Strategy:

see §27 below.

- (3) In destroying employment land and buildings, the Application conflicts with Policy DM2 in the Core Strategy: see §34 below.
 - (4) In changing the use of a rural pub without genuine and adequate attempts to market it as a pub, the Application conflicts with Policy DM24 in the Core Strategy: see §35 below
 - (5) In emptying the building of communal value, the Application runs counter to the Dover District Heritage Strategy: see §§59-61 below.
 - (6) In emptying the building of communal value, the Application will also effect substantial harm to the significance of this heritage asset and, given the absence of any countervailing public benefits, NPPF §133 and ss 66 and 72 of the *Listed Building etc Act* demand its rejection: see §§24, 66-68 below.
 - (7) The conversion to residential use will give no support to an existing business but will instead destroy an existing employment site, thereby conflicting with saved Dover District Local Plan 2002 §§3.13-3.14: see §49 below.
 - (8) The conversion to residential use will degrade the area as tourism asset, thereby conflicting with saved Dover District Local Plan 2002 §3.100: see §51 below.
 - (9) There is no housing need in the area that justifies the proposed change of use into a house: see §62 below.
 - (10) The Red Lion Inn is an economically viable employment source.
 - (11) Retention of the current use is attended by wider social, cultural, economic and environmental benefits which are not shared by it being converted into a home: see §§74, 76, 77 and 78 below. Rejection of the proposed development offers the opportunity to secure those benefits and is thus supported by NPPF para 126: see §66 below.
7. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires the Committee to give “the desirability of preserving the building or its setting” not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm.
8. The Committee is asked to reflect on the significance of the development proposal to The Red Lion Inn. The Application does not disguise the fact that the proposed development will destroy the existing, publicly-accessible use of the building and replace it with a private domestic use that precludes any public enjoyment of its listed features. The significance of the listed features will thus be totally lost to the public. As this Council has itself recorded in its recently published Heritage Strategy:
- “Such loss is usually attributed to neglect, decay or inappropriate change. The need to carefully target ever diminishing resources towards those assets most at risk is important in order to secure our heritage for future generations, for once they are lost they are lost forever.” (§12.51, Theme 12 Built Heritage)
9. I am aware that this Committee has before it a planning officer’s report (Andrew Wallace) and that that report recommends that planning permission and listed building consent be granted. On reading the report, I was surprised by its reasoning. I sought a legal opinion from leading planning barristers. They advised that reliance on this report to allow the Application would expose the Council to legal challenge. I have appended a copy of the opinion at Appendix 10. I note that the planning officer tells the Committee that “the listed building has not been in use as a public house for some considerable time” (para 2.36). In fact, it was in continuous use as public house until 16 June 2014 (not “the beginning of 2014” - para 1.1). Given that it has been a public house for over 500 years, to characterise less than two years as “some considerable time” is apt to skew the Committee’s decision-making process.

10. All of this points to the fact that this Committee will be acting consistently with Dover District Council's planning policies, with Central Government guidance and with planning legislation in rejecting the Application.
11. I have prepared this document in order to assist the Planning Committee. I am conscious that in the six minutes allowed for me to address the Committee, I will not be able to cover all the points I would like to make. I also hope that by appending the background material, the Planning Committee can see for itself that the points made are vouched by objective and respected sources. The Committee can contrast for itself the wealth and provenance of this material with the self-serving say-so upon which the Application is propped.
12. Finally, I have prepared for the Committee's convenience a suggested wording for refusing planning permission and listed building consent — Appendix 10.

The Red Lion Inn

13. Wingham Parish Council describes Wingham as having been a settlement for many centuries, largely unchanged by even the industrial revolution — see Appendix 3. This history defines the character of Wingham. The Red Lion, as a functioning pub, forms a central part of that history and character.
14. The Red Lion itself has a long history, dating from the thirteenth century. It may have formed part of the Canonical College set up in 1286 by Archbishop Peckham, but was more likely the Market House; a weekly market, to be held on Tuesdays, was licensed by Henry III in 1252. The Wingham Petty Sessions were held at the inn until a proper sessions house was built in 1886.
15. During the 17th century, the Palmers and the Oxendens, two great families of Wingham were deciding whether to follow the King or Parliament in the Civil War. However, John Boys of Trapham, a member of Parliamentary Committee which governed the district under the rule of Cromwell, sat at the Red Lion, where they held their meetings, to the embarrassment of Thomas Palmer, an avowed Royalist, who lived opposite. It was the Oxenden family who managed to keep the temperature down and the community alive and the village remained neutral.
16. Right up until 1886 the Petty Constables responsible for public order, served writs and escorted offenders to Petty Sessions held at the Red Lion.
17. The Red Lion Inn was entered as a listed building on 13 October 1952. This was very shortly after legislation was first passed to enable buildings to be listed, ie s 30 of the *Town and Country Planning Act 1947*. The early listing is significant in that it signifies that the Red Lion Inn was a ready candidate for listing. Moreover, it is a Grade II* listing, signifying a particularly important building of more than special interest, ie of greater importance than a Grade II listed building. It should be noted that at the time of its listing there was a non-statutory grade III listing, which was abolished in 1970. By way of comparison, other Grade II* listed buildings include Battersea Power Station, the Coliseum Theatre in London and St John's Jerusalem (ie Sutton-at-Hone Preceptory), Kent.
18. The Red Lion's listing states:
 "Public House. Circa 1400 extended C15, C16 and late C19. Timber framed and rendered with plain tiled roof, with C19 rear wing of red brick and tile hung. Two storeys on plinth with jetty to left, returned to left elevation on dragon post. Moulded bressumer to right and eaves coved to hipped roof with stack to end right and offset. Central hipped 2 storey porch on moulded brackets with 4 light mullioned window and 3 and 4 light mullioned

windows on either side on each floor. Central rib and stud door with four centred arched and moulded surround at head of flight of 5 steps with simple iron rails and acorn finials. Left return; continuous jetty on brackets with irregular fenestration of glazing bar sashes and mullioned windows and C19 end wing with 3 half dormers. Interior; evidence of at least 4 periods of building. Brick lined undercroft survives, possibly from late C13 with remains of C14 open hall over it, with 9 feet long unmoulded crown post roof and inserted C16 floor with moulded joists. Main body late C15/C16 continuous jettied range with moulded octagonal crown posts and 2 internal medieval doors and evidence of smoke bay. Moulded four centred arched stone fireplace in the 'Sessions Room'. Finally the C19 stable wing to rear. Early C18 open well staircase with turned balusters. The Inn stands on the site and may incorporate part of Wingham College, and was at some stage the market house, the manor court house and the Sessions House until 1883, and preserved inside is an early C18 sessions book."

It is notable that most of the features described above are internal and, if the use is changed, will be lost to the public.

19. in addition to its listed status, the Red Lion Inn is within a conservation area. An area can only be designated as a conservation area if it is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance: section 69(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*.
20. The Red Lion Inn is perfectly viable as such. Of the 42 reviews it received in TripAdvisor, 27 (ie almost 2/3rds) gave it an "Excellent" rating. The latest five reviews read:
 - *Unexpected gem, the food is absolutely delicious.* My boyfriend and I went to the restaurant one rainy night by the force of pure good luck. The restaurant was cosy and full of character. The food was incredibly delicious - the homemade bread, the Kentish lamb and the chicks. This can rival any top rated restaurant in London easily. Must try if you are in the area. (26/3/16)
 - *Great place to stay.* We have just come back from a three night break in the Red Lion and can't speak highly enough of the welcome and friendliness of Dave and Ann and all the people we met. It was our first time in Kent but won't be our last. We had lovely food and the Red Lion is a fantastic building with such interesting history. (14/5/14)
 - *Absolutely beautiful.* Me and my partner were stuck and needed a room, we were greeted by the loveliest couple who were very welcoming and friendly and made the time to have a chat, the room and breakfast both amazing, didn't want to come home but will defo be back. Recommend highly. (2/3/14)
 - *Superb.* Excellent food for all fussy requirements. The new landlord & lady are so warm and welcoming... Nothing is too much trouble. Loving the historic building!! I cannot wait to re visit and taste the food and enjoy the atmosphere!! The singer cellina was superb. (2/3/14)
 - *Fantastic, absolutely love this place.* I stayed at the Red Lion with my bridal party the night before my wedding. Everything about our stay was completely perfect and I cannot express how happy I am that we chose to stay here. The staff were friendly and attentive from the moment we arrived until the moment we left and nothing was too much trouble for them. John, the manager is an absolute star, a proper old fashioned landlord and all round gentleman! We took three bedrooms, all of which were beautifully kept - extremely clean and comfortable. The staff and locals in the bar welcomed us all as if we were old friends. We had a lovely evening meal, there is a great choice and everything is great value for money. The food was fantastic! On the morning of my wedding the staff gave us a beautiful cooked breakfast and took care of everything we could possibly need, welcoming my family members and

directing them along with my hairdresser, make up artist and photographer straight up to our room. And even doing their best to calm down a nervous and stressed out bride! Everything was stress free and easy and I was treated like royalty by all of the staff. The whole place is charming and beautiful and I will definitely be going back for a weekend with my husband!

Legal approach

21. By section 38(6) of the *Planning and Compulsory Purchase Act 2004* the Application must be determined in accordance with the policies of the Development Plan unless material considerations indicate otherwise. Consistently with this, section 70(2) of the *Town and Country Planning Act 1990* provides that where an application is made to the Council for planning permission, the authority:

"shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."
22. Section 16(2) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* provides that in considering whether to grant listed building consent the local planning authority:

"....shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Further, section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority:

"shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses..."
23. Putting to one side the effect of a building being listed, case-law has established that s 38(6) means that the policies of the Development Plan start off in priority and that material considerations of sufficient weight to outweigh them are required if the Application is to be determined otherwise than in accordance with the Development Plan.
24. Insofar as the proposed development is in a conservation area, the effect of s 72 of that Act is to impose an irreducible duty on the Council when exercising its planning functions under any of the planning Act to pay "special attention ... to the desirability of preserving or enhancing the character or appearance of that area." Binding judicial authority advises that unless a development will enhance or preserve the character or appearance of a conservation area it is almost inevitable that it will have a detrimental and therefore harmful effect on the area's character or appearance, with the result that the presumption in favour of development is rebutted and permission must be refused unless the advantages or benefits of the development would outweigh the failure to satisfy the preservation or enhancement test. The Planning Officer's analysis at §§2.33-2.34 does not faithfully reflect the legal requirements.

The planning policies

25. The Development Plan comprises, so far as is relevant:
 - (1) Dover District Council. Core Strategy, adopted February 2010.
 - (2) Policies saved from the 2002 Dover District Local Plan (these were saved in September 2007)
 - (3) The Land Allocations Local Plan, which was adopted in January 2015.

Dover District. Core Strategy

26. District Objective 10 in the Core Strategy (p 29) is to:

“Ensure that the intrinsic quality of the historic environment is protected and enhanced and that these assets are used positively to support regeneration, especially at Dover.”

The Application does nothing whatsoever to enhance to historic asset that is The Red Lion Inn. Rather, it deforms the historic asset by putting a domestic use into a non-domestic structure in a non-domestic location.

27. Policy CP1 in the Core Strategy provides that the “location and scale of development...must comply with the Settlement Hierarchy.” In the case of Wingham, the Hierarchy provides a function:

“Secondary focus for development in the rural area; suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent communities.”

28. The Application does not “reinforce [the role of Wingham] as a provider of services to its home and adjacent communities.” In removing the service that is provided to home and adjacent communities that is currently provided by The Red Lion Inn and replacing it with a domestic dwelling, it diminishes the role of Wingham as a provider of services to its home and adjacent communities.

29. The Planning Officer in his report to this Committee asserts that the Council’s Housing policies:

“As set out in the previous section, Wingham is classified as a Local Centre in the Settlement Hierarchy in Core Strategy Policy CP1 and is a suitable location in the rural area for residential development. In order to help operate the Hierarchy, Policy DM1 identifies settlement boundaries beyond which countryside protection policies apply and subject to specified exceptions, development will not be permitted. The application site falls within the settlement confines for Wingham and is an appropriate location for the creation of new dwellings..” (§2.20).

This misrepresents the Council’s housing policies.

30. The Council’s housing policies are partly set out in the Core Strategy, starting at p 108 (DM5-DM10). None of these are referred to in the Planning Officer’s report. The Council’s housing policies are also set out in the Land Allocations Local Plan, adopted 2015. The Planning Officer does refer to the Land Allocations DPD (foot of p. 12), but he omits to identify any specific policy that supports the development. That is because there is none.

31. Land Allocations Local Plan, adopted 2015 does deal with housing allocation in Wingham at §§3.346-3.349, policies LA33. The Planning Officer makes no mention of this policy. This is because it gives no support to the so-called principle at §2.2 of his report.

32. Paragraph 3.348 provides:

“To help sustain and strengthen Wingham’s role in the settlement hierarchy, it is considered that additional housing will be required over the lifespan of this Plan. However, the issues that provide the village with its unique character; the heritage assets, the river (creating Flood Zones 2 and 3) and its location in the open countryside, all limit the development opportunities in the village.”

In other words, the Policy contradistinguishes the conservation area and listed buildings in the village from the additional housing that may be formed within Wingham. This is fundamental.

33. Paragraph 3.349 and figure 3.14 then go on to identify three sites for residential development in Wingham and to describe the reasoning behind each. These are all as far away from the site of The Red Lion Inn as could be.

34. Policy DM2 in the Core Strategy provides:
 “Land allocated for employment uses as shown on the Proposals Map or with extant planning permission for employment uses will not be granted permission for alternative uses unless it has been subsequently allocated for that alternative use in a Development Plan Document.
 Permission for changes of use or redevelopment of land and buildings currently or last in use for employment purposes will only be granted if the land or buildings are no longer viable or appropriate for employment use.”
 As is demonstrated below (see §?), The Red Lion Inn is viable for its current employment use. The fact that it is not viable under the well-documented unfavourable regime imposed upon tenants by Punch (see §90 below)
35. Policy DM24 in the Core Strategy provides:
 “Planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed.”
36. The supporting text explains:
 “1.77 When applications are submitted for the change of use of a rural shop or pub account will be taken of its importance to the community that it serves and the range of other facilities and services that would remain. Permission for alternative uses will not be given if the community would be left without any local shops or facilities, or the range would be seriously diminished, unless the applicant has established that a shop or pub use is no longer commercially viable.
 1.78 The Council will have regard to the way in which the shop or pub has been managed. The Council's study into rural shops found that viability issues were often closely related to management techniques and a failure to keep up with competitors. The Council will also wish to see that adequate and genuine attempts have been made to market the premises for shop or pub use, as appropriate, but have failed to produce a viable offer. Marketing should be through an appropriate agent and for a period of time that fully tests demand having regard to the buoyancy of prevailing market conditions.”
37. The loss of The Red Lion Inn will harm the social viability of the community it serves and, by an increment, its economic viability. In order to avoid a conflict with policy DM24 the developer must **adequately demonstrate** that the use is no longer commercially viable **and** that genuine and adequate attempts to market the premises as a pub have failed.
38. The Planning Officer's report, after referring to §1.77 and the need to take account of “the range of other facilities and services that would remain”, advises at §2.4 that the range of would not be seriously diminished. The Officer supports this by referring to the two other public houses that would remain. This is a misreading of the supporting text. “The range” is not simply a reference to the types of facilities; it also embraces the variety. As noted above, The Red Lion is a very different public house to the other two, attracting a very different clientele. That clientele is not served by the other two public houses.
39. Accordingly, the development proposal will result in a material reduction in the range of facilities in Wingham. The Planning Committee must take that into account, giving due weight to the

importance of that facility and of there being a range in that facility.

40. Contrary to the Planning Officer's report (§2.7), given that the change of use of The Red Lion Inn will harm the economic and social viability of Wingham, it is necessary to address whether the developer has adequately demonstrated that the use is no longer commercially viable **and** that genuine and adequate attempts to market the premises as a pub have failed.
41. The developer has done neither. The marketing efforts have been desultory. He has not followed through an attractive offer to purchase the building. That offer was expressly made by someone "willing to invest the money in the building *and* purchase it in order to run it as a pub again." They have been predicated on a failed model - the tied pub. This demonstrates that a properly run pub with a proper sense of purpose is economically viable.
42. Accordingly, neither of the requirements that must be met in policy DM24 is satisfied. The Planning Officer's conclusion to the contrary at §2.10 is founded upon a misunderstanding of his Council's policies and a selective examination of the material — see Appendix 10.
43. There are a number of other observations to be made in relation to the Core Strategy.
44. The Core Strategy records at §2.64:
"In common with most rural areas the main concern revolve around the retention of services and facilities..."
The Application will remove, not retain, one of the services and facilities in Wingham.
45. Paragraph 2.72 records:
"...the position of the largest villages [of which Wingham is one] to continue to offer a range of facilities to both their own residents and those of neighbouring settlements, needs to be consolidated."
The Application will constrict, not consolidate, the range of facilities available to the residents of Wingham and neighbouring areas.
46. Paragraph 3.25 records that there is considerable opportunity to improve tourism:
"Much of this revolves around making much better use of historic and natural assets allied to the improvements in shopping, cafes, hotels etc mentioned above and the public areas of town centres."
The Application will not help tourism through the better use of the historic asset that is The Red Lion Inn. It will end for all time its use for helping tourism and it will end for all time the employment opportunities that proper exploitation of this heritage asset offers.
47. Paragraph 3.79 records that the "Strategy also promotes rural based jobs...by:
"The creation of rural based businesses through the reuse of buildings...
Resistance to the loss of rural services, where it would harm the local community..."
The Application will do just the opposite.

Saved policies from the 2002 Dover District Local Plan

48. Certain policies from the 2002 Dover District Plan have been "saved" and must therefore be taken into account if relevant to a development.
49. Paragraphs 3.13-3.14 provides, so far as relevant:
"3.13 One of the Plan's aims (Aim 2) is to help build a strong local economy. Its related Objectives (Objectives 16-21) are concerned with ensuring that sufficient employment

land is allocated, allocated sites are attractive to prospective investors, employment sites are protected from other development and the range of employment opportunities widened.....

3.14 Based on the existing situation and the Aims and Objectives, the Plan's Local Economy Strategy seeks to:-

.....

support existing businesses..."

50. Maintenance of the existing use of The Red Lion Inn will thus be consistent with the Plan's Local Economy Strategy, whereas allowing the development proposal will destroy the existing business.
51. Paragraph 3.69 records that the rural area of Dover District Council (which includes the area of Wingham) is:
"undergoing structural economic changes. These changes mean there is a need to diversify the types of employment activity in rural areas (rural diversification)..."
It then goes on to identify two strands to deal with this, one of which is tourism. Of this, the Policy says that tourism is an important source of employment opportunity.
52. Tourists are not attracted by residential dwellings. Genuine, historic, characterful pubs do, on the other hand add to the attractiveness of the area, enjoying ratings on websites and widespread publicity on social media.

Dover District Heritage Strategy

53. Any decisions relating to listed buildings and their settings and conservation areas must address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see in particular sections 16, 66 and 72) as well as satisfying the relevant policies within the National Planning Policy Framework and the Local Plan.
54. Protecting and enhancing the historic environment is an important component of the National Planning Policy Framework's drive to achieve sustainable development (as defined in Paragraphs 6-10). The appropriate conservation of heritage assets forms one of the 'Core Planning Principles' (Paragraph 17 bullet 10) that underpin the planning system. This is expanded upon principally in Paragraphs 126-141 but policies giving effect to this objective appear elsewhere in the National Planning Policy Framework.
55. The conservation of heritage assets in a manner appropriate to their significance is a core planning principle. Heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits.
56. Conservation is an active process of maintenance and managing change. It requires a flexible and thoughtful approach to get the best out of assets as diverse as listed buildings in every day use to as yet undiscovered, undesignated buried remains of archaeological interest.
57. In the case of buildings, generally the risks of neglect and decay of heritage assets are best addressed through ensuring that they remain in active use that is consistent with their conservation. Ensuring such heritage assets remain used and valued is likely to require sympathetic changes to be made from time to time.
58. *Dover District Heritage Strategy* (2013) describes itself as containing:
"recommendations to ensure that any future policies and approaches to the District's heritage are based on a clear understanding of the place, its significance and its value.

The aim of the Dover District Heritage Strategy is therefore to enable Dover District Council to achieve their objectives for the protection and enhancement of the historic environment as set out in the District's Core Strategy." (§1.3)

59. The Strategy explicitly recognises "communal value" as one of the four "strands" of "Heritage Value" (see §§2.43, 2.49, 4.8). "Communal value" is intimately related to the use of a building: see §§4.8-4.9.
60. In dealing with heritage assets, such as a listed building, it provides:
"3.3 A heritage asset will hold meaning to individuals and groups of individuals beyond their purely functional utility. Heritage assets have been shaped by people responding to their local environment, but will also help to shape that environment in the future. They have a significant role to play in creating a sense of place and acting as a catalyst for regeneration. The District's heritage assets add distinctiveness, meaning and identity to the place and are an exceptionally valuable local resource.
3.4 It is therefore important that the significance of the District's heritage assets is taken into account as part of any future development management, regeneration or maintenance decisions and opportunities are sought, wherever possible to enhance the District's heritage assets."
61. The Heritage Strategy includes 13 appended "Theme Papers." Theme 12 — entitled "Built Heritage" — again stresses the importance of communal value of the built heritage (see §12.119). Figure 19 in that document is devoted to The Chequer.

Strategic Housing Land Availability

62. The Dover District Council *Strategic Housing Land Availability Assessment Draft Final Report*, June 2009 provides:
"Housing Targets
7.5 Dover District has an RSS housing target of 10,100 units, the LDF Core Strategy, is based on this target. Through this SHLAA process there is an identified land supply for deliverable and developable sites totalling some 19,244 units, subject to further testing."
63. There is thus no housing imperative that supports the Application.

The National Policy Planning Framework

64. The National Policy Planning Framework (March 2012) ("**NPPF**") is a material consideration.
65. Paragraph 17 of the NPPF sets out 12 core planning principles that "...should underpin both plan-making and decision-taking." The 10th core planning principle is square on relevant:
"planning should.....conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations"
66. This core planning principle is explained in paragraphs 126-141 of the NPPF. So far as relevant, these provide:
"126. Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and

conserve them in a manner appropriate to their significance. In developing this strategy, local planning authorities should take into account:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to **viable uses consistent with their conservation**;
- the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- the desirability of new development making a positive contribution to local character and distinctiveness; and
- opportunities to draw on the contribution made by the historic environment to the character of a place.

127.

128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

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

130. Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.

131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional.

133. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional. **Where a proposed**

development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.” (emphasis added)

(The last paragraph is to be contrasted with the Planning Officer’s precis at §2.26).

67. As noted in §8 above, the proposed development would “lead to substantial harm to or total loss of significance of a designated heritage asset.” The Planning Committee should recognise this and so record.
68. The developer has not begun to demonstrate that the substantial harm to the heritage asset (which would see the listed features, which can currently be enjoyed by all patrons of The Chequer, taken away from the public and placed in a discordant domestic setting) is “ necessary to achieve substantial public benefits that outweigh that harm or loss.” Nor has the developer begun to show the applicability of any of the other four exceptions in paragraph 133 of the NPPF.

Planning Practice Guidance

69. Planning Practice Guidance (“PPG”) is also a material consideration. Guidance entitled *Conserving and enhancing the historic environment* opens:

“§001 What is the policy for the historic environment?

Protecting and enhancing the historic environment is an important component of the National Planning Policy Framework’s drive to achieve sustainable development (as defined in Paragraphs 6-10). The appropriate conservation of heritage assets forms one of the ‘Core Planning Principles’ (Paragraph 17 bullet 10) that underpin the planning system. This is expanded upon principally in Paragraphs 126-141 but policies giving effect to this objective appear elsewhere in the National Planning Policy Framework.”

70. The Guidance goes on to explain (§003):

“What is meant by the conservation and enhancement of the historic environment?

The conservation of heritage assets in a manner appropriate to their significance is a core planning principle. Heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits.

Conservation is an active process of maintenance and managing change. It requires a flexible and thoughtful approach to get the best out of assets as diverse as listed buildings in every day use to as yet undiscovered, undesignated buried remains of archaeological interest.

In the case of buildings, generally the risks of neglect and decay of heritage assets are best addressed through ensuring that they **remain in active use that is consistent with**

their conservation. Ensuring such heritage assets remain used and valued is likely to require sympathetic changes to be made from time to time. In the case of archaeological sites, many have no active use, and so for those kinds of sites, periodic changes may not be necessary.

Where changes are proposed, the National Planning Policy Framework sets out a clear framework for both plan-making and decision-taking to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance and thereby achieving sustainable development.

Part of the public value of heritage assets is the contribution that they can make to understanding and interpreting our past. So where the complete or partial loss of a heritage asset is justified, the aim then is to capture and record the evidence of the asset's significance which is to be lost, interpret its contribution to the understanding of our past, and make that publicly available." (emphasis added)

71. The Guidance supplies valuable assistance in evaluating what is a valuable use of a heritage asset and how it is to be taken into account in planning decisions (§015):

"If there is only one viable use, that use is the optimum viable use. If there is a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes.

The optimum viable use may not necessarily be the most profitable one. It might be the original use, but that may no longer be economically viable or even the most compatible with the long-term conservation of the asset. However, if from a conservation point of view there is no real difference between viable uses, then the choice of use is a decision for the owner.

Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused provided the harm is minimised. The policy in addressing substantial and less than substantial harm is set out in paragraphs 132 - 134 of the National Planning Policy Framework."

72. It also emphasises that the evidence of no viable use must be robust (§016):

"What evidence is needed to demonstrate that there is no viable use?

Appropriate marketing is required to demonstrate the redundancy of a heritage asset in the circumstances set out in paragraph 133, bullet 2 of the National Planning Policy Framework. The aim of such marketing is to reach all potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward, there is no obligation to sell to them, but redundancy will not have been demonstrated."

The economic and social importance of village pubs

73. The economic and social importance of maintaining the use of village pubs is well documented.

The 2010 econometric study of village pubs

74. In 2010 I Cabras and C Reggiani published an important econometric study of the effect of village pub uses. Entitled 'Village pubs as a social propellant in rural areas: an econometric study' and published in the *Journal of Environmental Planning and Management*, this was the product of an 18-month econometric analysis funded by the British Academy of community life in almost 2,800 small rural parishes in England. The authors are two economists based at Northumbria University and University of York.

75. It found that villages with a thriving pub are between 40 and 50 per cent more likely also to community social events or activities such as cricket matches or village fetes. It concluded that pubs are more important to village life even than the local parish church, that pubs are more important to the social side of village life more than ever before.

The Institute for Public Policy research report

76. In an 86-page report on the role of pubs in English village-life was prepared by the Institute for Public Policy Research in 2012 (Appendix 4). It concluded:

"Pubs are more than just private businesses selling alcohol. Many pubs also play an important role at the heart of their local communities.

- Pubs provide a meeting place where social networks are strengthened and extended: the pub scored the highest of any location in our survey asking people where they get together with others in their neighbourhood.
- Pubs inject an average of £80,000 into their local economy each year. Pubs add more value to local economies than beer sold through shops and supermarkets, simply because they generate more jobs. Beer sold through pubs also generates more funding for the public purse than beer sold through the 'off trade'.
- While alcohol is linked to problems around crime and disorder, very little of this comes from community pubs serving residential areas.
- Pubs are perceived by people to be the most important social institution for promoting interactions between people from different walks of life.
- Pubs host a wide variety of community-oriented events and activities that add considerably to local civic life.
- Many community pubs are becoming hosts for a range of important public services, including post offices and general stores, and providing broadband internet access.
- Community pubs, or at least pubs with certain characteristics, also have a cultural as well as a practical community value. This is because pubs are felt to offer things such as tradition and authenticity that are becoming rarer in a world transformed by global commercial pressures.
- This report uses a 'social return on investment' methodology to measure the wider social value generated by a sample of community pubs, and finds that this ranges from around £20,000 to £120,000 per pub."

The Joseph Rowntree report

77. A study commissioned by the Joseph Rowntree organisation and carried out by Marion Roberts & Tim Townshend (2013), 'Young adults and the decline of the urban English pub: issues for planning', *Planning Theory & Practice*, 14:4, 455-469) concluded that the traditional pub represented a site for restrained and responsible social interaction for young adults: see Appendix 7.

The 2015 econometric study

78. This was followed five years later by a further study and article by Matthew Mount & Ignazio Cabras, *Community Cohesion and Village Pubs in Northern England: An Econometric Study*, Regional Studies, 2015 (Appendix 8). Using data from 715 rural parishes located across Northern England, the paper demonstrates the importance of pubs for maintaining rural areas in these regions.

General conclusions on research into pub uses

79. There is no countervailing research material. The conclusions expressed in these reports is uncontroverted. There is no evidential basis upon which to ignore or even discount the

conclusions expressed.

The economic viability of tied pubs

80. To be valid, any economic viability assessment of a pub must take account of the economic model on which the pub is run.

The operation of pubs

81. Pubs can be owned and operated in a variety of ways. At one extreme is the managed pub, in which a company owns a pub, specifies what is sold in it, and hires a salaried manager to run it. At the other is the freehouse, where the individual licensee owns the pub, controls the business, makes the buying decisions and takes the profits. In between is the leased or tenanted pub, in which a licensee pays rent to the owner of the property and is often required to buy at least some categories of products through the landlord — known as being ‘tied’. In the UK there are approximately 17,000 freehouses, 31,000 tenanted/leased pubs and 9,000 managed pubs.

House of Commons Select Committee Report

82. On 21 April 2009 the House of Commons Business and Enterprise Committee published its report on pub companies (Appendix 5). This dealt with the relationship between pub companies and their lessees. The Select Committee heard evidence from a large number of tied pub lessees as well as from the pub companies themselves. The evidence was transcribed and is available online as vol 2 of the proceedings of the Select Committee:

<http://www.publications.parliament.uk/pa/cm/cmberr.htm>.

83. The Select Committee was careful to ensure that it did not simply hear from disgruntled lessees. It conducted its own survey to determine whether the evidence it received from individual lessees was typical of feelings in the industry, or whether it was the result of particular individual problems. The Select Committee recorded in the Summary of their report:

“Our investigation showed that the majority of lessees of tied pubcos did not consider their pubco added value to them and were dissatisfied with their pubco; 78% of lessees were dissatisfied with the tie. 67% of lessees who responded to the survey said that they earned less than £15,000 per annum. Even where pubs had a turnover of more than £500,000 a year, over 50% of lessees earned less than £15,000. Although we could not investigate the stories told by individual lessees, the survey results gave us confidence that although their cases might be extreme, they were not simply a dissatisfied minority...”

84. The Select Committee noted that two of the pubcos had given the Committee false evidence: “...in evidence to us both Mr Thorley **of Punch** and Mr Tuppen and Mr Townsend of Enterprise Inns made assertions which, on investigation, proved to give a partial picture, or on one occasion were positively false.” (§9)

85. Until very recently, Punch was the pubco for The Chequer. The Committee is asked to look at §§88, 95 of the Select Committee report. Misleading and giving false evidence to a Committee of the House of Commons is a serious matter.

86. The Select Committee reported:

“29.Punch argued ‘that the current challenging trading environment is the primary contributory factor for any increase in Licensees’ financial distress. The ‘tied’ lease model is not the issue.’

30. However the responses to our survey demonstrated that lessees disagreed with the pubcos' analysis of problems in the trade. The main cause perceived by the lessees for their financial difficulties was overwhelmingly their pubco — the rent they were charged by their pubco and the price they had to pay for their beer from their pubco."

87. The Select Committee went on to record a lack of transparency on the part of pubcos when it came to setting out how rents were fixed.
88. The Select Committee made a number of important findings which demonstrate the falsity of the developer's contention that The Chequer is unviable as a pub. It may be unviable as a pub tied to Punch: that is not the same thing. Because the terms are tilted in favour of Punch, being tied to Punch and being viable is an uphill struggle:
"Over 50% of the lessees whose pubs had a turnover of more than £500,000 a year earned less than £15,000. The pubcos may share the risks with their lessees but they do not share the benefits equitably." (§133)

Significance

89. The tied pub is hampered by particular economic constraints. Like any business which is tied to a particular supplier, the tied publican is not free to source his/her supplies from the lowest cost-source and is not free to select product lines that are most likely to be popular. An economic viability assessment of a tied pub is thus a distorted representation of the viability of that pub in the open market. The extent of the distortion requires an analysis of the product lines, the product prices and local market forces.
90. The developer has not put forward statistics or appraisals to demonstrate that The Red Lion Inn would be unviable if it were operated other than as a tied pub. With a heritage asset, it is for the developer to convince the Planning Committee with objective, verifiable evidence: see §72 above. The developer here has failed to do so.

The Institute for Public Policy research paper into tied pubs

91. In 2011, the Institute for Public Policy Research published a major report entitled *Tied Down. The Beer Tie and its impact on Britain's Pubs* (Appendix 9). It found that:
- the level of business churn is higher in the tied than in the non-tied sector
 - tied publicans are less likely to share the same levels of prosperity as those who are non-tied
 - tied publicans are much more likely to say they are struggling financially and they also earn significantly less than non-tied operators
 - tied publicans who are struggling financially see the beer tie as one of the most significant contributing factors to their financial problems."

92. The report has not been controverted. Its findings and conclusions stand unchallenged.

General conclusions on the economic viability of tied pubs

93. The developer has not attempt to give this Committee an analysis that corrects the distorting economic effects of the pub being tied. To assert that the economic viability of premises as a tied pub represents the economic viability of those premises as a pub is to call an apple a pear.

Conclusion

94. The Planning Committee is respectfully invited to rejected the Application on the basis that the proposed development would:

- (1) Debase the intrinsic quality of the historic environment of Wingham by extinguishing the historic use for which The Red Lion Inn was designed and replacing it with one that does not belong, thereby conflicting with District Objective 10: see §26 above.
- (2) Deprive Wingham of a longstanding public house in a village within a rural setting, the proposed development will diminish the role of Wingham as a provider of services to its home and adjacent communities, thereby conflicting with Policy CP1 in the Core Strategy: see §27 above.
- (3) Destroy employment land and buildings, thereby conflicting with Policy DM2 in the Core Strategy: see §34 above.
- (4) Change the use of a rural pub without genuine and adequate attempts to market it as a pub, thereby conflicting with Policy DM24 in the Core Strategy: see §35 above
- (5) Empty the building of communal value, thereby conflicting with the Dover District Heritage Strategy: see §§59-61 above.
- (6) Also thereby effect substantial harm to the significance of this heritage asset and, given the absence of any countervailing public benefits, conflict with NPPF §133 and ss 66 and 72 of the *Listed Building etc Act*: see §§24, 66-68 above.
- (7) Give no support to an existing business but would instead destroy an existing employment site, thereby conflicting with saved Dover District Local Plan 2002 §§3.13-3.14: see §49 above.
- (8) Degrade the area as tourism asset, thereby conflicting with saved Dover District Local Plan 2002 §3.100: see §51 above.

Moreover, The Red Lion Inn is an economically viable employment source, and the figures put forwards to suggest otherwise are skewed by the well-recognised distorting economics of the tied house: see §§90-? above. Retention of the current use is attended by wider social, cultural, economic and environmental benefits which are not shared by it being converted into a home: see §§74, 76. 77 and 78 above. Rejection of the proposed development offers the opportunity to secure those benefits and is thus supported by NPPF para 126: see §66 above.

95. Each of the above reasons is sufficient to reject the Application. Collectively, they represent an overwhelming case for rejection.

Alex Lister
25 May 2016

THE RED LION, CANTERBURY ROAD, WINGHAM

DOV/15/00292 & DOV/15/00293

JOINT OPINION

1. We are instructed by the Save the Red Lion Group ("our Client") to advise on the material before the planning committee for its upcoming meeting to determine the above application.
2. We have read the report prepared by the Council's professional officers to assist the planning committee determine the application. We are of the view the Report falls into error in two important respects. First, it fails to deal properly with the main development plan policy in issue (DM24) and secondly, it fails to advise the Committee of a highly material consideration, an offer to purchase the pub at market value: £240,000. In our opinion, were the Committee to rely on this report to reach a decision to allow the proposed development, it would expose itself to legal challenge.

Issue 1 – Policy DM24 Dover Core Strategy (2010)

3. By s.38(6) Planning and Compulsory Purchase Act 2004 the Council is obliged to determine the application in accordance with the policies of the statutory development plan unless material considerations indicate otherwise. As Lord Clyde explained in City of Edinburgh Council v Secretary of State for Scotland [1997] 1 W.L.R. 1447, 1459 the statutory duty requires a decision taker to:

"... consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan."

4. The Officer's Report identifies policy DM24 as engaged by the proposal. That is undoubtedly correct.
5. Policy DM24 provides:

"Planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed."
6. The policy thus puts the onus squarely on the developer to demonstrate satisfaction of the criteria, failing which planning permission is to be refused.
7. The Officer concludes at para.2.10 that the "proposed loss of the public house use would not cause harm as envisaged under policy DM24." Unfortunately, the Officer makes two separate legal mistakes in reaching this conclusion.
8. First, he effectively re-writes the policy by telling the Committee (at para 2.7) that "the issue is therefore whether the proposed loss of The Red Lion as a pub would seriously diminish the range of facilities in Wingham and thereby harm the economic and social viability of the community." While serious diminution of the range of facilities in Wingham will undoubtedly harm the economic and social viability of the community, the issue presented by Policy DM24 and which the Committee must decide for itself is not so limited as the Officer would have it. The issue for the Committee under Policy DM24 is whether the developer has sufficiently demonstrated that the change of use of The Red Lion from a pub to two dwellings *would not* harm the economic and social viability of the community that it serves. It is to be noted that the requirement in DM 24 is:
 - *would not* harm, not *might not* harm;
 - it is *harm*, not *serious harm*; and
 - it is to demonstrate that the loss would not harm the economic *and* social viability of the community, rather than to demonstrate that

the loss would not harm the economic *or* social viability of the community.

9. In recasting DM24 as he has, the Officer has left out of his conspectus all the ways other than serious diminution in the range of facilities at Wingham in which loss of The Red Lion might harm the economic and social viability of the community. It does not require any major feat of imagination to anticipate these.
10. Secondly, the report fails to identify any evidence to support the first of the two cumulative requirements of the second facet of DM24 (ie whether the developer has adequately demonstrated that the use as a pub is no longer commercially viable) or grapple with that requirement in any way.
11. It is no answer to suggest that simply because the Officer has arrived at the planning judgment that the loss of the community facility would not harm the economic and social viability of the community, he is absolved of responsibility to properly analyse the rest of the policy requirements to the decision taker. In any event, it is obvious from the Officer having considered the second requirement of the second facet that he appreciated that that facet needed to be dealt with. It is wrong of him to deal with only one of its two requirements.
12. The Committee is entitled to come to a different planning judgment on the first facet of DM24 (ie that the developer has not demonstrated that the loss of The Red Lion would not harm the economic and social viability of the community), and should that be the case, Members would be left in the dark as to application of the first requirement of the second facet of the policy.
13. As such, in our view, the Officer's Report is liable on each of these two counts to lead the Committee into legal error.

Issue 2 – Market interest

14. Whilst it is not the law that an officer's report must recite every minor consideration, it must summarise the key considerations fairly. As Lady Hale held in R(Morge) v Hampshire County Council [2011] UKSC 2 at [36]:

"... [elected members] have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them."

15. An officer's report will fall into error if:

"... the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken."¹

16. The Officer's report sets out the officer's analysis of the second requirement of the second facet of DM24 (having skipped over the first requirement as if it were not there) at paragraphs 2.7-2.10. Members are told of a marketing exercise undertaken by the applicant in May 2015, and that the result of that exercise yielded four viewings but no offers to purchase as a pub.

17. Startlingly, however, Members are not told of the offer made by a member of our Client Group to purchase the pub on 24 October 2014 for £240,000 to which no reply was received. Members are also not told that our Client chased the Applicant on 8 September 2015 via an email to their solicitors, Pocock's. They received an acknowledgment from Pocock's and an undertaking to pass the offer along to the applicant. No further response was received.

18. We are unable to think of a legitimate reason why this information should have been concealed from Members. It is obviously highly relevant to policy DM24.

¹ Oxton Farms v Selby DC [1997] EG 60 per Judge LJ.

19. The result of the failure to inform Members of this highly material consideration is the analysis at paragraphs 2.7-2.8. Those paragraphs suggest there were no offers made to purchase the pub, and that the reasons for no offers having been made are summarised at paragraph 2.8. That is a deeply misleading representation of the true facts on a highly material question before the Committee. Absent satisfactory explanation, it undermines the credibility of the report and its author.

Conclusion

20. In our view, should these two matters be left un-corrected, and Members proceed to vote in accordance with their Officer's recommendation, the decision will be vulnerable to legal challenge.

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25 May 2016

- a) **DOV/15/00292 - Change of use and conversion to two dwellings (1x 5 bed and 1 x 4 bed), works to create car parking and erection of boundary treatment, including the demolition of existing lean-to, toilet block and outbuilding – Red Lion, Canterbury Road, Wingham**

DOV/15/00293 - Internal and external alterations to facilitate conversion into to 2 dwellings including the erection of party wall, blocking of existing doorway and insertion of new window to ground floor south elevation, demolition of existing lean-to, toilet block and curtilage listed outbuilding (Listed Building Application) – Red Lion, Canterbury Road, Wingham

Reason for report: Number of contrary views.

- b) **Summary of Recommendation**

Planning permission be granted.

Listed Building consent be granted

- c) **Planning Policies and Guidance**

Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant listed building consent the local planning authority “*shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.*”

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses.

Section 72 of the Act 1990 requires that the planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Core Strategy (CS) Policies

- CP1 – The application site falls within the Wingham Local Centre suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent communities
- DM1 - Development will not be permitted outside of the settlement confines
- DM4 – Reuse or conversion of Rural Buildings will be permitted for structurally sound, permanent buildings within Local Centres for commercial, community or private residential uses
- DM13 – Residential parking should be design-led and accord with the chart in 1.44
- DM24 – Retention of Rural Shops and Pubs. Permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub have failed.

Land Allocations Local Plan

- Annex 1 to the Plan draws on the District Heritage Strategy in order to provide guidance on preparing heritage statements to support planning applications.

Dover District Heritage Strategy

- An objective of the Strategy is to “ensure the intrinsic quality of the historic environment is protected and enhanced and that these assets are used to positively support regeneration”.

National Planning Policy Framework (NPPF)

- Paragraph 14 sets out the presumption in favour of sustainable development. This is set out in full in the Overall Conclusions section at the end of this report
- Paragraph 17 sets out 12 core principles which amongst other things seek to secure high quality design and a good standard of amenity for all existing and future residents.
- NPPF –proposals should seek to be of a high design quality and take the opportunity to improve the visual quality and character of the area. Paragraphs 17, 56-59 and 64 seek to promote good design and resist poor design.
- Paragraph 28 of NPPF promotes the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.
- Paragraph 49 requires housing applications to be considered in the context of the presumption in favour of sustainable development
- Paragraphs 69-70 of NPPF seek to promote healthy and viable communities
- Paragraphs 131-134 of NPPF seek to reinforce the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 by setting out guidance on assessing the impacts of development on designated heritage assets. This is amplified in the national Planning Practice Guidance.

The Historic Environment in Local Plans; Good Practice Advice (GPA) (2015)

This document provides information to assist in implementing policies in the NPPF and the NPPG.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development that takes into account context as part of the evolution of the design.

d) **Relevant Planning History**

DOV/14/00858 and 00856 – for the conversion of the property into 6 self-contained flats. Withdrawn.

DOV/13/00766 – listed building consent for the creation of internal protected means of escape from first floor, upgrading of doors to meet fire regulations, internal lobby at ground floor level and associated works

TC/15/00049 – permission requested to remove the large horse chestnut from the site and the tree officer raised no objection, granting permission for the removal of the tree from a conservation area

e) **Consultee and Third Party Responses**

The applications were initially submitted as seeking permission for conversion to one four bedroomed house and three flats. They were subsequently amended to conversion to two houses and detailed revisions were then made to that proposal. Overall the applications have been subject to three rounds of consultation.

15/00293 – Listed Building Application

Parish Council: no objections

Historic England: determine based on national and local policies and on the basis of specialist conservation advisor.

Society for the Protection of Ancient Buildings: no response on revised proposals

Victorian Society/Georgian Group/Twentieth Century Society: no response

Ancient Monuments Society: No response on revised proposals

Third Party representations: 55 letters of objection have been received against the proposal – see planning application section below for details.

15/00292 – Planning Application

Parish Council: No objection

For information, the Parish Council objected to the application as originally submitted but raised no objection in response to consultation on the first amendment.

KCC Archaeology: Response awaited

KCC Highways: No objections in respect of highway matters. The proposals are unlikely to generate additional vehicle and pedestrian movements compared to the permitted uses of the site as a public house and letting rooms, and I note improvements are proposed to the visibility at the existing site access. Adequate car and cycle parking is also provided. The following should be secured by condition:

- Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction.
- Provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction.
- Provision of the measures to prevent the discharge of surface water onto the highway.
- Provision and permanent retention of the vehicle parking spaces shown on the submitted plans prior to the use of the site commencing.
- Provision and permanent retention of the vehicle turning facilities shown on the submitted plans prior to the use of the site commencing.
- Use of a bound surface for the first 5 metres of the access from the edge of the highway as shown on the submitted plans.
- Provision and permanent retention of the cycle parking facilities shown on the submitted plans prior to the use of the site commencing.
- Completion of the access alterations shown on the submitted plans prior to the use of the site commencing.

In addition an informative is recommended to advise of the need to obtain all necessary highway approvals and consents

Society for the Protection of Ancient Buildings (SPAB): would greatly prefer to see this building retained in a publically accessible use.

Ancient Monuments Society: Defer to conservation team

Third Party representations: There is an overlap in the comments made on both applications. Overall, there are some 61 letters of objection to the planning application and 55 to the listed building consent. The large majority of these were submitted in response to the first consultation with only 7 (3 for the planning application and 4 for the LBC) submitted in response to the second and third consultations. In summary, those letters of objection raise the following concerns:

Community Asset

- The building should be used by and made available for the community
- The proposal would mean the loss of an Inn and an important community resource, community hub and meeting place
- The proposal would diminish community life
- The pub has a cultural heritage value
- The pub was the heart of village life
- Pubs are an essential part of the social fabric of village life and community togetherness
- It is a beautiful building which should be open to the public
- Functionally important part of Wingham
- Tourist attraction and village landmark
- Local community denied access to a historically important building
- Flats or private houses are of no cultural benefit to the community
- The Dog Inn is not a true pub and the Anchor, whilst successful, encourages live music and is not conducive to a quiet chat or meal

Economic Impact

- place for visitors to stay and contribute to the local economy
- The proposal would affect the local economy
- loss of employment

Viability

- The pub was intentionally made non-viable and was poorly managed
- The pub could be viably operated and better managed
- Not enough effort to sell building as a going concern
- Other successful pubs in the area such as Duke William in Ickham
- Far from proved that it is not commercially viable

Heritage

- It forms part of one of the finest rows of medieval buildings in the country and is historically significant
- The proposals would harm the historic fabric of a grade II* building.
- The proposal would affect unique and significant features of the interior
- One of the few 'peculiars' in the country
- Best way to preserve is to keep as a whole
- The pub houses historic artefacts and memorabilia

Other concerns

- Once lost the pub use will not return
- There are other DDC schemes to increase housing stock in the area
- There will be a loss of parking to the village
- The building has been a pub for many years
- Building regulations could not be complied with [without significant damage to interior]
- The proposed layout is illogical regarding access to bathrooms in House 1 and access to House 1 (kitchen only accessible from parking via lounge)

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

Site

- 1.1 The Red Lion is a large detached building on a prominent junction within the core of the village of Wingham. It was recently used as a public house, but more recently it has been vacant. It became vacant at the beginning of 2014, and has remained vacant since.
- 1.2 The Red Lion was listed in 1952 at grade II* and is a timber framed building originating in the 15th Century with significant additions and alterations in the following four Centuries. The building has a possible 13th Century brick lined cellar from an earlier construction on the site. The list description notes that the inn was also utilised as the Sessions House until 1883 (an early 18th Century Sessions book is mentioned in the listing and can be found in the public bar).
- 1.3 The building is located on a highly important historic route; the road from the Cinque Port of Sandwich to Canterbury. The Red Lion has a double jetty (where the first floor overhangs the ground floor), is rendered with a Kent peg roof and is a dominant building in the streetscene. Internally the timber frame

is exposed to ground floor level, which allows the construction of the double jetty to be appreciated. Other features of high significant interest are the 18th Century staircase and two large rooms to first floor facing the Canterbury Road, one of which has an octagonal crown post roof structure and stone fireplace (noted as the Sessions Room in the list description).

- 1.4 The mid 19th Century saw further extension to the rear of the medieval building along the High Street, with a two storey red brick structure formally the stables with public room over. At ground floor no evidence of the stable remains whilst at first floor the original full height open space has been subdivided. The roof structure remains visible. Further alterations to the listed building which resulted in the loss of historic fabric include the removal of partitions at ground floor level to create the large open plan bar area and most recently the erection of partitions to form a fire lobby enclosing the 18th Century staircase.
- 1.5 The outbuilding proposed for demolition shows on historic maps dating to the mid/late 19th Century. It is constructed of brick and internally retains a single stall for a horse. It has been much altered in the past, including the replacement of the floor with concrete, the raising of the external walls and replacement of the roof with a flat roof construction. It has been built up against the neighbouring boundary wall and is suffering considerably from damp ingress and vegetative growth.
- 1.6 The application site falls within the Wingham Conservation Area. The historic core of the conservation area is centred along the wide linear High Street, with the Church and notable medieval buildings relating to Wingham College located along the Canterbury Road and slightly divorced from the tightly knit built form of the High Street. The Red Lion straddles the two areas and due to its architectural form and stature makes a significant contribution to the character and appearance of the conservation area.

Proposal

- 1.7 The proposal comprises the change of use and conversion of the building to one 5 bedroom house (hereinafter referred to as House 1) and one 4 bedroom house (House 2) and the internal and external works to facilitate the change of use.
- 1.8 The change of use and conversion of the building to two dwelling houses would accommodate sitting, dining, kitchen/breakfast and other ancillary rooms on the ground floor of both properties with 4 bedrooms on the first floor of House 2 and 5 bedrooms in House 1. The majority of rooms in House 1 are already extant.
- 1.9 The drawings have been amended from their original submission. As initially submitted, the proposal was for one 4 bedroom house and 3 self-contained flats. This was considered too harmful to the historic character and fabric of this building and the proposal was amended to 2 houses as it now stands. Subsequent detailed revisions have, however, been made which were subject to consultation. The application has, therefore, overall been subject to three periods of consultation.
- 1.10 The external works proposed include:
 - the demolition of a late lean-to extension adjoining the 19th Century addition to the listed building, demolition of the outbuilding and demolition of the modern late 20th Century single storey toilet block addition to the west elevation.

- Conversion of the carpark to garden space for the two houses. It will also accommodate parking for 5 cars; two per house and one guest parking bay. The hardstanding for the drive and car parking will be laid to concrete block paving.
- the provision of close board fencing and brick wall to delineate the two private gardens.

1.11 The internal works proposed in House 1 include:

- the removal of the modern bar and seating and the erection of new partitions to ground floor to form two reception rooms
- the removal of a modern fire lobby and glazing at ground floor level
- the creation of a wc at ground floor level
- the provision of fire/sound protection at both ground and first floor level between House 1 and 2.

1.12 The internal works proposed in House 2 include:

- the removal of an existing 19th Century staircase and the provision of new staircase
- the reconfiguration of the partitions in the 19th Century addition which are all modern, to create a new kitchen, utility room, dining room, study and entrance/stair hallway at ground floor level; 3 bedrooms, landing and closet at first floor level
- the creation of a wc at ground floor level
- the blocking of an existing doorway at ground floor level and creation of a new opening where the 19th Century staircase has been removed

1.13 The proposal would involve the loss of a horse chestnut, however the tree officer advised that the tree is dying and can be removed and permission was granted for its removal in 2015.

2. **Main Issues**

2.1 The main issues are:

- The principle of the change of use from a public house to two dwellings
- The impact of the proposals on the designated heritage assets
- The impact on residential amenity
- Highway and parking and Other Matters

Principle

Loss of use as a public house

2.2 The starting point for considering this issue is the relevant policies in the Development Plan. The Core Strategy, through Policy CP1, identifies Wingham as a Local Centre in the Settlement Hierarchy in recognition of its size, range of services and role that it plays in providing services to adjacent communities in addition to its home population. Supporting paragraph 3.10 in the Core Strategy notes the key services associated with designated rural settlements (including Local Centres) and this does not include public houses. The policy requires the location and scale of development to comply with the Settlement Hierarchy in that it is proportionate to the category of settlement and the function it performs. Paragraph 3.12 states that the policy will be used to inform development plan making decisions and decisions on planning applications. The issue raised by the planning application (15/00292) is whether loss of the public house use would jeopardise the role of Wingham as a Local Centre.

- 2.3 The Core Strategy specifically considers the issue of the retention of rural shops and pubs under DM24 and the outcome of an assessment under this policy is very relevant to reaching a conclusion under Policy CP1.
- 2.4 The supporting text to Policy DM24 provides guidance on assessing the loss of a public house and its impact upon village communities. Paragraph 1.77 states that account will be taken of the public house's importance to the community that it serves and the range of other facilities and services that would remain. Permission for alternative uses will not be given if the community would be left without any local shops or facilities, or the range would be seriously diminished, unless the applicant has established that a pub use is no longer commercially viable.
- 2.5 The applicant has submitted information to address Policy DM24. The applicant considers that, if permission is given, the village would still be well served by the range of remaining facilities. The applicant notes these as:
- Two other public houses in the village (The Dog Inn and the Anchor). Both offer food and drink, in common with the services previously offered by the Red Lion, are within walking distance of the different parts of the village and are no less convenient for the community. The Dog serves morning coffee and afternoon teas, has eight rooms for bed and breakfast customers and facilities for private functions. The Anchor provides a programme of live music and other entertainment and has facilities for functions.
 - A primary school
 - A parish church
- 2.6 The Council's 2014/2015 Authority Monitoring Report was approved by Cabinet in December 2015. It considered the range of services and facilities available in rural settlements and, in summary form, verifies the range in Wingham identified by the applicant and expands on this listing a post office, shop/s, village hall, medical facilities and other community facilities. More recently one of the shops in the village is now being run as a coffee/tea shop.
- 2.7 Whilst the proposed loss of the public house is regrettable it can be seen from the above that the village would still be served by two public houses – The Dog Inn and The Anchor and a good range of other facilities. The issue is therefore whether the proposed loss of The Red Lion as a pub would seriously diminish the range of facilities in Wingham and thereby harm the economic and social viability of the community. Seen against the range of facilities that would remain (including two other public houses) it is not considered that the proposal would result in harm to the social and economic viability of the community as referred to in Policy DM24 and amplified in paragraph 1.77. On this basis, it is not necessary to address the second part of Policy DM24 regarding whether the pub use is no longer commercially viable and that genuine and adequate attempts to market it have been made. However, the applicant has supplied a marketing exercise carried out by Sidney Phillips which began 21 May 2015. A report was submitted 27 October 2015 and a subsequent report submitted 29 February 2016. In brief, the report showed that whilst there was some modest interest in the property, none of the 4 viewings of the property in this time, produced any offers on the property. Whilst this marketing exercise does not meet the Council's draft "Marketing Guidelines" in that it was primarily internet-based and did not include advertisement in a local paper, the Guidelines (which do not have any formal status) were produced many years ago prior to the current extensive use of

the internet for property marketing. In addition, Sidney Phillips is a firm of chartered surveyors that specialises in the sale of pubs and will be attuned to the most effective means of marketing. The firm operates in England and Wales but its marketing extends beyond this owing to the use of the internet. On this basis officers are content that the marketing undertaken was adequate and sufficient to meet the terms of paragraph 1.78 in Annex 1 of the Core Strategy.

- 2.8 The reasons for not making an offer stated in the marketing report as given by the individual viewers were as follows:
- the ground floor does not provide enough space for sufficient covers and the expenditure to make the building compliant with building regulations is too high.
 - too much work required to get the business back up and running
 - too much investment required to run as a public house with letting rooms
 - too much competition in local area. Unable to obtain funding
- 2.9 It should be noted that when last in operation as a pub, only three rooms were lettable owing to Fire Regulations restrictions. These rooms were made Fire Regulation compliant through the 2013 listed building consent application. This represented the extent of fire resistant works that were likely to gain listed building consent and therefore meant that the remaining rooms could not be used for commercial letting. Therefore, when the marketing exercise was carried out, it was on the basis that only three of the six rooms would be lettable with the obvious implications for potential revenue.
- 2.10 It is concluded from the above that in relation to Development Plan policy the proposed loss of the public house use would not cause harm as envisaged under policy DM24. Taking this into account, together with the point that although the number of pubs in Wingham will reduce, the range of facilities will remain and that, in any event, pubs are not noted in paragraph 3.10 of the Core Strategy as key facilities for designated rural settlements, it is concluded that the proposal would not jeopardise the role of Wingham in a way that runs counter to policy CP1 and its role as a Local Centre in the Settlement Hierarchy.
- 2.11 It next needs to be considered whether there are any material considerations that would alter these conclusions. The material considerations consist of the NPPF and any other matters raised by third parties.
- 2.12 The fourth bullet point of paragraph 28 in plan making in the NPPF, seeks planning policies to promote the retention and development of local services and community facilities in villages and, amongst other uses, refers to public houses. The Council has such a policy basis in policies CP1 and DM24 although this was written prior to the NPPF.
- 2.13 Paragraphs 69 and 70 relate to promoting healthy communities. The first bullet of paragraph 70 relates to planning positively for the provision of, amongst other things, pubs and appears more directed towards plan making where it is addressed through Policy CP1. The second bullet relates to guarding against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. The proposed change of use to residential would, if implemented, reduce the facilities available to Wingham but it needs to be taken into account that the premises are not currently trading as a pub and have not done so

since the closure of the pub in early 2014. No specific evidence has been put forward to show that the community is less able to meet its daily needs as a result of closure although there is a considerable volume of public representation to indicate that it was/is a valued facility. The conclusion from this is, therefore, mixed but does not amount to such a clear and compelling consideration as to outweigh the positive assessment under Development Plan policy.

2.14 The Red Lion was nominated and added to the List of Assets of Community Value (ACV) in May 2015 but was removed through appeal in August 2015. ACV considerations are therefore not material to this case at the time of writing this report.

2.15 Public representations in objection to the proposed change of use raise several other points:

It has been pointed out that whilst there would be The Anchor and The Dog Inn remaining, they do not offer a “traditional pub atmosphere” for a quiet drink. The Anchor encourages live music and has a more lively atmosphere and The Dog Inn is more geared towards a restaurant. They suggest that the loss of the Red Lion would harm the range of pubs available to the village and surrounding areas. The term “range” is given no special meaning in the Core Strategy (DM24) and should be understood in this context by the ordinary definition of a series of things. If the Core Strategy had intended the meaning to include variety with the type of facility, it would have needed to make this plain as it is a much more onerous test. It is not therefore accepted that the proposal would cause harm within the meaning of the policy. In any event, the planning system cannot control the format of pub management. In other words the planning system cannot ensure that, if the Red Lion was brought back into use as a pub, it would provide a “traditional pub atmosphere”.

2.16 A number of representations state that the Red Lion would still be a viable pub if run independently of a national brewery. DM24 has two parts which, if the first part can be complied with, the second does not need to be considered. It has been put forward in representations that the marketing information supplied by the applicant does not adequately demonstrate that a pub use is no longer commercially viable and that sufficient and genuine attempts to market the premises have been made and have failed. This case is made primarily on the basis that the applicant's information is predicated on a failed model of the tied pub. The representations suggest that Punch Taverns imposed impossible restrictions and pricing on the previous publican and forced the business to fail, then selling the property off at a reduced rate. Officer assessment is that as the proposal has not been found to cause harm under the first part of the policy there is no need for it to be assessed against the marketing criteria in the second part of the policy. Nevertheless, in seeking to address the policy the applicant has submitted marketing material relating to his attempt to market the property following Officer advice. This material appears to comply with the requirements in paragraph 1.78 of the Core Strategy in that it was carried out by an appropriate specialist agent for an adequate period of time but, given the officer assessment that this is not a determining factor this has not been scrutinised in detail by a third party specialist.

2.17 Some representations mentioned the loss of local employment opportunities should the pub be lost. No numbers of possible employees have been given or the number of employees at the time the Red Lion was operated as a pub. As such, little weight can be given to this point raised in the objections.

- 2.18 Several representations referred to the Red Lion as a draw for tourists, and a place in which visitors to the area could stay and that its loss would have an impact on the local economy in relation to tourism and the money they spend locally. This aspect of the rural economy is discussed in 3.28 of the NPPF which seeks to promote the retention and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres; and to promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship. As previously mentioned CP1 and DM24 of the Core Strategy, which predate the NPPF, cover the majority of paragraph 3.28. However, there is nothing within the current Core Strategy which addresses rural tourism and the economic benefits which are derived from this. Currently, Wingham has at least 13 lettable rooms in B&Bs between The Dog Inn, The Old Butchers B&B and The Old Ship. The Red Lion could increase this total by 3 in its current layout and under the restrictions of the fire regulations. While this might be a useful addition no information has been submitted to demonstrate the contribution that the Red Lion made to rural tourism and the village or that in the period since its closure visitor revenues have dropped off in a measurable way. The observation that there is a further demand for lettable rooms in Wingham has not been backed up by any further information. The point is therefore a very generalised one and, in the absence of any hard evidence, does not provide a basis for refusal.
- 2.19 Overall, it is concluded that material considerations do not alter the assessment against development plan policies.

Change of use to a Dwelling

- 2.20 As set out in the previous section, Wingham is classified as a Local Centre in the Settlement Hierarchy in Core Strategy Policy CP1 and is a suitable location in the rural area for residential development. In order to help operate the Hierarchy, Policy DM1 identifies settlement boundaries beyond which countryside protection policies apply and subject to specified exceptions, development will not be permitted. The application site falls within the settlement confines for Wingham and is an appropriate location for the creation of new dwellings. The proposals do, however, need to be acceptable in all other relevant planning respects.
- 2.21 Policy DM4 relates to the re-use or conversion of rural buildings. The first part of the policy states that permission will be given for the re-use or conversion of structurally sound, permanent buildings within Local Centres (amongst other settlements) for commercial, community or private residential uses. There is no evidence to indicate that the building, the subject of this proposal, is not structurally sound or a permanent structure and it is therefore concluded that proposed conversion to residential use is consistent with this policy.
- 2.22 The proposed change of use is therefore in accordance with the relevant development plan policies for housing.
- 2.23 With regard to material considerations, NPPF paragraph 47 sets out the Government's general objective of boosting the supply of housing through plan making and the maintenance of a five year supply of housing land. Paragraph 49 in the NPPF requires housing applications to be considered in the context of the presumption in favour of sustainable development (itself set out in paragraph 14 of the NPPF). It also states that relevant policies for the supply of housing should not be considered up-to-date if there is not a five year housing land supply. The District does not have a five year housing land

supply. Paragraph 51 requires local planning authorities to identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies.

- 2.24 The proposal would make a minor contribution towards boosting the supply of housing in circumstances where the District does not have a five year supply of deliverable housing sites and it is consistent with paragraph 51 of the NPPF in that it represents bringing an empty building into residential use in line with policy DM4.
- 2.25 The proposed residential use is therefore consistent with the NPPF's housing policies. An assessment of the proposals under the presumption in favour of sustainable development is undertaken at the end of this report.
- 2.26 Representations have mentioned the other housing schemes in the Wingham area however, while the Plan allocates sites for housing developments of more than 5 dwellings, this does not preclude further windfall proposals being permitted for conversions to residential or the redevelopment of suitable sites elsewhere within the settlement confines. None of these matters therefore alter the assessment above in relation to the relevant housing policies in the development plan and the NPPF.

Designated Heritage Assets

Listed Building

- 2.27 The Red Lion is an inn of medieval origins which retains architectural and historic form and fabric to a very high degree both externally and internally. Features that have been noted as being of significance to the special interest of the listed building have been identified in sections 1.2 to 1.4.
- 2.28 The external alterations are limited to the demolition of the modern toilet block, the later single storey addition to the rear of the building and the addition of a window within the (revealed) original 19th Century elevation. The modern block and single storey addition do not contribute to the significance of the listed building. The insertion of an appropriately detailed window is considered acceptable.
- 2.29 Internally, the modern fire partitioning to ground floor would be removed, which would open up and better reveal the 18th Century staircase. The proposal also seeks to erect a party wall along the line of an existing partition at first floor and between existing joists at ground floor level. Details of the proposed wall have been submitted with the application which demonstrate there will be no direct impact on historic fabric but will result in a minor alteration to the historic planform. The wall at ground floor would be located directly beneath the existing at first floor, rather than on the junction between the medieval building and the 19th Century addition; whilst this would affect the historic planform it would not prevent the development of the listed building from being legible. However this is in order to prevent more extensive works that would be required with a flying freehold. The proposed works are considered acceptable as having the least possible intervention into the fabric.
- 2.30 Further partitions are proposed at ground floor level to House 1 to form an entrance hallway and separate the existing open plan space into two rooms; these partitions will be located where mortice evidence indicates an original division thus reinstating the lost historic planform.
- 2.31 Internal works also include alterations to the existing layout of the 19th Century two storey rear addition to form House 2. These would include the removal of

a staircase which is considered to be of limited interest to the significance of the listed building and its removal would therefore cause no detrimental harm.

- 2.32 The 19th outbuilding proposed for demolition has been significantly altered in the past. The dampness caused by being built up against the neighbouring boundary wall, and possibly exacerbated by the flat roof and vegetative growth, is damaging the brickwork to the extent that it is probable that full rebuild would be required should it be retained. The contribution of the outbuilding to the significance of the listed building is considered to be negligible and its demolition would cause no harm to the reading or understanding of the listed building.

Conservation Area

- 2.33 As noted above The Red Lion makes a significant contribution to the historic and architectural character and appearance of the conservation area by virtue of its architectural and historic form and prominence in the street scene. The proposed external works which would be visible from the public realm, the demolition of the single storey rear addition and the outbuilding, would have no impact on the conservation area as it has been recognised that the structures do not contribute to the historic or architectural significance of the listed building. The proposal does not include the removal of the existing modern pub signage but includes the provision of a new boundary wall at the rear entrance to the site. The side elevation of the listed building is blank brickwork at ground floor level and the proposed wall will therefore be in keeping with the context of the site. A condition requiring sample bricks and a sample panel has been recommended to ensure the wall is appropriately detailed. Consequently it is considered that there will be no harm on the character or appearance of the conservation area.
- 2.34 The Red Lion is located within an area of mixed residential and commercial properties lining the High Street and Adisham Road. The listed building is currently not being maintained as a public house and the loss of the use to a dwelling would not materially affect the character within the local community.

Conclusion on impact on designated heritage assets

- 2.35 The proposed works will have no impact on any features which contribute to the significance of the listed building or the character or appearance of the conservation area, and will have limited harm on the historic planform of the listed building. The proposed new party wall to ground floor has been designed to have least impact possible on historic fabric and on balance is considered to be appropriate in respect of the significance of the listed building. Consequently it is considered that the works are considered to be of less than substantial harm as defined by paragraph 134 of the NPPF.
- 2.36 In addition, paragraph 131 of the NPPF states that in determining planning applications local planning authorities should ensure that the conservation of the heritage asset is consistent with their use. The listed building has not been in use as a public house for some considerable time and the proposed use will, by bringing it back into use as two dwellings, ensure the continued preservation of the listed building and therefore meets the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Consequently the proposal would provide a wider public benefit through the maintenance and management of this designated heritage asset.

Residential Amenity

- 2.37 The second set of amendments to the proposals revised the garden and parking arrangements in order to overcome officer concerns regarding the parking layout and the size and shape of the garden for the larger house. The proposals are now considered to be acceptable in these respects.
- 2.38 The development site, being within the heart of the village, forms part of a tight street layout with residential and commercial properties to 3 sides of the site. However, as there are no new windows or other openings proposed, there would be no material increase in impact or harm through overlooking and interlooking between the proposed dwellings and the existing adjacent/nearby dwellings.

Highways and Other Matters

- 2.39 It is not considered that there would be an increase in highway and pedestrian safety concerns as the comings and goings of vehicular activity from 2 dwelling houses are not considered to be any worse than those from a public house. The proposal includes the provision of 5 parking bays which would meet the requirements of DM13. KCC Highways are seeking conditions that would ensure all aspects of this part of the proposal comply with KCC regulations.
- 2.40 The proposal reduces the degree of hardsurfacing on the site and therefore it is unlikely that further surface water flooding would occur from the proposed use. Conditions can be imposed which would ensure there is no discharge of surface water from the site onto the highway.
- 2.41 The proposal involves the loss of a dying tree. Landscaping proposals are included but in view of the location of the lost tree to the rear of the site, away from the public realm, it is not considered a replacement for it would be reasonable. The landscaping proposals for private and semi-private amenity space as submitted are considered to be acceptable.

Overall Conclusion

Planning application DOV/15/00292

- 2.42 It has been concluded that the heritage aspects of the planning application comply with the legal duties relating to conservation areas. With regard to the listed building's legal requirement it has been identified that none of the proposed works would have an impact on features that contribute to the special architectural and historic interest of the listed building and that limited harm would be caused to the historic planform. This harm has been identified as less than substantial as defined by paragraph 134 of the NPPF, and the public benefits of bringing the listed building back into use is considered to outweigh the limited harm caused by the works proposed. Special regard has been paid to this aspect and it is considered that the legal duty has been met.
- 2.43 The assessment has also shown that the planning application is in accordance with Development Plan policies and should be approved unless material considerations indicate otherwise.
- 2.44 In relation to material considerations an overall assessment needs to be made of the proposal against the NPPF's presumption in favour of sustainable development. The presumption itself is set out in full below.

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

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of- date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.
- For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest;
- land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.
- Unless material considerations indicate otherwise.”

2.46 It is the second part of the presumption regarding decision taking that needs to be focused upon. The assessment in this report has shown that the proposals are in accordance with the development plan and, under the first bullet in the decision taking section of the presumption, should be approved. As, however, the District does not currently have a five year housing land supply the relevant housing policies are deemed out-of-date and the second bullet point must be considered. The assessment in the report has considered NPPF policies and has found the loss of the pub use to be neither clearly in accordance with or contrary to the NPPF. The proposed change of use to residential would be in accordance with NPPF housing policy and offer a modest benefit. The assessment concludes that the proposals are acceptable in relation to amenity considerations.

2.47 The assessment of the heritage aspects of the proposal (which is a specific policy consideration) show that the works would have no impact on features which contribute to the significance of the listed building and a minor impact on the historic planform. The works therefore constitute less than substantial harm and the consideration as required by paragraph 134 of the NPPF needs

to be had as to whether there are public benefits to the proposal that would outweigh the harm. The public benefits offered by the scheme are bringing the listed building back into use against an otherwise uncertain future with associated prospect for its future maintenance and the modest but useful contribution to housing supply. The proposed changes to the appearance of the building will have no impact upon the street scene and will consequently preserve the character and appearance of the conservation area. This assessment does not therefore indicate that development should be restricted.

- 2.48 In conclusion, the application is considered to be in accordance with the development plan and should be approved unless material considerations indicate otherwise. Assessment under the NPPF, a main material consideration, shows that the adverse impacts of the proposal (the reduction in the community's ability to meet its daily needs) are not clear-cut and are outweighed by the identified benefits. The NPPF's heritage policy does not show that development should be restricted. The other material considerations that have been raised do not provide grounds for refusal. It is therefore recommended that planning permission is granted.

Listed Building Consent DOV/15/00293

- 2.49 Subject to the imposition of the recommended conditions it is considered that the proposal satisfies the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 2.50 The proposed works will, when considered under NPPF policy, cause less than substantial harm to the special interest of the designated heritage asset. Bringing the building into use after a period of vacancy and creating a more positive outlook for its future maintenance is considered to be a positive public benefit. In addition, the creation of two dwellings would make a small but useful contribution towards housing supply. These benefits are considered to outweigh the limited less than substantial harm that has been identified. In addition, the assessment has also shown that the proposals offer some benefits to the listed building.
- 2.51 In conclusion, the proposal satisfies the relevant legal and policy requirements and listed building consent can be granted.

g) **Recommendation**

- I In respect of DOV/15/00292 PLANNING PERMISSION BE GRANTED, subject to conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) materials to be submitted, iv) Details of cycle and refuse storage areas shall be submitted to and approved in writing by the local planning authority and put in place before the first occupation of the dwellings commences and maintained for such purposes thereafter, v) sample panel of brickwork to show bonding, type and style of pointing, for the proposed boundary wall, vi) any conditions requested by KCC Highways, vii) any conditions requested by KCC Archaeology..
- II In respect of DOV/15/00293 LISTED BUILDING CONSENT BE GRANTED, subject to the following conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) The works shall not be carried out otherwise than in accordance with detailed drawings; iv) such drawings to be submitted to and approved by the Local Planning Authority in writing to show details of any mechanical

ventilation, flues, soil vent or other pipes and joinery details for new window; v) no cleaning of internal or external timbers, vi) the Sessions Book will remain *in situ* and shall not be removed or relocated without formal approval from the local planning authority.

- III Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning permission/listed building consent conditions in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Andrew Wallace



5 September 2016

16 Bishearne Gardens
Liss
Hampshire
GU33 7SB

Planning Policy and Conservation
Dover District Council
Council Offices
White Cliffs Business Park
Whitfield
Dover
CT16 3PJ

FAO: Mr M Ebbs – Head of Regeneration and Development

Dear Sirs

DOV/15/0292 – The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB (“the Property”)

Thank you for your email dated 16 August, which confirmed my instructions in respect of the Property.

Your instructions are that I am to undertake an appraisal to.

1. Assess the marketing and any viability evidence submitted by Sidney Phillips on behalf of the applicant and information and details provided by the applicant and agent (where appropriate), against the requirements of Dover District Council Core Strategy policy DM24, paying particular regard to the provisions of pre-ambule paragraph 1.78 of the Core Strategy in respect of marketing.
2. Comment on the valuation at the time of marketing and the asking price bearing in mind the comparisons referred to and any other premises comparisons.
3. Assess the potential for bringing the Property back into viable commercial use, in respect of the potential accommodation that could be provided and the restaurant/public house capacity.
4. Interrogate as far as possible the CAPEX investment of £150,000 - £200,000 referred to in the Sidney Phillips letter dated 31 May 2016 that it is claimed is required to bring the Property back into a suitable condition for use as a public house and guest house.

I visited the Property on 1 September 2016.

In respect of any party mentioned and/or having provided any information used within this appraisal I confirm the following.

- I was previously employed by Fleurets until August 2012.
- I currently provide Punch Taverns consultancy advice relating to rent reviews.

In my opinion neither of these involvements constitute a conflict of interest.

The Dover District Local Development Framework, Policy DM24 states the following criteria.

1.76 Rural shops and pubs are of great importance to the economic and social well being of rural communities and are factors in determining the settlement in the Settlement Hierarchy. The loss of these facilities can be a severe blow to the local community.

1.77 When applications are submitted for the change of use of a rural shop or pub account will be taken of its importance to the community that it serves and the range of other facilities and services that would remain. Permission for alternative uses will not be given if the community would be left without any local shops or facilities, or the range would be seriously diminished, unless the applicant has established that a shop or pub use is no longer commercially viable.

1.78 The Council will have regard to the way in which the shop or pub has been managed. The Council's study into rural shops found that viability issues were often closely related to management techniques and a failure to keep up with competitors. The Council will also wish to see that adequate and genuine attempts have been made to market the premises for pub or shop use, as appropriate, but have failed to produce a viable offer. Marketing should be through an appropriate agent and for a period of time that fully tests demand having regard to the buoyancy of prevailing market conditions.

Policy DM 24

Retention of Rural Shops and Pubs

Planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed.

I have also had regard to the Campaign For Real Ale *Public House Viability Test* (PHVT).

My Appraisal

1. Assess the marketing and any viability evidence submitted by Sidney Phillips on behalf of the applicant and information and details provided by the applicant and agent (where appropriate), against the requirements of Dover District Council Core Strategy policy DM24, paying particular regard to the provisions of pre-amble paragraph 1.78 of the Core Strategy in respect of marketing.

The information provided within Sidney Phillips letters detailing the marketing undertaken provides a comprehensive review. In this respect I confirm Sidney Phillips are long established specialist licensed trade property agents. The Property has been exposed to the open market through a number of mediums to include both their own and third party websites, e-marketing campaigns, and advertisements placed in the trade press. In respect of the trade press in which advertisements were placed I can advise the Publican Morning Advertiser has a combined printed and digital circulation of

33,503 copies, and the Pubs & Bar Magazine a combined circulation of 19,577. I note from the information provided Sidney Phillips marketed the Property for a period of circa 10 months. During the period in which Sidney Phillips were marketing the Property four viewings were undertaken during that period; Sidney Phillips advise all those who viewed had some experience of public house operations and were looking at the Property as regards its potential for continued operation as a public house.

In addition to the marketing undertaken by Sidney Phillips, I am aware previously from 21 March 2014 the Property was marketed for the former owners Punch Taverns by Fleurets. I have spoken to Fleurets who advised their records showed limited interest in the Property; only two viewings were undertaken during their marketing period, one by the now current owners and the other by a private individual whose intention for the Property was unknown.

The policy requires that *“Marketing should be through and appropriate agent and for a period of time that fully tests demand having regard to the buoyancy of prevailing market conditions”*. I note DM 24 does not however stipulate a period of time and therefore I have also considered the PHVT that states, *“Where and how often has the pub been advertised for sale? Has it been advertised for at least 12 months? In particular, has the sale been placed with specialist licensed trade and/or local agents?”*

The Property has been advertised through two specialist licensed trade agents, the combined marketing period has been in excess of 12 months. With particular reference to the period during which Sidney Phillips were marketing the Property a wide range of medium were used to expose the Property to the open market. Therefore, I would consider the pool of potential purchasers for continued use of the Property as a public house has been sufficiently targeted and **I am of the opinion that the marketing undertaken meets the criteria of the policy.**

2. Comment on the valuation at the time of marketing and the asking price bearing in mind the comparisons referred to and any other premises comparisons I might be aware of.

It is my opinion that it would have assisted greatly if the applicants supporting documentation had included information that demonstrated the actual or estimated historical trading position of the Property. The provision of such information would have allowed for an easier consideration of whether the Property had been marketed at an appropriate price. It is however appreciated that the obtaining of appropriate information to support an opinion might be problematic. I note that Sidney Phillips stated *“research undertaken prior to inspection of the property for the purpose of a market appraisal provided details on the chequered trading history of the Red Lion”*. However, what this research discovered and demonstrated has not been shared.

I have also requested and been provided with historic barrelage information that was included within a previous application relating to this Property. I am also aware that the rateable value from April 2010 was £18,750. Based on the available information I would estimate that the historic trade would have been circa £250,000 p.a. to £260,000 p.a. from all income streams.

The fair maintainable turnover is the level of sales trade that a reasonably efficient operator would expect to achieve on the assumption that the property is properly equipped, repaired, maintained and decorated, and is the starting point for the valuation of a public house. Such an opinion is always subjective and considering the operation of a public house that is now closed and with limited information adds further difficulty, although with some expertise it is possible. Due to external

influences on the level of trade at any particular public house, including what might be happening at other local public houses, it is difficult to have certainty; however if one were to assume that declining beer sales and increased retailing prices were to balance each other out then and to assume a nominal uplift in food sales then that might suggest a fair maintainable turnover of £270,000 p.a.

Evidence supports the Market Value of a public house similar to the property might equate to up to 2.0 times the fair maintainable turnover. Based on a fair maintainable turnover of £270,000 this would support a value of £540,000 less the cost of any works required. In order to allow for any negotiations with potential purchasers it would be usual for the asking price to be slightly above.

Alternatively Market Value can also be evaluated by preparing a schedule of those public houses, which have been sold within the geographical area. Direct comparable evidence in the licensed sector is unlikely, but a valuer with the necessary specialist experienced would be able to use this as the basis to form an opinion of value. Land Registry sale prices for trading public houses should be treated with some caution as the value of any goodwill, inventory and licenses is likely to have been excluded, and hence the actual price paid will be greater than that shown.

Within Sidney Phillips letters a number of 'comparable' public houses are listed with price paid. In respect of the majority of these public houses I also have copies of marketing details showing asking prices in the range of £195,000 to £485,000.

In addition to these I am aware of the following public houses within the CT3 postcode area that have sold in the past four years.

Anchor Inn, Bekesbourne Lane, Littlebourne – in March 2013 was marketed with “no trade is warranted”, at a freehold guide price of £325,000. Sold 3 months later in June 2013 and according to Land Registry the price paid was £275,000.

Rose Inn, The Green, Wickhambreaux – trading public house with net turnover in 2010 of £307,458 p.a. the freehold guide price in June 2012 was £575,000. According to Land Registry the price paid 14 months later in August 2013 was £589,607.

Chequer Inn, Chequer Lane, Ash – was marketed from August 2012 with “no trade warranted” at a freehold guide price of £295,000. According to Land Registry the price paid 2 years later in September 2014 was £188,000.

Prince Of Wales Maypole, Hoath – trading public house with net turnover in 2012 of £434,981 p.a. was marketed in October 2013 at a freehold guide price of £595,000. According to Land Registry sold 2 years 6 months later for £550,000 in April 2016.

Royal Oak, Island Road, Upstreet – marketed in March 2016 with “no trade is warranted” at a freehold guide price of £350,000. Agents website currently shows five months later that the guide price reduced to £325,000 and “Sold STC”.

Dog Inn, Canterbury Road, Wingham – this public house is referred to in the Sidney Phillips letter dated 16 June 2016 as having been sold for £717,000 plus VAT (Land Registry states the price paid as being £696,000). This public house is situated a very short distance away, is Grade 2 Listed and has according to their website has 8 letting bedrooms.

The evidence suggests a wide range of asking prices and sale prices to be appropriate. In assessing the suitability of the asking price at which the Property has been marketed, those of most similarity

to the Property are those where no trade was warranted and/or closed. I note from both the Sidney Phillips comparables, and those I have identified, the asking prices fall within the bracket of £195,000 to £485,000.

Having regard to both approaches above, it can be observed that the asking price does fall within the range of the evidence; albeit being towards the top end it might be considered a little ambitious. It is my experience that unless the asking price is completely unrealistic, it would not deter interest from operators, or bids being received at what an interested party considers an appropriate level. In this case this has been demonstrated/evidenced in so much that four parties looking to operate the property as a public house did view. Generally it would follow that if the property had been considered an attractive public house business with potential, then I would have expected at the very least for one offer to have been received from one who viewed. **Given the above, it is my opinion that the marketing has been undertaken at an asking price, which although slightly ambitious is within the range that could be considered to be acceptable.**

3. Assess the potential for bringing the premises back into viable commercial use, in respect of the potential accommodation that could be provided and the restaurant/public house capacity.

In order to establish the long-term potential and economic viability of a public house it is necessary to consider the location, property and facilities and potential to develop the business further.

The Location – the village of Wingham is situated on the Canterbury to Sandwich road (A257) at its junction with the B2046 (to Aylesham). Traffic Count data shows the A257 at Littlebourne to have a daily average all motor vehicles count of 8,839. The Parish of Wingham has a relatively modest population of 1,775 (2011 Census). In terms of competing businesses there are also two other public houses in Wingham, a number of accommodation providers, an Indian restaurant, post office, newsagent, village store, bakery and coffee shop.

Given the characteristics of the location and existing facilities, I would consider the Red Lion could appeal to both 'local customers' these being from residential properties within the village boundary i.e. a short walking distance supplemented by some passing trade, although in respect of the latter I note that the relatively limited car parking is to the rear of the building and not visible to the majority of passing traffic, and that on street parking adjacent to the Property is problematic.

There are two other public houses in Wingham the Dog Inn and Anchor Inn. When I attempted to visit the Dog Inn it was closed to customers. According to the website <http://thedoginn.co.uk> the Dog Inn provides a more expensive menu together with bed & breakfast accommodation and operates its own a nano-brewery. Such an offer would appeal both to locals and seek to attract destination trade, although car parking may be an issue. To the rear of the building is a relatively small customer patio and car park with space for circa 11 vehicles. Due to the business being closed when I attended I have not observed the internal customer areas at the Dog Inn.

From my customer visit to the Anchor Inn and from their website <http://theanchoratwingham.com> The offer is targeted more towards local trade including 3 ales and a traditional pub menu, there are also pub games, quiz nights and live music. Internally there are two customer areas served by a linked bar servery and to the rear a large lawned customer garden, limited car parking to the front of the building. The Anchor Inn has also received national trade awards (Great British Pub Awards organised by the Publican Morning Advertiser) *2013 Best Newcomer* and *2014 Best Entertainment Pub*.

As regards diversification given the village already contains a post office newsagent and village store, it is difficult to envisage such to be an option without there being a detrimental impact on sales at those existing businesses.

The Property – This is a Grade 2 Listed Building of two stories plus basement, of varying construction principally under pitched tiled roofs. The building abuts the road at the front and side, to the rear/behind the building is a car park with space for approximately 11 vehicles, customer patio and service yard.

The ground floor as currently configured could provide two customer areas, a bar with circa 20 to 30 covers and a restaurant with space for 30 covers, there is also catering kitchen and customer toilets. At first floor level there are three/four letting bedrooms and a manager's flat two bedroom flat with lounge. The basement provides a beer store. Externally there is a patio to the rear of the building and a car park with space for circa 10 vehicles.

I have not undertaken a structural or building survey. Given the nature of construction and my observation of the tiled roof I may expect a potential purchaser to commission further specialist advice. In general terms the Property would benefit from modernisation, upgrading and redecoration throughout, see also section 4 below. In particular the letting accommodation is of a standard that requires significant upgrading to meet current customer expectation.

It is my opinion that the Property as arranged with two separate and relatively small customer areas, will give rise to supervision issues and potentially this will increase staff costs. Furthermore parking is relatively limited and the customer patio is considerably less attractive than the extensive garden at the Anchor Inn. Give the site configuration there is no opportunity to develop the Property to provide larger customer areas.

The Market and Potential – it is accepted within the licensed industry that On Market beer sales continue to decline, albeit more recently the rate has slowed and a number of factors including type of operation and location may also influence this. From 2006 to 2015 industry statistics show that on market beer volumes have fallen by some 35%. Further contributing factors have been the smoking ban, supermarket pricing and cultural changes.

To illustrate the potential of the Red Lion to a potential purchaser it is necessary to consider the same issues as they would. A potential purchaser would assess the viability of the public house basing this on the market perception of profitability. With a net annual turnover of £270,000 p.a. and utilising industry accepted ratios I would have expected the business to achieve net profit in the order of £72,000 p.a. However, this is prior to deductions for owners/operators drawings, depreciation and loan repayments in respect of monies to purchase the freehold of the property and undertake any refurbishment. Such need to be factored into the calculations to ensure a potential purchaser will receive sufficient remuneration and be able to fund the purchase and any works required.

A public house will typically provide the potential purchaser with both a business and a place to reside. Therefore it may be considered that it would be incorrect to make allowance for the opportunity cost of the capital used to purchase the property as well as any monies borrowed. A potential purchaser of a property such as the Red Lion, if it was to remain as a public house, is unlikely to have been able to borrow more than 50% of the purchase price. Therefore I have assumed at a purchase price of £400,000, there would be a loan of £200,000 and over twenty-years at a 5% interest rate this would equate to an annual finance cost of £16,500. It is also necessary to

factor in the cost of undertaking works to modernise, upgrade and redecorate the Property; assuming these could be undertaken at a cost of £150,000 but repayment is required over a shorter 10-year period and at a 5% interest rate this would equate to a further annual cost of circa £19,000.

To reflect that a potential purchaser would require to be remunerated from the business, assuming a couple each work 40 hours a week, are paid minimum wage and to include an allowance for holiday cover, it is necessary to make further annual deduction of £32,000.

Profit before cost of ownership	= £72,000
Less finance/opportunity cost of purchase	= - £16,000
Less finance/opportunity cost of works	= - £19,000
Less remuneration for operators	= - £32,000
Less depreciation (say)	= -£5,000
Less total cost of ownership	= - £72,000
 Profit after cost of ownership	 = £0,000 (i.e. breaks even)

The above calculations do of course have regard to fair maintainable turnover. The turnover at a recently reopened public house will be somewhat less, it may take between 6 and 18 months before the business is operating at that level of sales and hence profitability. Therefore during the period of establishing the new business it will not as illustrated above break even, but be running at a loss.

Conclusion – many public houses have historically operated with low levels of sales and profitability; as in this case this may provide an operator with an income at minimum wage rates however given the significant capital required to be invested the return is a nominal profit and an prudent investor would obtain better returns elsewhere without the risk that attaches to a public house business.

During the period immediately after reopening a public house will require a period of time while to establish and during this period profitability would be seriously impacted. The potential of this business certainly appears to be limited and it is probably for this reason that those public house operators who have viewed the Red Lion showed no further interest in this Property.

When the Red Lion closed to trade some sales will have migrated to similar businesses nearby, however, it is generally accepted that any particular geographical location has a limit to the sales a particular sector of business can support. The consequence of the introduction of a new business is likely to be a detrimental impact on sales at existing businesses of a similar type. Whilst I do not have any information relating to the level of actual trade at either the Dog Inn or the Anchor Inn, the reopening of the Red Lion is likely to result in a reduction in sales and profits at both these public houses, with the potential consequence that these businesses could become unviable.

4. Interrogate as far as possible the CAPEX investment of £150,000 - £200,000 referred to in the Sidney Phillips letter dated 31 May 2016 that it is claimed is required to bring the property back into a suitable condition for use as a public house and guest house.

The Sidney Phillips letter of the 31 May 2016 states, “a required CAPEX investment in the region of £150,000 to £200,000 in order to bring the property into a safe and workable condition for reopening as a public house”. No breakdown of this expenditure is provided and it would have assisted if supporting evidence by way of quotations for items of work had been provided.

During my inspection I listed a number of issues of potential repair and decoration, which in my opinion require attention, or at the very least further investigation, these include the following.

External

Roof to main building requires further investigation with missing tiles and is covered in moss.

External redecoration is required.

Customer patio requires updating and landscaping.

New external signage required.

Replace fencing around service yard.

Car park requires resurfacing.

Internal

Internal redecoration required.

Letting bedrooms require upgrading and modernisation – particularly to en suites.

Kitchen requires deep clean and potential upgrade of extraction system.

Owner's accommodation requires redecoration.

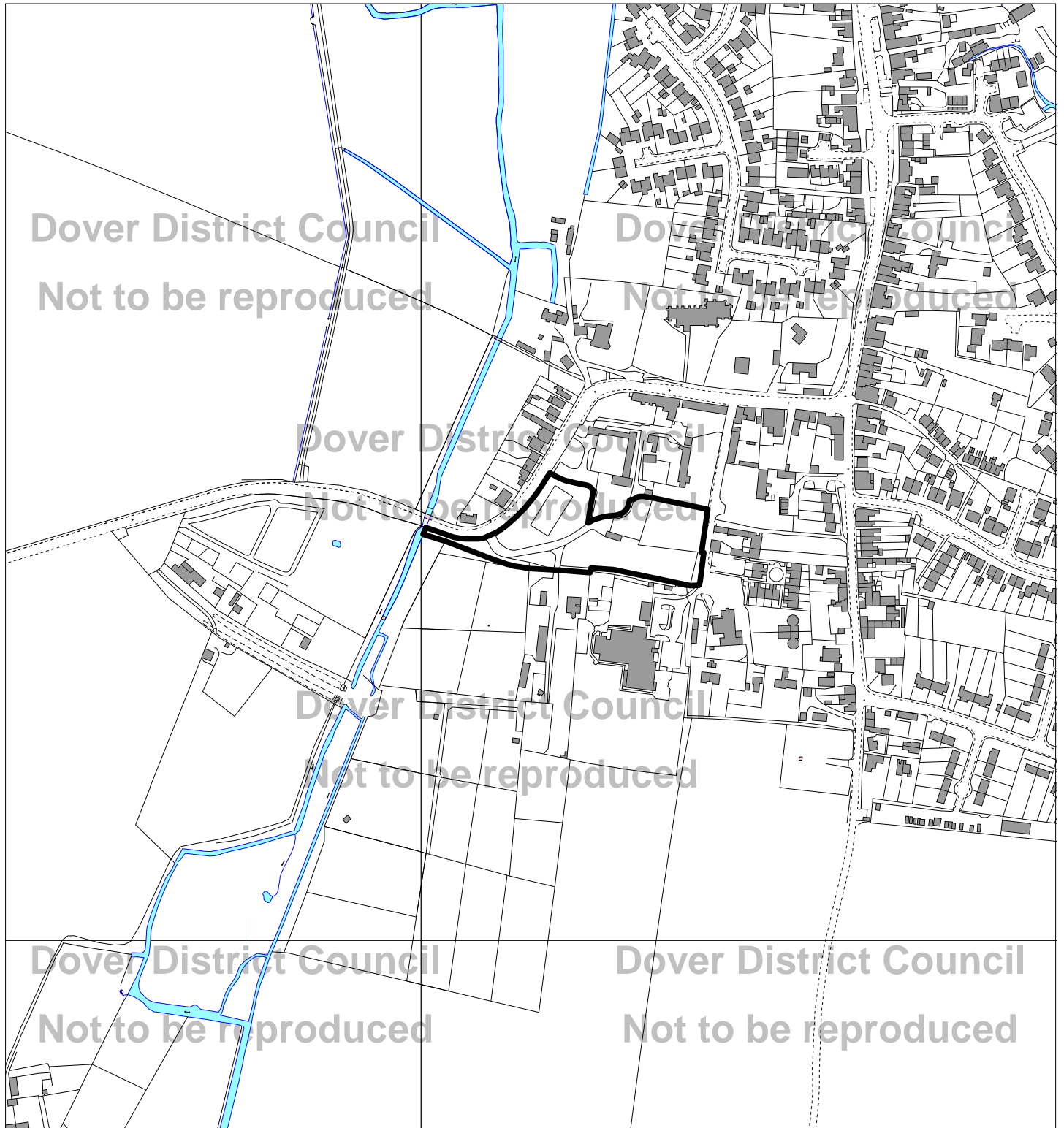
It is my experience and quite conceivable that the works above could easily amount to a total cost in excess of £150,000.

I trust the above is sufficient for your purposes at this time. Should you require further consideration, or clarification, of any of the above, please do not hesitate to contact me.

Yours faithfully



Barry E J Voysey BSc (Hons) DipArb FRICS FCI Arb



Not to scale

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Application: DOV/15/01100

Part of Wingham Court

Hawarden Place

Canterbury Road

CT3 1EW

TR24105731



a) DOV/15/01100 – Erection of 15 care units (Use Class C2), comprising of 9 terraced houses and 6 apartments; conversion and extension of Goose Barn to provide communal facilities to include manager's office, guest suite and activities room; provision of vehicular and cycle parking together with internal access arrangement works and junction improvements; and associated landscape and tree works - Land to the South of Hawarden Place, Canterbury Road, Wingham

1. This application was considered by the Committee at its meeting of 25 August 2016 when Committee resolved to defer the application for a site visit before returning to the Committee meeting of 22 September 2016.
2. The applicant's agent (Tetlow King) has submitted a letter dated 24 August which was circulated to Committee members prior to the August Committee meeting. This includes a number of comments on the August Committee report. The letter is at Appendix 1. This supplementary report seeks to address the points raised in the agent's letter.
3. It should be noted that further advice has been sought from the Principal Heritage Officer, Principal Infrastructure Delivery Officer and Senior Planning Policy Officer in preparing this supplementary report.
4. This supplementary report should be read together with the original Committee report which is at Appendix 3 and which outlines the full range of policy considerations together with details of third party and consultee responses.
5. Extracts from the letter are set out below (the headings are as set out in that letter), following which is an officer comment.

Analysis of Agent's Letter

Open Space

6. "I note and welcome the acceptance that the revisions to the site layout have overcome the previous concerns raised with regards the loss of open space originally identified. However, the final section of this paragraph causes some concern due to the lack of certainty on the matter. The report states that the plans *'do not indicate that this space would be publicly accessible.'* When reading the paragraph in more detail it states that the site was identified as open space in the core strategy *'due to its potential value as publicly accessible open space and/or its current amenity value.'* The land is not publicly accessible in its present state as it is privately owned and there is no indication that it would have ever been made publicly accessible.

It is presently only accessible via Hawarden Place due to the lack of connection from School Lane (a point that is addressed below in regards to the proposal), it is therefore hard to imagine how this space would ever become publicly accessible at any time in the future. It is therefore only reasonable to conclude that it was identified due to its amenity value. Assuming that to be the case its retention within the revised scheme as an orchard cannot be contrary to the aims of policy DM25 and the lack of public accessibility cannot be an issue.

Again, this matter has not been concluded in the report and it means that your members might indeed raise concerns over the lack of public access within my clients' proposals despite their being no requirement to do so and no conflict as such with the policy."

Officer Response:

7. Clarification from the Council's Principal Infrastructure and Delivery Officer confirms that the main purpose of the designation of this space is to preserve the setting of the heritage assets. Therefore the open space should be maintained in its current form.
8. The Council's Principal Infrastructure Officer has also outlined that the need for open space arising from new developments is calculated according to the formula set out within DM27 however the wording of this policy means it is only applicable to dwellings (C3). As the proposed development has been deemed to be C2 residential institution it is not possible to apply the open space formulae to the proposal. She has stressed that, if the application were deemed to fall within the C3 use class then a contribution towards open space would be sought.

Agent's Letter

Highways

9. "I note (and indeed the second reason of refusal) that an objection has been raised on the basis that the pedestrian connection to School Lane has been removed. The intention of the scheme was to provide a pedestrian connection to School Lane to the north of plot 15 on the layout. What is at issue here though is the comments from the Heritage Officer and those based on the revised layout that I received via email from the case officer on 9th August. These comments state (red being the additional comments received after the revised scheme was considered [in underline here]):
'There was only one section of the curtilage listed wall that I was content with breaking through, but further interventions particularly to School Lane will be harmful by eroding the sense of enclosure. The site location plan received 10/06/2016 is not completely clear but despite the annotation it appears that there remains an opening proposed in the wall to School Lane; this is an issue.'

Clearly your conservation officer considered, as was intended, that the layout plan does indeed retain the proposed opening in the wall to provide a pedestrian connection. I do note that in the summary of the Heritage Officer's comments on page 15 there is no mention of the above comments at all. This in itself is misleading as it seeks to remove from a public document issues that the Heritage Officer raised and must be considered. Members need to be aware as part of the balancing exercise (which I will discuss in more detail later) whether the harm to the wall by creating a pedestrian access is outweighed by the benefits of creating a pedestrian connection to School Lane.

Given that, as it stands, the second reason for refusal states that the scheme would fail to *'maximise walking, cycling and the use of public transport'* and Highways object to the scheme (if it does not indeed contain the pedestrian link) on the basis of it failing to provide a *'pedestrian route to the wider footway network and bus stop/services/amenities'* I can only surmise that officers have already made the judgement that the public benefits of a link do outweigh any harm to the heritage asset.

This is certainly a matter that needs addressing in order that members are aware of the issues. For clarification in case of continued confusion I can confirm that there is a gate at the end of the wall next to unit 15. Contrary to the view that this location

results in an opening in the wall this location on site is actually part of an existing fence as the wall ends approximately in line with the Orchard. As such the highways objection should not stand due to the inclusion of the access and neither should the heritage concerns due to it not relating to the boundary wall. I therefore consider that the second reason for refusal should be withdrawn as it is no longer defensible.”

Officer Response

10. A small gated entrance is proposed onto School Lane near unit 15 with a further narrow opening proposed to the north east of the site, adjacent to the boules/petanque court. However no hard surface is proposed to provide a link from the units or the entrance square to these accesses and onto School Lane and residents would have to walk over areas of lawn to reach the accesses. Therefore the openings do not appear to be an obvious link for pedestrians or cyclists to access the village, or to serve as paths that would be used frequently by residents. KCC Highways suggest a properly surfaced path within the site, serving the gated entrance near unit 15 would address their objection – this forming the basis of ground (ii) of the recommendation. It is acknowledged that such a practicable link for pedestrians and cyclists could be shown through a revised landscaping scheme however in its current form the scheme is not considered to take on opportunities to maximise walking, cycling or links to public transport and therefore the second recommended reason for refusal is considered to remain appropriate.
11. The Council’s Principal Heritage Officer has clarified that the opening next to unit 15 is not a cause for concern. She has provided a plan highlighting the gaps which are considered to cause a heritage concern which are to the north east of the site and to the north of the proposed guest room. Appendix 2 shows the location of these gaps for the avoidance of doubt.

Agent’s Letter

Quantum of Development

12. “The report seeks to summarise at paragraph 2.10 discussions that were held with the case officer as to why the scheme could not be reduced in size, a matter which the heritage officer brought up in their comments. Whilst the report seeks to provide an explanation as to why the scheme cannot be reduced in scale it lacks the context and implications of such a request.

As a matter of principal the report does not seek to set out in any detail the housing position within the district relative to meeting the needs of older people. The adopted Core Strategy is the starting point for considering need and thus quantum. It is noted that paragraph 2.31 of the strategy reflects the increase in the over 65 population within the district, going on to recognise at 2.38 that “the stock is not sufficiently suited or adaptable to the needs of the elderly and those with health problems.” Of final relevance is paragraph 3.77 which states that “the Strategy looks to the rural area to accommodate a significant amount of development consistent with the Settlement hierarchy and to help widen housing choice and meet local needs.” It is clear therefore from the core strategy that there is a recognition to make the most efficient use of land within sustainable locations, and with a specific recognition of an expanding ageing population with insufficient stock provision.

When considering the proposed scheme, the implications of the request for revisions to the scheme so that it is based upon ‘a small number of units hugging the back edge of the site (adjacent to the school) and retaining a large open space

to School Lane and within the site would be more characteristic' need to be considered. Although the number of units that should be considered is not outlined in the heritage officer's comments our subsequent discussions with the case officer via an email of 11 June states that they would be looking for a reduction "by at least 6-7 units meaning that the scheme would only retain 8-9 units. On the basis that the scheme is designed around the core principles of care, a point which the Council accept given the C2 use, this would mean that the scheme would still need to retain the proposed communal facilities and the minimum provision of care to residents at a higher cost per resident. This would make the scheme unviable and therefore no longer able to proceed for the provision of housing with care.

This is a significant implication of the suggestion to reduce the scale of the scheme to one that does not seem to have been given sufficient consideration in the report or indeed the assessment of the scheme generally (again, discussed in more detail below)."

Officer Response

13. There is a need for housing for older people and this is clearly set out in the report and reflects NPPF aims and objectives. To clarify the East Kent Strategic Housing Market Assessment predicts a population increase of 42.2% of age 65-84 and a population increase of 49.1% in the 85+ age group. The Council is currently updating its Strategic Housing Market Assessment but is yet to be finalised.
14. The National Planning Policy Guidance refers to housing for older people as being housing for over 65s rather than over 55s and the NPPF defines housing for older people as housing for people of retirement age.
15. To clarify a further point, the NPPG identifies that local planning authorities should count housing provided for older people, including residential institutions in use class C2 against their housing requirement. The Council cannot currently demonstrate a 5 year housing land supply and the proposal would make a modest contribution to rectifying this.
16. The applicant's agent has stated that the number of units could not be reduced. He has outlined that the cost per resident to retain the communal facilities and element of care would be increased, making the scheme unviable. This assertion is a material consideration, although in the absence of detailed financial evidence to support this claim (in a form that could be open to expert review), it should not be afforded undue weight.

Agent's Letter

Heritage Impacts

17. "I note in the report that issue of heritage impacts is the most significant element and forms the principal reason for refusal. The first point to note in this section of the report is the comment at paragraph 2.13 that "*Weatherboarding is not commonly found in the village.*" As a first point it should be noted that weatherboarding is indeed evident within the village, most notably within Hawarden Place immediately to the north of the application site. Secondly, the NPPF is clear at paragraph 60 that:

'Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through

unsubstantiated requirements to conform to certain development forms or styles. It is, however proper to seek to promote or reinforce local distinctiveness.'

As discussed with your officers, there is no conservation area appraisal for Wingham to date and therefore no reference point for what provides the distinctiveness of the area worthy of its preservation and enhancement. As stated, there are examples of the use of weatherboarding in the immediate locality of the application site and without a conservation area appraisal to provide the context of the local vernacular and distinctiveness the consideration of materials remains a personal matter and must be considered on the basis of whether the proposal fails to preserve or enhance the character and appearance. This is not stated in the report or the comments of the heritage officer and cannot therefore be considered to be harmful by the omission of this assessment.

The issue of greatest concern in the heritage assessment is that set out in paragraphs 2.16 and more importantly 2.17. Paragraph 2.17 open with the sentence, "*The lack of sufficient analysis of the significance of the designated heritage assets ...*" in order to suggest that the scheme has not been appropriately designed to reflect its local context. This fails to consider that a detailed Heritage Statement was submitted in support of the application. This report has an entire section in it relating to 'Assessment of Significance' and includes the following sub-headings:

- _Historic background;
- _Scheduled Monuments;
- _Listed Buildings;
- _Conservation Areas;
- _Archaeology; and
- _Non-designated heritage assets

Moreover, having considered the significance of the heritage assets the report proceeded in the following chapters to assess the effects of the proposed development on the assets both directly and indirectly, and provide an assessment of mitigation measures to be incorporated.

On the basis of the information submitted with the application it is disingenuous to suggest that the application lacks sufficient analysis. Indeed, were one to be critical at all of the application it would be reasonable to state that it is the council who have lack sufficient analysis of the designated assets for failing to have in place a conservation area appraisal of Wingham to set out what its principle characteristics are and those elements that need protecting and those that need enhancing.

The issue of the impacts on Goose Barn (set out in paragraph 2.18) also need to be addressed. The original comments from the heritage officer stated that this building was curtilage listed, however the most recent comments state that "*The barn (Goose Barn) is likely to be curtilage listed grade II* [noting here that the heritage officer states Grade II and not Grade II* as referred to in the committee report]." This is in contradiction to the assessment set out in the supporting heritage statement with the application which considers at paragraph 5.7.1 that Goose Barn is a non-designated heritage asset and is of low significance. Since the initial comments were received in March 2016 from the heritage officer we have not been provided with any evidence to demonstrate that the barn is indeed a curtilage listed building as considered by the heritage officer.

When considering the harm arising from the scheme in the heritage officers' original comments they failed to state whether it would result in substantial or less than

substantial harm, a point which was only clarified when pressed on the matter. I note that the report sets out at paragraph 2.19 that it is agreed that less than substantial harm arises from the scheme. In this paragraph the report states that *'The public benefits of the scheme are not considered to outweigh the harm to the designated heritage assets'*, which appears to mirror the comments from the heritage officer who stated *'The proposal has not provided any justification that this harm is outweighed by the public benefits of the scheme.'* Whilst the planning submission set out the significant public benefits of the proposed development (listed in detail at paragraphs 5.34 to 5.36 of the statement) and indeed the acknowledged need for this form of specialised housing both nationally and locally (paragraphs 5.9 to 5.21) there is no such assessment within the committee report or indeed ever provided to us during the course of the consideration of the application. The only consideration within the committee report is within the conclusion at paragraph 3.1 where it states "There is a need for housing, particularly for older people." This is the only element of the entire report that seeks to address any planning benefit of the application.

What is particularly difficult to accept when considering the heritage impacts is the wording of part of the reason for refusal. The reason states:

'The proposed development, by virtue of its scale, mass, layout, design and materials would if permitted result in a dominant, incongruous, unsympathetic and poorly related form of development, out of keeping with the prevailing form of surrounding development, harmful to the character and appearance of the surrounding area, street scene, the significance of listed buildings including the likelihood of obscuring views to the Grade I listed building and the character and appearance of the Wingham Conservation Area, contrary to National Planning Policy Framework Policies 60, 64, 128, 131, 132 and 134.' [my emphasis added]

This wording is clearly imprecise when it comes to visual impact as it uses the phrase likelihood to define the impact. This implies that no full assessment has been considered to determine whether or not there is real harm to the views of the Church as a result of the proposed development. This is not in keeping with national guidance that requires clear reasons to be given when seeking to refuse an application. It is therefore stated that the Council should confirm that the development will either result in detrimental impacts on views of the Grade I listed church or withdraw that element from the reason for refusal. The council have not provided any information to demonstrate that the scheme will result in unacceptable impacts to the views, whilst we have provided views to show that the scheme will not be harmful to assessing the church against the backdrop of our proposed scheme."

Officer Comment

18. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses and Section 72 of the Section 72 of the Act 1990 requires that the planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
19. As previously outlined, the Council's Principal Heritage Officer has clarified that concerns in the break in the existing boundary wall do not relate to the opening near to the proposed unit 15. A plan showing the locations of the breaks in the wall which have raised concerns is at Appendix 2 of this statement.

20. With regard to the proposed use of weatherboarding, the Principal Heritage Officer (PHO) has reiterated that her comments outline that this is not a material which is “commonly” used within the conservation area, rather than being a material which is not used at all within the conservation area. The PHO states, “a scheme which eschews materials that are characteristic of, and contribute to, the special interest of a conservation area is unlikely to ‘promote or reinforce’ the established vernacular.’ The report identifies the dominant materials in the locality and therefore the assessment of the proposed materials in respect of their impact on the character and appearance of the conservation area is considered to be in accordance with para 131 of the NPPF which requires the LPA to take account of ‘new development making a positive contribution to local character and distinctiveness.’
21. With regard to the agent’s point regarding the lack of analysis, the PHO maintains the view that the submitted Design Strategy fails to demonstrate the character of Wingham, and that the Heritage Statement contains only a limited assessment and suggestions based on provisional sketches, but it is considered has not been reflected within the Design Strategy.
22. The PHO confirms that there is a minor editing error in the heritage comments in that the Goose barn should read grade II* not grade II and stresses that it is reasonable to consider the building as being curtilage listed.
23. Significant concerns have been raised with respect to the long section plan as it is clear that it does not show the setting of the church in the wider landscape. The long distance view from Adisham Road is a key view which contributes to the setting of the grade I listed church, and it is considered that the plan is insufficient to demonstrate that the setting of the church has been fully considered.
24. It is maintained that the site is distinct in character from the tightly developed linear built form on the High Street and relates to the grounds of Wingham Court and is characterized by open spaces. A key view of the tower and spire of the Grade I listed church is afforded from the B2046 being a significant contributor to the special interest of the church and the conservation area.
25. It is maintained that the proposed development would prove harmful to heritage as outlined within the August committee report. Furthermore the scheme fails to preserve or enhance the character or appearance of the Grade II* listed Wingham Court, surrounding listed buildings and the conservation area. It is therefore considered that granting permission for the scheme would fail to accord with Section 66 and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
26. As outlined within the officer’s report, discussions have taken place with the applicant’s agent to attempt to achieve an acceptable design, however the applicant has not altered the design or appearance of the scheme. In accordance with paragraph 134 of the NPPF this harm should be weighed against the public benefits of the proposal including securing its optimum viable use.
27. In this instance the benefits of the scheme are considered to be primarily limited to a modest contribution to address a specific housing need. The agent has only recently confirmed that the communal space would be available to the public. Given the modest scale of the communal facilities and limited public accessibility to the

site, the public benefits of this are considered to be limited. Therefore the scheme continues to be considered to be contrary to Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraphs 131, 132 and 134 of the National Planning Policy Framework and therefore permission should be refused.

Agent's Letter

Balancing Exercise

28. "The government is clear in setting out within the NPPF at paragraph 14 the "presumption in favour of sustainable development" and that this must consist of an assessment of the economic, social and environmental role (paragraph 7). The committee report clearly makes an assessment of the environmental role noting what is considered to be an unacceptable impact on the conservation area while an acceptable impact for ecology (noting that there is no assessment provided on the landscape impact of the scheme). However, the report is almost silent on the economic or social role that the development would play locally within Wingham and indeed within Dover as a whole. It is accepted that economically the development will not play a significant role per se with regards employment generation other than during the construction of the scheme. However, additional residents will support existing local businesses and it is accepted that the scheme is within the village confines and a sustainable location.

In respect of the social role, the report states at paragraph 3.1 that the community facilities "*appear to be only available to residents on the site the applicants have not indicated otherwise, so the wider public benefits is at best limited.*" As a starting point officers have not sought any clarification on this matter in the discussions that we have had with them since submitting the planning application in November. We have provided additional information in respect of what the care package for residents would entail, how the communal facilities would operate in regards to layout and functions and even what the role of the site manager would be however at no point was the question asked about whether or not the communal facilities would be accessible for residents of the village. My clients are happy to confirm that existing residents are able to join in with the proposed development and benefit from the facilities and services on site subject to paying for those on a similar basis to the residents of the scheme itself. As a further reflection of the need and support for this form of development, my clients have already been approached by residents within the village who are looking for the opportunity to 'rightsize' and move into accommodation that suits their future health needs and enable them to free up their larger, under-occupied family houses.

Of course there is the financial aspect to consider regarding the maintenance and running of the facilities as these are paid for through the annual service charge, however in principle the opening up of the facilities to residents of the village on an invitation basis is always something that is encouraged as it ensures that such schemes become part of the wider community. This is an important tenet of such developments to ensure that issues of isolation within the older people of a community are addressed. The conclusion of the report also overlooks the fact that through the delivery of care and support to residents within the proposed scheme there will be obvious implications for being able to deliver additional outreach care services to the existing residents of the village who would prefer to stay in their own home but still receive some care and support.

It is our assessment that the overwhelming need for this form of development within

Dover and the associated benefits that such schemes deliver outweighs the harm to the heritage assets that the Council have identified, irrespective of the fact that we do not agree that such perceived harm is warranted in the first place.

Conclusion

As outlined in some detail above, clearly we have significant reservations about the report in its current format and the lack of detailed assessment that would be required to make a balanced judgement by your members. This is more worrying given the amount of time that your officers have had the application for and the lack of detailed discussions with them despite constant chasing for updates and previously stating that we were happy to discuss and explain our proposals given the specialist nature of them.

It is perhaps also worth noting that even in the majority of letters opposing the development in its original form the issues relate to specific details as opposed to the principle of development per se. Many of the specific design concerns with the original scheme have been addressed within the revised scheme such as concerns with the relationship of the scheme and existing properties in respect of outlook and overlooking. The general principle and design approach was also accepted when the initial plans were presented to the South East Design Panel.”

Officer's Comments and Conclusions

29. The concerns raised are noted. In the interests of clarity, a summary of the policy considerations pertinent to the assessment of this application are set out in the following paragraphs.
30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the planning application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. A key material consideration in this case is the NPPF.
31. Under the Development Plan, the application site falls within the settlement confines of Wingham where the principle of new residential development is acceptable, subject to the consideration of site specific details and impacts. As stated above however, the Council is unable to demonstrate a five year housing land supply. Having regard to paragraph 49 of the NPPF, in these circumstances, the Council's housing policies can no longer be considered up-to-date. In such instances the presumption in favour of sustainable development (under paragraph 14 of the NPPF) will apply, meaning that unless material considerations indicate otherwise, permission should be granted for the development unless: Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole; or specific policies in the NPPF indicate that development should be restricted.
32. In assessing the overall application against the policies in the NPPF, the Committee must be satisfied that the proposal constitutes sustainable development, where in line with paragraph 8 of the NPPF, economic, social and environmental gains are achieved jointly and simultaneously through the planning system.
33. It is considered that the original report assessed the sustainability credentials of the development proposals. Regarding the social aspect of the scheme, it acknowledged that the proposal will make a modest contribution to the 5 year housing land supply and will provide additional accommodation of a type needed

within the district. Regarding other aspects, the applicants originally advised that the communal facilities were only to be available to residents on the site and not open to the wider public. It is interesting to note that the applicant is now advising that existing residents would be able to use the facilities subject to payment on a similar basis to the residents of the scheme. This is welcomed although clarification as to how wider public access would be managed in practice would have been beneficial. It is also noted that the development would provide outreach care, although to what extent this would supplement/add to existing services provided by established KCC Social Services and others is unclear.

34. In terms of the economic impact, information provided with the application refers to the provision of 10 full time equivalent jobs (at the operational stage), although as now stated in the agents recent letter, the economic benefits of the proposal are not felt to be significant. Reference is made to employment during the construction phase and benefits associated with additional residents supporting local services.
35. With regard to the environmental impact, it is accepted that the principle of development within the settlement is acceptable, with the location providing opportunities for ease of access to services by means of travel other than the car. In this instance however, objections expressed through the views of KCC Highways highlight the shortcomings of the current proposal to provide adequate pedestrian access into the village. The means of remedying this are referred to earlier in this report, but as matters stand and on the basis of the current proposals, this issue forms part of the recommendation for refusal.
36. In respect of the impact of the development on the historic environment however the assessment undertaken in the August committee report concluded that the application would be contrary to the specific policies in the NPPF relating to conserving and enhancing the historic environment. In explanation, it was identified that the proposals would lead to "less than substantial harm" to the significance of heritage assets but that this harm would not be outweighed by any public benefits arising from the proposal. Following on from this, the report also concluded that the proposal would not satisfy the legislative requirements under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving a listed building or its setting and the need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area - The local planning authority has a statutory duty to apply this legislation when determining applications such as the one currently under consideration here.
37. Under Paragraph 14 of the NPPF, the requirement in this case is to grant planning permission, "unless specific policies in this Framework indicate development should be restricted" (such policies include those relating to designated heritage assets). The recommendation to refuse planning permission arises in large part from the failure of the proposal to address the requirements of NPPF policy relating to conserving and enhancing the historic environment.
38. In view of the harm arising from the impact of the development on the historic environment in particular, the proposals are not considered to achieve social, economic and environmental gains, jointly and simultaneously (paragraph 8 of the NPPF). They fail the policy assessment under Paragraph 14 and cannot therefore be considered to constitute sustainable development.
39. The failure to satisfactorily address these aspects of NPPF policy indicates that the development should be resisted. There is also a need however to consider whether

there are any other material considerations which should be taken into account and which might justify an alternative conclusion.

40. It is noted that the general principle and initial plans were “accepted” by the South East Design Panel. These however are not considered to overcome or outweigh the serious heritage concerns identified.

41. In conclusion, it is not considered that any other material considerations apply that would justify departing from the recommendation to refuse the current application for the reasons set out in the August committee report and restated here.

I. PLANNING PERMISSION BE REFUSED for the following reasons:-

(i) The proposed development, by virtue of its scale, mass, layout, design and materials would if permitted result in a dominant, incongruous, unsympathetic and poorly related form of development, out of keeping with the prevailing form of surrounding development, harmful to the character and appearance of the surrounding area, street scene, the significance of listed buildings including the likelihood of obscuring views to the Grade I listed building and the character and appearance of the Wingham Conservation Area, contrary to National Planning Policy Framework Policies 60, 64, 128, 131,132 and 134.

(ii) The development as proposed would fail to maximise walking, cycling and the use of public transport, contrary to paragraphs 49 of the National Planning Policy Framework and Policy DM11 of the Dover District Core Strategy.

Case Officer

Cheryl Macer

Appendix 1: Letter from applicant's agent received 24 August 2016



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Dover District Council
Planning Services
White Cliffs Business Park
Dover
Kent
CT16 3PJ

Date: 24 August 2016

Our Ref: M15.0907-05

Your Ref: 15/01100

By email only: Lesley.jarvis@dover.gov.uk

Dear Lesley

RE: LAND TO THE SOUTH OF HAWARDEN PLACE (LADY HAWARDEN SITE),
CANTERBURY ROAD, WINGHAM
PROPOSED EXTRA CARE DEVELOPMENT

I am writing on behalf of my clients, Environ Communities Ltd and The Trustees of the Viscount Hayward Will Trust, in response to the committee report for the above application that was published this week and is to be reported to the council's planning committee on Wednesday 24th.

Having reviewed the report in full I feel the need to provide this detailed response to address what I and my clients believe are serious deficiencies in its content. I understand that matters submitted after the report has been published will be presented orally to the committee but I am happy that an abridged version of this is discussed with them instead of the full content.

On a positive note to start, I am pleased that after months of deliberations the Council have accepted that my clients' proposal is indeed a Class C2 use that is based around the principle of providing housing with care. As set out in great detail with the application the provision of care for future residents of this scheme is at the heart of the proposal and we are therefore glad that the council have finally managed to reach a point of agreement with us on that matter. That has therefore simplified the planning issues with regards to the matter of affordable housing as set out in paragraph 2.35 and we are grateful.

I now set out below the issues that we have with regards to the report and why we believe that the conclusions reached are unfounded.

1. Open Space

The report at 2.5 address the issue of the layout of the scheme and the open space that has been designated under Core Strategy Policy DM25. I note, and welcome, the acceptance that the revisions to the site layout have overcome the previous concerns raised with regards the loss of open space originally identified. However, the final section of this paragraph causes some concern due to the lack of certainty on the matter. The report states that the plans "*do not indicate that this space would be publicly accessible.*" When reading the paragraph in more detail it states that the site was identified as open space in the core strategy "*due to its potential value as publicly accessible open space and/or its current amenity value.*" The land is not publicly accessible in its present state as it is privately owned and there is no indication that it would have ever been made publicly accessible.

It is presently only accessible via Hawarden Place due to the lack of connection from School Lane (a point that is addressed below in regards to the proposal), it is therefore hard to imagine how this space would ever become publicly accessible at any time in the future. It is therefore only reasonable to conclude that it was identified due to its amenity value. Assuming that to be the case its retention within the revised scheme as an orchard cannot be contrary to the aims of policy DM25 and the lack of public accessibility cannot be an issue.

Chairman
R S J Tetlow MSc Dip Surv FRTP FRCS FCIM FRSA

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Directors
S Hinsley BA (Hons) MRTPI
J M Adams BA (Hons) BTP MRTPI
J Sneddon BSc (Hons) MRTPI
J Stacey BA (Hons) Dip TP MRTPI

Again, this matter has not been concluded in the report and it means that your members might indeed raise concerns over the lack of public access within my clients' proposals despite their being no requirement to do so and no conflict as such with the policy.

2. Highways concerns.

I note in the report (and indeed the second reason of refusal) that an objection has been raised on the basis that the pedestrian connection to School Lane has been removed. The intention of the scheme was to provide a pedestrian connection to School Lane to the north of plot 15 on the layout. What is at issue here though is the comments from the Heritage Officer and those based on the revised layout that I received via email from the case officer on 9th August. These comments state (red being the additional comments received after the revised scheme was considered):

"There was only one section of the curtilage listed wall that I was content with breaking through, but further interventions particularly to School Lane will be harmful by eroding the sense of enclosure. The site location plan received 10/06/2016 is not completely clear but despite the annotation it appears that there remains an opening proposed in the wall to School Lane; this is an issue."

Clearly your conservation officer considered, as was intended, that the layout plan does indeed retain the proposed opening in the wall to provide a pedestrian connection. I do note that in the summary of the Heritage Officer's comments on page 15 there is no mention of the above comments at all. This in itself is misleading as it seeks to remove from a public document issues that the Heritage Officer raised and must be considered. Members need to be aware as part of the balancing exercise (which I will discuss in more detail later) whether the harm to the wall by creating a pedestrian access is outweighed by the benefits of creating a pedestrian connection to School Lane.

Given that, as is stands, the second reason for refusal states that the scheme would fail to "maximise walking, cycling and the use of public transport" and Highways object to the scheme (if it does not indeed contain the pedestrian link) on the basis of it failing to provide a "pedestrian route to the wider footway network and bus stop/services/amenities" I can only surmise that officers have already made the judgement that the public benefits of a link do outweigh any harm to the heritage asset.

This is certainly a matter that needs addressing in order that members are aware of the issues. For clarification in case of continued confusion I can confirm that there is a gate at the end of the wall next to unit 15. Contrary to the view that this location results in an opening in the wall this location on site is actually part of an existing fence as the wall ends approximately in line with the Orchard. As such the highways objection should not stand due to the inclusion of the access and neither should the heritage concerns due to it not relating to the boundary wall. I therefore consider that the second reason for refusal should be withdrawn as it is no longer defensible.

3. Quantum of development

The report seeks to summarise at paragraph 2.10 discussions that were held with the case officer as to why the scheme could not be reduced in size, a matter which the heritage officer brought up in their comments. Whilst the report seeks to provide an explanation as to why the scheme cannot be reduced in scale it lacks the context and implications of such a request.

As a matter of principal the report does not seek to set out in any detail the housing position within the district relative to meeting the needs of older people. The adopted Core Strategy is the starting point for considering need and thus quantum. It is noted that paragraph 2.31 of the strategy reflects the increase in the over 65 population within the district, going on to recognise at 2.38 that "the stock is not sufficiently suited or adaptable to the needs of the elderly and those with health problems." Of final relevance is paragraph 3.77 which states that "the Strategy looks to the rural area to accommodate a significant amount of development consistent with the Settlement hierarchy and to help widen housing choice and meet local needs." It is clear therefore from the core strategy that there is a recognition to make the most efficient use of land within sustainable locations, and with a specific recognition of an expanding ageing population with insufficient stock provision.

When considering the proposed scheme, the implications of the heritage officers request for revisions to the scheme so that it is based upon "a small number of units hugging the back edge of the site (adjacent to the school) and retaining a large open space to School Lane and within the site would be more characteristic" need to be considered. Although the number of units that should be considered is not outlined in the heritage officer's comments our subsequent discussions with the case officer via an email of 11 June states that they would be looking for a reduction "by at least 6-7 units" meaning that the scheme would only retain 8-9 units. On the basis that the scheme is designed around the principles of care, a point which the Council accept given the Class C2 use, this would mean that the scheme would still need to retain the proposed communal facilities and the minimum provision of care to residents but at a higher cost per resident. This would make the scheme unviable and therefore no longer able to proceed for the provision of housing with care.

This is a significant implication of the suggestion to reduce the scale of the scheme and one that does not seem to have been given sufficient consideration in the report or indeed the assessment of the scheme generally (again, discussed in more detail below).

4. Heritage Impacts

I note in the report that issue of heritage impacts is the most significant element and forms the principal reason for refusal. The first point to note in this section of the report is the comment at paragraph 2.13 that "Weatherboarding is not commonly found in the village." As a first point it should be noted that weatherboarding is indeed evident within the village, most notably within Hawarden Place immediately to the north of the application site. Secondly, the NPPF is clear at paragraph 60 that:

"Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness."

As discussed with your officers, there is no conservation area appraisal for Wingham to date and therefore no reference point for what provides the distinctiveness of the area worthy of its preservation and enhancement. As stated, there are examples of the use of weatherboarding in the immediate locality of the application site and without a conservation area appraisal to provide the context of the local vernacular and distinctiveness the consideration of materials remains a personal matter and must be considered on the basis of whether the proposal fails to preserve or enhance the character and appearance. This is not stated in the report or the comments of the heritage officer and cannot therefore be considered to be harmful by the omission of this assessment.

The issue of greatest concern in the heritage assessment is that set out in paragraphs 2.16 and more importantly 2.17. Paragraph 2.17 open with the sentence "The lack of sufficient analysis of the significance of the designated assets..." in order to suggest that the scheme has not been appropriately designed to reflect its local context. This fails to consider that a detailed Heritage Statement was submitted in support of the application. This report has an entire section in it relating to "Assessment of Significance" and includes the following sub-headings:

- Historic background;
- Scheduled Monuments;
- Listed Buildings;
- Conservation Areas;
- Archaeology; and
- Non-designated heritage assets

Moreover, having considered the significance of the heritage assets the report proceeded in the following chapters to assess the effects of the proposed development on the assets both directly and indirectly, and provide an assessment of mitigation measures to be incorporated.

On the basis of the information submitted with the application it is disingenuous to suggest that the application lacks sufficient analysis. Indeed, were one to be critical at all of the application it would be reasonable to state that it is the council who have lack sufficient analysis of the designated assets for

failing to have in place a conservation area appraisal for Wingham to set out what its principle characteristics are and those elements that need protecting and those that need enhancing.

The issue of the impacts on Goose Barn (set out in paragraph 2.18) also need to be addressed. The original comments from the heritage officer stated that this building was curtilage listed, however the most recent comments state that *"The barn (Goose Barn) is likely to be curtilage listed grade II* [noting here that the heritage officer states Grade II and not Grade II* as referred to in the committee report]."
This is in contradiction to the assessment set out in the supporting heritage statement with the application which considers at paragraph 5.7.1 that Goose Barn is a non-designated heritage asset and is of low significance. Since the initial comments were received in March 2016 from the heritage officer we have not been provided with any evidence to demonstrate that the barn is indeed a curtilage listed building as considered by the heritage officer.

When considering the harm arising from the scheme in the heritage officers' original comments they failed to state whether it would result in substantial or less than substantial harm, a point which was only clarified when pressed on the matter. I note that the report sets out at paragraph 2.19 that it is agreed that less than substantial harm arises from the scheme. In this paragraph the report states that *"The public benefits of the scheme are not considered to outweigh the harm to the designated heritage assets"*, which appears to mirror the comments from the heritage officer who stated *"The proposal has not provided any justification that this harm is outweighed by the public benefits of the scheme."* Whilst the planning submission set out the significant public benefits of the proposed development (listed in detail at paragraphs 5.34 to 5.36 of the statement) and indeed the acknowledged need for this form of specialised housing both nationally and locally (paragraphs 5.9 to 5.21) there is no such assessment within the committee report or indeed ever provided to us during the course of the consideration of the application. The only consideration within the committee report is within the conclusion at paragraph 3.1 where it states "There is a need for housing, particularly for older people." This is the only element of the entire report that seeks to address any planning benefit of the application.

What is particularly difficult to accept when considering the heritage impacts is the wording of part of the reason for refusal. The reason states:

"The proposed development, by virtue of its scale, mass, layout, design and materials would if permitted result in a dominant, incongruous, unsympathetic and poorly related form of development, out of keeping with the prevailing form of surrounding development, harmful to the character and appearance of the surrounding area, street scene, the significance of listed buildings including the likelihood of obscuring views to the Grade I listed building and the character and appearance of the Wingham Conservation Area, contrary to National Planning Policy Framework Policies 60, 64, 128, 131, 132 and 134." [my emphasis added]

This wording is clearly imprecise when it comes to visual impact as it uses the phrase likelihood to define the impact. This implies that no full assessment has been considered to determine whether or not there is real harm to the views of the Church as a result of the proposed development. This is not in keeping with national guidance that requires clear reasons to be given when seeking to refuse an application. It is therefore stated that the Council should confirm that the development will either result in detrimental impacts on views of the Grade I listed church or withdraw that element from the reason for refusal. The council have not provided any information to demonstrate that the scheme will result in unacceptable impacts to the views, whilst we have provided views to show that the scheme will not be harmful to assessing the church against the backdrop of our proposed scheme.

5. Balancing exercise

The government is clear in setting out within the NPPF at paragraph 14 the "presumption in favour of sustainable development" and that this must consist of an assessment of the economic, social and environmental role (paragraph 7). The committee report clearly makes an assessment of the environmental role noting what is considered to be an unacceptable impact on the conservation area while an acceptable impact for ecology (noting that there is no assessment provided on the landscape impact of the scheme). However, the report is almost silent on the economic or social role that the development would play locally within Wingham and indeed within Dover as a whole. It is accepted that economically the development will not play a significant role per se with regards employment

generation other than during the construction of the scheme. However, additional residents will support existing local businesses and it is accepted that the scheme is within the village confines and a sustainable location.

In respect of the social role, the report states at paragraph 3.1 that the community facilities "appear to be only available to residents on the site, the applicants have not indicated otherwise, so the wider public benefit is at best limited." As a starting point officers have not sought any clarification on this matter in the discussions that we have had with them since submitting the planning application in November. We have provided additional information in respect of what the care package for residents would entail, how the communal facilities would operate in regards to layout and functions and even what the role of the site manager would be however at no point was the question asked about whether or not the communal facilities would be accessible for residents of the village. My clients are happy to confirm that existing residents are able to join in with the proposed development and benefit from the facilities and services on site subject to paying for those on a similar basis to the residents of the scheme itself. As a further reflection of the need and support for this form of development, my clients have already been approached by residents within the village who are looking for the opportunity to 'rightsized' and move into accommodation that suits their future health needs and enable them to free up their larger, under-occupied family houses.

Of course there is the financial aspect to consider regarding the maintenance and running of the facilities as these are paid for through the annual service charge, however in principle the opening up of the facilities to residents of the village on an invitation basis is always something that is encouraged as it ensures that such schemes become part of the wider community. This is an important tenet of such developments to ensure that issues of isolation within the older people of a community are addressed. The conclusion of the report also overlooks the fact that through the delivery of care and support to residents within the proposed scheme there will be obvious implications for being able to deliver additional outreach care services to the existing residents of the village who would prefer to stay in their own home but still receive some care and support.

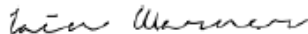
It is our assessment that the overwhelming need for this form of development within Dover and the associated benefits that such schemes deliver outweighs the harm to the heritage assets that the Council have identified, irrespective of the fact that we do not agree that such perceived harm is warranted in the first place.

6. Conclusion

As outlined in some detail above, clearly we have significant reservations about the report in its current format and the lack of detailed assessment that would be required to make a balanced judgement by your members. This is more worrying given the amount of time that your officers have had the application for and the lack of detailed discussions with them despite constant chasing for updates and previously stating that we were happy to discuss and explain our proposals given the specialist nature of them.

It is perhaps also worth noting that even in the majority of letters opposing the development in its original form the issues relate to specific details as opposed to the principle of development per se. Many of the specific design concerns with the original scheme have been addressed within the revised scheme such as concerns with the relationship of the scheme and existing properties in respect of outlook and overlooking. The general principle and design approach was also accepted when the initial plans were presented to the South East Design Panel.

Yours sincerely



IAIN WARNER
ASSOCIATE DIRECTOR
For and On Behalf Of
TETLOW KING PLANNING

Appendix 3

a) **DOV/15/01100 – Erection of 15 care units (Use Class C2), comprising of 9 terraced houses and 6 apartments; conversion and extension of Goose Barn to provide communal facilities to include manager's office, guest suite and activities room; provision of vehicular and cycle parking together with internal access arrangement works and junction improvements; and associated landscape and tree works - Land to the South of Hawarden Place, Canterbury Road, Wingham**

b) **Summary of Recommendation**

Planning permission be Refused.

c) **Planning Policy and Guidance**

Legislation

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses.

Section 72 of the Act 1990 requires that the planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Dover District Core Strategy

Policy DM1 states that development will not be permitted on land outside the urban boundaries and rural settlement confines, unless justified by other development plan policies of ancillary development.

Policy DM11 considers the location of development and managing travel demand. Development that would generate travel outside of rural settlement confines will not be permitted unless justified by development plan policies.

Policy DM13 sets out parking standards and identifies that it should be a design led process.

Policy DM25 seeks to protect open space unless there is overriding justification for its development.

Policy CP1 identifies Wingham as a local centre, suitable for scale of development that would reinforce its role as a provider of services to its home and adjacent communities.

Policy CP2 identifies the requirement for allocating land for houses and employment.

Policy CP3 identifies the distribution of housing allocations, stating that land to be allocated to meet the housing provisions of CP2 will include land for 1,200 homes in rural areas.

Policy CP6 requires infrastructure to be in place or provision for it to be provided to meet the demands generated by the development.

Policy CP7 seeks to protect and enhance the existing network of Green Infrastructure, and states that integrity of the existing network of green infrastructure will be protected and enhanced.

Land Allocations Local Plan (LALP)

Policy DM27 sets out standards for providing open space to meet the additional need generated by residential development of 5 or more dwellings. It also requires that a minimum of 15 years maintenance be demonstrated. Where it is impractical to provide open space on site, consideration will be given to accepting a commuted payment to providing and maintaining improvements to existing facilities.

National Planning Policy Framework (NPPF)

The NPPF states that at its heart is a presumption in favour of sustainable development, to be seen as a golden thread running through decision-taking. It sets out three dimensions to achieving sustainable development: economic, social and environmental. These should not be undertaken in isolation, because they are mutually dependent. To achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

Paragraph 14 of the NPPF requires that where the development plan is absent, silent or relevant policies are out-of-date development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or, specific policies in the NPPF indicate that development should be restricted.

Paragraph 50 states that local planning authorities should plan for a mix of homes based on current and future demographic trends, market trends and the needs of different groups in the community, including older people and people with disabilities.

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

Paragraph 57 stresses the importance of the achievement of high quality and inclusive design for development including individual buildings, public and private spaces and wider area development schemes.

Paragraph 58 states that planning decisions should ensure that developments will function well and add to the overall quality of the area over the lifetime of the development, respond to local character and history and are visually attractive as a result of good architecture and appropriate landscaping.

Paragraph 60 stresses that local planning authorities should not stifle innovation however stresses the importance of reinforcing local distinctiveness.

Paragraph 61 stresses that planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

Paragraph 131 relates to the desirability of new development contributing to or enhancing the significance of heritage assets.

Paragraphs 132 require local planning authorities to make an assessment of harm caused to designated and non designated heritage assets.

Paragraph 134 stresses that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

National Planning Policy Guidance (NPPG)

Provides guidance on matters relating to main issues associated with development.

Other documents

- East Kent Strategic Housing Market Assessment, 2009- identifies population trends and how housing should respond to these.
- The Kent Design Guide sets out design principles of development.
- Dover Heritage Strategy: an objective of the Strategy is to “*ensure the intrinsic quality of the historic environment is protected and enhanced and that these assets are used to positively support regeneration*”.
- Historic Environment in Local Plans; Good Practice Advice (GPA) (2015) and The Setting of Heritage Assets; Historic Environment Good Practice Advice in Planning 3: the GPA’s provides information to assist in implementing the policies in the NPPF and the NPPG in respect of alterations to listed buildings and development affecting their setting.

Relevant Planning History

Planning history for this site is extensive. The most relevant and recent applications are as follows:

DOV/97/0364- Renewal of permission DOV/92/0532 for conversion of outbuildings to 4 dwellings, ancillary accommodation and garages, and erection of new garages on site of former outbuilding-Granted 1992

DOV/99/00562- Conversion of existing granary building to single dwelling, erection of detached garage and alterations to existing vehicular access Granted 1999

DOV/99/0563- Listed building consent for the refurbishment, alteration and extension of existing granary building in association with conversion to single dwelling. Granted 1999

Permission was granted at the Chicken House, within the grounds of Wingham Court for the erection of a canopy extension, enlargement of window opening for the insertion of French doors and relocation of flue vent to South East elevation including the removal of a kitchen wall and a new partition constructed to create a larger kitchen under reference 15/01114 in January 2016.

Consultee and Third Party Responses

Kent Highway Services

“I refer to the amended plans submitted for the above on 10th June and note that the pedestrian connection to School Lane has been removed. This must be reinstated as it provides a pedestrian route to the wider footway network and bus stops/services/amenities in the village. I would also ask the applicant to clarify the proposed refuse collection arrangements, particularly in relation to access by a refuse vehicle and the existing refuse collection arrangements for the existing dwellings served off the access.”

Kent County Council Development Contributions

Requested that a contribution of £720.24 based on a development of this scale towards additional bookstock required to mitigate the impact of the new borrowers from this development and request a condition to submit details of and to secure high speed fibre optic broadband.

Principal Heritage Officer

Unable to support the scheme due to the detrimental impact it would have on the character and appearance of the conservation area and the setting of listed buildings, particularly the grade I listed church and grade II* listed Wingham Court. It was considered that the proposal had not provided any justification that the harm identified would be outweighed by any public benefits of the scheme.

In respect of the first submission, the following comments were made:

- Overcrowding of the site, impacting on its open character.
- Materials are inappropriate in the context of the established character of the conservation area.
- The design, in particular the ‘oast’ chimney feature, has no basis in the local vernacular.
- It had not been demonstrated that key views of the grade I listed church from the B2046 (Adisham Road) within its rural setting had been considered. In addition, views towards the site from within the conservation area, which contribute to the setting of the grade II* listed Wingham Court are potentially affected by the proposed development.
- Breaking through the curtilage listed wall harms the enclosed character of the space, thus harming the conservation area.
- The proposed extension of the Goose Barn, a curtilage listed building, would harm its simple character and appearance.

Further to the submission of amendments, the following comments were made:

- The amended site plan retains the open character of the space to a greater degree, but with no reduction in number of units the scheme still results in overcrowding.
- The massing of the development has increased, and due to the proposed location there is potential for even greater impact on the setting of the grade I listed church.
- The design and materials concerns have not been addressed.
- The proposed extensions to the Goose Barn, whilst reduced, would result in the loss of historic fabric. Details of the proposed works to this curtilage listed building are limited and the full implications on its character and appearance are therefore unclear.

Principal Ecologist

Ecology report is satisfactory and incorporates recommendations that should be taken forward where possible as conditions. In relation to mitigation of disturbance to bird interest for the RAMSAR/SPA sites considers that the occupants of the scheme would not generally be undertaking recreational activities and as such the development does not necessitate mitigating measure.

Environment Agency

Have "assessed this application as having low environmental risk. We therefore have no comments to make."

Environmental Health Officer

Raises concerns relating to the stacking arrangements between apartments and the transmission of noise between units. Has stated that "each room should be suitably adapted to ensure the restriction of airborne noise levels and vibration. Noise reduction in walls, floors, ceilings and stairwells should ensure occupants are protected adjoining flats. Quiet rooms should be located above and below other quiet rooms. Bedrooms, for example, should be above/below other bedrooms and should not be located adjacent to a potential noise source.

I am concerned at the stacking of the apartments for the proposal. In particular

- Unit 5 and 6 - Unit 4 and 5 floor plans are parallel which is what we prefer. However Unit 6 bedroom is above the living and kitchen area in Unit 5 and the living kitchen area of Unit 6 are above the bedrooms in Unit 5.
- Unit 10, 11 and 12 are all stacked differently. Unit 10 and 12 are stacked similarly apart from the planned area for the bathroom in Unit 12. However Unit 11 bedrooms are above Unit 10 lounge and kitchen area and Unit 12 lounge and kitchen area is above Unit 11 bedrooms.

I have concerns with the stacking arrangements as stated within the apartments; unless the stacking arrangements can be changed to ensure the apartment plans are parallel, the Environmental Health department would therefore require the sound insulation between Units 5 - 6 and 10,11,12 to be of a higher standard than specified in Approved Document E. As a guide, we would expect the level of sound insulation provided by the floor/ceiling partition to be in the order of Rw [1] 60dB. I would therefore recommend that the following additional conditions be placed on the application.

Full particulars and details of a scheme for sound insulation between the commercial and residential parts of the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme should include details on measures to ensure that there are no flanking transmission paths for noise between the commercial and residential premises. The approved scheme shall be installed before commencement of the use hereby permitted and permanently retained thereafter.

Southern Gas Networks

State that no mechanical excavations should take place above or within 0.5m of a low/medium pressure system or within 3 metres of an intermediate pressure system. The attached plans do not show any systems within close proximity to the site.

Southern Water

“Requires a formal application for a connection to the foul sewer to be made by the applicant or developer”. Requests that a relevant informative is placed on consent. Also note that there are no public surface water sewers and alternative means of draining surface water from this development are required which should not involve disposal to a public foul sewer. In relation to SUDs advise that measures to maintain SUDs (Sustainable Urban Drainage Systems) are put in place. Request that conditions are placed on consent that details of surface and foul water drainage are submitted to the local planning authority prior to commencement of development.

Historic England

“Do not object to the principle of development of Wingham Court. As the application is within a conservation area, there is a statutory requirement for the authority to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area (s.72, 1990 Act). Under paragraph 58 of the NPPF, planning decisions should also ensure that developments: will function well and add to the overall quality of the area; establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places; respond to local character and history, and reflect the identity of local surroundings and materials; and be visually attractive as a result of good architecture and appropriate landscaping.”

Planning authorities should look for opportunities for new development within conservation areas and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably (NPPF para 139). In this case, this particularly means that you should seek to ensure that building materials, building form and density promote or reinforce local distinctiveness (NPPF paragraph 60)

Wingham Parish Council

“Object to the application as 1. The proposed development is out of character with the existing dwellings and is too large for the area; 2. Despite proposed improvements to the access from the A257, the committee consider the access to be inappropriate for so many proposed dwellings and the volume of traffic using it. The access is on a bend near the edge of the village where there have been a number of accidents.”

Lead Flood Authority

Note that the application form states that a SUDs scheme would be put in place, however no details have been submitted. State that in this instance conditions requiring the details of the SUDs scheme would be acceptable.

KCC Archaeology

Notes that Wingham Court was held by the Archbishop of Canterbury and was an important stopping off point between Sandwich and Canterbury. Wingham Court and the garden wall are Grade II* listed. Immediately to the south of the site is the Scheduled Monument of

Wingham Roman Villa. Remains associated with the villa may extend into the site in question. Advises that the site has good potential for remains of archaeological interest to be present, but the precise significance of these remains are not understood. Requires a condition to be placed on consent requiring archaeological field evaluation works and appropriate safeguarding measures to ensure the preservation in situ of important archaeological remains.

Public representation

16 letters of objection and 9 letters of support have been received.

The letters of objection outline the following:

- Proposal is inappropriate overdevelopment. It is too dense.
- Apartment blocks are 4 storeys which is totally out of character with predominantly low rise buildings of Hawarden Place
- The access point is located on a blind bend, is already used by the 15 cars belonging to the residents of Hawarden Place. The scheme would intensify this use.
- There have been a number of accidents on this part of the A257 and the increased use of the A257 would prove harmful to highway safety.
- The proposal would adversely affect wildlife
- Internal layout is unsafe as residents would have to cross the car park to reach their properties
- Inadequate parking. Some visitors may choose to use spaces in the village hall car park
- Adverse impact of parking upon the barn
- Would adversely affect the significance of the Wingham Court.
- Is inappropriate to build a care home in the grounds of a Grade II* listed building. Previous residential developed converted existing farm buildings. This development does not.
- Commercial development is inappropriate in the surrounding area
- C2 use class seems inappropriate. It should be described as '15 retirement houses and flats.'
- The oasthouse design is unconvincing
- Sound insulation between dwellings has not been addressed.

The letters of support outline the following:

- The development would be sympathetic and in keeping with the surrounding area
- Amendments show sensitivity to the surrounding area
- The scheme would not aggravate traffic problems
- The roofline is interesting and black boarding
- Scheme is perfect for those wishing to leave large family homes and purchase more manageable housing
- Maintains the character and integrity of existing buildings

The Site and the Proposal

- 1.1 The application site is an irregular shaped piece of land which forms part of the curtilage of the Grade II* listed Wingham Court, and is within the conservation area of the village of

Wingham. Immediately to the south of the site is the Scheduled Monument of Wingham Roman Villa.

- 1.2 The site lies to the north of Wingham Primary School and to the east and south of the A257 Canterbury Road and to the east of School Lane. It is served by an access from Hawarden Place which is accessed from Canterbury Road.
- 1.3 Permission is sought for the erection of 15 extra care units, and an extension to the existing goose barn to provide communal space and manager's accommodation together with associated parking and landscaping. The application includes a Model Planning Statement which outlines that the purpose of this extra care scheme is to 'enable a wide range of requirements and tempt people to move into the "right-size property" that enables them to do all the activities associated with the "Third Age" (55 to 75) whilst setting themselves up responsibly for the "Fourth Age" (aged 75 plus)' who "neither need nor wish to retreat into an institutional lifestyle."
- 1.4 The submission has characterised the extra care units as falling within C2 use class, residential institutions. The development as proposed is considered to fall within this use as the units would be sold on a leasehold basis with a term of 125 years, an age restriction of 55 years plus, the scheme includes a communal building and the requirement for residents to take on a minimum care package of 1.5 hours care a week. In view of this advice it is considered that the proposal falls to be a C2 use class. The terms of occupation would be secured through the use of a Section 106 Agreement.
- 1.5 The residential units comprise 9 terraced houses and 6 apartments together with conversion and extension of the Goose Barn to provide communal facilities, parking and access arrangements. Units 4-15 are arranged in a two to three storey terrace ranging in height from 7.5 metres to 13.5 metres in height, running parallel to the southern boundary of the site. Units 1 to 3 form a separate two storey terrace to the west of the site. Units 1-3, 7-9 and 13-15 would be two storeys high, up to 12 metres in height.
- 1.6 The units are designed to contain number of features designed to appear similar to the kiln roofs of oasthouses and they would be constructed of orange multi bricks, black stained timber slatted cladding and plain roof tiles with inset terraces.
- 1.7 The ground floors comprise of a living room, kitchen, dining area and WC. The first floors would have 2 double bedrooms with en-suites and an area to the rear of the properties indicates an area for external space for each unit. Units 4-6 and 10-12 are two bedroom flats, comprising two double bedrooms, living room, dining rooms and kitchens.
- 1.8 15 residents parking spaces and 6 visitor parking spaces are provided the west of units 1-3 and the units are arranged around an 'entrance square' and central square in which the clubhouse and guest room are located. A further 4 parking spaces are adjacent to the proposed clubhouse of which two are labelled as visitor parking spaces.
- 1.9 The works to the goose shed include a single storey extension which and canopy, of brick construction and timber cladding. This building would provide a communal area and office/guest suite. The agent has confirmed that this communal space would operate primarily as a multi-function space with residents being in charge of setting out the activities they would like to do. The proposed guest accommodation would double as a therapy suite and the multi purpose hall with kitchen would be available for a variety of activities, for example gym/pilates, bridge, chess).

2. **Main Issues**

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

- The principle of development
- Design and impact upon the street scene
- Heritage and archaeology
- Impact upon living conditions
- Highways and transport matters
- Flooding and Surface Water
- Ecology
- Contributions and affordable housing

2.2 The principle of development

2.3 Paragraph 50 of the National Planning Policy Framework states that local planning authorities should plan for a mix of homes based on current and future demographic trends, market trends and the needs of different groups in the community, including older people and people with disabilities. The East Kent Strategic Housing Market Assessment shows that there is a forecast growth in the population of 60 to 84 year old age group between 2006 and 2026 with a national trend towards older people preferring to live independently with an increasing demand for specialist accommodation for older people.

2.4 The site is located within the confines of Wingham as shown on the Core Strategy Policy Proposals Map. Policy CP1 of the Core Strategy advises that Wingham is a local centre, and as such is deemed appropriate for secondary focus of development in the rural area which is suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent services.

2.5 A significant portion of the north eastern part of the site is designated as Open Space in Core Strategy Policy DM25. The policy outlines that proposals that result in the loss of public open space will not be permitted unless the criteria within the policy are met. The Council's Principal Infrastructure and Delivery Officer has advised that this area has been protected due to its potential value as publicly accessible open space and/or its current amenity value. She has advised that there is a significant deficit in the quantity of open space within the village. The amended plans show that the units would be sited along the southern boundary of the site, retaining this area as open space and label the area of Open Space as 'The Orchard' however they do not indicate that this space would be publically accessible.

2.6 Clearly there is a five year housing supply deficit and there is a need for housing for older people, and this has to be taken into account. The development as proposed would provide housing for over 55s and there is a forecast need for the housing for the over 60s in the East Kent SHMAA. The site is within the village confines and does not include built form on the designated area of Open Space and is therefore considered acceptable in terms of the additional housing proposed. The principle is therefore acceptable however the suitability of the proposal is also dependent on matters of design and as well as the impacts upon the streetscene, heritage, residential amenity and highway safety.

Impact upon the street scene, character and appearance of the surrounding area

2.7 The site is within the built up area of Wingham, however is to the southern edge of the village. The village edge location is characterised by relatively loose knit development, which is single and two storey in scale. Wingham Primary School is to the south and the Village Hall and parking area to the east. To the north are outbuildings within the curtilage of Wingham Court which have been converted to residential dwellings. The eastern boundary of the site has a red brick wall approximately two metres high.

- 2.8 In its current form the site makes a positive contribution to the streetscene in that it retains its original rural and 'big house' garden character, although there is some modern development to the south. It currently affords a sense of openness with views from School Lane, Canterbury Road and Adisham Road, which reinforces the edge of village location.
- 2.9 The proposed residential units are arranged in two terraces with the houses being two storeys in height and flats being arranged over three floors with the ridge heights of the terraces ranging from approximately 7.5 metres in height to 13.5 metres. The design contains a number of features designed to appear similar to the kiln roofs of oasthouses and they would be constructed of orange multi bricks, black stained timber slatted cladding and plain roof tiles.
- 2.10 The proposed terraced layout is not considered to be characteristic of the prevailing loose knit edge of village development in the surrounding area. The height of the proposed units are considered to be excessive when compared to the prevailing single and two storey development in the surrounding area which are approximately 7 metres in height and the proliferation of the 'kiln roof' features is considered to exacerbate this. These features are considered to be an artificial and over emphasised feature which may be attempting to replicate the vernacular of Kent oast features and design. These features are considered to be over intensive, when compared to the prevailing form of adjacent development, and accordingly somewhat contrived. The development would be visible from Canterbury Road, Adisham Road, School Lane and the public footpath which runs along the southern boundary of the site. Its scale, form and development mean that it would appear as a dominant feature within the streetscene where it would detract from the relatively open and low scale of development in the surrounding area, proving at odds with the loose knit edge of village development within the surrounding area. Amendments were sought to reduce the numbers units and to achieve a more simplified design however the agent has outlined that significantly reducing the number of units would result in such an increase in service charges to residents which would mean it would not be possible to deliver the scheme so that it provides an element of care. The applicant's agent has confirmed that the design of the units have not been altered as they are considered to be appropriate.
- 2.11 Paragraph 64 of the NPPF states that "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions." It is considered that the proposed development misses opportunities to improve the character and appearance of the surrounding area, and would appear dominant, unsympathetic and alien features within the surrounding area and due to the density, layout and intensity of 'oast' features therefore would prove harmful to the streetscene and the character of the area and therefore would be contrary to the aims and objectives of the NPPF.

Heritage and archaeology

- 2.12 The site is within the Wingham conservation area and a number of listed buildings, including listed buildings of the highest grading. These include: boundary wall to Wingham Vicarage (GII*); The Dog Inn (GII*); Canon Cottage (GI); Wingham Court and boundary wall (GII*) and the Church of St Mary (GI).
- 2.13 This part of the conservation area is distinct in character from the tightly developed linear built form on the High Street. It relates historically to the grounds of Wingham Court and is characterised by large open spaces and limited built form sitting on the fringes of the site. The palette of materials in the conservation area is dominated by red brick, render and Kent peg tile. Weatherboarding is not commonly found in the village.

- 2.14 In respect of the setting of listed buildings, a key view of the tower and spire of the Grade I listed Church of St Mary is afforded across the proposed site from the B2046. This view of the Church within the wider rural landscape is a significant contributor to the special interest of the church and indeed the conservation area, helping the traveller to locate the village which otherwise is tucked away unseen within the gently rolling landscape. There is a lack of modern development impinging on the view, and consequently the setting of the Church. In addition, the site is visible from Canterbury Road taking it into context with the GII* listed Wingham Court, a view which at present is uninterrupted by any built form; this setting of Wingham Court within an open landscape, with it in the foreground as a dominant form is a key contributor to the significance of Wingham Court.
- 2.15 Paragraph 128 states that “local planning authorities should require an applicant to describe the significance of any heritage asset affected, including any contribution made by their setting.” Paragraph 132 continues: “when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation...Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting”.
- 2.16 The Design Strategy submitted with the application does not include evidence that the historic or architectural character or appearance of Wingham has been considered. It does not provide a description on how the site contributes to either the character or appearance of the conservation area or the setting of the neighbouring listed buildings. In respect of paragraph 128 of the NPPF, the application therefore fails to demonstrate that the significance of the designated assets, including any impact on their setting, has been taken into consideration in developing the proposal.
- 2.17 The lack of sufficient analysis of the significance of the designated assets has resulted in a design that does not relate well to the sensitive context of the site, and which has potential to harm the setting of high status listed buildings. The materials and design features proposed are not commonly found within either the conservation area as a whole or within this particular part of the conservation area; the proposed use of black weatherboard is harsh and would jar with the soft tones of the materials traditionally found in the village. The form of the roofs, incorporating large areas of flat roof, excessively steep pitches, and incongruous and inauthentic ‘chimney’ like features, are dominating and bear no relationship in form to the neighbouring listed buildings or other historic buildings in the conservation area. The amended scheme exacerbates these design issues and the increased massing of development has potential to cause greater harm.
- 2.18 The Goose Barn has been noted as likely to be curtilage listed (grade II*), although Listed Building Consent has not been submitted. The extension proposed is significantly larger than the original historic building and the proposal would result in extensive loss of historic fabric. Furthermore, as no Consent application has been made insufficient information has been submitted to demonstrate that the building is structurally sound and capable of conversion and extension.
- 2.19 Paragraph 134 states that “where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.” Despite officer concerns, the application has not demonstrated that the significance of the designated heritage assets has been assessed or that the number of units, the density and massing of the development would not be harmful to the conservation area and or the setting of the grade I listed church and grade II* Wingham Court. The public benefits of the scheme are not considered to outweigh the harm to the designated heritage assets, and the scheme is not considered to accord with paragraph 134 of the NPPF or sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2.20 Advice from the Archaeologist is that Wingham Court is historically significant. It was an important stopping off point between Canterbury and Sandwich and the South of the site is the Scheduled Ancient Monument of Wingham Roman Villa. The Archaeologist has advised that there is potential for archaeological remains to be present on site and the significance of these remains are not yet understood. It is considered that this could be dealt with through a condition requiring a scheme of archaeological field evaluation works to be carried out with appropriate safeguarding measures

Impact on living conditions

2.21 There are residential dwellings to the north, west and east of the site. To the south is Wingham Primary School. There are distances of approximately 40 metres and 30 metres respectively between the terrace containing units 1-3 and nearby properties on Canterbury Road and Hawarden Place. They are set at an angle to the existing properties. Unit 15 is approximately 13 metres from Orchard Cottage to the east of School Lane, however it is not directly opposite. The distances and indirect relationship between the proposed units and the existing nearby properties are considered to mitigate impacts of overlooking and loss of privacy, loss of light, overshadowing, overbearing and loss of light.

2.22 While an increase in the number of residential within the grounds of Wingham Court would result in increased movements to and from the site, the proposed car parking area is in excess of 30 metres from other residential properties in Hawarden Place. This is considered to be adequate separation to prevent noise and disturbance to the occupiers of neighbouring properties.

2.23 The Council's Environmental Health Officer has raised concerns relating to the stacking arrangements of the flats with quiet rooms being located above quiet rooms. The proposed plans show that units 5 and 6, 10, 11 and 12 have bedrooms above and below living areas. The occupiers of these flats could therefore be subject to an unacceptable degree of noise and disturbance. The Environmental Health Officer has recommended that a scheme of sound insulation would mitigate this. It is considered that this could be adequately secured through condition.

2.24 It is considered that the relationship and separation distances between the proposed development and existing residential neighbouring properties mean that they would not adversely affect the living conditions of neighbouring property occupiers. The living conditions of future occupiers could be adequately safeguarded through conditions requiring a scheme of sound insulation. The impacts upon residential amenity are therefore considered to be acceptable.

Highways and transport matters

2.25 Hawarden Place is accessed from Canterbury Road. The proposal includes 15 residents parking spaces and 6 visitor parking spaces are located to the west of the site with a further 4 visitor parking spaces adjacent to the proposed clubhouse accessed via the proposed entrance square.

2.26 The submitted highways plan shows the access arrangement and proposed visibility splays which Kent Highway Services consider to be acceptable.

2.27 A bin store and collection area is shown on the proposed plan at the junction of Hawarden Place and Canterbury Road. Kent Highway Services have requested clarification regarding proposed arrangements for refuse collection which have not been provided by the applicant; however these could be secured by condition.

- 2.28 In its original form the scheme included a pedestrian link and parking to School Lane. The amended scheme removes this element. Kent Highway Services have raised concerns that this has been removed. They have stated that “This must be reinstated as it provides a pedestrian route to the wider footway network and bus stops/services/amenities in the village.” The NPPF promotes sustainable development which promotes the use of sustainable transport modes. Without an obvious pedestrian link into the site to give access to the village amenities and public transport links, it would appear that the development would prove to be a car centred development, contrary to the aims of the NPPF.
- 2.29 Whilst the increased use of Hawarden Place does not raise concerns relating to highway safety, the lack of a pedestrian link from the site to School Lane raises concerns that this would not be a sustainable form of development.

Flooding and surface water drainage

- 2.30 The site lies within Water Gathering Zone 3. The Environment Agency have raised no concerns relating to the potential for flooding caused by or within the development.
- 2.31 Southern Water has advised that there are no facilities for public surface water sewers and that alternative means of drainage would be necessary. The application states that SUDs would be used on site. The Lead Flood Authority have recommended that a condition is placed upon consent to require details of SUDs to be submitted prior to commencement of development. It is considered that this could be adequately secured by condition.

Ecology

- 2.32 Paragraph 110 of the NPPF outlines that the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity.
- 2.33 The site contains high grasses, lawns, shrubs and trees and the application is accompanied by a Phase 1 Ecological Survey, Reptile Presence or Absence Survey, Preliminary Bat Survey, Bat Emergence Survey and Bat Activity Surveys which concludes that the habitats on site are considered common and widespread.
- 2.34 The reports make some recommendations for the protection and enhancement of biodiversity on site including small scale translocation of reptile species, new planting, use of sensitive lighting and careful construction methods. The Principal Ecologist has advised that the development would be acceptable if these recommendations were put in place. These could be adequately secured by condition.

Affordable housing and contributions

- 2.35 The Planning Advisory Service guidance ‘Planning for older People’s Housing’ states that “Currently developers of C2 care housing are exempt from affordable housing contributions, and local authorities have discretion as to how they will apply CIL.” Dover District Council does not have a CIL charging schedule in place. Therefore affordable housing contributions cannot be sought. Kent County Council have advised that the development would generate users of library facilities and that to mitigate the impact of this development, the County Council will need to provide additional library books to meet the additional demand to borrow library books which will be generated by the people residing in these dwellings. A developer contribution of £48.02 per household has been requested (a total of £720.30). This is considered to meet the tests set out within the CIL Regulations in that it is necessary to make the development acceptable in planning terms,

directly related to the development and fairly and reasonably related in scale and kind to the development. The applicant has not objected to this request, which if permission is granted could be secured by a legal agreement (Section 106).

3.0 Conclusion

- 3.1 There is a need for housing, particularly for older people. The site is within the confines so in these respects the development could be considered to be acceptable. However, as set out above, the development is considered to unacceptably impact upon the character and appearance of the surrounding area with respect to its layout, scale and form. Although providing an element of “community” facilities these appear to be only available to residents on the site, the applicants have not indicated otherwise, so the wider public benefit is at best limited.
- 3.2 It is considered the development would have a detrimental impact on the character and appearance of the conservation area and the setting of listed buildings, particularly the Gr I church and Gr II* Wingham Court, and has not provided any justification that this harm is outweighed by the public benefits of the scheme. It is therefore considered to be contrary to section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Furthermore the development would fail to promote sustainable methods of travel.
- 3.3 It is recommended that permission should be refused for the reasons set out below.

Recommendation

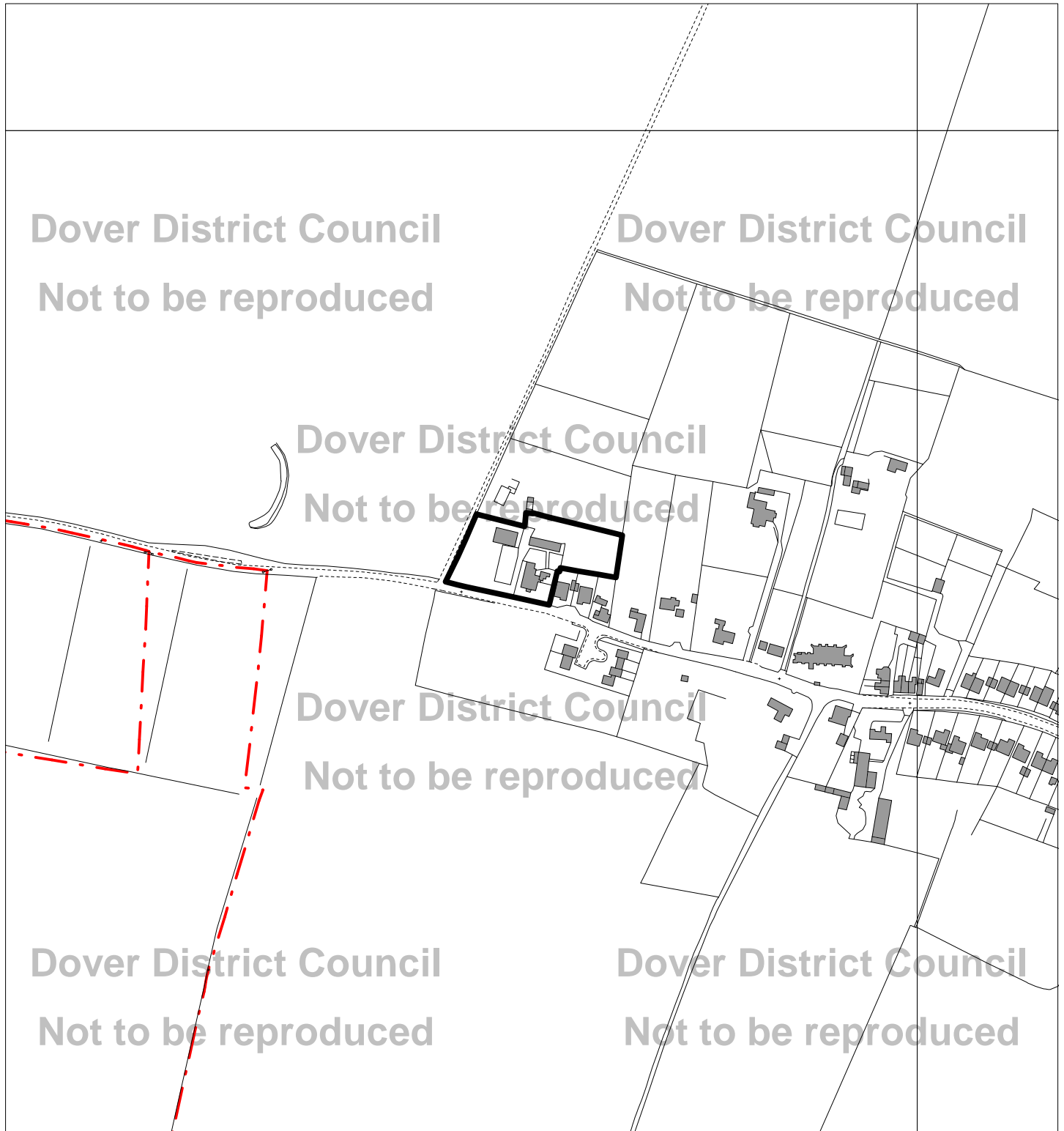
I. PLANNING PERMISSION BE REFUSED for the following reasons:-

(i) The proposed development, by virtue of its scale, mass, layout, design and materials would if permitted result in a dominant, incongruous, unsympathetic and poorly related form of development, out of keeping with the prevailing form of surrounding development, harmful to the character and appearance of the surrounding area, street scene, the significance of listed buildings including the likelihood of obscuring views to the Grade I listed building and the character and appearance of the Wingham Conservation Area, contrary to National Planning Policy Framework Policies 60, 64, 128, 131, 132 and 134.

(ii) The development as proposed would fail to maximise walking, cycling and the use of public transport, contrary to paragraphs 49 of the National Planning Policy Framework and Policy DM11 of the Dover District Core Strategy.

Case Officer

Cheryl Macer



Not to scale

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Application: DOV/16/00442

Three Tuns

The Street

Staple

CT3 1LN

TR26735670



- a) **DOV/16/00442 - Erection of nine dwellings, change of use and conversion of the existing public house into a single residential dwelling, creation of vehicular access, parking area and associated works – The Three Tuns, The Street, Staple**

Reason for report: Number of contrary views.

- b) **Summary of Recommendation**

Planning permission be refused.

- c) **Planning Policies and Guidance**

Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant listed building consent the local planning authority “*shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.*”

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the planning authority should pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses.

Section 72 of the Act 1990 requires that the planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Core Strategy (CS) Policies

- CP1 – Part of the application site falls within the Village of Staple where the tertiary focus for development in the rural area suitable for a scale of development that would reinforce its role as a provider of services to its home and adjacent communities.
- DM1 - Development will not be permitted outside the settlement boundaries
- DM4 – Reuse or conversion of Rural Buildings will be permitted for structurally sound, permanent buildings within Local Centres for commercial, community or private residential uses
- DM11- Location of development and managing travel demand
- DM13- Parking provision
- DM15- Protection of the countryside
- DM24 – Retention of Rural Shops and Pubs. Permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub have failed.

Land Allocations Local Plan

- Annex 1 to the Plan draws on the District Heritage Strategy in order to provide guidance on preparing heritage statements to support planning applications.
- Policy LA45 makes provision for a change to the settlement confines of Staple to deliver one or two dwellings to the end of Orchard Lea to sustain Staple’s role in the settlement hierarchy.

National Planning Policy Framework (NPPF)

- Paragraph 14 sets out the presumption in favour of sustainable development. This is set out in full in the Overall Conclusions section at the end of this report
- Paragraph 17 sets out 12 core principles which amongst other things seek to secure high quality design and a good standard of amenity for all existing and future residents.
- Proposals should seek to be of a high design quality and take the opportunity to improve the visual quality and character of the area. Paragraphs 17, 56-59 and 64 seek to promote good design and resist poor design.
- Paragraph 28 of NPPF promotes the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.
- Paragraph 49 requires housing applications to be considered in the context of the presumption in favour of sustainable development
- Paragraphs 69-70 of NPPF seek to promote healthy and viable communities
- Paragraphs 131-134 of NPPF seek to reinforce the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 by setting out guidance on assessing the impacts of development on designated heritage assets. This is amplified in the national Planning Practice Guidance.

The Historic Environment in Local Plans; Good Practice Advice (GPA) (2015)

This document provides information to assist in implementing policies in the NPPF and the NPPG.

The Kent Design Guide (KDG)

- The Guide provides criteria and advice on providing well designed development that takes into account context as part of the evolution of the design.

d) Relevant Planning History

DOV/91/00934 – Conversion of barn into 5 chalets. Granted 09/04/1992

DOV/07/0205 – Erection of marquee- Withdrawn 12/04/2007

09/0449 – Retrospective application for the erection of a marquee. Granted 3/07/2009.

e) Consultee and Third Party Responses

9 letters of objection and 9 letters of support have been received.

The letters of objection outline the following:

- There are quite a lot of new builds in the area
- High density housing development which is out of keeping with the surrounding area
- The Street is inadequate for the volume of traffic it carries
- The number of proposed parking spaces is inadequate
- Proposed design is out of keeping with the village
- Loss of privacy

- The Three Tuns is a landmark in staple and would be hidden behind buildings
- Part of the site falls outside the village confines
- The pub was once thriving and could once again under the right ownership
- Drainage in the village might be inadequate

The letters of support state:

- Pub is currently unsightly and underused.
- Scheme would create jobs
- Good road links to London and Canterbury
- Street scene would be improved
- Would create family housing
- Gravel car park is unsightly

Southern Gas Networks- Advise that no mechanical excavations should take place within 0.5m of a low/medium pressure system or above or within 0.3m of an intermediate pressure system.

Southern Water-advise that no development should be located within 3 metres either side of the public sewer and no new soakaways should be located within 5 metres of a public sewer.

Environmental Health Officer-has no observations to make on the application

Kent Highway Services- Raises no objections to the scheme subject to conditions which include the completion of a footway within the site and connecting to the existing footway on the south side of The Street prior to first use of the site commencing, the provision and maintenance of visibility splays.

Senior Heritage Officer- Outlines that the Three Tuns is a dominant building with significant presence in the street. Recommends that the existing hedgerow is maintained to retain the generous space around the listed building, that plots 1 and 2 with the blank side elevation do not relate to the surrounding context. Also note that the bulk, massing and architectural detailing of plots 1, 2, 5, 6 and 7 should be reworked so that they appear subservient. Considers that in its current form the proposal would compete with the listed building and would cause less than substantial harm to the Grade II listed building.

Staple Parish Council- Recommend refusal due to concerns regarding the density of the development. Request that village confines are checked which are believed to run through the site.

Principal Infrastructure and Delivery Officer- The development generates a need for 0.094 hectares of open space. She has advised that that as the site is located approximately 1 km from the play area in Staple and is not currently accessible by footpath, it would be most appropriate to provide this on site. A suitable area of open space has not currently been provided.

Senior Archaeological Officer- Advises that the site is within an area of archaeological potential and that a programme of works should be implemented if permission were to be granted.

Kent County Council Development Contributions- outline that no contributions will be sought as the development is for ten units, in accordance with advice contained in the Starter Homes Ministerial Statement of 2 March 2015.

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

Site

- 1.1 The site is an irregular shaped parcel of land on the edge of the village of Staple to the north of The Street, the main route through the village. A significant proportion of the site including the car parking area and part of the gardens lies outside the village confines.
- 1.2 The site is currently occupied by the Three Tuns, formerly used as a pub as well as a marquee, single storey outbuildings to the rear, associated gravelled parking area and garden, and associated fences and walls. The site is accessed from the Street via an access to the west of the Three Tuns. The north and west of the site are bound by dense vegetation with established conifers to the northern boundary and a deciduous hedge to the western boundary. There is a low wall to the front of the site where there is a bus stop. The eastern, and part of the front boundary is treated by a fence.
- 1.3 The Three Tuns was listed in 1979 at Grade II. It was constructed in the 17th and 18th centuries of red brick with a plain tiled roof, is two storeys with an attic with a hipped dormer with sash windows to the first floor and timber casements to the ground floor and a central projecting 20th century porch.
- 1.4 The applicant has outlined that The Three Tuns was once a thriving village pub. It was open for business as a wedding venue until March 2014 and until late 2015 traded as a B and B.
- 1.5 The outbuilding to the rear is single storey clad in dark timber and appears to have been in use for holiday accommodation.

Proposal

- 1.6 The proposal comprises the change of use and conversion of the Three Tuns to a single dwelling house and the erection of nine dwellings together with associated access, turning head, garages and car barns. The applicant has confirmed that the plans which were submitted on 31 May and 12 May are to be considered rather than the more recently submitted set of plans.
- 1.7 The conversion of the pub would include the demolition of a single storey rear extension which currently houses a toilet block. It would also comprise a living room, dining room and kitchen at ground floor, five bedrooms, bathrooms and ensembles to the upper floors. The house would be served by a car barn with a sliding gate and have gardens surrounded by a hedge.
- 1.8 The development of the remainder of the site includes the demolition of a single storey outbuilding, referred to within the application as a chalet. This is understood to have provided holiday accommodation and to have been constructed between 1940 and 1960 as shown on historic maps. A further nine dwellings are proposed surrounding the Three Tuns.
- 1.9 Of the new build dwellings units 1 and 2 are a pair of semi-detached two storey dwellings which would be sited immediately to the west of the Three Tuns, with the side elevation of unit 1 facing the street and units 3 to 7 are two storey dwellings arranged along the northern boundary of the site and units 8 and 9 are bungalows with accommodation provided within the roof slope.
- 1.10 The proposed dwellings are varied in and would be constructed of a mix of dark timber boarding, red brick, brown plain tiling and aluminium framed glazing. Units 1 and 2 are to the west of the Three Tuns fronting the access from The Street each with attached garages. Units 3 to 7 are placed parallel to the rear

boundary of the site. Units 3 and 4 are a pair of two storey semi-detached houses which are traditional in appearance. Units 5,6 and 7 form a two storey terrace with dark timber boarding and units 7 and 8 are bungalows with rooms within the roofspace served by dormers and glazed gables to the first floor to their rear elevations. Car barns with dark timber boarding, and brown plain tiled roofs are arranged between the dwellings to serve as parking.

2. **Main Issues**

2.1 The main issues are:

- The principle of the development including the change of use from a public house to a dwelling house
- The impact of the proposals on the designated heritage assets
- The impact on the character and appearance of the surrounding area
- The impact on residential amenity
- The impact upon highway safety

Principle

Residential development of the site

- 2.2 The starting point for considering this issue is the relevant policies in the Development Plan. The settlement boundary passes through the site so that the Three Tuns, its gardens and the single storey rear outbuilding are defined as being within the village of Staple. The remainder of the site, including the gravel car park and open area to the north and east of the site fall outside the settlement confines. Policy DM1 of the Core Strategy states that development will not be permitted on land outside the rural settlement confines as shown on the proposals map unless justified by other development plan policies or it functionally requires such a location.
- 2.3 The Core Strategy, through Policy CP1, identifies Staple as a village in the Settlement Hierarchy in recognition of its size, where the function is as the tertiary focus for development in the rural area; suitable for a scale of development that would reinforce its role as a provider of services to its home community. The issue raised by the application is whether the loss of the public house would jeopardise the role of Staple as a village.
- 2.4 Furthermore, the Land Allocations Local Plan (2015) already makes provision for a change to the settlement confines in Staple to deliver one or two dwellings at land to the west of Orchard Lea (Policy LA45), to sustain Staples role in the settlement hierarchy, while acknowledging that the opportunity for further development in Staple is limited by its rural character and the setting of listed buildings.
- 2.5 However, given the Council cannot currently demonstrate a 5 year housing land supply then the Development Plan policies concerning the supply of housing are considered to be out of date at this time, as per para 49 of the NPPF, and therefore the weight that should be afforded to them is diminished. This would apply to Core Strategy Policies CP1 and DM1.
- 2.6 Where policies are found to be out of date applications should be dealt with in accordance with para 14 of the NPPF (presumption in favour of sustainable development). So it will be necessary to demonstrate whether the proposal constitutes sustainable development or not in line with para 7 of the NPPF.
- 2.7 Whilst the current absence of a 5 year housing land supply adds weight in favour of the proposal, a number of recent appeal decisions have concluded

that small scale developments in the District would have a very limited benefit in assisting the council meet its 5 year housing land supply. Given this, when determining the application it is necessary to balance the absence of a 5 year housing land supply against other policy considerations, for example impact on the setting of the listed building, impact on the openness of the countryside, the design and layout of the site and concerns over whether the proposal constitutes sustainable development.

Loss of use as public house

- 2.8 Policy CP1 defines Staple as a village, suitable for a scale of development that would reinforce its role as a provider of services to essentially its home community.
- 2.9 The Core Strategy specifically considers the issue of the retention of rural shops and pubs under DM24
- 2.10 Policy DM24 of the Core Strategy (2010) states that “planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub have failed.”
- 2.11 The applicant has submitted information to address Policy DM24 which includes a planning statement and evidence of the marketing exercise which has taken place. The applicant’s statement states that Staple is a relatively small village community with a small flow of traffic through the village, with very few other facilities and no significant daytime working population in the immediate area. It states that the Three Tuns was once a thriving village pub, however over the last few years custom has dwindled due to the move towards home drinking, which caused the owner to diversify by running it as a wedding venue until March 2014. Following which it operated as a bed and breakfast until late 2015, when it ceased operation.
- 2.12 When considering whether a change of use should be granted it is necessary to consider the last known lawful use of this building. We understand that The Three Tuns has not been trading as a public house for a number of years and has instead operated as a wedding venue and then most recently as a bed and breakfast, before closing permanently at the end of 2015. However these other uses are not lawful uses, as they were never granted planning permission, meaning that the last lawful use of the building was as a public house (use class A4).
- 2.13 Given this, it is questionable what harm the proposal would have on the economic and social viability of the community it serves, given that it has not been trading as a public house for at least over 2 years. Furthermore at the time of writing; only one objection to the change of use has been received.
- 2.14 The planning statement outlines that the operation of the Three Tuns was not a viable business for the owners to sustain a living and therefore they were required to diversify the trade into other uses.
- 2.15 The marketing assessment outlines that the pub was marketed for a period of 17 months with Christies. This included photo adverts being placed in the Publican’s Morning Advertiser, and the Caterer. During this time producing three offers which were significantly below the asking price. The marketing assessment has been assessed by a chartered surveyor who has considered

that the marketing undertaken meets the criteria of DM24 and that the asking price which could be considered reasonable.

- 2.16 From the information submitted, it is clear that the continued use as a public house was not viable and that genuine and adequate attempts have been made to market the premises in line with Policy DM24. Therefore the proposal is considered to be in line with DM24 of the Core Strategy.
- 2.17 Whilst the principle of conversion of the pub to a dwelling is considered to be acceptable, the acceptability of the proposal will be dependent upon the heritage impacts, impacts upon the streetscene, residential amenity and highways matters.

Impact upon the character and appearance of the surrounding area

- 2.18 It is important to assess the impact of the proposal upon the character and appearance of the surrounding area. Paragraph 56 of the NPPF outlines that planning policies and decisions should respond to local character and history and reflect the identity of local surroundings and materials. Policy DM15 requires the protection of the countryside to be considered and states that:

“Development which would result in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if it is:

- i. In accordance with allocations made in Development Plan Documents, or
- ii. justified by the needs of agriculture; or
- iii. justified by a need to sustain the rural economy or a rural community;
- iv. it cannot be accommodated elsewhere; and
- v. it does not result in the loss of ecological habitats.

Provided that measures are incorporated to reduce, as far as practicable, any harmful effects on countryside character.”

- 2.19 The site is in an edge of village location in a prominent location and The Three Tuns is an imposing building which is set within substantial grounds. The open space is considered to reflect the edge of village location and the site serves as an end stop to the village of Staple
- 2.20 Views of the site can be obtained from the east and west from The Street, Grove Road, and the countryside to the west from the surrounding countryside. Views from the open countryside to the north would be limited as a tree screen is proposed to this boundary.
- 2.21 To the east of the site along The Street residential development comprising detached bungalows and two storey dwellings which front the street and have a degree of separation between them. Bates Close to the south of The Street appears to be a more modern development of single and two storey dwellings, which are arranged around a close, set away from the main street.
- 2.22 With the exception of the demolition of the rear single storey extension no external alterations are proposed to the Three Tuns. The proposal also includes the erection of nine dwellings. Whilst these are not uniform in appearance, and include a mix of two storey and single storey dwellings which are detached and semi-detached, they are arranged in a linear fashion set back from the street along the rear boundary and units 1 and 2 fronting the access road, with a limited degree of space between them which is further reduced by the presence of car barns between the units. The number of units, and the lack of space between them is considered to give rise to a development that would appear more dense than the development in the surrounding area. The layout, density and lack of space between the dwellings are considered to be uncharacteristic of the surrounding area.

- 2.23 Units 1 and 2 front the access way and the side elevation of unit 1 and its boundary treatment facing The Street. While these dwellings would be set back from the street, the flank elevation of unit 1 is largely blank with only a window at ground floor. The submitted street scene elevation shows that the ridge heights of units 1 and 2 are almost 1 metre higher than that of the Three Tuns. Their scale and the expanse of blank side elevation is considered to result in a dominant form and the siting of these units to the west of the Three Tuns is considered to obscure the long views of the Three Tuns and the village from the west. This is considered to result in a form of development which would be at odds with the prevailing street frontage.
- 2.24 The development as proposed is considered to appear overly dense, with a lack of space between the units. The layout is relatively linear with a number of units set back from the street which appears at odds with the pattern of development in the surrounding area, and the proposed siting, scale and the blank elevation of unit 1 fronting the street would result in an urban form of development. This would result in the loss of openness which is currently afforded by the site, and the loss of the rural, edge of village character of the site. Therefore the proposal is considered to prove harmful to the character and appearance of the surrounding area and would fail to respond to local character and history and reflect the identity of local surroundings, contrary to Paragraph 65 of the NPPF. The development is considered to adversely affect the character and appearance of the countryside and there appears to be no justification in terms of allocations made within the Development Plan Document, in terms of agriculture, the rural economy or community. There is also no information that would suggest that a total of ten dwellings could not be accommodated elsewhere. The development would therefore fail to protect the character of the countryside and is considered to be contrary to Policy DM15 of the Core Strategy.

Heritage

- 2.25 The Three Tuns was listed in 1979 at Grade II. It was constructed in the 17th and 18th centuries of red brick with a plain tiled roof, is two storeys with an attic with a hipped dormer with sash windows to the first floor and timber casements to the ground floor and a central projecting 20th century porch.
- 2.26 Paragraph 132 of the NPPF outlines “when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation...Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting”.
- 2.27 The building fronts the street and sits within substantial grounds and is an imposing feature at the edge of the village. The Council’s Senior Conservation Officer has noted that it has a significant presence in the street scene and that the generous space surrounding the building contributes to the significance of the listed building. He has noted that the orientation of plots 1 and 2 have a blank side elevation facing The Street do not relate to the surrounding context and that they would better relate to the surrounding area if they fronted the road. He has raised specific concerns relating to the bulk, massing and architectural detailing of units 1, 2, 5, 6 and 7 would need to be reworked so that they would appear subservient to the main dwelling. He is concerned that in its current form the proposal would compete with the listed building for dominance on the site. For these reasons he has stated that the proposal would result in less than substantial harm.

- 2.28 Paragraph 134 of the Framework outlines that where a development proposal will cause less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal including securing its optimum viable use. In this instance the proposal would provide 10 residential dwellings where there is a need for housing, however a number of recent appeal decisions have concluded that small scale developments in the District would have a very limited benefit in assisting the council meet its 5 year housing land supply. The contribution of the scheme to the housing supply is not considered to override the harm caused to the Grade II listed building.

Highways

- 2.29 Paragraph 35 of the NPPF states that developments should be located and designed where practical to give priority to pedestrian and cycle movements and have access to high quality public transport facilities.
- 2.30 There is a bus stop to the front of the site which serves a bus route from Canterbury, Walmer and Sandwich and runs an hourly service. However there is no pedestrian link between the site and the village. Kent Highway Services have advised that a footway should be provided within the site to the south eastern corner and a short section of footway provided to continue the southern section of footpath, which currently ceases at the bus stop to the west of Bates Close. Kent Highway Services have stated that this could be dealt with by condition although details of a footway have not been indicated on the plans. The lack of footpath would mean that the site would not be accessible by pedestrians.
- 2.31 Kent Highway Services have also requested a number of conditions relating to visibility and surfacing which could be secured by condition.
- 2.32 The site is located at the edge of the village, however it is served by a regular bus route. However the proposal does not include a footway within the site and the applicant has not indicated that a section of footway would be proposed to the south of The Street. Therefore it is not considered to accord with the aims of the NPPF in this respect.

Impact upon residential amenity

- 2.33 There are residential dwellings immediately to the east of the site. To the north and west appears to be agricultural land and to the south of The Street is an area of dense vegetation. The Council's Environmental Health Officer has raised no concerns regarding the scheme. The nearest residential dwelling, Cascade, is approximately 12 metres from The Three Tuns and the access is approximately 50 metres from these neighbours. Units 8 and 9 would be approximately 19 metres from the existing neighbouring bungalows Cascade and Apollo and a close boarded fence is proposed for the boundary with the existing dwellings. It is considered that the proposed development would not generate a greater number of movements to and from the site, or increased noise. Furthermore the separation distances between the neighbouring properties and the proposed dwellings and the access point are considered to mitigate noise impacts upon neighbouring property occupiers.
- 2.34 The units 8 and 9 are located to the rear of the existing bungalows at Apollo and Cascade. They are single storey with 2 bedrooms and a bathroom provided within the roof and gabled feature to the rear. These dwellings have been designed with south facing windows only at ground floor and windows in the roof and gable feature within the north elevation only.

Other matters

Open space

- 2.35 Policy DM27 of the Land Allocations Local Plan requires that developments that generate a need for residential development will be required to contribute towards provision of open space. The Council's Principal Infrastructure and Delivery Officer has advised that the development generates a need for 0.094 hectares of open space. She has advised that that as the site is located approximately 1 km from the play area in Staple and is not currently accessible by footpath it would be most appropriate to provide this on site. However following the Order of the Court of Appeal dated 13 May 2016, it is not considered appropriate to seek these contributions.

Developer contributions

- 2.36 Kent County Council have outlined that no contributions will be sought as the development is for ten units, in accordance with advice contained in the Starter Homes Ministerial Statement of 2 March 2015.

Conclusion

- 2.37 There is a need for housing in the district and the principal of the conversion of the public house to a residential unit is considered to be acceptable. However the site partly constitutes open countryside and the proposal is considered to be a dominant and urban form of development which would prove harmful to the streetscene and the significance of the Grade II listed building. The potential benefits of the proposal in providing a housing scheme are considered to be limited, and would not outweigh this harm.
- 2.38 Furthermore whilst the site is served by public transport, a pedestrian link has not been provided to ensure the development would be publically accessible to pedestrians.
- 2.39 It is recommended that permission should be refused for the reasons set out below.

Recommendation

PLANNING PERMISSION BE REFUSED for the following reasons:-

(i) The proposed development, by virtue of its scale, mass, layout, design and relationship with the Three Tuns would, if permitted, result in a dominant, incongruous, unsympathetic and poorly related form of development, out of keeping with the prevailing form of surrounding development, harmful to the character and appearance of the countryside, the surrounding area, street scene, the significance of the Grade II listed building, contrary to National Planning Policy Framework Policies 60, 64, 131,132, 133 and 134 and Dover District Core Strategy Policy DM15.

(ii) The development as proposed would fail to maximise walking and cycling contrary to paragraphs 49 of the National Planning Policy Framework and Policy DM11 of the Dover District Core Strategy.

REPORT TO PLANNING COMMITTEE – 22 SEPTEMBER 2016

PLANNING ENFORCEMENT – APRIL-AUGUST 2016

1. This is the first report to Planning Committee that reviews current activity in Planning Enforcement. It is mainly just an outline of casework numbers, although a few key outcomes have been noted.

The detail can be expanded upon if required by Members and we can easily add other areas of interest in the future if required

2. Outstanding Enforcement cases

2016	2015	Prior to 2015		Total
114	38	61		213

3. Cases received: 87

4. Cases actioned: 73

5. Action taken

PCNs	1
ENF Notices	8
215 Notices	4
Stop Notices	0
Prosecutions	0

6. Three examples of Key Outcomes

- Enforcement Notice issued in respect to unauthorised lorry park in Coombe Valley Road. Planning enforcement appeal recently submitted but yet to be validated by the Planning Appeals Inspectorate.
- As a result of having issued a number of Listed Building Enforcement Notices regarding unauthorised satellite dishes on the frontages of buildings in East Cliff and Athol Terrace the majority of such dishes have now been removed.
- Bellevue, Minnis Lane (unauthorised new dwelling). Planning enforcement appeal received and subject to a 2 day Public Inquiry 21 and 22 February 2017.

Dave Robinson
 Planning Delivery Manager