

Minutes of the remote meeting of the **PLANNING COMMITTEE** held on Thursday, 2 July 2020 at 6.00 pm.

Present:

Chairman: Councillor J S Back

Councillors: R S Walkden  
M Bates  
D G Beaney  
E A Biggs  
T A Bond  
J P J Burman  
D G Cronk  
O C de R Richardson  
H M Williams

Officers: Principal Planner  
Principal Planner  
Planning Officer  
Planning Consultant  
Planning Solicitor  
Democratic Services Manager  
Democratic Services Officer

The following persons submitted written statements which were read out by the Democratic Services Manager in lieu of public speaking:

<u>Application No</u>	<u>For</u>	<u>Against</u>
DOV/19/01522	Mr Nigel Brown	Ms Tracey Antonia
DOV/20/00211	Taylor Hare Architects	Mr Glen Obee
DOV/19/00642	Mr John Mackenzie	Mrs Sharon Laffin Councillor Peter Jull

137 APOLOGIES

It was noted that an apology for absence had been received from Councillor D P Murphy.

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138 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that, in accordance with Council Procedure Rule 4, Councillor M Bates had been appointed as a substitute member for Councillor D P Murphy.

139 DECLARATIONS OF INTEREST

There were no declarations of interest.

140 MINUTES

The minutes of the meeting of the Committee held on 21 May 2020 were approved as a correct record and signed by the Chairman.

141 ITEMS DEFERRED

Members noted that the one deferred item (Application DOV/19/00642 – Site at Cross Road, Deal) was to be considered at the meeting as Agenda Item 9.

142 APPLICATION NO DOV/19/00425 - LAND TO THE REAR OF 92 AND 94 NORTHWALL ROAD, DEAL

Members viewed a CGI image, drawings, a plan and photographs of the application site. The Planning Consultant advised that planning permission was sought for the erection of a two-storey house in the rear gardens of 92 and 94 Northwall Road. Because the site was in Flood Zone 3a, the dwelling would have non-habitable rooms and a garage on the ground floor, and habitable rooms on the first floor and in the roof space. Public representations had been received raising concerns about traffic, on-street parking and the blocking of turning heads in the cul-de-sac. In response, the Planning Consultant advised that the provision of three parking spaces for a property of this size was acceptable. He confirmed that the turning heads would not be affected. The sequential test for development in flood zones had been met, and adequate measures to minimise flood risk had been taken. The proposed dwelling was sympathetic to the design of houses in the surrounding estate, and met the requirements of the National Planning Policy Framework (NPPF). Approval of the application was therefore recommended.

In response to queries from Councillor D G Cronk, the Planning Consultant advised that a condition to restrict windows was proposed. The installation of double yellow lines was a matter for the Highway Authority and therefore outside the Committee's remit. However, the development at West Lea did not have double yellow lines, and he was not aware of parking problems in the area. Following a point raised by Councillor E A Biggs, it was acknowledged that gable dormers were more prominent in this locality. However, Officers were not looking to replicate every design feature of the surrounding estate, and the dormer proposed for this dwelling would add interest to the roofline.

RESOLVED: (a) That Application No DOV/19/00425 be APPROVED subject to the following conditions:

- (i) 3-year time limit to commence development;
- (ii) The development to be in accordance with the submitted drawings;
- (iii) Full details to be submitted of how the development will dispose of foul and surface water drainage;
- (iv) Details of existing and proposed site levels shall be submitted for approval;
- (v) A Construction Management Plan to be submitted for approval;

- (vi) Samples of the building and hard-surfacing materials to be submitted for approval;
  - (vii) The retention of parking, cycling and garaging spaces;
  - (viii) The provision of refuse and recycling storage;
  - (ix) No surface water run-off allowed onto the highway;
  - (x) The upper floor window in the side elevation to be obscure glazed;
  - (xi) No additional windows to be permitted;
  - (xii) The removal of permitted development rights to extend, alter the roof or to erect an outbuilding;
  - (xiii) Boundary enclosures to be submitted for approval;
  - (xiv) No living accommodation shall be situated on the ground floor, and all living accommodation shall be located on the upper floors, at a minimum level of 4.2 metres ODN or above;
  - (xv) The finished threshold level of the ground floor shall be no less than 150mm above the finished external ground level of the site;
  - (xvi) Details of measures to mitigate the potential risks from flooding shall be submitted for approval.
- (b) That powers be delegated to the Head of Planning, Regeneration and Development to settle any necessary wording in line with the recommendations and as resolved by the Planning Committee.

143 APPLICATION NO DOV/19/01522 - 26 HARDWICKE ROAD, DOVER

The Committee was shown plans, drawings and photographs of the application site. The Principal Planner advised that the application sought permission to demolish the existing house and erect a block of five flats. As a correction to the report, Members were advised that the rear dormer window referred to in paragraph 1.3 was at 22 Hardwicke Road and not no. 24. In addition, the agent had been advised about the inaccuracy of a sectional drawing, although this did not affect the assessment of the application.

The existing house sat well below road level. The proposal was to replace it with a three-storey building which would be wider at the sides and extend further into the site than the existing building. Whilst the building would be higher than the existing dwelling, this would achieve a gradual stepping down in building heights which was a characteristic of the street. As a result of the parking area at the front being widened to encompass the whole of the frontage, some on-street parking spaces would be lost.

The site was within the settlement confines and the principle of development was therefore acceptable. Negotiations had taken place with the applicant on the design of the building and some improvements had been made. However, the proposal still

fell short of being a good design and, particularly when seen from the rear, remained overbearing in appearance. Moreover, it would look out of place in the street scene and affect the residential amenity of neighbouring properties due to loss of privacy and overlooking. For these reasons the proposed building failed to meet paragraphs 11, 117, 122 and 127 of the NPPF, and refusal was therefore recommended.

In clarification, the Principal Planner advised that concerns around overlooking centred on the use of balconies at the rear of the building which would allow residents to look into the most private part of the rear garden of no. 24. At the pre-application stage, the proposal had been for eight flats. This had been reduced to five in the first application and, whilst that building had been the same size as the building now proposed, there had been additional balconies and glazing to the rear. In addition, the design of that building had been bland and unrelated to its surroundings.

Councillor T A Bond questioned whether there were strong enough reasons for refusal given that design was a subjective view. The NPPF was clear that proposals should be approved if the decision was finely balanced and, in this case, he was of the opinion that the application should be approved. The Principal Planner advised that, as well as design, there were concerns around its overbearing nature, privacy and overlooking which were all strong reasons for refusal that could be demonstrated. Councillor Biggs pointed out that the applicant had sought pre-application advice, followed by negotiations, yet the proposal was still found to be unacceptable. Councillor Cronk supported the application's refusal, believing the proposal to be an over-development of the site.

The Principal Planner clarified that the applicant was looking to excavate the ground floor in order to keep the roof height lower whilst achieving the same number of units. Whilst negotiations with the applicant had been productive to a point, clearly not all the advice given had been pursued. In response to some Members who were minded to approve the application, he emphasised that obscure-glazing the balconies would make little difference as they were only one metre high and could easily be looked over. In his view, the number of units proposed was too many for the site.

**RESOLVED:** (a) That Application No DOV/19/01522 be REFUSED on the following grounds:

- (i) The proposed development, by reason of the unsympathetic design and appearance of the front elevation, would look out of place in the street scene and fail to respect the character of the area. The design and appearance of the rear elevation also fails to respect the character of the area by reason of the extent of glazing and disposition of window and door openings which are at odds with the domestic character of neighbouring buildings. For these reasons the development does not meet the objectives of paragraphs 117, 122 and 127 of the National Planning Policy Framework (2019).
- (ii) The proposed development would cause unacceptable harm to the amenities of neighbouring residential properties through a loss of privacy and overlooking of private garden areas. This is exacerbated by the fact that many of the windows situated above lower ground floor level serve rooms

that are likely to be in regular daytime use. The number of large windows situated at height would be oppressive for neighbouring residents. The height of the building and its proximity to the boundary would also be oppressive and overbearing for part of the external area at the rear of no. 28. For these reasons the development does not meet the objectives of paragraphs 122 and 127 of the National Planning Policy Framework (2019).

(iii) For the reasons cited in (i) and (ii) above, the adverse effects of granting planning permission significantly and demonstrably outweigh any identified benefits, and the proposal therefore fails the test set out in paragraph 11(d) of the National Planning Policy Framework (2019).

(b) That powers be delegated to the Head of Planning, Regeneration and Development to settle the wording of reasons for refusal, in line with the issues set out in the report and as resolved by the Planning Committee.

144 APPLICATION NO DOV/20/00211 - SHOTFIELD FARM, THE STREET, PRESTON

Members were shown drawings, plans and photographs of the application site which adjoined the settlement confines of Preston. The Planning Officer reported that Preston Parish Council's views had now been received and did not alter the recommendation to approve the application. She also advised that a revised site plan had been submitted and the application was considered valid.

The application followed a previously refused scheme which had been deemed unacceptable due to its impact on the character and appearance of the street scene as a result of the inappropriate design of the proposed dwellings and the loss of a gap. However, the dwelling now proposed was of a reduced scale, well-proportioned and designed, and the open aspect of the street scene had been retained. Whilst limited harm would be caused to the setting of the listed building nearby, this was considered to be outweighed by the public benefits of the scheme, i.e. the provision of an additional family dwelling in a sustainable location. Officers considered that the proposal would not cause harm to the countryside or the residential amenity of neighbouring occupiers, and approval was therefore recommended.

In response to a concern raised by Councillor H M Williams in relation to the eaves of the dwelling extending over the adjoining land not owned by the applicant, the Planning Officer advised that the overhang was minimal and would be considered de minimus (or insignificant) in planning terms. The Chairman reminded Members that land ownership issues were a civil matter and outside the remit of the Committee. Members were required to consider the scheme before them, and suggestions to move the dwelling further away from the boundary could not be considered at this stage.

Councillor R S Walkden commented that, whilst outside the confines, the application site had houses either side of it. Councillor J P J Burman welcomed the applicant's efforts to lessen the impact of the dwelling. Councillor Bond voiced concerns about approving a dwelling on a site which was outside the confines and therefore contrary to Core Strategy Policy DM1. In his view, the dwelling would look out of character, and its proximity to two listed buildings was problematic for him.

RESOLVED: (a) That Application No DOV/20/00211 be APPROVED subject to the following conditions:

- (i) 3-year time limit;
  - (ii) Approved plans;
  - (iii) Samples of materials;
  - (iv) Provision of parking facilities;
  - (v) Measures to prevent the discharge of surface water onto the highway;
  - (vi) Pre-commencement condition for Construction Management Plan;
  - (vii) Use of bound surface for the first 5 metres of the access from the edge of the highway;
  - (viii) Provision and maintenance of a visibility strip measuring 2.4 metres in width from the edge of the carriageway along the site frontage with no obstructions over 1 metre above carriageway level within the strip, prior to use of the site commencing;
  - (ix) Provision and maintenance of 1 metre x 1 metre pedestrian visibility splays behind the footway on both sides of the access with no obstructions over 0.6 metres above footway level, prior to the use of the site commencing;
  - (x) Cycle parking details;
  - (xi) Bin storage;
  - (xii) Completion of access prior to first use;
  - (xiii) Removal of permitted development rights (classes A, B, D and E);
  - (xiv) Surface water disposal scheme;
  - (xv) Foul water drainage scheme;
  - (xvi) Submission of a landscaping scheme;
  - (xvii) Boundary treatments and hard-surfacing materials.
- (b) That powers be delegated to the Head of Planning, Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

The Committee viewed an aerial view, plans and photographs of the application site. The Principal Planner advised Members that the application sought outline planning permission for the erection of up to 100 dwellings, with off-site highway works in Station Road and Cross Road. As an update to the report, twelve additional objections had been received since the agenda was published, raising no new issues. In addition, it had been confirmed that the financial contributions towards secondary and primary education would be going to Goodwin Academy and a number of primary schools in Deal respectively. Contributions towards social care and libraries had also changed - to £7,626 and £4,801 respectively.

Members were reminded that the application had been considered at Planning Committee meetings held on 16 January and 13 February. At the first meeting the application had been deferred for a site visit to enable Members to understand the proposed highway works and to consider the development's potential impact on the riding school. As a result of the site visit, additional highway conditions had been recommended, largely for completion prior to development on site. The application had subsequently been considered at the 13 February meeting where it was again deferred pending the receipt of comments from the British Horse Society (BHS).

It was confirmed that, whilst comments had not been received from the BHS, the Council had sought and received advice from an independent equine expert. This advice was set out in the report but, essentially, indicated that there would be no harmful impact on the riding school. To address concerns raised about the riding school, the applicant had since confirmed that construction traffic would largely be routed via Cross Road. In addition, it was expected that the off-site road works near the riding school would be completed within four weeks, and the landscaping works on the southern side of the site completed prior to occupation of 70% of the dwellings in order to reduce the impact on the school.

Since the last meeting, Network Rail (NR) had also raised objections in relation to Coldblow level crossing due to the potential for an increase in its use. As a result, the applicant had provided a level crossing impact assessment which found that there would be a very limited material increase in the use of the crossing. This finding was supported by Kent County Council (KCC) Highways. However, NR had raised further concerns relating to the assessment, in particular with the data. Without making a formal request for financial contributions, NR had indicated that the most appropriate option to reduce the risk was to upgrade the crossing to a manually-controlled barrier crossing which would cost in the region of £3 to 5 million. Full details were set out in the report but, following clarification, it was evident that there was no justification for seeking additional contributions to address what appeared to be an existing problem. NR had subsequently withdrawn its objection.

The Principal Planner recapped on the key considerations of the application. The site was outside, but adjoining, the settlement confines of Deal. Whilst the proposal was therefore contrary to the Council's Local Plan policies, those policies were now considered to be in tension with the NPPF. Paragraph 11 of the NPPF indicated that sustainable development should be approved, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This was the 'tilted balance' decision that the Committee was required to make in this case. There had been significant public objections to the application. However, the scheme would bring forward 100 dwellings for the district's housing supply, as well as other benefits such as affordable housing and financial contributions towards education, health and open space, amongst others.

In response to Councillor M Bates who raised concerns about the data used for the level crossing assessment, the Principal Planner clarified that the 2011 census data were the last official figures available. However, in line with normal practice, these had been updated by a survey carried out in 2015 and updated again in 2017. Although the data used by the applicant appeared to be out-of-date, KCC Highways would use the same data. With reference to NR's wish to hold discussions with the Council about upgrading the level crossing, Members were advised that NR was a statutory consultee in respect of the Local Plan review. Planners had already contacted NR to advise that it would formally be consulted at the Regulation 18 stage of the review, if not earlier.

Councillor O C de R Richardson expressed surprise that the equine consultant had only undertaken a desktop study and had not visited the school nor contacted the owner, even though her report had been submitted before travel restrictions were imposed due to Covid-19. Furthermore, her report focused on the impact of construction works rather than the effect on horses hacking out. He was also concerned about the large number of houses that would be built outside the confines, as well as the uncertainty surrounding what the development would look like. He added that it was for the Committee to decide whether the proposal was acceptable or not in policy terms, rather than concerning itself with matters relating to the potential appeal and costs arising from that appeal. In his view, it was the Committee's remit to determine the most controversial applications, particularly in cases where the decision was a marginal one.

The Principal Planner explained that the equine consultant had been chosen because of her public inquiry experience and legal qualifications. People had been advised against non-essential travel long before 16 March when her report was submitted. The decision not to ask the consultant to visit the riding school site had been taken in consultation with the Head of Planning, Regeneration and Development.

She reiterated that Core Strategy Policy DM1 was considered to be out-of-date and therefore carried reduced weight. Members needed to be realistic about the fact that the Local Plan was now ten years old and, as a result, some local policies were now out of step with national policies. Paragraph 11 of the NPPF clearly identified that there should be a presumption in favour of sustainable development; this had been tested widely in the courts and at appeal. The independent landscape consultant had advised that mitigation measures proposed by the applicant were satisfactory, and that the visual impact of the development on the countryside was not a sufficient reason for refusal. Design and access were indicative only, but they would be scrutinised carefully at any reserved matters stage.

In response to Councillor D G Beaney, and referring to paragraph 2.9 of the report, the Principal Planner clarified that highway works could not be fully completed before building works commenced because there would be a need to retain some level of access for construction traffic. The condition was carefully worded so as to reflect the concerns raised by Members at the site visit.

Councillor Burman questioned why an air quality assessment had not been carried out, in line with the Council's policy. Looking at air quality post-completion, the number of increased movements during peak hours would lead to an increase in idling engines which would in turn increase air pollution. He was of the view that the report had failed to demonstrate that there would be no demonstrable harm to local people. Accordingly, he could not support the application. Councillor Williams

concurred with the concerns raised about the equine consultant's report. In relation to highways, she felt that local views had been ignored and overruled. Reports from residents and the local town and parish councils were that the local road network was already full and would not be able to cope with the proposed development.

Councillor Bond accepted that it was a balanced decision. However, he was of the opinion that Policy DM1 still carried some weight, albeit much reduced. Policy DM11 sought to prevent development outside settlement confines that would generate travel. Policy DM12 indicated that, unless there were sufficient mitigation measures, developments should not be permitted where the construction of a new access was required which was likely to lead to a significant increase in traffic delays. Whilst the scheme would benefit the new occupants, it was clear that existing residents living close to the site perceived the proposal as harmful. There would be no environmental benefits, especially for those using the Public Rights of Way who would lose a green panorama. The proposed landscaping would not compensate for the loss of 3.9 hectares of rural countryside. Another harm would be the loss of on-street parking which was in high demand. The equine report appeared to have been rushed through since the consultant had not bothered to visit the school or contact the owner. All these factors, including the potential damage that would be caused to a rural business, amounted to significant harm in his opinion.

The Principal Planner pointed to several environmental benefits arising from the development, such as 10% increased biodiversity, the provision of an orchard, woodland, a pond and open space. The social benefits of the scheme included affordable housing and financial contributions towards education, social care and libraries. She clarified that discussions about the level crossing would be in relation to the Local Plan and not about the impact of the development.

In respect of Policies DM11 and DM12 mentioned by Councillor Bond, she advised the Committee that these had been formulated before the NPPF. The key factor to consider when assessing the development was whether there would be a severe highways impact. None of the statutory consultees, including KCC Highways, had identified any materially significant impact arising from the development. DM15 and DM16, policies that were designed to protect the countryside and prevent harm to its character and appearance, were now in tension with the NPPF. The independent landscape consultant had made a site visit and assessed the site in detail, concluding that there would be no major adverse impact.

Turning to air quality, she accepted that the applicant's report had focused mainly on the construction phase but, in any case, experts were of the view that the level of traffic generated by the proposed development did not necessitate a detailed air quality assessment. Unlike Dover, Deal did not suffer from air quality issues, and there was therefore no requirement for developments to demonstrate that limits met national objectives or were within those set as part of an air quality management area. Furthermore, the Council's Environmental Health team had confirmed that there were no air quality issues arising from the scheme.

In response to Councillor Richardson who reported that the Council's Climate Change Working Group had recently been informed of air quality issues in the district, the Principal Planner pointed out that she could only advise on whether the application complied with planning policies and the NPPF, which it did. Councillor Burman argued that, whilst Deal might not be in an air quality management area, there would be a concentrated, localised effect on air quality from the scheme, extending up to Station Road.

It was moved by Councillor J P J Burman and duly seconded that Application No DOV/19/00642 should be REFUSED on the grounds that it would cause harm to local residents as a result of air quality issues.

The Principal Planner stressed that any refusal on air quality grounds would need to be evidenced, and there was no evidence to support a refusal. Councillor Bond warned that it would be inadvisable to refuse the application on air quality grounds alone. The Committee needed to employ the 'tilted balance' approach which meant assessing the application against the range of issues raised during the meeting that, in his view, had not been satisfactorily addressed.

The Planning Solicitor advised the Committee against refusing the application on the air quality ground only. He referred Members to paragraph 11(d) of the NPPF, and the need to address any adverse impacts of the scheme when framing the reasons for refusal. In line with the NPPF and the 'tilted balance' approach, the Committee would need to consider whether any adverse impacts significantly and demonstrably outweighed the benefits offered by the development. Whilst the Committee was advised to attribute reduced weight to some of the Council's Local Plan policies, they were still relevant, and it was appropriate to consider them when weighing up the benefits against adverse impacts. That said, he was of the view that insufficient evidence of adverse impacts had been put forward by Members, particularly in respect of air quality.

Councillor Bond suggested that DM1, DM15 and DM16 could be cited as reasons for refusal, along with harm to a rural business, the loss of parking and the environmental benefits not being sufficient to counter the loss of countryside. The Principal Planner guarded against refusing on highways, landscape and air pollution grounds. Advice had been received from the independent landscape consultant that any harm to the character of the landscape could be adequately addressed by mitigation measures. If Members wished to refuse on the ground that the cumulative impacts of development would cause harm to air quality, these should be identified. If appealed, an air quality consultant would need to be engaged to defend the decision and it was unlikely that this would be successful. She advised that the policy that was most likely to be defensible at appeal was DM15.

The Planning Solicitor stressed that a weak refusal would be susceptible at appeal and could be seen as unreasonable. This was likely to lead to costs being awarded against the Council which, he reminded the Committee, would be met from the public purse. He advised that the Council's housing requirement had moved on considerably since Policy DM1 was first drafted. It was now more difficult to defend the refusal of an application when the site was adjacent to the settlement confines where there was likely to be a lack of demonstrable harm.

Councillor Burman agreed to amend his original motion. He commented that it was Members' duty to represent their constituents. Whilst he was aware that the costs of an appeal could be significant, he believed that local residents would prefer Members to follow their principles, even if that risked losing an appeal.

Councillor Walkden commented that the arguments put forward for refusing the application were weak. He urged Members to think carefully about their positions as the developer was likely to win at appeal and costs would almost inevitably be awarded against the Council.

It was moved by Councillor J P J Burman and duly seconded and

RESOLVED: a) That Application No DOV/19/00642 be REFUSED on the following grounds:

(i) The application has not clearly demonstrated that the development, when taken cumulatively with other committed developments within Deal, would not result in detriment to the air quality in the local area as a whole, particularly at key road junctions which would be impacted through additional traffic.

(ii) The proposed development of the site with the quantum of housing proposed will adversely affect the character and visual amenity of the surrounding countryside on this prominent and sloping site, contrary to Policy DM15 of the Dover District Council Core Strategy (2010) and paragraph 170 of the NPPF (2019).

b) That powers be delegated to the Head of Planning, Regeneration and Development to settle the wording of the reasons for refusal, in line with the issues raised by the Planning Committee.

(The Chairman advised the Committee that, in accordance with Council Procedure Rule 9, the Committee was required to pass a resolution to continue the meeting beyond 10.00pm.

RESOLVED: That the Committee proceed with the business remaining on the agenda.)

146 APPEALS AND INFORMAL HEARINGS

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

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

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

The meeting ended at 10.22 pm.