

- a) **DOV/17/00194 – Variation of condition 2 of planning permission DOV/15/00327 to allow amendments to the approved plans (amendments to the rear dormer roof extensions on chalet bungalows and alterations to fenestrations) (Section 73 application) - 43 Dola Avenue, Deal**

Reason for report: Number of contrary views and called in to Planning Committee by Councillor Kenton.

b) **Summary of Recommendation**

Planning Permission be refused.

c) **Planning Policies and Guidance**

Core Strategy Policies

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

National Planning Policy Framework (NPPF)

- The NPPF has 12 core principles which, amongst other things, seeks to: proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs; secure high quality design and a good standard of amenity for all existing and future occupants and buildings; encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value; and actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.
- Chapter four of the NPPF seeks to promote sustainable transport. In particular, paragraph 29 states that “the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas”.

- Chapter six of the NPPF seeks to significantly boost the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.
- Chapter seven requires good design, which is a key aspect of sustainable development.

The Kent Design Guide (KDG)

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

d) **Relevant Planning History**

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

DOV/16/00998 - Erection of two detached dwellings and creation of parking – Refused

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

The following applications, which relate to neighbouring sites, are of note in the assessment of the current application.

210 Middle Deal Road, Deal (Rear of Site with Access Proposed off Foster Way)

DOV/04/01318 – 2No. detached two storey 3 bedroom houses – Granted

Land Rear of 41 Dola Avenue, Deal

DOV/04/01287 – Erection of two detached bungalows – Refused and Dismissed at Appeal.

DOV/06/01461 – Erection of one detached chalet bungalow – Refused and Allowed at Appeal.

e) **Consultee and Third Party Responses**

Deal Town Council – No response received

Environmental Health – No observations are made.

KCC Highways and Transportation – No objection, subject to the conditions and informatives previously requested under permission DOV/15/00327.

KCC Lead Local Flood Authority – No comment to make on this application. However, in relation to condition 7 of permission DOV/15/00327, the LLFA have commented that the additional information which has been submitted has been reviewed and the LLFA confirm that they have no objections and advise the condition 7 can be discharged.

KCC Public Rights of Way – No comments on the proposals. However, in relation to condition 12 (traffic signage) of permission DOV/15/00327 KCC have confirmed that no objection is raised to the submitted details.

DDC Principal Ecologist – No comments

Southern Water – No response received

Public Representations – Seven letters of support have been received, raising the following points:

- The dwellings have been attractively designed and are in keeping with the character and appearance of the area
- The development will provide much needed housing
- The dwellings have been built to a high standard
- The use of high level windows means that no overlooking will be caused

In addition, two letters of objection have been received, raising the following objections:

- The windows in the development are obtrusive and cause a sense of enclosure
- The dormer windows are nothing like those in Foster Way
- The dormers were not built in accordance with the approved drawings

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

1.1 The site lies within a wholly residential area of Deal. The area has a mixed character with linear and perimeter block development to the south east and winding cul-de-sacs to the north west. The scale and form of development is equally varied, with a mixture of detached, semi-detached and terraced properties of one, one and a half or two storeys in height.

1.2 The site itself currently contains one detached bungalow facing towards Dola Avenue to the north east. The former garden to this dwelling was granted planning permission, under application number DOV/15/00327 for nine dwellings, which appear to be nearing completion (if not complete), albeit with some modifications which are subject to this application. A Public Right of Way (ED21) runs along the north east boundary of the site.

1.3 This application seeks to vary condition 2 which was attached to planning permission DOV/15/00327, to amend the design of the approved chalet bungalows. The amendments to the design of each of these properties comprise the replacement of one pitched roof dormer window and one roof light to the rear roof slope with one wider flat roofed dormer window, together with the alteration to the side fenestrations of the building to reduce the size of a side window. The internal layout of the dwellings would also be amended to provide two bedrooms (one with an en-suite/dressing room area) and a bathroom at first floor level and a kitchen/dining room, living area, study/bedroom, utility room and WC at ground floor level. As approved under the previous application, a total of fifteen car parking spaces would be provided, two for the existing dwelling, one for each of the proposed dwellings and four communal visitor spaces. These car parking spaces would be served by one vehicular access to Dola Avenue and an access road through the site, with a turning head to the south of the site.

2. **Main Issues**

2.1 The main issues are:

- The principle of the development

- The impact of the development on the character and appearance of the area
- The impacts of the development on the living conditions of neighbouring properties
- The impact on the highway network
- The provision of surface water drainage

Assessment

Principle

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

Character and Appearance

- 2.3 The proposal is the same as the previously approved scheme save for the replacement rear dormer and alterations to the side fenestrations. The layout of the development would continue to provide a linear form of development to create a small cul-de-sac, which would respond to the prevailing pattern of development within this part of Deal and provide a scale of building which responds to the building types within the area. It is therefore considered that the layout, pattern of development and scale of the proposed dwellings accords with the character of development in the area.
- 2.4 As identified by the report for the previous application (DOV/16/01038), the design of properties in the area varies significantly. Distinct groups of buildings display a coherent design; however, each group of buildings differs from the next. The proposal would create a holistic and self-contained development which would produce a character of its own, whilst responding to the proportions of the neighbouring properties, in particular those in Foster Way. The proposed dwellings would provide a regular rhythm to their fenestrations, whilst detailing such as a red brick plinth under yellow brick walls, together with vertical glazing would add interest to the buildings.
- 2.5 The committee report for the previous application concluded that the design of the dormers, whilst more pronounced features compared with the modestly sized dormers which had been approved, would not appear incongruous. However, the Planning Committee disagreed and determined to refuse that application due to the harm it would cause to the character and appearance of the area. The reason for refusal given read:
- The proposed dormer windows to the rear (north west) roof slopes of the dwellings, by virtue of their size, flat roofed design and prominent location, would cause significant harm to the character and appearance of the area, contrary to the aims and objectives of National Planning Policy Framework, in particular paragraphs 58, 59, 60, 61 and 64.
- 2.6 The refusal of the previous application is a material consideration in the assessment of this application, particularly as the current scheme is (with the exception of the amended window design) the same as the previously refused scheme. Whilst, at officer level, it is concluded that the dormers proposed under this application would not cause significant harm to the character and appearance of the area (in conformity with the previous recommendation), it is necessary to

give weight to the previous refusal and consider whether that reason has been overcome.

- 2.7 The stated reason for refusal criticizes the “size, flat roofed design and prominent location” of the dormers. The dormers have not been reduced in size since the previous application was refused, whilst their design retains its flat roof. The location of the dormers has also not altered. The change to the fenestration design, which replaces high level windows with better proportioned windows, provides some improvement to the appearance of the dormers. However, this change does not address the concerns specified in the reason for refusal and, consequently, it cannot be concluded that the reason for refusal has been overcome.
- 2.8 The fenestration to the side elevation of each dwelling is also proposed to be amended from the approved scheme. The fenestration would remove the window located under the eaves of the building. Whilst the approved elongated window would have been an interesting feature on the buildings, the side elevations will be little seen from outside the site and, as such, this proposed change would not significantly impact on the appearance of the buildings or the character of the area. This change did not form a reason for refusal of application DOV/16/01038 and, likewise, is considered to be acceptable.
- 2.9 The development would retain the previously approved front garden areas and landscape margins along the sides of the access road. These areas include the provision of thirty-eight new trees which would significantly soften the site and provide maturity to the development. As was the case when determining the previous application, it is considered that it would be reasonable to secure the provision and maintenance of the proposed landscaping by condition, should permission be granted.
- 2.10 The dwellings, save for the amendments to the dormer windows, are now built and the materials used are evident. These materials are considered to be acceptable and, as such, the condition requiring samples of the materials to be submitted for approval is no longer required.

Impact on Residential Amenity

- 2.11 The site is bounded by residential properties on all sides, with properties particularly close to the north west, north east and south west boundaries of the site.
- 2.12 The amended dormers would be located to the rear roof slopes of the buildings, facing north west. To the north west of the site are No.27 Foster Way and No.'s 41 and 41a Dola Avenue. The proposed row of dwellings would back onto the side boundaries of these properties, which enclose their rear gardens. Whilst the buildings would not be set any closer to these neighbours, the proposed dormers would be larger than those previously approved and, as such, regard must be had for whether the changes to these dormers would cause any additional and unacceptable harm.
- 2.13 Regard must be had for whether the proposed dormers would cause unacceptable loss of light or sense of enclosure to properties to the rear of the dwellings. The committee report for the previous application (DOV/16/01038) commented that “whilst the proposed dormers would be wider than the approved dormers, they would remain set back from the rear elevation of the building by around 1m,

comparable with the approved dormers. The height (1.5m) and depth (1.8m) of the dormers would also be comparable with the approved dormers". Consequently, it was not considered that an unacceptable loss of light or sense of enclosure would be caused to neighbours. However, Planning Committee disagreed and, subsequently, the application was refused for the following reason:

The proposed dormer windows to the rear (north west) roof slopes of the dwellings, by virtue of their size, location and proximity of neighbouring properties, would cause an unacceptable sense of enclosure to, and overbearing impact on, neighbouring properties (No.'s 25 and 27 Foster Way and No.41a Dola Avenue in particular), significantly harming the residential amenities of the occupiers of those properties, contrary to the aims and objectives of the National Planning Policy Framework, in particular paragraphs 17, 56, 63 and 64.

- 2.14 As confirmed at paragraph 2.6 above, the refusal of the previous application is a material consideration of significant weight. Whilst again, at officer level, it is concluded that the dormers proposed under this application would not cause significant harm to in terms of causing a sense of enclosure or being overbearing (in conformity with the previous recommendation), it is necessary to give weight to the previous refusal and consider whether that reason has been overcome.
- 2.15 The stated reason for refusal criticizes the "size, location and proximity to neighbouring properties" of the dormers. The size, location and, consequently proximity to and relationship with neighbouring properties, have not been amended by this application. As such, the application does not address the concerns specified in the reason for refusal and, therefore, it cannot be concluded that the reason for refusal has been overcome.
- 2.16 The approved scheme included first floor dormer windows and roof lights to the rear roof slope, facing towards No.27 Foster Way and 41 and 41a Dola Avenue. The approved windows had been designed with cill heights of 1.7m above the finished floor level of the rooms they serve and, as such, it was concluded that they would not cause any unacceptable overlooking. The proposed windows have lowered their cill heights to approximately 1.2m above finished floor level. The applicant has confirmed that these windows will be obscure glazed and will be non-opening. It is considered that this will be sufficient to avoid direct overlooking to neighbouring properties, although a perception of overlooking would remain, which would harm the residential amenity of neighbours.
- 2.17 In considering the previous application, it was established that the living conditions of future occupiers would be acceptable. The proposed changes would not reduce the residential amenities of future occupiers and, as such, the living conditions for future occupiers are considered to be acceptable.

Impact on the Highway

- 2.18 The proposed access and parking arrangement remain unchanged from that which was granted under application number DOV/15/00327, with the site accessed via a single means of access from Dola Avenue. However, the floor plans shown on the submitted drawings have increased the number of bedrooms from two to two, plus a study/bedroom at ground floor level. The change in floor plan would be likely to increase demand for car parking by around four spaces across the development, having regard for Table 1.1 of the Core Strategy. The approved layout plan would have provided two spaces more than would have been necessary and,

consequently, two spaces less than would be required by the scheme which is now proposed. However, whilst on-street car parking in the surrounding area is constrained, on balance it is not considered that the car parking proposed would cause severe residual cumulative harm to the local highway network, which is the relevant threshold as described by paragraph 32 of the NPPF.

- 2.19 The access would incorporate a ramped speed table adjacent to where it joins onto Dola Avenue and would have visibility splays of 2m by 3m. The previous permission included a condition requiring that signage be erected at the entrance to indicate that pedestrians have priority and to lower the speed limit to 10mph. Details of these signs, together with details of the ramped speed table have been submitted and, following consultation with KCC Highways and Transport and KCC PRoW, have been discharged. As such, it is considered that the proposed access and car parking, being consistent with the previous approval, is acceptable.
- 2.20 The previous permission also included a condition which required that a wall, 1.8m in height, be erected along the north western boundary of Unit 9, along the boundary with Foster Way. This condition required that the wall be erected prior to the development commencing. The reason for this condition was to ensure that construction traffic is prevented from entering or exiting the site from or to Foster Way. The development, with the exception of the changes to the windows within the dormers, has been completed. Whilst the wall had not been erected prior to the commencement of the development, contrary to the requirements of the condition, a 1.8m high fence was erected which ensured that no vehicles entered or exited the site via Foster Way. In addition, following the substantial completion of the development, the approved wall has been erected. It is considered that, for completeness, it would be reasonable to include a condition requiring the wall to be maintained in perpetuity.
- 2.21 The previous permission also included a condition which required details of cycle parking. These details have subsequently been approved and, as such, this condition can be amended to omit the requirement to submit details, but retain the need to provide the approved cycle parking, prior to occupation.

Contributions

- 2.22 Core Strategy Policy DM5 requires that for schemes of 5 to 14 dwellings an on-site provision of affordable housing or an equivalent financial contribution (or a combination of both) will be required. The approved application was the subject of a legal agreement which secured a financial contribution of £89,977.50 towards the provision of off-site affordable housing, which is equivalent to 5% of the Gross Development Value of the scheme, in accordance with the Councils Affordable Housing SPD.
- 2.23 Policy DM27, which is included in the Land Allocations Local Plan (LALP), requires that planning applications for residential development will be expected to provide, or contribute towards the provision of, open space to meet the needs generated by the development. The legal agreement attached to the previous application also secured a financial contribution of £5,690 towards the provision of a dual use tennis and netball court at Victoria Park.
- 2.24 The legal agreement included a clause which stipulated that any subsequent approval under Section 73 or 73A of the Planning Act, such as the current application, would also be bound by the same requirements to provide financial contributions towards open space and affordable housing. It is considered that

these contributions remain reasonable and ensure that the development would meet the requirements of Policies DM5 and DM27 respectively.

Trees

- 2.25 The site includes one tree to the southern corner of the site. This tree is a mature sycamore of around 13m in height, but is not covered by a Tree Protection Order. It is considered that, as the largest tree in the area, it provides a contribution to the visual amenity of the area. The granted application allowed for the felling of this tree, on the basis that the application proposed the provision of a total of thirty-eight trees. Whilst these trees would be significantly smaller than the Sycamore to be felled, it was concluded that overall they would provide an enhancement. The condition requiring full details of all landscaping should be attached to this application, should it be granted planning permission.

Surface Water Drainage

- 2.26 When the previous application (DOV/15/00327) was considered at Planning Committee, Members questioned whether the development could provide adequate surface water drainage. However, following the provision of additional information, the application was granted.
- 2.27 The proposal does not seek to amend the method of surface water drainage, which will continue to discharge surface water to ground via soakaways and through permeable hardstandings. The testing which took place under the previous application confirmed that such a method is feasible and, accordingly, a condition was added to the permission requiring full details of the sustainable drainage scheme, and full details of its subsequent maintenance. Additional information relating to surface water drainage has been provided, which has calculated the surface water run-off from the site (based on a 1 in 100 year storm, plus 30% to account for climate change), the infiltration rates of the ground (which have been carried out to the relevant Building Research Establishment standards) and, consequently, the amount of surface water storage required to ensure that the rainfall in an extreme event can be slowly discharged to ground. The storage required under this design event is 37.33cu.m. The proposal includes the provision of 39cu.m. of storage. The design of the permeable hardstandings also allow water to be stored and slowly discharged to ground, having regard for the relatively slow infiltration rates. The Lead Local Flood Authority have confirmed that this additional information is satisfactory and has advised that condition 7 can be discharged. It is therefore considered that condition 7 can be amended to require that the agreed drainage scheme is carried out.

Other Matters

- 2.28 It should be noted that the original permission for this site (DOV/15/00327) did not remove permitted development rights for dormer windows to the rear elevation of the building, although permitted development rights for new or altered windows to the rear roof of the building were removed. As such, should the dwellings have been constructed in accordance with the approved drawings, occupants could have constructed dormer windows within their rear roof slopes (albeit without windows) without the need to apply for planning permission. It is unrealistic to consider that every occupant would have taken up this option; however the potential ability to construct dormers is considered to be material.

Overall Conclusions

- 2.29 This application seeks to amend the previously approved scheme, enlarging the rear facing dormers and amending the window design to the side elevations of buildings. The application also includes details which address some of the conditions which were attached to the previous permission. The principle of the development remains acceptable.
- 2.30 A previous application (DOV/16/01038) for the site sought permission for a very similar development to that which is now being considered. This previous application, was considered by Planning Committee and, whilst recommended for approval, it was determined to refuse that application due to its impact on neighbours and its impact on the character and appearance of the area. The refusal of that application, and the reasons for refusal, are material considerations which carry significant weight. Notwithstanding the previous officer recommendation, the current application has not overcome the stated reasons for refusal of that application. Furthermore, the current scheme has enlarged the windows within the dormers which are shown as being clear glazed and would have low cills. This additional change would cause an unacceptable perception of overlooking to neighbours in Foster Way and Dola Avenue. Consequently, it is therefore recommended that planning permission be refused.

g) **Recommendation**

I PERMISSION BE REFUSED for the following reasons:-

(1) The proposed dormer roof extensions to the rear (north west) roof slopes of the dwellings, by virtue of their size, location and proximity of neighbouring properties, would cause an unacceptable sense of enclosure to, and overbearing impact on, neighbouring properties (No.'s 25 and 27 Foster Way and No.41a Dola Avenue in particular), significantly harming the residential amenities of the occupiers of those properties, contrary to the aims and objectives of the National Planning Policy Framework, in particular paragraphs 17, 56, 63 and 64.

(2) The proposed dormer extensions to the rear (north west) roof slopes of the dwellings, by virtue of their size, flat roofed design and prominent location, would cause significant harm to the character and appearance of the area, contrary to the aims and objectives of National Planning Policy Framework, in particular paragraphs 58, 59, 60, 61 and 64.

(3) The proposed windows within the dormer roof extensions at first floor level to the rear (north west) roof slopes of the dwellings, by virtue of their size, the height of their cills above floor level, location and relationship with adjoining properties, would cause an unacceptable perception of overlooking to neighbouring properties (No.'s 25 and 27 Foster Way and No.41a Dola Avenue in particular), significantly harming the residential amenities of those properties, contrary to the aims and objectives of the National Planning Policy Framework, in particular paragraphs 17, 56, 63 and 64.

Case Officer

Luke Blaskett