

a) **DOV/17/01499 – Outline application for the erection of a detached dwelling (with all matters reserved) - Marley Cottage, Marley Lane, Finglesham, Deal**

**Reason for report:** Number of contrary views (17).

b) **Summary of Recommendation**

Planning permission be refused.

c) **Planning Policies and Guidance**

Core Strategy Policies

- 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 travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies.
- DM15 - Development which would result in the loss of, or adversely affect the character and appearance of the countryside will not normally be permitted.
- DM16 - Generally seeks to resist development which would harm the character of the landscape, unless it is in accordance with a Development Plan designation and incorporates mitigation measures, or can be sited to avoid or reduce the harm and/or incorporates design measures to mitigate the impacts to an acceptable level.

National Planning Policy Framework (NPPF)

- Paragraph 11 states that planning law requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
- Paragraph 14 states that 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  - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: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.
- Paragraph 17 states that planning should:
  - be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area.

- secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
  - contribute to conserving and enhancing natural environment and reducing pollution.
  - Actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable
- 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.
  - Paragraph 32 states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
  - 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 61 states that although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, 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 64 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”.
  - Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests and soils.

d) **Relevant Planning History**

There is no relevant planning history for the site.

e) **Consultee and Third Party Responses**

Northbourne Parish Council

No objections.

County Archaeologist

No objections subject to a watching brief condition.

Southern Water

The applicant is advised to consult Environment Agency directly regarding the use of a private wastewater treatment works or septic tank drainage which disposes off effluent to sub-soil irrigation. The owner of the premises will need to empty and maintain the works or septic tank to ensure its long term effectiveness.

No objections have been raised; however, a pre-commencement condition is recommended to be attached to the permission requiring submission of details of the proposed means of foul and surface water sewerage disposal.

It is also advised that should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is also advised to discuss the matter further with Southern Water.

#### Public Representations

Seventeen (17) letters of support have been received, and have made the following comments:

- Would provide housing
- One more home with low impact on the surrounding environment
- There is a serious lack of properties available for sale to people who have family ties and jobs locally and who would like to live in the village. The age demographic of Finglesham is rising steadily and any development which can help to introduce a younger generation of families into the village should be greatly encouraged.

Any building works will be of the highest quality.

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

- 1.1 The application site comprises the side/rear garden of a detached cottage (Marley Cottage) which sits on the edge of a small/historic cluster of properties focussed around Marley Farm Nurseries. The group sits within open countryside, some 350m south of the hamlet of Finglesham. The site fronts Marley Lane, a single track metalled rural lane.
- 1.2 The property and its neighbours lie within a predominantly open landscape comprising arable farmland, punctuated by similar small pockets of development focussed on farmsteads and rural cottages, often screened by trees/woodland.
- 1.3 Between the site and Marley Lane is an embankment (about 1m high) atop which is a 2m high (approx.) hedge. The hedging continues along the site's southern boundary which adjoins the open countryside and currently screens views of the Marley Cottage garden from this direction. Marley Cottage itself however (and the hedging) is clearly visible to the south along Marley Lane and also from Broad Lane (adjoining Betteshanger) beyond.
- 1.4 The nearest settlement to the application site (providing main services) is Eastry which is located at a distance of approximately 3.2 miles from the site.
- 1.5 This application seeks outline planning permission for the erection of a detached dwelling (all matters reserved). The application is accompanied by indicative plans which show a 4 bedroom two storey dwelling, served by a new access from Marley Lane.
- 1.6 The application is accompanied by a planning statement. This states that the purpose of the dwelling is to provide a home for the applicant's son and daughter in law who wish to move close to the parents but have been unable to access the local housing market. They have also sought to register with Dover's self-build register but there are no plots available to meet the need.
- 1.7 Weight for the proposal is argued on the basis that the Council do not have a 5 year housing land supply and that little weight should therefore be given to the housing

policies of the Core Strategy, including DM1. It is also stated that the site is previously developed land, the use of which is encouraged by the NPPF and that overall the proposal satisfies the sustainability objectives (social, economic, environmental) of the NPPF.

## 2. **Main Issues**

2.1 The main issues are:

- The principle of the development
- The impact on the character and appearance of the area
- The impact on residential amenity
- The impact on the highway network
- The impact on ecology

## 3. **ASSESSMENT**

### Principle of the Development

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose 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.

3.2 Also, policy CP1 states that the location and scale of development in the District must comply with the Settlement Hierarchy which informs the distribution of development in the Core Strategy. Policy CP1 deems that sites outside of defined settlements are unsuitable for further development unless it functionally requires a rural location.

3.3 It was acknowledged in the recent Ash appeal that the tilted balance would be applied in respect of development proposals for new housing because the Council's housing evidence base is out-of-date. Members will be aware that the Inspector also agreed that the Council does have a 5 year housing land supply. The tilted balance therefore applies here. In essence, in accordance with paragraph 14 of the NPPF, permission should then be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole. It is, however, necessary to apply the Core Strategy principle under policy DM1 which is not a housing supply policy, as the starting point in that development outside the confines would not be acceptable unless there are unusual and compelling reasons for permission to be given.

3.4 Regard will be had later in this report for whether there are any material considerations which indicate that permission should exceptionally be granted in line with the tilted balance, i.e. whether any harm identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

### Impact on the Character and Appearance of the Area

3.5 The site is within a sensitive location, being within the countryside, where policy DM15 applies. This policy directs that planning permission for development that

adversely affects the character or appearance of the countryside will only be permitted if it satisfies one of four criteria and the development would not result in the loss of ecological habitats.

- 3.6 As stated at 1.1 to 1.3 above, the area is rural in character. Built development is very limited comprising small clusters of buildings focussed on historic farmsteads and cottages partially screened by trees and hedgerows. The application site sits on the edge of such a cluster fronting a rural lane (Marley Lane). The application site is relatively flat and whilst a boundary hedge along the southwest and southeast provides some screening, the site is readily visible in the countryside to the south/east along Marley Lane and from Broad Lane.
- 3.7 As suggested by the indicative plans accompanying the application, a dwellinghouse on this site would be likely to require engineering works for the excavation of the existing embankment and the loss of hedging to secure a suitable access to the site. This would significantly erode the character of the rural lane at this point. Views from the lane would be gained of the new dwelling, which would be seen together with a range of domestic paraphernalia such as hardsurfacing, fences, walls, gates etc, all of which would jar with the relatively unspoilt rural setting and which would have urbanising effect on the immediate area to the detriment of the rural character and appearance of the immediate area.
- 3.8 As stated at 1.5, the indicative plans depict a large 4 bedroom, two storey dwelling. While the harm identified above would equally apply to a single storey property, this would be exacerbated by a scheme along the lines suggested by the indicative proposals.
- 3.9 A two storey dwelling would also be particularly visible from the available prominent views to the southeast, introducing an overtly visible building at the edge of the cluster which would erode and harm the rural character.
- 3.10 Regard must be had to whether in light of this harm, the proposed development could be acceptable by meeting any of the four criteria listed under Policy DM15 *which include (i) it is in accordance with allocations made in the 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 it does not result in the loss of ecological habitats*). In respect of these matters, the proposed dwelling would be located in a rural location well beyond any designated settlement confines. It is not justified by the needs of agriculture. Whilst it is acknowledged that the proposal would provide a short term economic benefit, by providing employment during the construction phase, it is not considered that it would apply to a sufficient degree to set aside the harm identified. Furthermore, no overriding justification has been provided that demonstrates why it needs to be in this location and why it cannot be accommodated elsewhere.
- 3.11 Regard must also be had for whether the development would harm the wider landscape character of the area, as identified through the process of landscape character assessment, in accordance with policy DM16. Where harm is identified, permission could be given if (i) it is in accordance with the development plan and incorporates any necessary avoidance and mitigation measures, or (ii) can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impacts to an acceptable level.

- 3.12 Regard has been had to Dover District's Landscape Character Assessment (2006). In respect of this locality, it states; *"the landform is gently undulating, rising to the south. There are large open arable fields and few hedgerows. Woodland belts and tree clumps add to enclosure in places. Field sizes increase towards the south. The tree cover consists of native woodland belts and clumps within arable farmland. The area comprises a mixture of small, square fields, particularly around settlements, and regular rectilinear large arable fields. The land use is arable dominant with some pasture around settlements. Scattered farmsteads, windmills and oasthouses are found in the region."*
- 3.13 The proposed development would be visible in the countryside to the south/east along Marley Lane and from Broad Lane. However, by virtue of the site's location, existing vegetation, topography of the site and the scale of the proposal, it is not considered that the proposed development would be of significant detriment to the character of the wider landscape as identified through the process of the Dover District's landscape character assessment. The NPPF calls for development to take into account the intrinsic character and beauty of the countryside.
- 3.14 Overall, whilst the proposed development would not cause significant harm to the wider landscape (DM16), it is considered that the scale, nature and type of development would erode the rural character of the immediate area, introducing an overtly urban form of development into a rural setting. As such, the development would be contrary to Core Strategy Policy DM15 and aims and objectives of the NPPF.

#### Impact on Neighbours

- 3.15 The application site shares boundaries with Marley Cottage to the northeast. It is considered that given the size of the site and its relationship with neighbouring properties, subject to acceptable details being submitted in the reserved matters application, no unacceptable impacts to neighbours would arise.

#### Impact on Highways/Travel

- 3.16 Regard has also been had to the Policy DM11 which states that development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies. The proposed dwelling would give rise to additional (albeit modest) travel in a location beyond settlement confines where the Plan restricts such development and as such would be contrary to policy.
- 3.17 It is noted that there is no footpath along Marley Lane that would lead to Finglesham. The lane is also unlit. Finglesham is a hamlet as defined by Policy CP1, and contains only very limited facilities and services meaning that the occupiers would need to travel further to meet their day to day needs. The nearest bus stops are located at a distance of approximately 1.3km from the application site which are served by No.81 and No.81B buses, which links to Dover, Deal, and Sandwich. They provide an hourly service to Dover and Sandwich until 7:00pm and an infrequent service to Deal (couple of times in a day). Taking the above facts in the round, in particular the nature and distance of the walking route, it is very likely that the proposal would encourage travel by car, thereby working against the sustainable travel and reduction of the pollution objectives of the NPPF contrary to paragraphs 17 and 29 of the Framework. So, there is lack of compliance with Policy DM11 and the NPPFs, sustainable and reduction of pollution objectives to consider.

- 3.18 In accordance with Policy DM13, the proposed dwelling would need to provide up to two independently accessible off-road parking spaces. In the event of grant of planning permission, these details would need to be submitted as part of any reserved matters application. It is likely that this could be achieved along with cycle parking provision.

#### Archaeology

- 3.19 KCC Archaeology have advised that the proposed development site lies in an area of archaeological potential associated with various crop and soil marks visible in the fields surrounding Finglesham. These crop and soil marks indicate the presence of buried archaeological features and landscapes. They include enclosures, ring-ditches (the ploughed out remains of prehistoric funerary monuments) and other features. Additionally, a Lower Palaeolithic handaxe has previously been recorded as coming from brickearth deposits on Marley Lane.
- 3.20 Given the archaeological potential of the site, it is considered that the construction of the proposed dwelling along with any associated groundworks would likely impact upon heritage assets of archaeological interest. Consequently, it is considered that it would be reasonable to require a programme of archaeological work in this instance, by condition.

#### Ecology

- 3.21 Regard has been had to Natural England's Standing Advice which suggests that in large gardens in suburban and rural areas, the likely presence of bats, breeding birds, badgers, reptiles and great crested newts could be expected. The application site is in a rural location. The surrounding area contains established trees and hedgerows which could provide habitat for protected species. Regard has also been had to Dover District's Landscape Character Assessment (2006), which indicates that the application site lies within the North Downs Natural Area. Chalk geology is characteristic of this area, supporting downland habitats within the chalk grassland. There is a rich variety of plant and insect species, with grazing and aspect affecting the species composition. Scrub forms an interface between chalk grassland and woodland, supporting invertebrates and birds.
- 3.22 Having visited the site, it was noted that the parcel of land subject of this application comprised managed grass, conifer hedge and a few mature trees. Whilst it is acknowledged that the surrounding area may contain protected species, given the existing vegetation on site, it is not considered that there is any likelihood of protected species being present on site. Therefore, no impact on ecology would result from the proposal.

#### Sustainability Overview

- 3.23 Regard has been had for whether there are any other material considerations which indicate that permission should be granted contrary to the development plan.
- 3.24 The NPPF is a material consideration of significant weight and, considering NPPF as a whole, the development can be split down into the three dimensions of sustainable development – social, economic and environmental.
- 3.25 The proposed development would provide a short term and very modest economic benefit, by providing employment during the construction phase.

- 3.26 With regards to the social role, it is not considered that the proposal would result in the creation of a high quality environment. Whilst it is acknowledged that the proposed development would provide one dwelling, the benefit associated with it would be negligible as the Council can demonstrate a 5.65 year housing land supply. Furthermore, it is considered that the proposed development lies in an unsustainable location and would not enhance or maintain the vitality of rural communities.
- 3.27 Turning to the environmental role, it is considered that the proposal would result in an intrusive form of urbanisation in this part of countryside, which would fail to protect or enhance the natural environment. Furthermore, by virtue of its siting and location, the development would fail to minimise the need to travel and would be highly dependent upon the private car, contrary to paragraphs 17 and 29 of the NPPF.
- 3.28 At point 3.21 of the planning statement, it is stated that the land is previously developed (PDL). The definition of PDL at Annex 2 of the NPPF excludes land in built-up areas including private residential gardens but doesn't extend this definition to residential gardens in rural areas. The site is therefore technically PDL. It is acknowledged that the NPPF encourages the use of PDL. In the circumstances of this case however, it is considered that the use of garden land for building would represent, at best, a very modest environmental benefit. However, these are material considerations that would militate against this 'benefit' as such.
- 3.29 The proposal would provide only very limited social, economic and environmental benefits; however, this is considered to be more than outweighed by the significant and demonstrable harm caused to the wider environmental objectives relating to countryside protection and encouraging sustainable travel patterns. To conclude, it is not considered that the development represents 'sustainable development' and is not, therefore, supported by the provisions of paragraph 14 of the NPPF.

#### Other Matters

- 3.30 Representations received suggest that the proposed dwelling would be utilised by the applicant's son who has been unable to access the local housing market (see 1.6); however, this would not be considered sufficient reason by itself for setting aside the strong policy objection to new housing in this location.
- 3.31 It is accepted that although the Council has a self-build register, there are no plots registered on it which would be suitable for the applicant. In this instance, the Core Strategy is silent on this and the tilted balance of the NPPF then applies in this regard. However, in this case, as set out in this report, there are adverse impacts which would outweigh the benefits.
- 3.32 From the review of the planning statement submitted with the application, it is noted that the applicant makes reference to the Council's inability to demonstrate a 5 year housing land supply. The assertion is incorrect and as stated within the section 'Sustainability Overview', the Council can demonstrate a 5.65 year housing land supply. As such, significant weight can be given to policy DM1, contrary to the submissions in the application, and policies DM15 and DM16.

#### **4. Conclusion**

- 4.1 The application site lies outside of settlement confines, where planning policy strictly controls new development. The proposal doesn't address any of the exceptions

allowed for by policy and as such is considered to be unacceptable in principle, contrary to Policy DM1. The proposal would constitute an incongruous and visually intrusive feature in this important rural environment to the detriment of the character and appearance of this part of countryside contrary to policy DM15. It would constitute an unsustainable form of development. It is acknowledged that the proposal would provide very limited social, economic and environmental benefits; however, this is considered to be more than outweighed by the significant and demonstrable harm caused to the wider environment. Therefore, the proposal would be contrary to the Development Plan policies and would not be supported by the provisions of paragraph 14 of the NPPF.

g) **Recommendation**

I PLANNING PERMISSION BE REFUSED for the following reason:

1. The proposed development and its associated engineering works and alterations, if permitted would result in an unjustified dwellinghouse, outside of any defined urban or village confines, the need for which has not been demonstrated sufficiently to override normal restraint policies. The proposal would constitute unsustainable unjustified sporadic residential development in this rural location, resulting in additional vehicle movements and the need to travel by private car and would harm the rural character and appearance of the locality contrary to policies DM1, DM11 and DM15 of the Core Strategy and paragraphs 14, 17, 61 and 109 of the National Planning Policy Framework.

Case Officer

Benazir Kachchhi