

- a) **DOV/17/01345 – Outline application for up to 48 dwellings (comprising up to 14 affordable dwellings and up to 34 market dwellings), a care home with up to 64 bedrooms (C2 use), publicly-accessible open space (including children's play area), attenuation pond, and creation of vehicular access (two dwellings to be demolished) (appearance, landscaping, layout and scale of development to be reserved). Proposed amendments to highway arrangements – Land at Churchfield Farm, The Street, Sholden**

Reason for report – Number of third party contrary comments.

- b) **Summary of Recommendation**

Grant permission.

- c) **Planning Policy and Guidance**

Statute

Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

A summary of relevant development plan policy is set out below:

Dover District Core Strategy (2010)

CP1 – Settlement hierarchy.  
DM1 – Settlement boundaries.  
DM5 – Provision of affordable housing.  
DM11 – Location of development and managing travel demand.  
DM13 – Parking provision.  
DM15 – Protection of the countryside.  
DM16 – Landscape character.

Dover Land Allocations Local Plan (LALP) (2015)

DM27 – Providing open space.

Saved Dover District Local Plan (2002)

None applicable.

Kent Minerals and Waste Local Plan 2013-2030 (2016)

DM7 – Safeguarding mineral resources.

National Planning Policy Framework (NPPF)(2018)

11. Plans and decisions should apply a presumption in favour of sustainable development...

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date [***including where a five year supply of housing land cannot be demonstrated***], granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. 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.

12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan... permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

91. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

- a) promote social interaction... for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
- b) are safe and accessible... for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas; and
- c) enable and support healthy lifestyles... for example through the provision of safe and accessible green infrastructure... and layouts that encourage walking and cycling.

98. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks...

108. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- b) safe and suitable access to the site can be achieved for all users; and
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

109. Development should only be prevented or refused on highways grounds of there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

124. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities...

127. Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change...
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users...

177. The presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.

193. 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

#### **Other considerations**

Planning (Listed Buildings and Conservation Areas) Act 1990.

#### **Church of St Nicholas – grade II\* – listed 11 October 1963**

“Parish church. C13 with C14 fenestration and tower, C17 porch, all heavily restored late C19. Knapped flint and plain tiled roof. Nave and chancel north porch and west tower. Three stage tower with string courses corner buttresses and parapet. Nave with restored Y-tracery windows and buttresses, chancel stepped in with renewed lancets, and low windows to north and south. North porch C17 of red brick on flint, the end wall rebuilt C19 in brown brick. C19 doorways. Interior: plain chamfered tower door, fine C15 chancel arch on round responds with moulded octagonal capitals and bases, and wave moulded outer order carried all the way round the arch. The inner reveals of chancel lancets are original C13 work. C19 roofs, of crown posts in the nave. The nave extends to north of chancel and tower as if aisled on plan. The north doorway C15, with attached shafts and moulded surround. C19 fittings, including bad marble reredos. Monuments: large series of black and white marble wall plaques, early and mid C19 Neo-classical, the best to Sarah Curling, d. 1845, with draped urn and enriched bracketed base, signed J. Milligan, Portland Rd, London, and Jane Harvey, d.1842, with a sarcophagus on claw feet, with fasces on the sides, and small coffin over, signed E. Gaffin, Regent St. London. Originally a chapelry of Northbourne. (See B.O.E. Kent II, 1983, 460).”

#### **Tomb chest and vault and headstone about 2 and 5 metres north of Church of St Nicholas – grade II – listed 24 March 1987.**

GV II Tomb chest and vault and headstone. Tomb chest to William Hild, Pilot of Deal, d.1674, and members of his family to 1696. Red brick chest with plinth on barrel vaulted and part rendered vault. Moulded marble top slab with inscription. Headstone

to William Salmon, d.1713. About 3 feet high with heavily scrolled shoulders with death's head motif.

**Tomb chest and headstone about 1+5 metres east of Church of St. Nicholas – grade II – listed 24 March 1987.**

Tomb chest. Late C17. Moulded and inscribed top slab on red brick chest on plinth. Inscription illegible. Headstone to Elizabeth Ratley, d.1776. About: 3 feet high, with scrolled shoulders and palm frond surround to heraldic achievement.

d) **Relevant Planning History**

DOV/17/01153 – Screening opinion – proposed residential development – ENVIRONMENTAL STATEMENT NOT REQUIRED.

e) **Consultee and Third Party Responses**

For original comments – please see first report (19 July 2018) – attached as Appendix 1.

**DDC Ecology** – in relation to the need for an appropriate assessment, and NPPF paragraph 177, please see report section below.

**Natural England** – in relation to the need for an appropriate assessment, and NPPF paragraph 177, please see report section below.

**Sholden Parish Council** – in reference to the Inclusive Transport Strategy 2018:

“Sholden Parish Council would like to refer the Planning Committee to the summary of chapter eight: it says:-

"We will recommend that local authorities pause the development of shared space schemes while we review and update the Department's guidance".

Chapter Eight, sub-paragraph 11 goes into much more detail:

"While we consider CIHT (Chartered Institute of Highways and Transportation" and DPTAC's (Department of Transport...) recommendations and how to take them forward, we are requesting that local authorities pause any shared space schemes incorporating a level surface they are considering, and which are at the design stage. We are also temporarily suspending Local Transport Note 1/11. This pause will allow us to carry out research and produce updated guidance".

It seems to us in Sholden Parish Council that this new instruction to Councils very much impacts on the Greenlight access plans at the top of The Street? That is, no level surface footway should now be considered?"

**KCC Highways** – Further comment on shared surfaces, following Sholden Parish Council comment on this matter:

“The concern appears to be in relation to the use of shared spaces by disabled people, particularly the visually impaired, some of whom expressed concern that such schemes were difficult to navigate and left them feeling excluded. In this particular case the street is already a shared space and has been used as such for many years. The proposals improve the existing shared space by highlighting the presence of pedestrians to drivers and providing a different colour surface for pedestrians. In terms of the visually impaired or blind, if necessary a small kerb upstand could be included which would help identify the pedestrian route to these users but still allow overrun by

vehicles as necessary. This again would be an improvement over the existing shared space arrangement.”

**South Kent Coast Clinical Commissioning Group (CCG) (NHS)** – As confirmation, the CCG would apply the same formula to the care home part of the scheme ie 64 x 1 (assumed single occupancy rooms) x £360 = £23,040 in addition to the £40,435.20 already requested. (£63,475.20 in total)

I reiterate the feedback from the local practices – there are already a significant number of care home residents registered in Deal and an additional home of this size will have a destabilising effect on local primary care provision.

The number of GPs in Deal is falling, and combined with additional patients with complex needs, often with multiple co-morbidities and requiring more home visits than other patients, the additional pressure on the local healthcare system would likely put existing patients at risk as services become stretched. The fact that the need is concentrated in one place does not detract from the issue that unless there is care package arranged independently for residents, a local GP will be required to take on the patients and potentially have more time away from their surgery, thus reducing contact hours available at the practice and reducing the number of appointments available to patients.

**DDC Infrastructure officer** – informal discussion – please see report section below relating to NHS.

**KCC Archaeology** – comments – “It is possible that the proposed development may affect important archaeological remains, potentially including a continuation of the important and extensive archaeological landscape investigated archaeologically at Timperley Fields and visible as crop- and soil- marks on Sholden Downs. I therefore recommend that provision is made in any future planning consent for the archaeological evaluation of the site, to be followed by further safeguarding and/or investigation measures as required. The following condition covers what would be required:

AR5 No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of:

- i. archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
- ii. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority.”

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

The Site

- 1.1. The site is located behind (east of) the junction of The Street and Vicarage Lane in Sholden, east of the A258 London Road, and west/north west of Middle Deal (adjacent to Diana Gardens).
- 1.2. The site is related to the old Churchfield Farm, but has not been farmed in recent memory. The site is covered by overgrown vegetation and scrub, with some intermittent areas of tree coverage, and is private land, although there are walking tracks worn into the ground. The site is level with the land at Vicarage

Lane, but is higher than The Street, particularly when moving towards the north east. The site is currently accessed from an old farm track, come residential access, between numbers 30 and 32 The Street.

- 1.3. The site is immediately adjacent to the rear of dwellings on The Street and Vicarage Lane, on its north western and south western boundaries respectively. Along its south eastern boundary is public footpath ED56. The north eastern boundary of the site opens out on to open farmland and on to the southern end of the Timperley Place development.
- 1.4. Adjacent to the southern corner of the site is the grade II\* listed Church of St Nicholas, and its churchyard. Two tombs within the yard are grade II listed.
- 1.5. The Street and Vicarage Lane retain village and suburban characters respectively. The junction of The Street with the A258 London Road, the main access into Deal or Sandwich, is narrow and intimate in character, with visibility partially restricted by the road orientation and close boundaries on both sides, with no pedestrian footway. The Street is served by a regular bus service during the main hours of the day.
- 1.6. Approximate site dimensions (as seen from Vicarage Lane) are:
  - Depth – 258 metres (including access), 210 metres (not including site access).
  - Width – 267 metres.
  - Site area – 5.6 hectares.

#### Proposed Development

- 1.7. The proposed development is an outline application that comprises the erection of up to 48 dwellings and up to a 64 bedroom care home. Matters of layout, appearance, scale of development and landscaping are reserved.
- 1.8. The indicative drawing shows the development focused in the western section of the site, with an L shaped section of land bordering the north east and south east site boundaries.
- 1.9. This section of land would be set aside for the following:
  - 0.73 hectares existing woodland and copses
  - 0.74 hectares proposed structure planting
  - 0.45 hectares proposed SUDS
  - 0.31 hectares proposed LEAP and kickabout area
  - 1.06 hectares species rich grassland
  - 0.11 hectares retained scrubland

As well as including footpath links to the existing footpath ED56, running adjacent to the south east site boundary, on a south west – north east axis from London Road to Church Lane. This would equate to 60% of the site not being developed for housing or the care home.

- 1.10. The single vehicular access to the development would be taken from Vicarage Lane, where numbers 1 and 2 would be demolished. Around this junction parking would be restricted by double yellow lines. Six compensatory layby parking spaces would be created near to the junction within the site.

1.11. Works are proposed to The Street between its junctions with Vicarage Lane and London Road. This would comprise resurfacing with coloured blocks – black for the main carriageway and red for an indicated footway. At the junction with London Road, the footway would be built out into the carriageway to meet to the south western end of the proposed footway.

1.12. Plans will be on display.

## **2. Assessment**

### Deferred for Site Visit

2.1. At the Planning Committee meeting on 19 July 2018 members resolved to defer this application for a site visit on 21 August 2018, at 8am, for the following reasons: (i) Understand traffic movements in the vicinity of the site; (ii) Assess the proposed access and proposed off-site highways works at the junctions of The Street/London Road and The Street/Vicarage Lane; (iii) Assess the landscape impact of the proposals; (iv) Assess the visual impact of the proposals on the character and appearance of Sholden; (v) Assess whether the proposals would cause any harm to the setting of the Grade II\*-listed St Nicholas Church; and (vi) Understand the potential for motorised vehicle traffic to use footpath ED56 as a shortcut between Timperley Place/Church Lane and the proposed development site.

2.2. The outcome/discussion of the site visit will be reported at the meeting of planning committee on 23 August 2018.

2.3. Since the meeting on 19 July 2018, the following issues have arisen in relation to the determination of the proposal.

### NPPF 2018 – paragraph 177 – Ecological impacts, appropriate assessment and the presumption in favour of sustainable development

2.4. The position reported to planning committee on 19 July 2018 with regard to the ruling of the European Court of Justice (ECJ), the need for an appropriate assessment, and more widely, the application of the presumption in favour of sustainable development (the ‘tilted balance’), was that it was necessary to undertake an appropriate assessment for this application. It was further reported that an appropriate assessment was undertaken by the local planning authority (LPA), which concluded that there would be, “no likely significant effect from the proposed housing development on the Thanet Coast and Sandwich Bay SPA and Ramsar sites”. Natural England were satisfied with this assessment “providing that all mitigation measures are appropriately secured in any permission given”.

2.5. The two positions were somewhat contradictory, while the LPA concluded that there would be no likely significant effect, Natural England sought mitigation measures as part of any permission. It is considered logic would dictate that, if mitigation is required, there must be a likely significant effect.

2.6. Additionally, following the July committee meeting, this matter has been reviewed by the council’s principal ecologist and legal advice has been sought. This has concluded that, whilst some evidence has been provided which indicates residential development in the district may not cause a significant effect, it has not been sufficiently demonstrated that such an effect would not be

caused, having regard for the precautionary principle. Consequently an appropriate assessment must be undertaken.

The Conservation of Habitats and Species Regulations 2017, Regulation 63: Appropriate Assessment

- 2.7. All impacts of the development have been considered and assessed. It is concluded that the only aspect of the development that causes uncertainty regarding the likely significant effects on a European Site is the potential disturbance of birds due to increased recreational activity at Sandwich Bay and Pegwell Bay.
- 2.8. Detailed surveys at Sandwich Bay and Pegwell Bay were carried out in 2011, 2012 and 2018. However, applying a precautionary approach and with the best scientific knowledge in the field, it is not currently possible to discount the potential for housing development within Dover district, when considered in combination with all other housing development within the district, to have a likely significant effect on the protected Thanet Coast and Sandwich Bay SPA and Ramsar sites.
- 2.9. Following consultation with Natural England, the identified pathway for such a likely significant effect is an increase in recreational activity which causes disturbance, predominantly by dog-walking, of the species which led to the designation of the sites and the integrity of the sites themselves.
- 2.10. The Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy was agreed with Natural England in 2012 and is still considered to be effective in preventing or reducing the harmful effects of housing development on the sites.
- 2.11. For proposed housing developments in excess of 14 dwellings (such as this application) the Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy requires the applicant to contribute to the Strategy in accordance to a published schedule. This mitigation comprises several elements, including the monitoring of residential visitor number and behaviour to the Sandwich Bay, wardening and other mitigation (for example signage, leaflets and other education).
- 2.12. Having had regard to the proposed mitigation measures, it is considered that the proposal would not have a likely significant adverse effect on the integrity of the protected Thanet Coast and Sandwich Bay SPA and Ramsar sites. The mitigation measures (which were agreed following receipt of ecological advice and in consultation with Natural England) will ensure that the harmful effects on the designated site, caused by recreational activities from existing and new residents, will be effectively managed.”
- 2.13. In addition to this change in position, paragraph 177 of the NPPF (previously addressed under paragraph 119) states that the presumption in favour of sustainable development does not apply to any application requiring an AA because of its potential impact on a habitats site.
- 2.14. Accordingly, where the report of 19 July 2018 was written in the context of the presumption in favour of sustainable development being in effect, this report is no longer written in that context.
- 2.15. In ecological terms, it is important to note that the proposed development is still considered to be acceptable, but only subject to the appropriate mitigation

measures being secured. In terms of how the council had approached matters for residential developments prior to the ruling of the European Court of Justice (addressed in the report of 19 July 2018), the outcome in this case is very similar, but with the order in which mitigation can be factored in moved to a later point of the consideration process, and appropriate assessments now becoming a mandatory part of that process.

- 2.16. Where the presumption in favour of sustainable development no longer applies, this is considered below in the sustainability conclusion and general conclusion.

#### Proposed Highways Works/Sholden Parish Council comments

- 2.17. Sholden Parish Council has referred the planning committee to paragraph 8.11 of the Inclusive Transport Strategy 2018, which states:

“While we consider CIHT and DPTAC’s recommendations and how to take them forward, we are requesting that local authorities pause any shared space schemes incorporating a level surface they are considering, and which are at the design stage. We are also temporarily suspending Local Transport Note 1/11. This pause will allow us to carry out research and produce updated guidance.”

- 2.18. The position of KCC Highways in this instance is that the proposed works to The Street, between the junctions of Vicarage Lane and London Road, are not to introduce a shared surface, as the pedestrian use of the road with a dedicated footpath means that it is de facto already a shared surface and has always been so.

- 2.19. The works proposed by the applicant would bring about some formalisation of the shared surface and by providing visual cues that a pedestrian or pedestrians might be present, is likely to improve the existing functioning of this section of the highway. Accordingly, the proposal is considered to be a benefit on these terms.

#### NHS Contribution Request

- 2.20. At the meeting of planning committee on 19 July 2018 it was reported that the NHS had not responded in relation to the proposed care home, except in so far as to comment that the home could not be supported, or that a financial contribution should be sought if a recommendation to grant permission were to be made.

- 2.21. Since that meeting, the NHS has responded with the comment that, while still maintaining a position of not being able to support the impact of the care home on the operation of the local GP surgeries in the area, an additional request of £23,040 has been made toward the fitting out of the Balmoral surgery (total – £63,475.20).

- 2.22. The reasoning of the NHS that it cannot support the proposal is that it would adversely affect its ability to provide GP services. However, its request for contributions in relation to the care home, further considered below, effectively acknowledges that the proposal can be made acceptable in planning terms. Subject to a section 106 obligation on these terms, the impact identified by the NHS cannot be considered to be a lawful reason for refusal, because it can and would be mitigated.

- 2.23. The applicant has queried the NHS request in line with their comments regarding any ‘new’ occupants of the care home coming from within a 3 mile/10 minute

drive radius, logic follows that the care home would not be creating any new patient demand, and as such, the request made by the NHS is not reasonably related to the development – thereby not meeting the test of CIL regulation 122. However, it is recommended that the position of the local planning authority should be pragmatic, i.e. that while the applicant is quoting an expected radius from within which occupants of the care home will move, this cannot be guaranteed. The NHS, while maintaining a position that the care home cannot be supported, has nevertheless requested a financial contribution towards the fitting out of the Balmoral surgery. Accordingly, it is considered that the impact of the care home, by virtue of a request being made, can be accommodated.

2.24. In the report of 19 July 2018, the infrastructure officer had suggested that a contribution fairly and reasonably related in scale and kind to the development would be £13,492 (not £40,435.20), on the following basis:

- 48 dwellings would result in 112 people.
- Each person would equate to 0.08m<sup>2</sup> of floor space
- Each m<sup>2</sup> of floor space would cost £1,686.
- $112 \times 0.08\text{m}^2 = 8.96\text{m}^2$
- $8.96 \times £1,686 = £13,492$ .

2.25. However, this calculation was inaccurate, and should have read £15,106.56.

2.26. On the same basis, a further 64 people would increase the contribution sought to £23,738.88,

- $112 + 64 = 176$
- $176 \times 0.08\text{m}^2 = 14.08\text{m}^2$
- $14.08 \times £1,686 = £23,738.88$ .

2.27. The applicant has indicated that they are also willing to be pragmatic in these circumstances and meet the funding request.

#### Sustainability Conclusion

2.28. The implication of the European Court of Justice ruling in relation to the effect of a development on a European ecological site and the need to undertake an appropriate assessment, in combination with paragraph 177 of the revised NPPF, is that the tilted balance does not apply to the consideration of this planning application, regardless of whether the council can demonstrate a five year supply of deliverable housing land, or whether the relevant policies of the local plan are considered to be up to date.

2.29. Nevertheless, any adverse impacts and benefits of the proposal remain the same.

#### Economic Role

2.30. The proposed development would bring economic benefits in terms of time limited construction contracts. It would also bring longer term benefits, the proposed care home facility would bring with it a number of jobs, likely permanent and flexible, full time and part time. The largest economic benefit would come as a result of the number of people that would live within the individual dwellings, depending that is, on the degree to which these people might be new to the area, or moving within the area. These people would support the local economy to varying degrees, potentially with increased levels of local

spending. The site would no longer be productive farmland, however, this site has not been farmed in recent memory and the resultant effect of the development of sites accessed from Church Lane in particular, is that this site has become more difficult to access and farm profitably as part of a larger concern. In economic terms, it is considered that the benefits of the development would outweigh any adverse impacts.

### Social Role

- 2.31. As noted above, this development would bring with it new residents that could become part of and strengthen the existing community. The proposed care home would provide a social facility for an identified existing [and in the future, more critical] need, and this is considered to be a benefit in absolute terms. The proposed development would contribute to the council's five year land supply calculation and would also deliver 14 affordable houses, in accordance with the NPPF aim to significantly boost the supply of homes. There would also be planning obligations in support of local primary and secondary schools. New recreational facilities would be delivered for local children, as would newly accessible open space, to be secured in perpetuity. The comments of the CCG are taken into account and this represents a potential adverse effect of the proposal – it is noted that the proposed care home is considered to represent a potentially unacceptable strain on local GP surgeries, however, the CCG has now a financial contribution in relation to this. In terms of the social role, and the respective benefits and adverse impacts of this scheme, it is considered that the benefits ultimately outweigh any harm.

### Environmental Role

- 2.32. The environmental impact of the proposal is considered to be more balanced. There is a loss of countryside involved in the proposal, although in terms of character, as previously addressed, this is not necessarily considered to be harmful. Countering the absolute loss of countryside is the delivery of open space to be retained in perpetuity, along with an enhancement of the existing trees and vegetation around parts of the site, based on a precautionary principle, which would provide an ecological corridor for any local species. The development would bring with it activity where there has been none for a number of years, including increased travel movements in and around the proposed new junction between the site and Vicarage Lane, and between the junctions of The Street and Vicarage Lane, and The Street and London Road. However, it has been shown in the transport assessment, and through a safety audit, that these movements can be accommodated at peak times, such that there are no objections from KCC Highways or from Highways England. In heritage terms, the location of the grade II\* listed church is acknowledged and addressed by way of an indicative site layout that refrains from placing any dwellings within the setting of the church, to the degree that it both maintains views to it from the neighbouring countryside, and has raised no objection from the DDC heritage officer. The environmental aspects of the proposal are considered to be balanced, but in terms of adverse impacts outweighing benefits, this is not considered to be the case.

## **3. Conclusion**

- 3.1 It is acknowledged that the presumption in favour of sustainable development does not apply in determining this application. Nevertheless, the proposed development is still considered to be acceptable.

- 3.2 The statutory basis for determining an application is that the decisions are made in accordance with the development plan unless material considerations indicate otherwise.
- 3.3 The proposed development is outside of the settlement boundary and as such is not in accordance with the development plan. The development, however, does provide for new housing against the context of the NPPF, one aim of which remains to significantly boost the supply of new homes.
- 3.4 As assessed in the original report, it is considered that the development would provide a range of benefits being in a sustainable location adjacent to the existing urban area, where there are no statutory objections, and where no significant harm has been identified. It is concluded that this represents a material consideration which indicates permission should be granted contrary to the development plan.
- 3.5 Reviewing the proposal, it is acknowledged that it is in outline in form, so consideration in this case is against an indicative layout. However, as noted, there are elements of this which are fixed i.e. the proposed access, and other elements which would be difficult to alter i.e. the location of open space, which is to be secured in perpetuity through a legal agreement, and which provides an appropriate setting for the grade II\* listed church, as well as ecological enhancement measures.
- 3.6 Although paragraph 177 of the revised NPPF stipulates that if an appropriate assessment is required, the titled balance does not apply, it is correct to acknowledge that an appropriate assessment was undertaken and, subject to the mitigation payment being made, the development would not cause a likely significant effect.
- 3.7 There is not considered to be undue harm arising to the character of the countryside or the immediate vicinity, even accepting that some countryside would be lost to the development, and the separation of Middle Deal and Sholden, although reduced in terms of distance, would now be defined with no further narrowing possible at this location.
- 3.8 Concerns have been raised about the amount of traffic and transport movements that would be associated with the proposal, however, the applicants have demonstrated to the satisfaction of both KCC Highways and Highways England that any impacts would not be severe. The applicants propose works to the junction of The Street with London Road, and to the highway of The Street from that point north east as far as the junction with Vicarage Lane. These works would assist with the operation of this section of The Street, for both vehicles and pedestrians.
- 3.9 In terms of what has been identified as a shared surface, and the concerns raised by Sholden Parish Council – these are acknowledged, however, due to that surface already functioning as such, the proposed works are considered to be a benefit, as commented by KCC Highways.
- 3.10 The proposed development would meet all compliant planning obligations and policy required contributions, so in this regard, is seen to be addressing its own impacts, such that benefits might be provided to the local communities.
- 3.11 There are no flooding or drainage concerns and the site can be adequately serviced by the full range of utilities.

- 3.12 It must be acknowledged that the NPPF has been revised since the July committee meeting. However, except where discussed in this report, it is not concluded that the changes materially affect the conclusions reached in the previous committee report (Appendix 1).
- 3.13 Accordingly, in light of the presumption in favour of sustainable development not applying, the benefits of the proposal, combined with harm not being identified, remain such that the recommendation is to grant permission.

g) **Recommendation**

- I. Planning permission be GRANTED, subject to the signing of a section 106 legal agreement, and planning conditions, including the following: (1) Reserved matters – layout, appearance, scale of development, landscaping (2) RM application time limit (3) Approved drawings (4) Commencement time limit (5) Affordable housing (6) Contamination investigation and verification (7) Construction management plan (8) Surface water drainage scheme and verification (9) Foul sewage (10) Biodiversity enhancement (11) External lighting (12) Soft and hard landscaping, including means of enclosure (13) Archaeology (14) Finished floor levels (15) Samples (16) Highways – no surface water on to highway (17) Highways – bound surface (18) Highways – vehicle parking and turning facilities (19) Highways – cycle parking (20) Highways – completion of site access before occupation (21) Highways – completion of improvements to The Street before first occupation (22) Highways – completion of roads, footways, footpaths, verges, junctions, street lighting sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture in accordance with approved details by X time (23) Highways – completion of works between adopted highway and dwelling before occupation of dwelling – footways and/or footpaths; carriageways, turning facilities, highway drainage, visibility splays, street lighting, street name signs and highway structures (if any) (24) Highways – provision and maintenance of visibility splays onto Vicarage Lane (no obstructions above 1 metre in height) (25) Highways – driver visibility splays (26) Highways – pedestrian visibility splays (27) Highways – pedestrian and cycle connections to ED56 (28) Site levels (29) Details of earthworks (30) Arboricultural method statement (31) Wildlife enhancement scheme (32) Refuse and recycling storage (33) Broadband connection (34) Residential sprinklers (35) Surface water drainage – infiltration drainage to be agreed (36) Surface water drainage – no building to be occupied until verification of drainage scheme.
- II. That powers be delegated to the Head of Regeneration and Development to settle the detail of the section 106 agreement in relation to the delivery, management and ongoing maintenance of the proposed open space and ecological enhancement land.
- III. That powers be delegated to the Head of Regeneration and Development to settle any necessary planning conditions in line with the issues set out in the recommendation and as resolved by the Planning Committee.

Case Officer

Darren Bridgett