

- a) **DOV/19/00105 – Erection of a detached dwelling, with associated parking and creation of vehicular access (existing boundary wall to be removed) - Land adjacent to 44 Foster Way, Deal**

Reason for report: Application called-in by Ward Member (Cllr Gardner)

- b) **Summary of Recommendation**

Planning permission be refused.

- c) **Planning Policies and Guidance**

Core Strategy Policies

- CP1 – Requires that the location and scale of development complies with the Settlement Hierarchy. Deal is identified as a District Centre, which is the secondary focus for development in the District; suitable for urban scale development.
- CP6 - Development that generates a demand for infrastructure will only be permitted if the necessary infrastructure is either already 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 2018 (NPPF)

- Paragraph 2 states that “planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise”.
- Paragraph 8 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. These three overarching objectives are interdependent and need to be pursued in a mutually supportive way.
- Paragraph 11 states that where development accords with an up-to-date development plan it should be approved without delay; or where there are no relevant policies or the most important policies for the determination of the application are out of date, then also granting consent. Where there is a clear reason for refusing the proposed development due to conflict with an area/asset of particular importance (as identified in the framework); and/or

where any adverse impacts of granting permission significantly and demonstrably outweigh the benefits, when taking the Framework as a whole, then planning permission should be refused.

- Paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.
- Paragraph 47 'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing'.
- Chapter five of the NPPF seeks to significantly boost the supply of housing, requiring Local Planning Authorities to identify specific deliverable sites sufficient to provide five years' worth of housing.
- Chapter nine of the NPPF seeks to promote sustainable transport.
- Chapter twelve seeks to achieve well-designed places, with the creation of high quality buildings and places being fundamental to what planning and development process should achieve.
- Chapter fifteen requires that the planning system contributes to and enhances the natural and local environment, by recognising the intrinsic character and beauty of the countryside, protecting valued landscapes, geological conservation interests and soils, recognising the value of ecosystems, minimising impacts on, and where possible enhancing, biodiversity, preventing pollution and remediating contamination.
- Chapter sixteen of the NPPF seeks to conserve and enhance the historic environment.
- Paragraph 177 states 'The presumption in favour of development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.'

The Kent Design Guide

The guide provides criteria and advice on providing well designed development, emphasising that context should form part of the decision making around design.

d) **Relevant Planning History**

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

DOV/16/00998 – Erection of two detached dwellings and creation of parking – Refused and Dismissed at Appeal

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 and Allowed at Appeal

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) – Refused

DOV/17/00514 - Variation of condition 2 of planning permission DOV/15/00327 to allow changes to approved plans (application under section 73) – Granted

DOV/17/00832 – Erection of a detached dwelling – Granted

DOV/17/01022 - Erection of a detached dwelling with associated parking and creation of vehicular access - Refused

In addition to the above applications, 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.

DOV/17/01022 - Erection of a detached dwelling with associated parking and creation of vehicular access. Refused and dismissed at appeal.

DOV/17/01369 - Erection of single storey dwelling with associated parking and creation of vehicular access. Refused and dismissed at appeal.

DOV/18/01006 - Erection of a detached dwelling with associated parking and creation of vehicular access. Refused.

e) **Consultee and Third Party Responses**

Deal Town Council – object to the planning application for the following reasons:

- over development of site,
- proximity to adjacent houses,
- party wall cannot be removed
- amended proposal does not address issues in DDCs previous refusal

Southern Water – no objection raised. An informative has been recommended to be attached in the event of grant of permission.

County Highways – this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

Public Representations:

Twenty four (24) representations received objecting to the planning application and raising the following relevant planning matters:

- would erode the openness
- over intensification of the site.
- Removal of boundary wall will result in increase in parking in Foster Way.
- The current gap provides a pleasant break between developments.
- Extremely overbearing.
- Loss of privacy, security.
- Tunnelling effect.
- Landscaping as approved under the previous application never materialised and the reason this area is looking as waste ground is because the builder refuses to finish clearing this site and therefore is using this area as a dumping ground for building materials.
- Would result in the overdevelopment of the site.
- The development would obstruct views.
- Fails to integrate into the area.
- Out of keeping with Belvedere Gardens and Foster Way homes and appears very cramped.
- Does not address the reasons why planning permission was rejected on 4 previous occasions and 3 rejections by the Planning Inspectorate.
- Affects the lives of the residents of Foster Way.

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, although distinctive styles of dwellings are typically found grouped together.
- 1.2 The site itself lies at the end of a row of nine dwellings which are understood to have been substantially completed (some of these dwellings appear to have been occupied). The access road is now known as Belvedere Gardens.
- 1.3 The site was previously intended, under the original application (DOV/15/00327, as amended) and a subsequent Section 73 application to provide residential garden. However, the development has not been completed and the site remains vacant. The approved landscaping has not been carried out. More recently, trenches have been dug and concrete slabs (which have the appearance of foundations) have been poured on site.
- 1.4 This application seeks permission for the erection of a detached two storey bungalow which would be located towards Foster Way (south west) end of the site. It is proposed to demolish the existing boundary wall along the northwest boundary of the site to provide access off Foster Way. The dwelling would be provided with one car parking space which would be accessed from Foster Way. It is important to note that the dwelling which is the subject of the current application is in about the

same location as the dwelling which was refused and subsequently dismissed at appeal, under application number DOV/16/00998 and in the same location as the recently refused dwellings under application numbers DOV/17/01022, DOV/17/01369 and DOV/18/01006. The Inspector's decision, the decision notice for the refusal and the changes which have been made will be important considerations in the assessment of this application.

2 **Main Issues**

2.1 The main issues are:

1. The principle of the development
2. The impact on the character and appearance of the area
3. The impact on residential amenity
4. The impact on the highway network
5. The impact on ecology

ASSESSMENT

Principle of the Development

2.2 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.

2.3 The site lies within the settlement confines of Deal. It is considered that the principle of the development is acceptable, subject to site-specific considerations.

Impact on the Character and Appearance of Area

2.4 It is considered relevant to draw a comparative analysis between the previous refusals, appeal decisions and the current application. To date, there have been four refusals followed by three dismissed appeals, relating to the erection of a dwelling on this site.

2.5 Application DOV/16/00998, which proposed a dwelling on the site, was refused, in part, due to the harm it would cause to the character and appearance of the area. The reason for refusal read:

“The proposed development, by virtue of the location, layout, scale and design of the dwellings, together with their relationship with adjoining properties, would create a cramped and congested form of development, out of character with the pattern of development within the area. Consequently, the development would fail to integrate into, and cause harm to, the character and quality of the area, contrary to paragraphs 17, 58, 59, 60, 61 and 64 of the National Planning Policy Framework”.

2.6 This decision was subsequently dismissed at appeal. In respect of the proposed dwelling on the current application site which would have been a detached chalet bungalow of similar design to the approved dwellings in Belvedere Gardens, the Inspector commented at paragraphs 6, 7 and 8 of her Appeal Decision:

“No 24 would occupy a plot at the end of a run of new semi-detached chalet this run of buildings and would have very limited effect on the street scene

from Dola Avenue, being separated by some distance. I am again advised that the plot was proposed to form a garden area under the permitted scheme, which would give a pleasant, spacious character to this end of the development. However, given that the siting, scale and design of No 24 would reflect that of the adjacent new buildings, I consider that the character and appearance of the wider development, of itself, would not be significantly altered by the introduction of this additional unit.

Notwithstanding, this end of the development, and particularly the plot which would accommodate No 24, is clearly visible from Foster Way. From there, the plot offers separation between the individual style of the new development and existing houses in Foster Way, particularly Nos 44 and 42. This gap provides a sense of openness between the two streets and is currently dominated by a tall tree. No 24 would significantly erode this openness, partially obscuring the tree from Foster Way, which would result in a cramped appearance to this end of the development when viewed from Foster Way. Furthermore, No 24 would present a rear elevation to Foster Way, bounded by a wall enclosing the dwelling from the road, which would be generally out of keeping with the front elevations interacting with the road in this vicinity. For these reasons, No 24 would appear out of keeping with the general form and pattern of development of the surrounding area.

In light of the above, I conclude that the proposed development would significantly harm the character and appearance of the area. This would be contrary to the aims of the National Planning Policy Framework (the Framework), in particular Paragraphs 17, 58, 60 and 64 which among other things seek high quality design that responds to local character, promotes local distinctiveness and takes opportunities to improve the character and quality of an area. Paragraphs 59 and 61 are of no significant relevance to this appeal in that they respectively relate to design codes and policies and to connectivity between people and places”.

- 2.7 In summary, the Inspector concluded that the development would cause no harm to the visual amenity of Belvedere Gardens or Dola Avenue. However, the Inspector considered that: the dwelling on the current application site would be clearly visible from Foster Way; the gap created by the site provides an important sense of openness; the loss of this gap would cause a cramped appearance to the development when viewed from Foster Way; and the design of the development would be out-of-keeping with the properties in Foster Way.
- 2.8 Subsequently, a further application was submitted on this site, under application number DOV/17/01022 for a chalet bungalow. The size and general form of the building proposed by that application was similar to the previously dismissed scheme, but was located around half a metre further from the side elevation of No.22 Belvedere Gardens and consequently closer to the boundary with No.44 Foster Way. Whilst the detailed design was amended, the changes were not significant and, as such, the development was not considered to have overcome the previous concerns. The application was therefore refused and subsequently, dismissed at appeal.
- 2.9 In respect of the proposed dwelling on the current application site, the Inspector in his decision commented at paragraph 8:
“The chalet bungalow proposed in Appeal B would reflect the scale and appearance of the neighbouring development, and the entrance from Foster

Way means that it would relate to neighbouring dwellings in that road. As such, it would not harm the character and appearance of the surrounding area”.

It is noted that the Inspector in his assessment, did not comment upon the importance of this gap which was discussed by the previous Inspector for a similar scheme refused under (DOV/16/00998). It is considered that the assessment regarding the sense of openness that this gap provides remains relevant in this instance and has been discussed at length at paragraph 2.14.

2.10 A further application was submitted on this site, under application number DOV/17/01369 for a single storey dwelling in a similar location as, and having a similar footprint to, the refused and discussed schemes. However, the scale of the building had been significantly reduced to a single storey height and, consequently, the design had also been amended. The proposal was refused on the grounds of impact on visual amenity and unacceptable impact on residential amenity and was dismissed at appeal.

2.11 In respect of the proposed single storey bungalow, the Inspector in his decision commented at paragraphs 6 and 7:

“The appeal site is prominent in views along Foster Way as it is located at the end of the road. The bungalow proposed would contrast with the surrounding development. It would be low and there is a wall that forms the boundary to the Foster Way, limiting views into the site. Nevertheless, the roof of the proposed bungalow would be visible and would appear incongruous between the two storey houses at 42-44 Foster Way and chalet bungalows in Belvedere Avenue and at 27 Foster Way.

I note that there are other bungalows at the other end of Belvedere Avenue. However, these are located a short distance away, within a different immediate context and in a less prominent location. As such, they do not affect my conclusions as to the effect of the proposed bungalow in Appeal A on the character and appearance of the area.”

2.12 In summary, the Inspector concluded that by virtue of its overall form and design, the proposed single storey bungalow would be out of keeping with the properties in the street and deemed it unacceptable in terms of its impact on the visual amenity.

2.13 The fourth application was submitted on this site, under application number DOV/18/01006 for a two storey dwelling in a similar location as, and having a similar footprint to the current application and the refused and discussed schemes. Consequently, the proposal was refused by the authority of Planning Committee on the grounds of impact on visual amenity and unacceptable impact on residential amenity.

2.14 Members will note that the site is visible from Foster Way and it was the impact of the development from here that led to the previous refusals and three dismissed appeals. This application introduces a dwelling of a substantial scale which is similar in scale and design to the previously refused scheme (DOV/18/01006). It is also relevant to note that it is substantially larger than the other three previously refused and dismissed schemes in terms of overall massing and height. As such, the issue with regards to the intrusion of the sense of openness raised by the previous Inspector remains unaddressed. The application site functions as a transition space between the developments on either side and facilitates their co-

existence in an amenable manner. Prior to concluding, regard must also be had to the detailed design of the scheme which should be assessed in conjunction with the identified harm which would be caused by virtue of erosion of an important transition gap. The overall appearance of the building would remain consistent with the overall appearance of the dwellings in the immediate vicinity to the southwest (i.e. nos 42 and 44 Foster Way), thereby exhibiting stark differences in terms of design with respect to the dwellings immediately adjoining the application site to the northeast. Given the clash of architectural styles, it is felt that the need for the retention of open space between the developments becomes even more pronounced. Whilst the proposal replicates the design of the immediately adjoining properties in Foster Way, it is not considered that this design overcomes the concerns raised regarding its impact on the character and appearance of the street scene.

Impact on Neighbours

- 2.15 The most recent applications DOV/18/01006 and DOV/17/01022 were refused, in part due to the unacceptable sense of enclosure to, and corresponding loss of outlook from, that property, resulting in an unacceptable loss of amenity to No.44 Foster Way. Moreover, in dismissing the appeal (DOV/17/01022), at paragraphs 11 and 13 of the appeal decision, the Inspector commented that:

“The chalet bungalow proposed in Appeal B would have a side gable end facing towards the boundary of no.44 and would replace previous mature planting on the appeal site. The relationship between the proposed chalet bungalow and no.44 would result in the proposed chalet bungalow dominating that front garden area and the front windows of no.44 to create a tunnelling effect similar to that referred to in the previous appeal decision. The modest gap between the dwelling and the boundary and removal of boundary wall would not materially alter that effect.

For these reasons, I conclude that the proposal in Appeal B would result in harm to the living conditions of the occupiers of 44 Foster Way by reason of outlook. As such, the development in Appeal B (DOV/17/01022) would be contrary to policies contained within the Framework that seek a high quality of design and a good standard of living conditions for existing occupants of buildings”.

- 2.16 It is considered that the thrust of the above assessment remains relevant in this instance. For ease of understanding, it would be relevant to draw a comparison between the two schemes (DOV/17/01022 and DOV/19/00105 (current)) with a view to fully understand the associated impacts.
- 2.17 The height of the proposed dwelling is about the same height as the previous scheme (DOV/17/01022); however, it has been amended from a chalet style bungalow (which had a lower eaves height of approximately 2.5m) to a two storey dwelling with a gable roof with an eaves height of approximately 3.9m and a ridge height of 7.5m. The gable ends would face Belvedere Gardens and Foster Way to the southeast and northwest respectively whilst the southwest roofslope would face nos 42 and 44 and the northeast roofslope would face no.22. In summary, it means that the proposed dwelling has been orientated such that the longer and bulkier elevation would face the neighbouring properties in question, i.e. nos. 42 and 44, albeit the gables would no longer be adjacent to these neighbours. It is considered that the proposal would result in a severe sense of enclosure, loss of outlook and

overshadowing and would thereby unduly prejudice the living conditions of the occupiers of no.44. It is considered that having regard for the previous refused applications and dismissed appeals, this harm is sufficient to warrant a refusal.

- 2.18 Whilst unacceptable harm would be caused to the living conditions of no.44, the side elevation of No.42 does not contain any windows and, as such, no sense of enclosure, loss of light or overshadowing would occur.
- 2.19 Concerns have been raised by third parties that the development would obstruct views. However, the loss of or harm to a view is not a material planning consideration and cannot, therefore, be attributed weight.

Living Conditions of Future Occupiers

- 2.20 The dwelling proposed would be of a reasonable size, would be naturally lit and ventilated and would have access to a private external amenity area. An area is shown on the submitted drawings for the convenient and discrete storage of refuse. Consequently, it is considered that the living conditions of future occupiers would be acceptable.

Highways/Travel Impacts

- 2.21 The application proposes the provision of one car parking space, which would be accessed from Foster Way.
- 2.22 The dwelling is shown to provide two bedrooms and is within a suburban location. Table 1.1 of the Core Strategy advises that 2-bed dwellings in such locations will be expected to provide 1 allocated car parking space, with an additional 0.2 spaces provided for visitors. As such, the development would give rise to a need for 1.2 car parking spaces. Consequently, the development would be deficient in car parking, albeit by a fraction of a space. It is acknowledged, as set out by third parties, that car parking in Foster Way is constrained, particularly in the evenings and at weekends. Whilst the development would be likely to increase pressure for visitor parking at Foster Way, it is not considered that this additional pressure would amount to a severe cumulative impact on the road network or cause an unacceptable impact on the highway safety, which is the relevant test within the NPPF (paragraph 109). It is noted that none of the previous applications were refused or dismissed on highway grounds.
- 2.23 The submitted drawings show the provision of vertical cycle storage, consistent with the storage which has been provided for the approved dwellings in Belvedere Gardens. This provision is considered to be acceptable, subject to a condition ensuring that the storage is provided at the time of occupation.

Ecology

- 2.24 Having regard for Natural England's Standing Advice, it is not considered that the site includes any features likely to provide habitat for protected or notable species.

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

- 2.25 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.

- 2.26 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.
- 2.27 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.
- 2.28 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.
- 2.29 Given the limited scale of the development proposed by this application, a contribution towards the Councils Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy will not be required as the costs of administration would negate the benefit of collecting a contribution. However, the development would still be mitigated by the Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy as the Council will draw on existing resources to fully implement the agreed Strategy.

3. **Conclusion**

- 3.1 Whilst the principle of the proposed development is acceptable, it is not considered that the development has overcome the concerns which led to the refusal of the previous applications (DOV/16/00998, DOV/17/01022, DOV/17/01369 and DOV/18/01006) and the subsequent dismissal of the appeals in relation to the same, insofar as they relate to the development of the current application site. In particular, the development would cause unacceptable harm to the character and appearance of the area and harm to the residential amenity of No.44 Foster Way. For these reasons, it is recommended that planning permission be refused.

g) **Recommendation**

- I Planning permission be REFUSED for the following reasons:
 1. The proposed development, by virtue of the location, layout, scale and design of the dwellings, together with their relationship with adjoining properties, would create a cramped and congested form of development, out of character with the pattern of development within the area. Consequently, the development would fail to integrate into, and cause harm to, the character and quality of the area, contrary to paragraphs 127, 130 and 131 of the National Planning Policy Framework.
 2. The proposed dwelling, by virtue of its location, scale and relationship with No.44 Foster Way, would cause an unacceptable sense of enclosure to, and corresponding loss of outlook from, that property, resulting in an unacceptable loss of amenity, contrary to paragraphs 127 of the National Planning Policy Framework.

- II Powers to 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

Benazir Kachchhi