

a) **DOV/19/00106 Erection of a detached dwelling with associated parking at Land adjacent to St Mary's Grove Cottage, St Mary's Grove, Tilmanstone**

Reason for report: At call-in request of Cllr Manion

b) **Summary of Recommendation**

Planning permission be refused.

c) **Addendum to Committee Report of 30 May 2019**

1.1 Members will recall that this application was considered at the Planning Committee meeting held on 30<sup>th</sup> May 2019. It was resolved to defer the application to enable a site visit, in order that Members could make an assessment of the impact of the proposal on the open character of the landscape and have regard to the personal circumstances of the applicants. The site visit will take place on Tuesday 18<sup>th</sup> June 2019.

1.2 A copy of the May committee report is attached for reference and should be read in conjunction with this report. The issues raised in this report are set out in response to points raised in the previous meeting and to clarify matters.

1.3 As outlined in the committee report the proposal represents a departure from the Development Plan (Core Strategy) in that it involves development at a Hamlet, outside of any identified settlement confines (paragraph 2.4 of the committee report refers). Policy DM1 states that development will not be permitted on land outside settlement confines unless:

- a) It is specifically justified by other development plan policies. (e.g. rural exception affordable housing).
- b) The development functionally requires a rural location (e.g. an agricultural workers dwelling).
- c) The proposal is ancillary to existing development (e.g. an annex for older relatives).

The proposed development does not fall within any of the above categories and as a result is contrary to policy DM1 which seeks to restrict development in the rural area in the interests of protecting the countryside and reducing travel by non-sustainable modes. The proposal is also contrary to the settlement hierarchy of the Plan (Policy CP1) which identifies Tilmanstone as a hamlet, not suitable for further development unless it functionally requires a rural location.

1.4 At the same time it needs to be recognized that part of the evidence base underlying the Core Strategy is not up to date which has the effect of applying less weight (for decision making purposes) to those policies which seek to control/manage residential development in the rural area, namely Policies CP1 and DM1. It's important to point out however that general countryside protection policies (DM15 and DM16) are not held to out of date and are considered to accord with the objectives of the NPPF. Therefore they can be afforded full weight.

- 1.5 Where relevant policies are not held to be 'up to date', the NPPF (paragraph 11) indicates, in line with the presumption in favour of sustainable development, that planning permission should be granted for the development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal when weighed against the policies of the NPPF as a whole.
- 1.6 This assessment, known as the "tilted balance" requires a clear understanding of the benefits and adverse impacts of the proposal relative to the overall aims of NPPF policy which is to achieve sustainable development having regard to economic, social and environmental objectives.
- 1.7 In economic terms and in the event that planning permission is granted, the proposal would provide some limited employment opportunities for a short period of time whilst the dwelling is constructed. In addition the occupants of the proposed dwelling could, in a very limited way, make use of local services and facilities in support of the local economy.
- 1.8 Some social benefits would arise from the supply of one new dwelling to the local housing supply. This is however a small contribution and it is recognised in paragraph 2.38 of the committee report that Dover District currently has a five year housing land supply, following the outcome of an Annual Monitoring Report in March 2019. The application proposes the provision of a 'lifetime home' to meet the particular needs of the applicant and in so doing would help meet a health and social need.
- 1.9 Environmental benefits of the development include the fact that the site, being garden land outside a settlement boundary, is technically 'previously developed land', the use of which is supported by the NPPF. At the same time, the proposed house would be occupied as a separate dwelling such that it would not be ancillary to the existing house or functionally require a rural location as such. The new dwelling would lead to additional travel from outside a defined settlement. Given the remote nature of the hamlet and the lack of alternative transport modes and limited services and facilities (there is a village hall, church and a childrens' play area, but no shops at Tilmanstone) most travel for day-to-day needs would be by private car. This would work against the NPPF objective of shaping places in a way that supports the transition to a low carbon future. It would also be contrary to DM11 of the Core Strategy.
- 1.10 The new dwelling would be sited on the edge of the hamlet and would be visible from public areas within the rural area, principally from North Court Lane, to the northwest of the site, adjoining and along which is a public right of way (Bridleway) EE266. Views of the dwelling from this direction would be clear and would result in a prominent form of built development in a location where the visual transition between the open countryside and the historic hamlet, is pleasantly 'soft' and sylvan in character, in a manner that compliments and enhances the rural character of the area. The current openness of the application site is important to retaining this transitional

character. The introduction of additional development in the from proposed would create a 'harder' edge to the hamlet. It would compromise the prevailing visual character and detract to the appearance of the countryside at this point contrary to Policy DM15. Policy DM15 does allow for a range of development 'exceptions' in the countryside which might cause harm to its character or appearance, including development justified by the needs of agricultural. However, residential development, such as the type proposed in this application are not included in the list of exceptions.

- 1.11 The concerns raised in this case relating to the harmful impact on the character of the countryside and the encouragement of non-sustainable travel are well established planning considerations which have informed the restrictive policy of the Core Strategy in this area (which prohibits new housing at hamlets) and which remain key issues in the NPPF for assessing the suitability of sites for housing development. The conclusion as set out in the May committee report, was that the proposal would conflict with these key policy issues (contrary to the Development Plan and NPPF) and as such planning permission should be refused.
- 1.12 As outlined at the Planning Committee meeting of 30th May, personal circumstances have been cited in this case as justification for the development, contrary to policy. These relate to the difficulties associated with adapting the applicant's current property (which is a listed building) to accommodate needs arising from a lack of mobility which are making day to day living increasingly difficult. The applicants wish to stay living in the village and the provision of a 1½ storey lifetime home on the site would facilitate this.
- 1.13 The needs of the applicant are material to the application; the NPPF recognizes that the needs of groups with specific housing needs, including people with disabilities, should be addressed. The Public Sector Equality Duty contained in the Equality Act 2010 also places a requirement on the local authority to minimize disadvantages suffered by disabled persons, albeit this does not necessarily override other requirements, such as planning policy.
- 1.14 Where consideration is to be given to setting aside established policy on the basis of a personal need, it would be expected (based on the approach taken by the Planning Inspectorate at appeal and elsewhere) that the case would have to be both compelling and of a type that was so specific, that it would be unlikely to repeated – this being important to ensure that a grant of permission wouldn't set a precedent for other similar developments. Based on the evidence currently before committee, regarding the circumstances associated with the need for the dwelling, it is not considered that this 'high bar' has been addressed such that permission could be exceptionally granted. In an appeal case elsewhere (which provides a useful comparison) the Inspector in grappling with similar types of issues raised by the current application, reached a decision to exceptionally grant permission (contrary to policy) having regard to:
  - The applicants serious illness confining him permanently to a wheelchair;

- The conclusion that the family's needs would be better served by a new dwelling on a single level;
- Evidence relating to the applicants search for alternative properties nearby;
- Evidence relating to the applicant's financial position;
- Confirmation that the proposed dwelling was not excessive and was proportionate to the identified need;
- The conclusion that the consequences of a refusal of planning permission would render the applicants homeless or force upon them separate living arrangements as a consequence of which their Human Rights (under Article 8 of the Human Rights Act 1998) would be materially compromised – a fact given considerable importance by the Inspector;
- The uniqueness of the circumstances that would enable the local planning authority to resist future proposals for new dwellings in an area where policy prohibits housing; and
- Recognising also the benefit of adding to the supply of housing for disabled persons, the imposition of a planning condition limiting occupation of the dwelling to persons with mobility issues.

- 1.15 The range of issues set out above, while drawn from one appeal, help identify the strength of case necessary for a personal need to override established policy and the type of controls potentially required through planning condition. Your officers have visited the site and met with the applicant and made the agent aware of the considerations outlined here. While difficulties associated with adapting the listed building are fully understood, at this current time, the need case outlined in the application are considered to fall well short of demonstrating that a truly exceptional case exists that would justify setting aside policy and the harm identified.
- 1.16 In summary, a key question to ask is whether this is the right location for residential development? - Whether the proposed development would provide a suitable site for housing, having regard to the proximity of services, the character/appearance of the area and the suitability of the highway network. In respect of the first two issues in particular, the site is considered unacceptable, giving rise to environmental objections which would significantly and demonstrably outweigh the benefits of the proposal. As a consequence it is judged that the proposal would not constitute a sustainable form of development and as such would be contrary to the objectives of the NPPF and the Development Plan.
- 1.17 Both Officers and Councillors are sympathetic to the needs of the applicants at St Mary's Grove Cottage and their preference to remain living in Tilmanstone. It would always be open to the applicant to seek to address the matters/issues outlined here as part of a future enquiry (although no commitment can be given as to whether any augmented case could be supported) however based on the nature of the application currently before committee, the recommendation remains to refuse permission.

Further matters

- 1.18 The outcome/discussion that took place at the site visit will be reported verbally at the Planning Committee meeting on 20<sup>th</sup> June 2019.
- 1.19 Since the original report was prepared, Tilmanstone Parish Council confirm they have 'no comments' to raise on the proposal.

d) **Recommendation**

REFUSE PLANNING PERMISSION for the following reason: (1) The proposed development would be located outside of any settlement confines, as identified on Dover District Council Policies Map 2015, does not functionally require a rural location and would not be ancillary to existing development and would therefore represent an unsustainable form of development. The proposal would be highly visible within its rural setting and harmful to the open character and appearance of the adjoining countryside. The proposal would be contrary to policies CP1, DM1, DM11, DM15 and DM16 of the Core Strategy and paragraph 127 of the National Planning Policy Framework.

Case Officer  
Hilary Johnson