

- a) **DOV/19/00487 – Change of use of building and land to café/restaurant (Class A3 Use), with alterations to the front elevation of the building, and provision of an external seating area - Land at Captain’s Gardens Cottage, Victoria Road, Deal**

Reason for report: Councillor call-in.

- b) **Summary of Recommendation**

Planning permission be granted.

- c) **Planning Policies and Guidance**

Core Strategy (CS) Policies

DM1 - Development will be permitted within the settlement boundaries

Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990

Section 66 of the above Act requires the decision maker to have special regard to the desirability of preserving a listed building or its setting, or any features of special architectural or historic interest it possesses.

Section 72 of the above Act requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

National Planning Policy Framework 2019 (NPPF)

Section 8 is relevant as it seeks to promote and provide healthy and safe communities, and social, recreational and cultural facilities through providing safe and accessible places.

Section 9 is relevant as it seeks to promote sustainable transport, and to ensure that safe and suitable access to sites can be achieved for all users.

Section 12 is relevant as the proposal should seek to achieve well-designed places ensuring that development will function well and add to the overall quality of an area, be sympathetic to local character and history and 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.

Section 16 is relevant as it seeks to ensure that the historic environment is conserved or enhanced. The application site falls within the Middle Deal Conservation Area and within an Article 4(2) Direction - as part of the Middle Deal Conservation Area.

Deal Castle is a Scheduled Ancient Monument. Paragraph 194 of the NPPF requires that when considering potential impacts any substantial harm to, or loss of assets of the highest significance notably scheduled monuments ... should be wholly exceptional. Paragraph 195 of the NPPF sets out the assessment required where a proposed development will lead to substantial harm. Paragraph 196 sets out the assessment required when development will lead to less than substantial harm.

### The Victoria Road and Wellington Road Conservation Area Appraisal 2019

This Appraisal is an adopted Local Development Document. It identifies the site as adjoining (to the immediate east of) the Conservation Area and the land behind the application building (the Garden) as an important parcel of open space in the Conservation Area. It also identifies the Captains Garden Cottage as a heritage asset of local importance.

### Dover District Heritage Strategy 2013

This Strategy provides guidance on the future protection and enhancement of the district's historic environment. With regard to Middle Deal Conservation Area, one of the document's objectives is for landscape management to take place around Deal Castle, in particular the overgrown trees and hedges to the north west of Deal Castle should be thinned to allow glimpses from the approach roads.

### The Kent Design Guide (KDG)

The Guide provides criteria and advice on providing well designed development that takes into account context.

### National Design Guide 2019

This Guide provides detail and advice on how to achieve well-designed places as required by the NPPF.

#### d) **Relevant Planning History**

16/01370 – Granted, for the re-surfacing of the Deal Castle's visitor car park, alterations to vehicular access, installation of pay machine and cycle stands.

19/01222 – Granted, for Change of use to office/studio, retail and assembly and leisure (Mixed Use Class A1, B1(a), D2) of the building (former stables) immediately north of the current application site. Planning conditions imposed on this decision prevented the premises from relaying amplified sound, required all windows and doors to be closed after 1800 hours daily, and restricted the hours of use of the premises to 1900 hours (for the office use), to 1800 hours (for the retail use) and to 2100 hours (for the D2 use) daily.

#### e) **Consultee and Third-Party Responses**

Dover Council Waste Services: No comments to make

Kent Highways:

1. To the initial submission, KCC Highways did not object to the lack of on-site car parking (as public parking is available opposite the site and on-street in the vicinity of the site) and considered the servicing arrangements acceptable. However, concerns were expressed regarding pedestrians having to cross the A258 to reach the proposed café from the Castle and its parking area, due to the width of the road and the difficulty of crossing in a single attempt. As such, a pedestrian island was sought together with dropped kerbs and tactile paving on each side of the road.

2. On receipt of additional drawings (SK15 Rev B), KCC Highways noted that the existing access to the site needed widening (which could be dealt with under Section 278 of the Highways Act 1980), but raised no objections in respect of highway matters subject to the following being secured by condition:

- Completion of the pedestrian crossing shown on the submitted plans or amended as agreed with the Local Planning Authority prior to the use of the site commencing.
- Provision and permanent retention of the vehicle turning facilities shown on the submitted plans prior to the use of the site commencing.

3. To an additional drawing (SK15 Rev C), KCC Highways objected as this Drawing does not provide the minimum 3.25 metre-wide running lanes required on each side of the proposed pedestrian island.

Kent Archaeology Unit: No measures required.

Environment Agency: No comments to make.

Walmer Parish Council:

1. Objects to the proposal as the proposed crossing is in the wrong location and is considered a potential safety hazard.
2. Supports the change of use to cafe/restaurant (Use Class A3) with 52 external seating area and alteration to front door. However, the committee objects to the proposal of the formation of a pedestrian crossing as the proposed crossing is in the wrong location and is considered a potential safety hazard.

Deal Town Council:

1. Raises no objections and fully supports KCC Highways' concerns regarding pedestrian safety and the recommendation to install a pedestrian island.
2. Objects to the proposed pedestrian crossing in its current position on highway safety grounds and the negative impact of the crossing's infrastructure on the setting of the ancient monument.
3. Objects to the amended proposed pedestrian crossing on highway safety grounds (Drawing SK15 Rev C) which is highlighted in Kent County Council's Highways response stating that the pedestrian island is unacceptable as it does not provide the minimum 3.25 metre-wide running lanes required on each side.

Environmental Protection Officer: Has no observations. Does not object to the proposed hours of opening.

Heritage Officer: Supports the proposal, but wishes the matter to be referred to Historic England for a response. The Victoria Road and Wellington Road Conservation Area appraisal notes the busyness of the road as having a negative impact on the character of the conservation area. The proposed pedestrian crossing is unlikely to have any impact on that issue, but the detailed design of the crossing is sensitive to the conservation area by reason of the

limited road markings, the use of conservation kerbs and natural stone tactile paving.

Historic England:

1. Raises concerns on heritage grounds. No objections are raised with regard to the change of use of the building. However, concerns are raised regarding the chosen location for a pedestrian crossing, as this would impact the significance of Deal Castle which is a nationally important heritage asset. It will be necessary to demonstrate that a pedestrian crossing in this location is justified, and that there is no other less harmful location that it could be constructed.

2. Following receipt of the revised crossing proposals - these continue to fail to meet the requirements of the NPPF. There have been no apparent considerations of alternative locations for the crossing, or if there have these have not been explained, or that the crossing as proposed is justified.

3. Following receipt of the 'Options Appraisal' - Historic England agree that with the submission of this further information - the application now meets the requirements of the NPPF. We still consider the location and design of the traffic island and crossing to be harmful to the significance of Deal Castle, however the applicant has now demonstrated that they have considered all less harmful alternative options and also justified the choice of location and design for the crossing - in line with paras. 190 & 194 of the NPPF. We are happy that harm to heritage significance has been minimised as far as possible given the constraints of the site. As we believe the application now meets the requirements of the NPPF, we would not raise any objections to the planning application.

Public Representations: There have been 22 responses received from the public consultation exercise, all of which support the proposed application. The responses state the proposal is good for the community and the economy, good for tourism and visitors to the area, it will provide wider benefits, it will bring a vacant building back into use, a crossing is needed in this location and the use will function as an additional facility for the Castle.

- f)
1. **The Site and the Proposal**
    - 1.1 The application site is located fronting onto Victoria Road, opposite Deal Castle, within the Middle Deal Conservation Area. It comprises a single storey building at the rear of the site (its western side) fronting onto an area of open space, with access from Victoria Road.
    - 1.2 The building is of red-brick construction under a tiled hipped roof, with a rectangular floor plan. The windows are irregularly spaced in the principal (front) east elevation, but all but one consists of timber sashes, with multiple small panes in the upper sash and a single vertical glazing bar in the lower.
    - 1.3 The building was constructed circa 1895 probably to provide accommodation for members of the Captain's household. By the 1920s the cottage was occupied by a chauffeur (the coach house to the south being used to garage the Captain's car). During World War II the cottage

was used as a store, and a WC was added to its northern end. After the war, the cottage provided accommodation for the Castle's custodian and its interior was refitted for this use. Since the 1980s the building has been unoccupied and is a vacant building.

- 1.4 The open space in front of the building forming part of the site is laid to lawn. This area forms part of a larger area of open space that extends in front of the former stable building to the north (subject to the recent grant of planning permission under 19/01222, as set out above) and extends to a building at the southern end of the site - the location of the former coach house).
- 1.5 Despite being physically divorced from the Castle by the busy road, the cottage contributes to the castle's setting, with its modest size and character not competing with the entrance to the Castle.
- 1.6 Opposite the site is Deal Castle, which is a Scheduled Monument, and is also within the Conservation Area. Forming a group of three castles (Sandown, Deal and Walmer) Deal Castle was built by Henry VIII circa 1539-1540. The castle buildings are protected by a stone-lined dry moat up to 20m wide and 5m deep, originally crossed on its western, landward side by a wooden drawbridge. The slots for the lifting gear survive above the pointed archway entrance, constructed within the westernmost bastion, although the drawbridge has been replaced by a stone causeway. A portcullis originally fronted the iron studded oak door. Despite these changes the western entrance to the Castle is substantial and impressive, and is the key route through which visitors enter the Castle. This entrance is opposite the application site.
- 1.7 The car park serving visitors to the Castle is located on the Castle's south side, with access from Marine Road.
- 1.8 To the west of the application site is the 'garden' of the Captain's Cottage, which remains as open land. This garden is not being directly affected by the application proposal, but its openness makes a positive contribution to the Victoria Road and Wellington Road Conservation Area. The impact of the proposal on its setting needs to be taken into account.

#### Original Proposal

- 1.9 The proposal seeks to convert and change the use of the building to a café/restaurant. The existing building, albeit vacant for many years, was last used as a one bedroom dwelling. The proposed change of use and conversion seeks to accommodate a kitchen/servery area, indoor seating areas, storage room and a W.C.
- 1.10 In front of the building, on the area of grass, customer tables and chairs are proposed. The submitted drawing shows that there could be some 13 tables and 52 chairs.
- 1.11 Food preparation will take place within the building and will involve cooking, reheating and baking using a domestic styled oven and a microwave, along with the preparation of cold food for sale. Mechanical ventilation from the building will use a small domestic sized unit fitted

within the existing window on the rear elevation – with no external venting plant or pipes. It is proposed that the Licensable area for alcohol consumption will be within the building.

- 1.12 The applicant has advised that the majority of furniture will be stored within the building out of hours but there will be some heavy tables left outside which by their sheer weight will be immovable. Under the terms of the proposed lease, that tenant is only leased the lawn area in front of the cottage as included by the red line application plan. The lawn to the right (when facing the building from the road) has already been let to the tenants of the former stables whereas the driveway and the grassed area to the left is controlled by the applicant so “spreading” can be managed and legally controlled.
- 1.13 The proposed hours of opening are from 0800 hours to 2200 hours each day.
- 1.14 The external changes involve the replacement of a window in the front elevation of the porch with an entrance door. An existing door in the side elevation of the porch will be removed, with the opening infilled with brickwork.

#### Amended Proposal

- 1.15 The proposal comprising the change of use of the building and land has remained the same throughout the progress of the application. However, the requirement by Kent Highways for a pedestrian crossing that would link the entrance to the Castle with the application site has given rise to additional drawings, the submission of further information and further comments from third/interested parties.
- 1.16 The additional comments are set out earlier in this report. In effect, and to summarise, the design of the pedestrian crossing includes the use of natural stone/granite tactile paving, silver grey conservation kerbing and refuge island, single aspect traffic bollards and ‘white lining’ to show tapering from the refuge island. Initially the width of the carriageway was proposed as 3.25 metres on either side of the refuge island, whereas a later drawing (SK15 Rev C), which showed more conservation friendly street furniture and materials, reduced this width to 3 metres on either side of the island. This reduction in width is commented upon by Kent Highways and Deal Town Council, as set out above.
- 1.17 It is confirmed that the width of the carriageway is intended to be 3.25 metres wide on either side of the island (which reverts the proposed carriageway width to that shown under drawing SK15 Rev B).

## **2. Main Issues**

2.1 The main issues are:

- The principle of the development
- The impact upon the significance of the designated heritage assets
- The impact upon residential amenity
- Other matters

### Principle of Development

- 2.2 The application site falls within the urban area of Deal. As such, under Policy DM1, the change of use of the building is acceptable in principle.
- 2.3 The proposal involves the loss of a dwelling. The Core Strategy does not contain a policy that addresses the principle of losing a dwelling. Although there will be a net reduction in the number of dwellings in the District's housing supply (the loss of 1 dwelling), this loss along with the fact that the building has not been used as a dwelling for nearly 40 years is not considered to be unacceptable in principle.

### Impact upon Designated Heritage Assets, the Visual Quality of the Street Scene and Character and Appearance

- 2.4 The immediate character of the area around the proposed location of the pedestrian crossing is defined by the hedged boundary and open area to the east of the Cottage; the railings, hedges and trees on the boundary around the Castle; the massing of the Castle itself; and the residential buildings to the northwest. As the Castle and cottage/stable buildings are set back from the roadside, the overall character is open in contrast to the built-up streetscape to the north.
- 2.5 One of the designated heritage assets affected by the proposal will be Deal Castle. This is a building of exceptional heritage significance. The Castle exemplified the English practice of artillery fortification, presenting a relatively low external profile and consisting of massive curving walls designed to deflect shot. Despite alterations in subsequent centuries, the overall form of the Henrician castle survives very well. The Castle's deliberately squat profile and its urban context mean that its presence in the townscape is only apparent at close quarters. There are good views from the northeast, at the east end of Deal Castle Road, and from the coastal path. Views of the Castle from Victoria Road are obscured by the historic hedging around the paddock car park to the south, and by historic tree planting northwest of the Castle (by the junction between the Victoria Road and Deal Castle Road). The only clear view of the Castle from Victoria Road in the vicinity of the proposed pedestrian crossing is to the west of its entrance. This is a significant view, since it is the primary entrance to the Castle and includes the stone causeway running across the Castle's ditch to its entrance bastion. For those approaching from the north, this is their first view of the Castle. The contribution made by this view to the setting of the Castle is therefore considerable.
- 2.6 The proposed location of the pedestrian crossing, in front of the entrance bastion has the potential to cause a harmful impact upon the setting of the Castle.
- 2.7 To reduce the impact of the proposed crossing (including the associated physical interventions on the highway) the proposal has sought to employ a conservation approach to the use of materials by using textured granite rather than standard buff coloured cement tiles for paving the kerbside and island. This material will be visually less stark

and should harmonise better with the masonry of the Castle. The refuge island is designed to be as insubstantial as possible in order to reduce its physical presence.

- 2.8 Whilst it is considered that the use of 'conservation' materials and minimising the physical changes to the highway, reduce the impact upon the significance of the designated asset, the NPPF requires that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). As the heritage asset is a Schedule Monument, it has the highest significance.
- 2.9 The application demonstrates through an 'Options Appraisal' that there are no suitable or safe alternatives to the proposed location of the pedestrian crossing.
- 2.10 In conclusion, the location of the proposed crossing cannot be moved to an alternative position, the detailed components of the crossing have sought to use materials and design in the street furniture to minimise the visual impact of the crossing and whilst there remains less than substantial harm to the setting of the heritage asset, the public benefits of the proposal should be considered favourably in the balance, as follows.
- 2.11 The application building has been vacant since the 1980s and it is a building of local importance. Its re-use should assist in increasing the longevity of the building - making it less likely that it will fall into dis-repair.
- 2.12 The proposed use of the building and the land in front will provide an important benefit to the visitors of the Castle, who will have their visit supplemented by somewhere close by to eat and drink. This will make the Castle a more attractive destination to visit.
- 2.13 The proposed use would also offer benefits to the local community in the form of an additional location to eat and drink, close to the town centre, and an additional location to relax and to take time out.
- 2.14 With regard to the impact upon the other designated heritage asset (Middle Deal Conservation Area), the harm would be less substantial. The additional street furniture would add to the visual clutter of highway-related interventions along this stretch of Victoria Road. However, the proposed design and use of materials used in the pedestrian crossing are considered to have a 'conservation-led' approach. The proposed street furniture would not be unduly harmful to the open character of this part of the Conservation Area.
- 2.15 The external changes to the building are minimal. This should ensure that the building's contribution to the character and appearance of the Conservation Area(s) would be unaffected - and that there would be no harm to its importance as a local asset.
- 2.16 The open space in front of the building would be retained, whilst the proposed positioning of the tables and chairs on this space would only comprise small changes to its appearance.



- 2.17 As the activity associated with the change of use would take place away from the adjoining Victoria Road and Wellington Road Conservation Area, beyond the site's western boundary, and the away from the Captain's 'Garden', the proposal would not have a material impact upon the setting of that Conservation Area.
- 2.18 It is considered to be a finely balanced case. However, in view of the most recent response from Historic England (raising no objections), the support from the Council's Heritage Officer and the support for the scheme from English Heritage, the proposal (along with the pedestrian crossing) is considered to be acceptable, as the public benefits of the scheme are considered to outweigh the harm to the designated heritage assets.

#### Impact upon Residential Amenity

- 2.19 There are residential properties located to the north and south of this area of open space. Although these properties do not adjoin the site, the use of the land in front of the application building during the evening, in particular, could give rise to levels of activity, noise and general disturbance.
- 2.20 The recent approval to change of use of the former stable building, north of the current application site, imposed conditions to restrict the hours and nature of the use of that building. It is considered that the imposition of planning conditions as set out later in this report to control the opening hours, to prevent amplified music and to retain the consumption of alcohol within the building during opening hours would reduce the likely impact of the use on the amenities of the occupiers of nearby residential properties.

#### Other Matters

- 2.21 Whilst there are concerns raised through the public consultation to the location of the proposed pedestrian crossing, a safety audit for the crossing has been submitted and an Options Appraisal has been undertaken that satisfy the requirements of Kent Highways and Historic England. In summary, no alternative or other more suitable locations exist to meet highway safety requirements.

### **3. Conclusion**

- 3.1 There are significant public benefits arising from the application proposal. On balance, these are considered to outweigh the level of harm to the significance of the designated heritage assets.
- 3.2 It is considered that the proposal would result in a suitably sustainable form of development.
- 3.3 A number of safeguarding conditions are set out below to help minimise the impact of the proposal.

g)

#### **Recommendation**

I PERMISSION BE GRANTED with the imposition of the following conditions:

1) 3 year time limit to commence development; (2) the layout of the building to be in accordance with the submitted drawings; (3) before the use commences, the pedestrian crossing as shown on the approved drawings, shall be provided; (4) samples of materials to be used in the pedestrian crossing and the replacement brickwork on the building shall be submitted for the Council's approval; (5) Joinery details for the new entrance door to be submitted for the Council's approval; (6) the use shall not take place between 2200 hours and 0800 hours on any day; (7) upon closing, all seats shall be brought into the building; (8) no alcohol shall be consumed on the site by customers outside the building; (9) the sale of alcohol for consumption on the premises shall be incidental to the use of the site as a café/restaurant; (10) no amplified music shall be played on the application site; (11) provision and retention of vehicle turning facilities on site.

II Powers be delegated to the Head of Planning, Regeneration and Development to settle any necessary wording in line with the recommendations and as resolved by the Planning Committee.

Case Officer

Vic Hester