

a) **DOV/19/01260 – Outline application for the erection of up to 14 dwellings (appearance, landscaping and scale to be reserved) - Land Off Church Lane, Deal**

Reason for report: The number of representations objecting to the proposal.

b) **Summary of Recommendation**

Planning Permission be Granted subject to conditions and S106 agreement.

c) **Planning Policy and Guidance**

Planning and Compulsory Purchase Act 2004

- Section 38(6) – requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

Core Strategy Policies

- CP1 – The location and scale of development in the District must comply with the Settlement Hierarchy. Deal is identified as a District Centre and the secondary focus for development in the District, suitable for urban scale development.
- CP4 – Sets out strategic considerations for housing development, including the need to reflect the local housing market and provide an appropriate housing mix. Density should wherever possible exceed 40 dwellings per hectare.
- DM1 – Development will not be permitted outside 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.
- DM5 – The Council will seek applications for residential developments of 15 or more dwellings to provide 30% of homes as affordable homes in home types that will address prioritised need, and for developments between 5 and 14 homes to make a contribution towards the provision of affordable housing.
- 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.
- DM12 – The access arrangements of development proposals will be assessed with regard to the Highway Network set out in the Local Transport Plan for Kent.
- DM13 – Parking provision should be design-led, based upon the characteristics of the site, the locality, the nature of the proposed development and its design objectives. Provision for residential development should be informed by the guidance in Table 1.1 of the Core Strategy.
- DM15 – Development which would result in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if it is in accordance with allocations, justified by the needs of agriculture or a need to sustain the rural economy, it cannot be accommodated elsewhere and it does not result in a loss of ecological habitats. Measures are to be incorporated to reduce, as far as practicable, any harmful effects on countryside character.
- DM16 – Development that would harm the character of the landscape will only be permitted if it is in accordance with Development Plan allocations and incorporates any necessary avoidance and mitigation measures, or it can be sited to avoid or

reduce harm and/or incorporate design measures to mitigate the impacts to an acceptable level.

### Land Allocations Local Plan

- DM27 – Planning applications for residential development of five or more dwellings will be required to provide or contribute towards provision of open space, unless existing provision within the relevant accessibility standard has sufficient capacity to accommodate the additional demand.

### National Planning Policy Framework (NPPF)

The most relevant parts of the NPPF are summarised below:

- Paragraph 8 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental.
- Paragraph 11 states that development proposals that accord with an up-to-date development plan should be approved without delay or, where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, permission should be granted unless:
  - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development (having regard for footnote 6); or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- Paragraph 59 says that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- Paragraph 78 states that to promote sustainable development in rural areas, housing should be located where it will enhance the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.
- Paragraph 98 says that planning policies and decisions should protect and enhance public rights of way and access.
- Paragraph 108 states that, in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable modes of transport can be taken up, safe and suitable access to the site can be achieved for all users, and any significant impacts on the transport network or highway safety can be mitigated to an acceptable degree.
- Paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- Paragraph 110 states (amongst other things) that applications should create places that are safe, secure and attractive, which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to

local character and design standards; and allow for the efficient delivery of goods, and access by service and emergency vehicles.

- Paragraph 117 states that decisions should promote an efficient use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.
- Paragraph 122 states that decisions should support development that makes efficient use of land, taking into account the need for different types of housing, local market conditions, infrastructure, the desirability of maintaining an area's prevailing character and setting, and the importance of securing well-designed, attractive and healthy places.
- Paragraph 123 states that, where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.
- Paragraph 127 states that decisions should (amongst other things) ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and landscaping, and are sympathetic to local character and history, including the surrounding built environment and landscape setting, whilst not preventing or discouraging appropriate innovation or change (such as increased densities), and create places that promote health and well-being, with a high standard of amenity for existing and future users.
- Paragraph 158 says that development should be steered towards areas with the lowest risk of flooding, using the sequential test.
- Paragraph 163 says that, in determining any planning application, local planning authorities should ensure that flood risk is not increased elsewhere.
- Paragraph 165: Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.
- Paragraph 175 says that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or compensated for, planning permission should be refused. Development which is likely to have an adverse effect on a SSSI or other designated habitats site should not normally be permitted. The only exception is where the benefits of the development clearly outweigh its likely impact on the features for which the site is designated.
- Paragraph 177: The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.
- Paragraph 178: Planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
- Paragraph 193 says that, when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation.

## The National Design Guide and Kent Design Guide (KDG)

- These Guides provide criteria and advice on providing well designed development.

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

DOV/10/01012 and DOV/13/00945 – (Adjoining site to the east) Outline planning application and Reserved Matters for residential development of up to 230 dwellings and public open space, with access from Hancocks Field, Hunters Walk, and Hyton Drive, including roads, cycle paths, footpaths, ancillary works incorporating landscaping, a pond, and alterations to existing public rights of way – Permission granted.

DOV/17/01345 – (Adjoining site to the west) Outline planning application for up to 48 dwellings (comprising up to 14 affordable dwellings and up to 34 market dwellings), up to 64 bedroom care home (C2 Use), publicly accessible open space (including children's play area), attenuation pond, and creation of vehicular access, with the demolition of two dwellings – Permission granted at appeal.

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

Sholden PC – Objects. The reasons for objection may be summarised as follows:

- Does not accept the applicants' assertion that the provision of additional housing should be given substantial weight because DDC cannot demonstrate a five-year supply of housing. DDC has provided 131% of its housing need over the past three years and in August 2019 it was stated that a 5.56 years' supply existed.
- Disagrees that the presumption in favour of sustainable development is active. But even if it was, the presumption is not conclusive (that is, just having the presumption does not in itself mean that granting permission is a foregone conclusion). Although the Core Strategy is in need of revision, this does not make all the policies redundant. In particular CP1, CP2, CP3, DM1, DM12, DM15 and DM16 should form the basis of DDC's decision.
- The site is outside the confines and the application should be refused under DM1, as there are no other policies that justify the development.
- The development needs to use a private road for access and local residents should be considered experts in their local area.
- It will breach DM15 because of a loss of countryside; there will also be a loss of ecological habitat.
- There will be harm to the character of the landscape (DM16) without any avoidance or mitigation measures, and the development could be accommodated elsewhere.
- There is no evidence that the development would bring economic, social and environmental benefits and thus justify being considered "sustainable".
- There are numerous other breaches of NPPF policies, such as in relation to traffic congestion, air quality, poor design, climate change and flood risk. Disagrees with the statement that the Timperley Place development has a hard urban edge; but this development would create one. This proposal will close the gap between Sholden and Deal. The harmful effects far outweigh the benefits and the application should be refused.

This is a summary of a detailed and lengthy response; Members may wish to read the full response on the Council's website.

Deal TC – Object as over development of area and not part of allocation of land.

Environment Agency – No objection in principle. It is assumed foul drainage will be connected to the main sewer; an appropriate condition should be imposed. Also requests a condition to address any unforeseen land contamination and informatives relating to the treatment and disposal of construction wastes.

KCC Flood and Water Management – We are aware from the Flood Risk Assessment that infiltration SuDS have been disregarded from this site due to groundwater being 8-9m below ground and insufficient unsaturated zone available (10m), as per the requirements of the Environment Agency. BGS's infiltration SuDS Map indicates that the site has opportunities for bespoke infiltration as there is freely draining bedrock geology, however the superficial head deposits are poorly drained and ground instability is indicated.

Whilst soakage testing has been undertaken, the report including infiltration test results has not been submitted. We would recommend that results are provided to confirm why infiltration is not suitable at this site. The depth of groundwater needs to be confirmed. We would only permit off site discharge until it is proven that infiltration is not viable.

We are aware that the proposed drainage approach is a surface water connection into the adjacent sites network before discharging into the watercourse north of the site. Unfortunately, no details have been provided regarding the receiving networks capacity and condition. This information should be provided at the earliest opportunity.

Please be aware that the half drain time of the permeable paving system should not exceed 24 hours. A half drain time of 7 days is not acceptable.

Although this is an outline application with some matters reserved, unfortunately insufficient information regarding infiltration viability and capacity of the receiving network has been provided. It is imperative that the principles of surface water drainage are demonstrated to be appropriate at the earliest opportunity, avoiding later complications. Unfortunately we currently object to the development pending receipt of further information as discussed above.

Re-consultation has been carried out with KCC in respect of the additional information on drainage submitted by the applicant and a response is awaited. Any further comments received in advance of the Committee meeting will be reported to Members orally.

Southern Water – Has provided details of nearby water infrastructure, but caveats that the exact position should be ascertained in advance of any work and sets out the limitations with regard to work in the vicinity of such assets. Advises that there may be other sewers deemed to be public crossing the site. A formal application for connection to the foul sewer is required and an informative is requested in this regard. Southern Water has also set out the level of detail required when SUDS are proposed, and the prescribed hierarchy in terms of preferred final means of disposal from SUDS. Has requested a condition requiring details of foul and surface water drainage to be submitted and approved prior to commencement of the development.

Re-consultation has been carried out in respect of the additional information provided by the applicant and any further response will be reported to Members orally.

River Stour IDB - I note that the applicant proposes to restrict surface water discharge into the adjacent network to the greenfield rate,  $Q_{bar}$ , but it is still not clear whether or not this area of land already drains to the SuDS (which is thought to be unlikely). It is therefore essential that this is clarified; does the site already drain to the adjacent SuDS and was that SuDS originally designed to accommodate this runoff? As previously stated, details of on-site drainage will need to be agreed with KCC's SuDS team to ensure that the existing SuDS (or any modification to it) can fully accommodate additional runoff. The final discharge rate from the SuDS into Southwall Road Dyke must not be increased, without the prior written agreement of the Stour IDB. Please note that due to the history of flooding at this location I doubt that the Board would agree to any increase in rate.

Natural England – Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound. Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s).

Advises that an Appropriate Assessment under the Habitats Regulations is required. Standing advice should be followed with regard to impact on protected species.

Kent Wildlife Trust – No response received.

KCC County Archaeologist – No response received.

KCC Highways – I concur with the Transport Statement that the proposals are unlikely to have a severe impact on the highway network, with around 7 two-way vehicle movements likely to be generated in the network peak hours.

I note the application form indicates that the new road is to be adopted by the highway authority, however the existing road leading to the site is a private road and the new road will therefore also have to remain private. Whilst not a highway matter due to the road staying private, I would point out that the layout shows tandem parking arrangements which are generally not accepted under Policy DM13 of the Local Plan.

No objection, subject to a condition requiring a Construction Management Plan. Conditions are also suggested relating to the provision of car and cycle parking, and the protection of visibility splays. Informative requested regarding the need for Highways Consents.

KCC PROW – Have no comments to make.

KCC Developer Contributions – Has requested the following contributions:

£46,536 towards expansion at Deal Primary School;  
£57,610 towards expansion at Dover Grammar School for Girls;  
£358.92 towards additional resources including IT equipment for the new Learners at Deal Adult Education Centre;  
£917.00 towards additional resources for Deal Youth Service to mitigate the impact of the new attendees;  
£776.30 towards additional services and stock at Deal Library to mitigate the impact of the new borrowers from this development;  
£2,056.32 towards specialist care accommodation within Dover District;

£3,325.56 towards improvements at both WTS and HWRC to increase capacity to mitigate impact.

Has also requested that all new homes be wheelchair accessible and adaptable dwellings, and that an informative be added regarding provision of broadband to all new houses.

Designing Out Crime Officer – Layout and permeability should be safe and appropriate, especially alongside the footpath. Parking should be designed to minimise conflict and maximise surveillance. Technical measures suggested to meet Secured by Design standard.

NHS South Kent Coast CCG – There is currently limited capacity within existing general practice premises to accommodate growth in this area. The need from this development, along with other new developments, will therefore need to be met through the creation of additional capacity in general practice premises. Requests a developer contribution of £10,725 towards provision of capacity in the Deal and Sandwich Primary Care Network to provide primary care services for the additional patient numbers generated from new build developments.

DDC Environmental Health Officer – Accepts the conclusions of the submitted Desk Study regarding contaminated land. Requests a condition setting out how any unforeseen contamination is to be dealt with.

Public representations –

27 objections received raising the following issues:

- Site is outside the development area for Deal and this will result in the separation between Deal and Sholden being lost; rubbing salt into the wound after the Churchfield Farm decision;
- Overdevelopment; the site isn't big enough; cumulative impact with other development nearby;
- Development here will put greater pressure/bigger risk for development on the adjacent field, which would completely remove the gap between Deal and Sholden; risk that this would create a rat-run;
- Application site doesn't reflect boundaries; boundary is inaccurate;
- Loss of open space and nature/wildlife; wildlife is only just re-establishing here after the Timperley Place development; newly planted trees and verges would have to be removed;
- Hyton Drive is a private road and residents pay the cost of maintenance; it is not suitable for construction traffic and the developers should compensate residents for the damage that will inevitably be caused; speed humps, narrowness of road, and pedestrian-friendly design all make this unsuitable for large construction vehicles;
- Disturbance during construction; noise and traffic; this will prolong disturbance residents have endured during construction of Timperley Place;
- Danger from increased traffic and safety risk to children going to the play park, residents using the existing footpath and others; footpath used as a through route will be disrupted, meaning people have to walk in the road/cross the road;

- Construction traffic would damage the newly-built houses as they are built on rafts; need for repair and redecoration;
- Questions over the safety of the new junction onto Hyton Drive; on a bend where vehicles already speed and where people park;
- The traffic statement is totally unreasonable and underestimates the traffic that will be generated;
- All local access roads are at a standstill at peak times, even before the current development is finished;
- Overlooking and loss of privacy to existing houses; new houses are too close; design of new houses isn't clear;
- Loss of views of open countryside;
- Materials won't match and will look odd;
- Insufficient parking;
- Further demands on/lack of infrastructure (schools; dentist; doctors);
- Surface water drainage system is already overwhelmed and needs to be cleaned out frequently;
- Scheme is for large family houses with no affordable housing and will attract new people to the area rather than providing for local need.

7 representations in support, raising the following issues:

- Site is untidy and looks a mess; minimal environmental effect as the site is already damaged;
- There is a need to build more homes; this development will provide more houses and improve the area;
- Hyton Drive provides better access than Vicarage Lane; it is wide and with few houses;
- Happy for more development away from Sholden and towards the town;
- This is a modest increase on what has already been built and will have little effect on the local area;
- Surrounding roads still have more capacity.

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

1.1 This is an application for outline planning permission with access and layout to be determined at this stage, and appearance, landscape and scale to be dealt with as Reserved Matters. The site of 0.61ha is broadly triangular and lies to the west of houses in Hyton Drive, which is part of the recently-developed Timperley Place development. Hyton Drive and the public footpath leading to Church Lane form the eastern boundary. A narrow tongue of land extending to Church Lane is included within the site. Church Lane at this point is a footpath not used by vehicular traffic. To the north-west of the site is undeveloped agricultural land. To the south-west is a wooded area that is undeveloped but formed part of the

application site for development at Churchfield Farm, granted planning permission at appeal in 2019. The site itself has the appearance of overgrown scrub; it is understood that it was used for the storage of equipment and so on during the Timperley Place construction phase. The north-western boundary is not clearly defined on the ground and it appears that the current cropping regime in the adjacent field has encroached across the boundary into the application site.

- 1.2 It is proposed to erect three two-bedroom dwellings, eight three-bedroom dwellings and three four-bedroom dwellings (total 14), mostly detached but there are two pairs of semis. Access is taken off Hyton Drive in the north-east corner of the site, at the point where that road bends to the south. The access road runs close to the north-western and south-western boundaries, with a landscaped buffer between the road and the north-western boundary. The new houses mainly front onto the other side of the access road, with three arranged around a spur in the centre of the site. An amended layout plan has been submitted to address some of the concerns expressed by Kent Highways over tandem parking; only four of the properties now have tandem parking. As appearance and scale are to be treated as Reserved Matters, although a site layout has been provided, there are no details of the design or height of the proposed buildings at this stage. However, an illustrative street elevation has been provided which shows two-storey houses of conventional design, with pitched and gabled roofs, rustic style porches, featured lintels over the windows and some chimneys.
- 1.3 In terms of the policy context, the site lies in countryside outside, but adjacent to, the defined urban confines of Deal; that boundary follows the eastern boundary of the site. The outer edge of the built-up area of Sholden is about 120m away, across the field to the north-west. Public footpaths cross this field. There is a play area, associated with the Timperley Place development, within the open area to the north-west of that development and to the north-east of the current application site. The site is in Flood Zone 1.
- 1.4 The application is accompanied by a Design and Access Statement, Planning Statement, Transport Statement (amended), Heritage Statement, Archaeological desk-based Assessment, Landscape and Visual Appraisal, Ecological Appraisal, Flood Risk Assessment (including Drainage Strategy), and Phase I Contamination Assessment. A further statement on drainage issues has been provided in response to the consultation responses from technical consultees. A Viability Assessment has also been provided to address the capability of the development to provide Developer Contributions, this has been the subject of independent review.

## **2. Main Issues**

2.1 The main issues are:

- The principle of developing this site for housing;
- The impact on the countryside and the landscape setting at the edge of the built-up area;
- Impact on residential amenity;
- Parking and highways considerations;
- Contamination and drainage;
- Archaeology and heritage issues;
- Habitats and ecology;
- Viability and developer contributions.

## **Assessment**

### **Principle**

- 2.2 The starting point for decision making is Section 38(6) of the Planning and Compulsory Purchase Act 2004. This states that 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 in accordance with the plan unless material considerations indicate otherwise.
- 2.3 The site lies outside the settlement boundaries, where Policy DM1 of the Core Strategy applies. This policy states that development will not be permitted on land outside the confines, unless it is specifically justified by other development plan policies or it functionally requires such a location or is ancillary to existing development or uses. Having regard to the wording of this policy, the erection of dwellings in this location is by definition contrary to Policy DM1.
- 2.4 DM11 seeks to resist development outside the settlement confines if it would generate a need to travel, unless it is justified by other development plan policies. Although the site is outside the settlement confines, it is for a relatively modest number of dwellings, adjoining the confines and it is within walking distance of a number of local facilities, including access to public transport. On this basis it is considered that the occupants of the development could access necessary day to day facilities and services. As such, whilst technically contrary to Policy DM11, the location of the site is considered to foster a sustainable pattern of development, which is the overarching intention of Policy DM11, as set out in the paragraphs which precede the policy, and also broadly consistent with NPPF paragraph 108 in this regard.
- 2.5 Policy DM15 requires that applications which result in the loss of countryside, or adversely affect the character or appearance of the countryside, will only be permitted if they meet one of the exceptions; none of those exceptions applies directly in this case. The development would result in the loss of countryside, as the site is outside the confines. The applicants have provided a detailed Landscape and Visual Appraisal (LVA) which is discussed later in this report. Members will be aware that this site is more sensitive than some other sites to the issue of countryside loss, given that it might be perceived as narrowing the gap between the built-up areas of Deal and Sholden. However, in the light of the more detailed discussion later in this report, it is concluded that development of this site would not substantially reduce that gap and the impact on the wider countryside would be limited. It is therefore considered that the proposal is contrary to the first part of Policy DM15 (loss of countryside), but is in line with the second part of Policy DM15 (whether harm is caused).
- 2.6 However, notwithstanding the primacy of the development plan, paragraph 11 of the NPPF states that where the policies which are most important for determining the application are out of date (including where the LPA cannot demonstrate a five year housing land supply or where the LPA has 'failed' the Housing Delivery Test), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (known as the 'tilted balance') or where specific policies in the NPPF indicate that development should be restricted.
- 2.7 Having regard to the most recent Annual Monitoring Report 2018/9, the Council is currently able to demonstrate a five-year supply. The Council has not met the Housing Delivery Test, achieving 92%. Whilst this has been taken into account, it

does not trigger the paragraph 11 'tilted balance', which is only engaged when housing delivery falls below 75%. It is, however, necessary to consider whether the 'most important policies for determining the application' are out of date. It is considered that the policies which are most important for determining the application are DM1, DM11 and DM15.

- 2.8 Policy DM1 and the settlement confines referred to within the policy were devised, in conjunction with other policies for the supply of housing in the Council's 2010 Adopted Core Strategy, with the purpose of delivering 505 dwellings per annum. In accordance with the Government's standardised methodology for calculating the need for housing, the Council must now deliver 629 dwellings per annum. As a matter of judgement, it is considered that some policies in the Core Strategy are in tension with the NPPF, are out-of-date and, as a result, should carry only limited weight. Whilst it is not considered that policies DM11 and DM15 are out-of-date (although the parts of these policies which place 'blanket' restrictions on development outside the confines are in tension with the NPPF), policy DM1 is now out-of-date. Given how important this policy is and given the tension between policies DM11 and DM15 and the NPPF, it is considered that the 'basket of policies' which are most important for determining this application is out-of-date.
- 2.9 The 'tilted balance' identified in paragraph 11 of the NPPF is therefore engaged. An assessment as to whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the development therefore needs to be undertaken and whether there are any other material considerations that indicate permission should be granted.
- 2.10 It is also worth noting at this point that, although the site is outside the confines of Deal, policy CP1 states that the location and scale of development in the District must comply with the Settlement Hierarchy. Deal is identified as a District Centre and the secondary focus for development in the District, suitable for urban scale development.

#### Impact on Countryside and Landscape Setting

- 2.11 In terms of the impact on the wider landscape policies DM15 and DM16 of the Core Strategy are most relevant. Policy DM15 relates to the protection of the countryside and states that development that would result in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if it is in accordance with allocations made in Development Plan Documents or the development justifies a rural location.
- 2.12 Policy DM16 relates to landscape character and states that development that would harm the character of the landscape, as identified through the process of landscape character assessment, will only be permitted if:
- it is in accordance with allocations made in development plan documents and incorporates any necessary avoidance and mitigation measures; or
  - it can be sited to avoid or reduce the harm and/or incorporate design mitigation measures to mitigate the impacts to an acceptable level.
- 2.13 The site is not situated within a designated landscape but consideration of the impact on the existing landscape, its setting and character, and visual amenity is necessary to establish whether the proposed development would affect the character of the wider landscape and countryside. It is also necessary to consider

paragraph 170 of the NPPF which relates to the need to enhance the natural and local environment, protect and enhance biodiversity, and to recognise the intrinsic character and beauty of the countryside.

- 2.14 The Landscape and Visual Appraisal (LVA) submitted with the application looked at the historical map data and published landscape character assessments and undertook on-site field analysis to identify key viewpoints, analyse the landscape character and visual environment of the local area, and identify any potential landscape and visual effects. The particular setting is described, with open agricultural land to the north and recent residential development to the east. It comments that to the south west and west more established vegetation exists within a broadly square parcel of land and physically and visually encloses the site along this boundary. It is noted that the plot to the west of the site has been granted planning permission for 48 dwellings and a 64 bedroom care home and the approved layout plan shows that the built development will be separated from the current application site by an area of landscaped public open space, which wraps around the north eastern, eastern and south western parts of that site.
- 2.15 The LVA describes the site as being largely flat, reflecting the localised and wider landscape setting. The site and the urban areas to the east and west are located in the wider Stour floodplain and, as such, there is limited variation in topography. There are no landscape features within the site of any particular landscape value. The quality of the landscape within the application site is said to be of low value and because of the enclosed nature of the site within the urban fringe setting of Deal, the sensitivity of the site is also assessed as being low.
- 2.16 A number of viewpoints were identified in order to demonstrate the visibility of the site within the localised and wider setting. With regard to the effect of the proposals upon landscape character, it is considered that they can be integrated in this location without detriment to the localised or wider character. The design of the proposals in terms of their layout and appearance has been informed by the built form which characterises the immediate setting of the site. It is concluded that the proposed development will have a limited effect on the character of the wider landscape setting, and of Deal itself, due to the visually contained nature of the site and will provide a suitable continuation of the existing built form / environment that already characterises the immediate setting of the site. The design of the site also takes account of the recent residential development to the east and will reflect the scale and nature of the properties, maintaining a connection between the site and the existing settlement area. The northernmost properties have also been set back from the northern boundary to reflect a similar line of built form to that which currently exists to the east / north east. Reference is made to the neighbouring Churchfield Farm development and it is noted that the Inspector considered the effect of the proposals upon the separation between Sholden and Middle Deal. At para 24 the Inspector concluded that *“the relatively large amount of undeveloped land indicated in the masterplan provides an opportunity to maintain a substantial portion of the site as publicly available open space at the expense of some addition to the built-up area of Sholden. Therefore, I find limited harm from this proposal eroding the extent of unbuilt separation between Sholden and Deal, given the quite substantial public space offered in perpetuity.”*
- 2.17 The LVA concludes that, in relation to landscape character, the proposals can be integrated alongside the recently approved Churchfield Farm scheme without compromising the perceived gap between Deal and Sholden. The gap is not protected by any policy designations and the proposals will maintain the gap resulting from the Churchfield Farm development between the two settlements, which the Inspector considered acceptable and appropriate. As a result of the

surrounding vegetation cover and existing built form, it is considered that the proposals would only be perceived in the context of the existing built up area of Deal. It is concluded that the proposals can be integrated without harm to the perceived gap between Deal and Sholden and will not adversely affect the individual identities of the two settlements.

- 2.18 Having reviewed the LVA and its conclusions, it is considered to represent a reasonable assessment of the site and its broader visual context. The development will not encroach any further north into the agricultural land than the existing development at Hyton Drive. The site is relatively well enclosed in visual terms and does not feature significantly in longer distance views from the north and north-east, being visually somewhat separate from the more open agricultural land that forms the majority of the gap between the Timperley Place development and that part of Sholden to the north. Seen in the context of the future development on the Churchfield Farm site, this site appears almost as an indentation within what will become a clear boundary denoting the northern edge of the built-up area of Deal. The proposed layout of the site, with the houses set back from the northern boundary behind the road and a landscape planted buffer, which also assists in assimilating the development into the wider landscape setting. Bearing in mind all these factors, and also what the Inspector said about the impact of the Churchfield Farm proposal on the gap separating the two settlements, it is reasonable to accept the conclusion that development on this site would not unacceptably erode that gap.
- 2.19 Therefore, although the proposal would result in a loss of countryside and be contrary to part of DM15, no significant harm has been identified, and mitigation measures are incorporated, such that a reason for refusal based on DM15, DM16 and NPPF paragraph 170 could not be justified.

#### Impact on Residential Amenity

- 2.20 NPPF paragraph 117 promotes the effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Para 122 supports development that makes efficient use of land, taking into account (amongst other things) the identified need for different types of housing, the desirability of maintaining an area's prevailing character and setting, and the importance of securing well-designed, attractive and healthy places. Para 127 says that developments should add to the overall quality of the area, be visually attractive and sympathetic to local character.
- 2.21 In terms of residential amenity, the main issues to consider are the impact on the amenity of existing residents through any loss of privacy, overlooking, loss of daylight and sunlight, loss of outlook, or additional noise and disturbance. NPPF paragraph 127 advocates the achievement of a high standard of amenity for existing and future users.
- 2.22 Although details of the design and appearance of the buildings have not been submitted at this stage, the general pattern of development and the illustrative street scene indicate that the development would be compatible with the recent development to the east. The overall density is 23dph, which is below that sought through policy CP4. However, this is partly accounted for by the irregular shape of the site and the tongue of land at the southern end which could not satisfactorily accommodate any houses, and partly by the desire to provide a meaningful landscaped edge to the northern boundary.

- 2.23 The layout within the site should provide a satisfactory level of private amenity for future occupiers, with back gardens generally about 10m long and “back-to-back” distances (where they exist) generally in excess of 20m. In terms of the potential for overlooking into the dwellings and gardens in Hyton Drive, there are no obvious opportunities for a serious loss of privacy, with the new dwellings either presenting a flank elevation to the boundary, or being at a slight angle; in most instances the new houses are separated from those in Hyton Drive by roadway; the closest house (plot 11) is about 6m from the flank of 140 Hyton Drive and the public footpath passes between them. These relationships can be more readily assessed at the Reserved Matters stage.
- 2.24 On the basis of the submitted details, there is no reason to suppose that the objectives of NPPF paragraphs 117, 122 and 127 cannot be met. A number of local residents have expressed concern at the impact of traffic, including heavy vehicles, during the construction phase; this is discussed in the section that follows.

#### Parking and Highways

- 2.25 The development will be accessed through the Timperley Place development, via Hyton Drive and various other roads, eventually out onto Church Lane, Southwall Road and Middle Deal Road. There is more than one option for navigating through the Timperley Place development and not all traffic will necessarily go the same way. The submitted Transport Assessment concludes that an average of seven vehicle movements are likely to be generated in the peak hour, and this conclusion is endorsed by Kent Highways. On this basis no objection has been raised on strategic highways grounds. The network can accommodate this modest increase in traffic and the visibility and junction design are to standard. For clarification in relation to points raised by Sholden PC, this development does not propose a new access or increased use of an existing access onto a trunk or primary road, so that part of policy DM12 is not invoked.
- 2.26 The road within the site will be a 6m wide shared surface. The amended parking layout shows a reduction in the number of tandem parking spaces; each house has a minimum of two parking spaces (the four-bedroom houses have at least three) and there are two visitor spaces. Tracking diagrams have been provided to show adequate access for refuse freighters and the like.
- 2.27 In response to Kent Highways comments regarding the unadopted status of the access roads, the applicants have provided a Solicitor’s statement that confirms that the application site has the benefit of full rights of way and services over the Persimmon development at Timperley Place, and that these rights are referred to in Land Registry documents. Nevertheless, in order to comply with Planning Act requirements, the applicants have been requested to provide an amended site plan showing the “red line” extending to the adopted highway, and to serve formal notice on the owners of the intervening land.
- 2.28 A number of residents within the Timperley Place development have expressed concern over the impact of construction traffic on their living conditions during the construction phase, and the impact this might have on the road infrastructure itself. This raises a number of different issues. The impact of construction activity (including traffic) on amenity is a material planning consideration. Some residents complain that this is likely to be felt just as construction works elsewhere within that development are coming to an end; that, in itself, is not a material consideration. The impact on the living conditions of affected residents is something that would normally be dealt with through implementation and adherence to a Construction Management Plan. It is not uncommon for

construction traffic, including large machinery and so on, to have to pass through residential areas in order to reach the site; whilst local residents' concern is understandable, there is no reason why careful and thoughtful management, including for example minimising the number of trips such vehicles need to make and sensitive timing of delivery of construction materials, should not be able to provide adequate protection for residents' amenity. A condition can be imposed on any permission that might be granted, requiring a Construction Management Plan.

- 2.29 The question of potential damage to the road infrastructure (or indeed to individual properties along the way) is not normally regarded as a material planning consideration; this is a private matter between the operators of the machinery/traffic and the owners of the infrastructure, whether that be the Highway Authority or another party. If, as is suggested, there is a management company responsible for the upkeep of the roads, to which residents contribute, then recompense for any damage (should it occur) would be a matter to be resolved between that body and the alleged perpetrators.

#### Contamination and Drainage

- 2.30 With regard to potential ground contamination, EHO has accepted the conclusions of the submitted report that the site is suitable for development and has recommended a condition to address any unforeseen contamination becoming apparent during construction. The Environment Agency raises no objection and has asked for a similar condition, plus a number of informatives.
- 2.31 The proposed development is located in Flood Zone 1 (little to no risk of flooding). Therefore, the proposed development passes the Sequential Test and application of the Exception Test is not necessary. The submitted FRA says that all potential sources of flood risk to and from the site, as listed in NPPF, have been assessed and the risks of flooding occurring have all been assessed as low. In assessing the flood risk, the impacts of climate change have been considered for the lifetime of the proposed development and are also considered acceptable.
- 2.32 For foul drainage, it is proposed to connect into the existing system serving the Timperley Place development; this is likely to require some increase in pipe capacity, which the submitted Drainage Strategy says can be paid for through Southern Water's infrastructure charge.
- 2.33 The Drainage Strategy also includes an indicative approach to the disposal of surface water; it is proposed to install sustainable drainage systems to reduce surface water run-off flows from the site for storm return periods up to the 1-in-100-year storm event, plus an allowance for climate change. However the final design of the scheme has not been provided at this stage. The preferred option, in accordance with the normal hierarchy, would be infiltration to the ground. However, it is not clear whether this is a practical option here because of a high water table. Should further tests and groundwater monitoring demonstrate that there is a sufficient unsaturated zone, the strategy will be reviewed to incorporate this option. At this stage, though, the proposal is to discharge to a watercourse through connection to the existing drainage network for the Timperley Place site. This will involve the use of pervious paving and attenuation tanks and regulating devices to control the rate of run-off.
- 2.34 A further statement has been submitted in response to the issues raised by KCC Flood and Water Management. In this, the applicants say they will undertake further groundwater testing, but ask that this be dealt with through planning

conditions. They also argue that, because of the level of attenuation, the impact on the capacity of the existing system would be negligible and also, because that system has been fairly recently installed and is to be under the control of Southern Water, there should be no issue regarding its condition. A further response is awaited from Southern Water and KCC, which will be reported to Members orally.

#### Archaeology and Heritage Issues

- 2.35 The application is accompanied by both a Heritage Statement and an Archaeological Assessment. St Nicholas Church is Grade II\* listed and is about 240m to the west of the application site. There are a number of Grade II listed tombs in the churchyard. As required by NPPF paragraph 189, the application describes the significance of these heritage assets and their setting, and the likely impact of the proposed development on this significance. Paragraph 193 requires lpas to give great weight to an asset's conservation in considering development proposals. Under paragraph 196, where a development would lead to "less than substantial harm" to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
- 2.36 The Heritage Statement concludes that the listed buildings do not have any direct historical or functional relationship with the current application site and the proposed development will not impact on their historic fabric. Any alteration to the setting of the Church as a result of the proposed Churchfield Farm development needs to be taken into account; the Inspector concluded that that development provided "no harm" due to the vegetation buffer being maintained at the southern end of the Churchfield Farm site. Due to the vegetation within and along the boundaries of the churchyard, there is little visual interaction to enable appreciation of the architectural or historic fabric of the Church, when looking from the east; therefore, the Statement concludes, the current proposed development does not affect the significance of the Church, as a heritage asset. This conclusion is accepted.
- 2.37 The Archaeological Assessment looks in detail at the potential for archaeological remains to exist on the application site. This includes a historical analysis of activity in the vicinity at different eras and the evidence from other finds nearby. It concludes that the site is of high archaeological interest and regional significance for the Prehistoric and Roman period, moderate for the Mediaeval period, and low for all other periods. This is an area with high archaeological potential, the potential for surviving remains is high, and the proposed development has the potential to have a high-level impact on any remains. In the light of this assessment, it is appropriate to impose a condition on any permission that might be granted, requiring a programme of archaeological field investigation, in advance of any development taking place; this is also the approach that was adopted by the Inspector in determining the Churchfield Farm appeal.

#### Ecology and Habitats

- 2.38 The submitted Ecological Appraisal concludes that the habitats at the site appear to be of low ecological value, and that none of the nature conservation designations in the area are likely to be affected. This conclusion is accepted. A limited number of measures are proposed for ecological enhancements to comply with the policy requirements of the NPPF to achieve biodiversity gain; these include bird boxes, use of native species and trees and shrubs of local provenance in the landscaping scheme, and establishment of a wildflower grassland strip. Although the site is fairly small, it is suggested that the applicant could consider further enhancement

measures, including providing habitat features to encourage species such as hedgehogs, reptiles and bats. These can be addressed through a condition requiring an ecological management and monitoring plan, together with an informative listing the features that might be considered.

- 2.39 Natural England comments on the SPA Mitigation Strategy, but points out that an Appropriate Assessment should be carried out; this is set out below.

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

- 2.40 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.
- 2.41 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.
- 2.42 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.
- 2.43 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.
- 2.44 Given the limited scale of the development proposed by this application, a contribution towards the Council's 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.
- 2.45 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.

Viability and Developer Contributions

- 2.46 KCC has requested contributions towards primary and secondary education, community learning, youth service, libraries, social care and waste and recycling facilities, as set out above in the "Consultee responses" section of this report. These all appear reasonable, apart from that requested for the enhancement of capacity at household waste and recycling sites. Further work is currently being

carried out to put together a strategy for enhancement of these sites County-wide and, until that has been satisfactorily concluded, there is no certainty over the level of justification for the requested contribution.

- 2.47 The remaining KCC requests amount to £108,254.54. In addition, the NHS CCG has asked for £10,725 on behalf of the NHS, to go towards enhancing general practice facilities in the Deal and Sandwich Primary Care Network. The resulting total is £118,979.54, which the applicants have agreed to pay, this to be secured through a S106 agreement subject to the grant of planning permission.
- 2.48 Under policy DM5, the Council is to seek a contribution towards the provision of affordable housing from developments of between five and 14 dwellings. For developments of this scale, provision can be made either on-site or through a broadly equivalent financial contribution, or a combination of both. Applying the normal 30% requirement would equate to four dwellings. However, given the relatively small number of units involved, experience has shown that it is often difficult to attract an affordable housing provider, as shared overheads and management costs are generally higher for such sites. The most practical way forward in this instance is therefore considered to be through a contribution to off-site provision. However, given the level of contributions already identified and other “unusual” costs associated with this development (such as the need for a full archaeological investigation), the applicants sought to argue that viability of the scheme would be threatened if the full amount of affordable housing contribution were to be required. A viability assessment has been provided by the applicants and this has been examined by specialist consultants on behalf of the Council. It is common ground between the consultants that the full level of affordable housing provision would not be viable. Negotiations have therefore taken place between Officers and the applicants and as a result of that the applicants have agreed a contribution of £100,000. This is a negotiated position and, in all the circumstances, is one that is commended to Members.
- 2.49 The total amount of developer contributions secured through the proposed S106 agreement would therefore be £218,979.54.

### **3. Conclusion and Sustainability**

- 3.1 This is an application for the erection of 14 dwellings on a site that is in countryside outside the defined urban confines of Deal. Although this means that it is contrary to policies DM1, DM11 and, in some respects, DM15, those policies now carry reduced weight in the light of the NPPF and the need to provide increased numbers of homes within the District. Because the policies that are most important for the determination of the application are either out of date or otherwise in conflict with the NPPF, determination of the application rests on the application of NPPF paragraph 11. There are no considerations in respect of “assets of particular importance” that clearly point to refusal. Therefore the judgement that has to be reached is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 3.2 Although development of this site would result in the loss of countryside, the detailed assessment that has been provided shows that, in terms of impact on the character and appearance of the local countryside, and the wider landscape, this would cause limited harm because of the specific location of the site, its visual relationship to neighbouring land and, in particular, the limited impact it would have on reducing the physical gap between the built-up areas of Deal and Sholden. The proposed site layout assists in integrating the development with that to the east,

and that approved to the west, which further mitigates the impact on this visual gap and, indeed, will help to strengthen the northern boundary of the built-up area of Deal. The proposal is acceptable in terms of its impact on the setting of heritage assets, ecology, the residential amenity of existing residents and in terms of other technical considerations. All other matters can be addressed through conditions.

- 3.3 The overarching aim behind the judgement in paragraph 11 is to foster sustainable development. This has three objectives – economic, social and environmental; despite being outside the confines, this is a sustainable location for residential development, being within close proximity to a range of services and access to public transport. The development would bring social and economic benefits by way of helping to meet the need for additional housing. Overall, therefore it is considered that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of granting permission.

**g) Recommendation**

- I. GRANT PLANNING PERMISSION subject to completion of a Section 106 Agreement to secure the developer contributions as set out in the report, and conditions to cover the following matters:

- 1) Standard Outline condition – Reserved Matters (appearance, landscape and scale) to be submitted
- 2) Standard Outline condition – submit Reserved Matters within three years
- 3) Standard Outline condition - commencement
- 4) List of approved plans
- 5) Submission of details of external materials
- 6) Submission of landscaping scheme
- 7) Provision of car parking
- 8) Provision of cycle parking
- 9) Provision of refuse facilities
- 10) Unforeseen contamination
- 11) Submission of a detailed scheme for the disposal of foul drainage (pre-commencement condition)
- 12) Submission of a detailed scheme for the disposal of surface water drainage, including SUDS (pre-commencement condition)
- 13) Verification of installation and effectiveness of drainage scheme
- 14) Submission of, and adherence to, Construction Management Plan
- 15) Provision of access to highway and construction of visibility splays, before occupation
- 16) Archaeological investigation (pre-commencement condition)
- 17) Submission of ecological management and monitoring plan
- 18) Provision of electric vehicle charging points
- 19) Broadband provision
- 20) Scheme of ecological mitigation
- 21) Scheme in relation to secured by design principles

**Informatives**

- 1) Need for consent to connect to sewer (SW)
- 2) Other sewers running through site (SW)
- 3) Advice on biodiversity measures to be incorporated into the landscaping scheme and ecological management plan
- 4) Incorporation of technical design measures regarding Secured by Design

- 5) Provision of infrastructure to facilitate broadband
  - 6) Disposal of waste arising from excavation/construction (EA)
  - 7) Protection of existing water infrastructure (SW)
  - 8) Matters to be included in detailed SUDS scheme (SW)
- II. Powers to be delegated to the Head of Planning, Regeneration and Development to settle any necessary planning conditions, in line with the issues set out in the report and as resolved by Planning Committee and to draft and issue a Statement of Reasons.

Case Officer

Neil Hewett