

a) **DOV/20/00403 – Erection of a detached dwelling and associated parking - Land Adjoining 22 Belvedere Gardens, Deal**

Reason for report – Number of contrary views

b) **Summary of Recommendation**

The Planning Inspectorate be informed that if the decision had been made by the Planning Committee then the application would have been refused.

c) **Planning Policy and Guidance**

Core Strategy Policies (2010)

CP1 – Deal is a District Centre and suitable for urban scale development
DM1 - Development will be permitted within the settlement boundaries

National Planning Policy Framework 2019 (NPPF)

Section 5 is relevant as it seeks the delivery of a sufficient supply of homes, including the size, type and tenure of housing need for different groups in the community.

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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The Kent Design Guide (2005)

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

National Design Guide 2019

This Guide provides detail and advice on how to achieve well-designed places as required by the NPPF. In this case, relevant to the determination of the application is the need to ensure that communities have a mix of home tenures and that communities are socially inclusive and development is designed to understand and relate well to the site, its local and wider context

d) **Relevant Planning History**

The site has a lengthy planning history, however, the most relevant applications and appeals are:

DOV/17/01369 – Refused and dismissed on appeal (May 2018), for the erection of a single storey two bedroom bungalow.

DOV/20/00227 – Granted, in April 2020, for a Lawful Development Certificate (LDC), for a proposed outbuilding on the land (within the garden of No.22) for use as a workshop/store.

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

Representations can be found in full in the online planning file. A summary has been provided below:

Town Council – Raises no objection

Southern Water – Initial response was to advise that a formal application to connect to the public foul sewer would be required. In response to further details submitted by the applicant, Southern Water objected to the proximity of the soakaway to the public water main, but then on receipt of further information, Southern Water removed its objection on the basis that the proposed development is no nearer to the water main than the adjacent development.

Waste Services – The applicant's plans incorporate an area to store and aid the collection of waste including recyclable materials to Local Authority requirements.

Public Representations:

58 representations of objection have been received and the material considerations are summarised below.

- Overdevelopment and cramped form of development
- Harm to the character and appearance of the area and residential amenity
- Loss of privacy, light, a garden, tree and natural environment
- Poor design, would not be in keeping in its context or the development in Foster Way
- The building removes the gap/openness between buildings and would increase the sense of enclosure
- The proposal is contrary to the decision of the Appeal Inspector
- The application seeks to benefit directly from Permitted Development rights
- There would be too many vehicles, the proposal would harm emergency access
- There is no need for the proposal
- There are discrepancies in the submitted plans

68 representations in support of the proposal have been received and are available to view in the online planning file and are summarised below;

- There is a shortage, need and demand for this accommodation
- The proposal would be in keeping and improve the appearance of the area
- The development would 'complete' the street scene and tidy up the site
- There would be an economic benefit

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

1.1 The application site comprises a rectangular plot of land at the end of a recently completed row of chalet bungalows (Belvedere Gardens), with more modest sized bungalows at its north-eastern end. The site currently forms the side garden of No.22 Belvedere Gardens. No.22 has a short rear garden, compatible with the rear gardens in the remainder of the terrace.

- 1.2 The application site is accessed from Dola Avenue with an access that runs in a straight line in front of the terrace of chalet bungalows to a turning head in front of the application site.
- 1.3 Adjacent to the turning head there is a modern development of two storey houses that front towards Foster Way. The application site is located adjacent to the front garden of No.44 Foster Way.
- 1.4 Foster Way is a cul de sac comprising a mix of chalet bungalows and two storey houses. The head of the cul de sac in Foster Way is located to the rear of the application site.
- 1.5 Since the submission of this application, a building has been constructed on the site. A building on this site was the subject of a Lawful Development Certificate which was issued under application DOV/20/00227 in 2020. In addition, a new wall has been constructed between the site and No.44 Foster Way.
- 1.6 At the most recent site visit, works were taking place on the building and on the land, but in effect the building has been substantially completed. Importantly, the building is visible from Foster Way and along Belvedere Gardens.

The Proposal

- 1.7 The proposal seeks retrospective planning permission for a single storey building on the site for use as a two bedroom dwelling. The building has a rectangular form and is designed with a pitched roof and gabled ends. The building is finished in roof tiles and cream and red brick. The building is as deep as the adjacent property (No.22); it has a matching front and rear building line, depth of rear garden and a single parking bay in front.
- 1.8 The front elevation contains two windows (to serve two bedrooms), whilst the rear elevation has a window and patio doors to the garden (serving a kitchen/dining area and lounge).
- 1.9 At its nearest, measured from the submitted drawings, the side elevation is 1.9m from the boundary with No.44 Foster Way, 1.7m from the turning head in Belvedere Gardens, 5.7m from the rear boundary wall with Foster Way and 1.2m from the side elevation of No.22. The height of the building to the eaves is 2.2m and 4.1m to the ridge.

2. Main Issues

- 2.1 The main issues for consideration are:
 - The principle of the development
 - The impact on the character and appearance of the area
 - Other material considerations

Assessment

Principle of Development

- 2.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in

accordance with the plan unless material considerations indicate otherwise.

- 2.3 The application site falls within the urban area of Deal. As such, under Policy DM1, the erection of a dwelling within the settlement boundary is acceptable in principle.

Impact on the Character and Appearance of the Street Scene

- 2.4 The design, form, appearance and location of the proposed dwelling on this site matches the proposed dwelling that was dismissed on Appeal in May 2018 under application DOV/17/1369. The Inspector's decision is a material consideration in the determination of this application.
- 2.5 The Inspector considered that the site is prominent in views along Foster Way and that the proposal would contrast with surrounding development. In particular, the roof would be visible and appear incongruous between the two storey houses at 42-44 Foster Way, chalet bungalows in Belvedere Avenue (Gardens) and at 27 Foster Way.
- 2.6 In conclusion, the proposed dwelling was considered to harm the character and appearance of the surrounding area. On considering "other matters" advanced with the appeal, the Inspector was asked to consider the potential for outbuildings to be constructed under permitted development rights on the appeal site. The Inspector opined that he was provided with limited evidence as to what may be possible, such as the grant of a certificate for proposed lawful development (an LDC), and in the absence of such evidence he gave little weight to this factor.
- 2.7 The proposed dwelling is visible from views from Foster Way and Belvedere Gardens and its single storey height appears incongruous in its immediate context and prominent location. This situation has not changed from the 2018 Appeal decision which weighs significantly against the proposal.
- 2.8 As such, it is considered that the proposal harms the character and appearance of the area and is contrary to Paragraphs 124,127 and 130 of the NPPF.

Other Material Considerations

- 2.9 It appears, by reason of the similarity between the Appeal proposal, the LDC proposal and this current application proposal that the applicant has sought to benefit from permitted development rights to achieve the outcome of a single storey dwellinghouse on the land.
- 2.10 The LDC building indicated two rooms (a store and a workshop). This application building is proposed to have a number of rooms, subdivided into habitable and non-habitable areas. As a matter of fact and degree a Class E permitted development outbuilding has to be designed and constructed and required for purposes incidental to a dwellinghouse and within its curtilage. The building as constructed appears to have footings and has been constructed with a timber frame, insulation and facing brickwork – which seems excessive for an outbuilding. It is also noted that a Building Regulation application has been submitted for the erection of a dwellinghouse which refers to "building works having been started". These factors weigh in favour of the building having been built for purposes other than as a curtilage outbuilding, although all of these factors do not preclude the possibility that the building could be used as a Class E curtilage building.

- 2.11 In addition, for the building to be considered as a Class E building it would have to be used/required for the domestic needs or personal enjoyment of the occupants of the dwellinghouse to which it relates. In this case, the applicant does not reside at No.22 Belvedere Gardens and it is stated on the application that there are no other “owners” of the land. The implication being that the occupants of No.22 are tenants and there is no indication as to why the tenants would require an outbuilding of the size and scale of the building in question which would be incidental to the enjoyment of the dwellinghouse at No 22. The building is not being used at present. On the balance of probability, as a matter of fact and degree, it is not therefore considered the building that has been constructed is likely to be required for purposes incidental to the enjoyment of the dwellinghouse and would not therefore be development permitted under Class E as such.
- 2.12 The building proposed on the drawings under this planning application is also dimensioned slightly differently to the LDC building – to the extent that its height and proximity to the side boundary would render the building not as permitted development.
- 2.13 In conclusion, whilst the fallback position is a material consideration – the weight to be afforded to the fall back needs to be determined by the Planning Committee in its decision. In this case, whilst a building could be erected on the site, to almost the same dimensions and location as the proposed building, the current building appears to have been built for primary residential accommodation purposes.
- 2.14 There is also a fallback position in that a building in this location, to match what would be allowed under permitted development rights would affect the gap between buildings and be seen from Foster Way. However, an outbuilding would be seen for what it is, and used for what it is – in connection with the dwelling house that it serves a purpose for. Whereas, there would be a different perception and impact of the proposed building if it was a separate dwelling – it would also be a separate unit of accommodation, with its own occupiers, visitors and related vehicle activities having independent use of the garden area, from No.22.
- 2.15 It is considered that with the strength of the recent Appeal decision and the harm that the Inspector identified, this proposal would equally cause the same harm to the quality of the street scene and the character and appearance of the area. The fallback position whilst in play, is not considered to outweigh the material harm.
- 2.16 The Appeal Inspector considered other matters in his decision, including the impact upon residential amenity. He did not consider that the scheme would materially affect the living conditions of the occupiers of neighbours, in particular 44 Foster Way. In accordance with the assessment of previous applications, it is considered that the development would be acceptable in terms of its impact on the highway network and car parking.
- 2.17 The site is located within the area where the development is likely to have a significant effect on the Thanet Coast and Sandwich Bay Special Protection Area (SPA). Applying a pre-cautionary approach and with the best scientific knowledge in the field, it is not currently possible to discount the potential for housing development within the district, to have an adverse effect on the integrity

of the protected SPA and Ramsar sites. Following consultation with Natural England, the identified pathway for such an adverse effect is an increase in recreational activity which causes disturbance, pre-dominantly by dog-walking, to the species which led to the designation of the sites and the integrity of the sites themselves.

- 2.18 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. For proposed housing developments in excess of 14 dwellings the SPA requires the applicant to contribute to the Strategy in accordance with a published schedule. This mitigation comprises several elements, including monitoring and wardening.
- 2.19 Having regard to the proposed mitigation measures and the level of contribution currently acquired from larger developments, it is considered that the proposal would not have an adverse effect on the integrity of the SPA and Ramsar sites. The mitigation measures will ensure that the harmful effects on the designated site, caused by recreational activities from existing and new residents, will be effectively managed.

3. Conclusion

- 3.1 The proposal is considered to harm the quality of the street scene and the character and appearance of the area and this was the conclusion of the Appeal Inspector in 2018.
- 3.2 The applicant has sought to erect an outbuilding on the site under permitted development rights that almost replicates the design, appearance and location of the current proposal. It is considered that the building now erected has not been designed or erected for the purpose of an outbuilding "required" by the occupants of No.22 Belvedere Gardens for purposes incidental to the use of that dwellinghouse; and indeed, has not been erected in compliance with Class E of the General Permitted Development Order (2015) (as amended).
- 3.3 It is considered that the harm caused by the proposal is clear and unequivocal and that the fallback position advanced does not outweigh the harm caused.

g) Recommendation

- I The Planning Inspectorate be advised that if the application had been considered by the Planning Committee it would have resolved to refuse planning permission for the reasons set out below.
- 1) The proposed development by reason of its design, scale, appearance and location be an incongruous form of development in its context that would harm the character and appearance of the area, contrary to Paragraphs 124,127 and 130 of the National Planning Policy Framework.
- II Powers to be delegated to the Head of Planning, Regeneration and Development to advise the Planning Inspectorate of the resolution and to make the case to the Planning Inspectorate for the appeal to be dismissed.

Case Officer

Vic Hester