

a) **DOV/19/01339 – Erection of four attached dwellings with undercroft parking and bin stores (existing buildings to be demolished) - 3 Middle Deal Road, Deal**

Reason for report: Number of contrary views.

b) **Summary of Recommendation**

Planning permission be refused.

c) **Planning Policies and Guidance**

**Core Strategy Policies**

- DM1 - Development will not be permitted outside of the settlement confines, unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses.
- DM13 – Provision for parking should be a design led process based upon the characteristics of the site, the locality, the nature of the proposed development and its design objectives. Provision for non-residential development, and for residential cycle provision, should be informed by Kent County Council Guidance SPG4, or any successor. Provision for residential development should be informed by the guidance in the Table for Residential Parking.

**National Planning Policy Framework 2019 (NPPF)**

- Paragraph 2 states that “planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise”.
- Paragraph 8 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. These three overarching objectives are interdependent and need to be pursued in a mutually supportive way.
- Paragraph 11 states that where development accords with an up-to-date development plan it should be approved without delay; or where there are no relevant policies or the most important policies for the determination of the application are out of date, then also granting consent. Where there is a clear reason for refusing the proposed development due to conflict with an area/asset of particular importance (as identified in the framework); and/or where any adverse impacts of granting permission significantly and demonstrably outweigh the benefits, when taking the Framework as a whole, then planning permission should be refused.
- Paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.
- Paragraph 47 ‘Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing’.

- Chapter five of the NPPF seeks to significantly boost the supply of housing, requiring Local Planning Authorities to identify specific deliverable sites sufficient to provide five years' worth of housing.
- Chapter nine of the NPPF seeks to promote sustainable transport.
- Chapter twelve seeks to achieve well-designed places, with the creation of high quality buildings and places being fundamental to what planning and development process should achieve.
- Chapter fourteen requires that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change.
- Chapter fifteen requires that the planning system contributes to and enhances the natural and local environment, by recognising the intrinsic character and beauty of the countryside, protecting valued landscapes, geological conservation interests and soils, recognising the value of ecosystems, minimising impacts on, and where possible enhancing, biodiversity, preventing pollution and remediating contamination.
- Chapter sixteen of the NPPF seeks to conserve and enhance the historic environment.
- Paragraph 177 states 'The presumption in favour of 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.'

#### The Kent Design Guide (KDG)

The Guide provides criteria and advice on providing well designed development.

#### The National Design Guide (NDG)

The Guide provides criteria and advice on providing well designed development.

#### d) Relevant Planning History

There is no relevant planning history for the site.

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

Deal Town Council – object to the planning application raising the following matters:

- Overdevelopment of the site
- Current access is inadequate and straight onto a blind bend
- Negative impact on the street scene
- Concerns over height of the building
- Building within flood risk are

Environment Agency – (*response received on 07 January 2020*) This site lies within Flood Zone 3a; this is an area considered to be at ‘high risk’ from flooding in the absence of tidal defences. Whilst we appreciate that this area is well defended from tidal flooding, there is always a ‘residual’ risk from inundation in such areas.

Accordingly we would request that your Authority initially considers whether the applicant has suitably addressed the requirements of the flood risk Sequential Test. In accordance with the National Planning Policy Framework (paragraph 158), development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It is for the local planning authority to determine if the Sequential Test has been applied and whether or not there are other sites available at lower flood risk. We are presently unable to determine whether there are other sites within the district where a development of this nature may be preferentially located.

If your Authority is satisfied with the principle of residential development at this site and are content that the Sequential Test has been passed, the Exception Test becomes applicable; the second part of this requires that the development and its occupants are safe from flooding.

The submitted Flood Risk Assessment (FRA) interrogates the most pertinent flood modelling for the area and proposes a ‘design’ flood level, above which all living and sleeping accommodation will be provided.

*Environment Agency position:* The proposed development will only be acceptable if the following measures, as partially detailed within the Flood Risk Assessment submitted with this application, are implemented and secured by way of a planning condition on any planning permission granted.

*Reconsultation response received on 28<sup>th</sup> February 2020*

Further conditions have been recommended in relation to groundwater protection. No further concerns have been raised.

Environmental Health – views not received.

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

Waste Officer – no objections raised.

Southern Water – no objection subject to conditions requiring submission of details for a SUDS scheme (surface water disposal) and foul water drainage.

#### Public Representations

9 letters of objection received raising the following matters:

- Overdevelopment of a small site
- Design is not in keeping with the local area
- Access to the rear on a blind bend – accident waiting to happen
- Lack of sufficient parking
- Poor access and insufficient visibility
- Will further drain the very limited on-road parking spaces available in this double yellow lined area

- Considerable loss of light
- Out of proportion
- Traffic on Albert Road will increase with the construction of nearly 200 homes in Pottery Grove – will increase risk of an accident due to the blind bend
- Area prone to flooding

9 letters of support received making the following comments:

- Improve the aesthetics of the area
- It will be good for the area to go back to being totally residential and being more pleasant to look at
- Nice design
- Great asset to the local community
- Get rid of heavy vehicles
- Close to railway station
- Close to all amenities

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

- 1.1 The application site comprises an existing single storey building which lies within the settlement confines of Deal. The site also lies within the flood risk zone 3. The site is used as a yard and offices for a paving/hard landscaping company. The site covers approximately 395 sqm. The site lies at the junction formed by Albert Road and Middle Deal Road.
- 1.2 The proposal involves demolition of the existing single storey building and erection of a three storey building comprising 4 2-bed attached dwellings with rooms within the mansard roof and undercroft parking. The proposed dwellings would be sited abutting the edge of the footpath and would turn the corner. The proposed dwellings would be finished in multi-stock brickwork and yellow brick detailing with feature band and sprung arches over windows and doors and stone cills. It would have white UPVC fenestration and would artificial slate tiled roof. It is proposed to erect a 1.8m high close boarded wooden fence along the northern boundary of the site.

2 **Main Issues**

2.1 The main issues are:

- The principle of the development
- Character and Appearance
- The impact on the highway network
- The impact on residential amenity
- Drainage and flooding
- Ecology

**Assessment**

**Principle of Development**

- 2.2 The starting point for decision making, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990, is the adopted development plan. Decisions should be taken in accordance with the policies in such plans, unless material considerations indicate otherwise.

- 2.3 Policy DM1 states that development will not be permitted outside of the settlement boundaries, unless it is justified by another development plan policy, functionally requires a rural location or is ancillary to existing development or uses. The site is located within the defined settlement confines and therefore accords with Policy DM1.
- 2.4 DM11 seeks to resist development outside of the settlement confines if it would generate a need to travel, unless it is justified by other development plan policies. Again, as the site is located within the settlement confines, the development accord with Policy DM11. The occupants of the development would be able to access most day to day facilities and services within Deal and would be able to reach these facilities by more sustainable forms of transport, including walking and cycling. The site is located relatively close to public transport links.
- 2.5 Policy DM1 and the settlement confines referred to within the policy were devised with the purpose of delivering 505 dwellings per annum in conjunction with other policies for the supply of housing in the Council's 2010 Adopted Core Strategy. In accordance with the Government's standardised methodology for calculating the need for housing, the council must now deliver 629 dwellings per annum. The NPPF takes a more nuanced approach regarding the location of development. As a matter of judgement, it is considered that policy DM1 is in tension with the NPPF, is out-of-date and, as a result, of this should carry only limited weight. Notwithstanding this, However, the application site is within the defined settlement confines and, as such, Policy DM1 supports development in this location..
- 2.6 Policy DM11 seeks to locate travel generating development within settlement confines and restrict development that would generate high levels of travel outside confines. For the purposes of assessing this application, the site falls within the settlement confines and so is supported by DM11. Whilst there is some tension between DM11 and the NPPF, they are broadly consistent (save for the blanket restriction of travel generating uses outside of confines). The NPPF seeks to focus development in locations which are or can be made sustainable, where there is access to a range of modes of transport (including walking and cycling) and where development will support existing facilities and services, and social integration. Insofar as this application is concerned, it is therefore considered that DM11 is not out-of-date and should continue to attract significant weight.
- 2.7 It is considered that policy DM1 is out-of-date and DM11 is in tension with the NPPF. These 'most important' policies for determining this application taken together, are considered to be out-of-date and carry reduced weight. As such, the 'tilted balance' described at paragraph 11 (d) of the NPPF is engaged.

#### Character and Appearance

- 2.8 The proposal involves demolition of an existing single storey building and erection of four three-storey attached dwellings under a mansard roof with 3 undercroft parking spaces on the ground floor. The proposed dwellings would abut Middle Deal Road to the north and Albert Road to the east. The site is surrounded by residential properties. The existing building on the site is of no architectural merit and in this respect does not contribute to the townscape or enhance the existing surroundings. In addition to this, the commercial paraphernalia including the industrial metal fencing and concrete hardstanding are highly prominent in the street and as such they are considered to be visual detractors.
- 2.9 The area comprises terraced, semi-detached and detached houses of varying scale and design. Whilst there is no consistency in terms of design features in Middle Deal Road

or Albert Road, it is worth noting that the dwellings in the street are predominantly two storeys in height, finished in brick/render and have pitched roofs with gable ends. One feature of the area (particularly along a stretch of Albert Road) is window detailing, with windows set back in reveals, bay windows, arched brick headers and window cills. Having reviewed the design and access statement accompanied with the application, it is noted that the design of the proposed dwellings has been carefully considered. The character of the building would lack some of the more interesting detail found on the terraces in the area (for example the attractive bay windows to the buildings to the north) and whilst the overall design of the dwellings is not identical to the existing properties in the vicinity, by virtue of the overall scale, roof form, choice of materials, proportions of the fenestration, header and sill detailing, it is considered to respond to the prevailing architectural detailing in the vicinity and is therefore considered acceptable.

- 2.10 In conclusion, it is considered that the proposed development is reasonably designed and sited and would enhance the character and appearance of the street scene. Therefore, the proposal would be in accordance with the paragraphs 127 and 130 of the NPPF.

#### Highways/Travel Impacts

- 2.11 The application site is within the settlement confines of Deal. The site lies at the junction formed by Middle Deal Road and Albert Road. The road is well-lit and is served by public footpaths and bus stops which provide services, linking to the centre of Dover and Canterbury. It also lies in close proximity to Deal Train Station. The site is relatively close to the facilities and services within Deal Town Centre. Having regard to these factors, it is considered that the site is in a sustainable location and would allow for a variety of modes of transport to be used, including more sustainable modes.
- 2.12 Policy DM13 requires that provision for parking should be a design led process based upon the characteristics of the site and the locality. Provision for residential development should be informed by guidance in the Table for Residential Parking (Table 1.1 in the Core Strategy), and cycle provision informed by KCC Guidance SPG4. In line with Policy DM13 of the Core Strategy, the 2 bed dwellings would require a provision of 1 off-street car parking space each in an edge of town centre location. The proposed development proposes three undercroft car parking spaces and therefore lacks provision of one off-street parking space and a visitor parking space. It is noted that on-street car parking is prevalent in the street.
- 2.13 Third party representations raised concerns regarding the lack of parking, an increase in the pressure of parking in the street, traffic problems and dangerous access. Discussions were had with KCC Highways in respect of the proposed access. The proposed development would utilise the existing access. KCC Highways have advised that whilst the access is not considered to be ideal, it is necessary to draw a comparison of the existing frequency and nature of the use of the access (i.e. for commercial traffic) with the traffic that is likely to be generated as a result of low key residential use (4 cars). Having regard for the above, on balance, the proposed access is considered acceptable. In respect of the concerns regarding parking, whilst the development would be likely to increase the demand for on-street car parking, in light of the evidence submitted with the application, whilst the development would be likely to increase pressure for parking on-street this would be unlikely to cause severe harm to the local highway network or an unacceptable impact on the highway safety. As such, the lack of parking in this instance would not warrant a refusal on this basis.

#### Impact on Neighbours

- 2.14 The application site shares boundaries with properties no's 5, 7, 9 Middle Deal Road to the west and a row of terraced properties no's 2-16 to the south fronting Church Path. During the course of the application, concerns were raised in respect of overbearing impacts on no.5 Middle Deal Road to the immediate west. Concerns were also raised in respect of unacceptable loss of privacy to the neighbouring occupiers. The applicant was forthcoming and the amended drawings were received which included amendments to the internal layout of the proposed dwellings to facilitate obscure glazed windows to non-habitable rooms facing the neighbouring properties to the west and south. The properties fronting Church Path have deep private gardens measuring approximately 15-20m. Having reviewed the amended drawings, it is considered that the proposal would not result in unacceptable loss of privacy to the occupants of properties fronting Church Path or Middle Deal Road whilst a degree of perception of overlooking may persist particularly to the neighbouring properties no's 5, 7, 9 Middle Deal Road. Notwithstanding the above, having regard for the separation distances with the dividing boundary (approximately 8-9m), it is not considered that the perception of overlooking would be so severe to warrant a refusal on this basis.
- 2.15 In respect of sense of enclosure, whilst attempts were made by the applicant to amend the massing of the roof to reduce its bulk, by virtue of the proximity, scale and height of the proposed dwellings, the concerns in relation to the severe sense of enclosure to the private amenity area of no.5 still remain unaddressed. The proposed single storey extension which would accommodate the bin store would lie on the dividing boundary with no.5 whilst the three storey side elevation of the dwelling would lie at a distance of approximately 2.5m from the dividing boundary with no.5. It is considered that the proposal would result in a severe sense of enclosure to the private amenity area such that the living conditions of the existing occupants would be unduly prejudiced. It would therefore be contrary to paragraph 127 of the NPPF which requires the developments to 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.
- 2.16 A daylight/sunlight assessment has been submitted with the planning application. It is noted that habitable rooms in the following residential buildings were identified as potential sensitive receptors and have therefore been tested. The properties include (Church Path) no's 4, 6, 8, 10, 12, 14, 16, no.44 Albert Road and (Middle Deal Road) no's 5, 7 and 9. The daylight impacts assessment includes tests to ascertain Vertical Sky Component and No Sky Line Assessment. It is apparent that the results were below the aspirational value of 0.8 recommended by the BRE Guidelines. Therefore, the impact on the daylight distribution within the assessed rooms is concluded to be negligible. Finally, the report concludes that it would have an acceptable degree of change and, whilst this represents that the reduction in daylight distribution would be noticeable by the occupants, it is unlikely to have any significant impacts.
- 2.17 Further to this, sunlight and overshadowing analysis has been carried out. The methods of assessment include Annual Probable Sunlight Hours Assessment (APSH) and Sun on the Ground. The BRE guidelines require three sunlight tests to be carried out. At paragraph 7.1 page 18, it states, "The BRE Guidelines clearly state that for the proposed development to be considered to have an adverse effect on the available sunlight to neighbouring windows, all three tests would need to have been failed". The results of the tests showed that each property passed 1/3 tests. The BRE guidelines deem such an approach as acceptable. Further to this, the results from the test 'Sun on the Ground' have been satisfactory. Therefore, this has been assessed to have no adverse impact.
- 2.18 Having regard to the conclusions of the assessment, it is considered that the proposed development would not result in a significant loss of light or overshadowing to the occupiers of the neighbouring properties.

### Living Conditions of Future Occupiers

- 2.19 Regard has been had to the paragraph 127 of the NPPF requires the developments to 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. The proposed dwellings, together with their individual rooms would be of a good size, whilst all habitable rooms would be naturally lit. It is noted that given the restrictive nature of the site, provision of amenity space has not been achieved. Whilst this is not considered ideal, by virtue of its location in a tight knit urban area, the lack of amenity space in this instance is considered acceptable.

### Ecology

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

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

- 2.21 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.
- 2.22 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.
- 2.23 Following consultation with Natural England, the identified pathway for such a likely 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.
- 2.24 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.
- 2.25 Given the limited scale of the development proposed by this application, a contribution towards the Councils Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy will not be required as the costs of administration would negate the benefit of collecting a contribution. However, the development would still be mitigated by the Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy as the Council will draw on existing resources to fully implement the agreed Strategy.

### Drainage and Flooding

- 2.26 The application site lies within Flood Zone 3 which is considered to be an area at 'highest risk' from flooding. Where development within areas at risk of flooding is proposed, paragraph 158 of the NPPF requires that the Sequential Test is applied and, if necessary, that the Exception Test is applied. The aim of the Sequential Test is to steer development to areas with the lowest risk of flooding. However, development may be permitted where there are no reasonably available sites which are appropriate for the development in areas with a lower probability of flooding.

- 2.27 The application has been supported by a site-specific flood risk assessment (FRA) and a sequential test. The sequential test has been carried out in accordance with the methodology prescribed within the Council's SFRA Site Specific Guidance for Managing Flood Risk. The methodology within the guidance for the search of comparator sites refers to a number of sources of information available within DDC's evidence base for applicants which include the following:
1. Authority Monitoring Report (AMR) – this report provides information on sites with 'extant planning permission' and allocated sites.
  2. Economic Development Needs Assessment (EDNA) – This report provides information on strategic scale employment sites.
  3. Housing Economic Land Availability Assessment (HELAA)
  4. Brownfield Register
- 2.28 The SFRA also states that if it is not possible to identify a minimum of 2 sites for comparison from the sources above, applicants should approach local land/property agents. Land for sale is often advertised by size not capacity, and therefore in this circumstance applicants should request information on available sites which are ±10% the size of the application site (in sqm).
- 2.29 The sequential test has been carried out in accordance with the methodology within the SFRA. The submitted sequential test demonstrates that no sequentially preferable sites have been found in Deal which are available. As such, the sequential test is considered to have been passed. By virtue of the site being in flood zone 3, the application would qualify to be assessed against the exception test as set out in the NPPF.
- 2.30 Paragraph 160 of the NPPF sets out that for the exception test to be passed it should be demonstrated that: a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
- 2.31 The proposed development would provide a short term and modest economic benefit, by providing employment during the construction phase. With regards to the social role, it is considered that the proposal would enhance the urban setting together with providing 4 additional dwellings in a sustainable location within settlement confines. It has good access to the public transport and facilities and services in Deal such that it would be likely to provide additional support for those facilities and services. The council can currently demonstrate a five-year housing land supply (having 6.16 years' worth of supply). It is considered that, on balance, the proposal would provide wider sustainability benefits to the community that outweigh the flood risk.
- 2.32 The FRA includes recommendations of appropriate flood mitigation measures to be incorporated in the proposed development which includes the following:
- The walls are to be built as cavity brick/blockwork to mitigate against potential flood impact.
  - The construction of the new building would utilise flood resilient construction methods and include a solid concrete ground slab to avoid potential flood water ingress below suspended floor voids.
  - The types of materials used in the construction of the development would be chosen to prevent or reduce the risk of structural damage caused by flood or surface water runoff to prevent the growth of wet rot spores.
- 2.33 The EA recommends that the finished floor levels should be set at a minimum of 600mm above the design flood level of sleeping arrangements are provided at ground floor level

or 300mm above the design flood level for habitable accommodation. Having regard for the detailed design of the proposed dwellings which seek to incorporate the above-mentioned flood mitigation measures, it is considered that the proposal is acceptable in terms of meeting the flood resilience criteria as outlined within EA's standing advice on flood risk. Environment Agency have raised no objections in relation to the proposal and have recommended a condition (which relate to the flood mitigation measures) to be attached in the event of grant of planning permission.

- 2.34 Further to the above, it is appropriate to consider whether the development would be likely to lead to localised on or off-site flooding. The NPPF, paragraph 163, states that local planning authorities should ensure that flooding is not increased elsewhere and priority should be given to the use of sustainable drainage systems. In furtherance to this, the Planning Practice Guidance states that sustainable drainage systems should be designed to control surface water run-off close to where it falls and replicate natural drainage as closely as possible.
- 2.35 Whilst Southern Water have raised no objection in this instance, it is considered that in the event of grant of planning permission, pre-commencement conditions requiring the submission of detailed schemes for both foul water and surface water disposal would be attached to the permission.
- 2.36 It is noted that there have been numerous flood events on Albert Road and consequently understandable concerns have been raised by third parties. In assessing this application, particular care has been taken to understand the potential implications of this development on flooding. Whilst the development would provide four new dwellings on the site, it would replace an existing commercial operation which would have created its own outflows and run-off. The development would reduce the amount of impermeable surfacing on the site, improving surface water drainage (which could be secured by condition), whilst a condition would also be attached (should permission be granted contrary to the recommendation) requiring a purpose designed foul water drainage. As such, it is considered that the development would not increase the risk of flooding on site or elsewhere.

### **3. Conclusion**

- 3.1 By virtue of the limited separation distance, scale and height of the proposed development, it would cause unacceptable harm from severe sense of enclosure to the residential amenity of the neighbouring occupiers of no.5 Middle Deal Road. The proposal would therefore be contrary to paragraph 127 of the NPPF. Whilst it is acknowledged that the loss of light to neighbours would not be so harmful as to warrant refusal, It is considered that the harm caused by the severe sense of enclosure would be significant and demonstrable, and would outweigh the benefits of the proposed development.
- 3.2 In respect of other matters, it is concluded that no harm would arise in respect of the character and appearance of the street scene or the wider area. It is considered acceptable in terms of highways impact and drainage.
- 3.3 In conclusion, by virtue of the significant harm arising from the sense of enclosure to the occupiers of no.5 Middle Deal Road, the application is recommended to be refused.

### **g) Recommendation**

- I Planning permission be refused for the following reason:

1. By virtue of the limited separation distance, scale and massing of the proposed dwellings, the proposed would result in a severe sense of enclosure to the occupiers of no.5 Middle Deal Road such that the living conditions of the existing occupants would be unduly prejudiced. The proposed development would therefore be contrary to paragraph 127 of the NPPF.
- 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 recommendation and as resolved by the Planning Committee.

Case Officer

Benazir Kachchhi