

a) **DOV/20/01076 – Erection of a detached dwelling, double garage and associated parking - Land North East of The Close Nursery, Station Road, St Margaret's-at-Cliffe**

Reason for Report: Number of contrary responses (31 in support).

b) **Summary of Recommendation**

Planning permission be refused.

c) **Planning Policy and Guidance**

Dover District Core Strategy (CS) 2010

- CP1 – Settlement hierarchy
- DM1 - Development within the built confines.
- DM11 – Travel Demand
- DM15 – Countryside
- DM16 – Landscape

National Planning Policy Framework (NPPF) 2019

- Paragraph 8 - The three objectives of sustainability.
- Paragraph 11 - Presumption in favour of sustainable development.
- Paragraph 124 – Good design is a key aspect of sustainable development
- Paragraph 127 - Achieving well-designed places.
- Paragraph 130 - Permission should be refused for poor design.
- Paragraph 131 – Great weight to be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area
- Paragraph 170 - Development to contribute to and enhance the natural environment.
- Paragraph 172 - Great weight given to conserve and enhance landscape and scenic beauty in Areas of Outstanding Natural Beauty (AONB).
- Paragraph 175 - Protection of habitats.

Kent Downs AONB Management Plan

This Plan contains landform and landscape character policies, which seek the protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Kent Downs AONB.

National Design Guide 2019

Requires context to be taken into account in the design of new development

Draft Local Plan

The Council is in the final phase of approving the draft Dover District Local Plan for public consultation. This is the start of a process for developing a new local plan for the district, replacing in due course, the Core Strategy and Land Allocations Local Plan. Once the draft plan is approved for consultation, it will be a material planning consideration for the determination of planning applications, although importantly it will have little weight at this stage. As the plan progresses, it will be possible to afford

greater weight to policies or otherwise, commensurate with the degree of support/objection raised in relation to them during the consultation process. A final version of the Plan will be submitted to the Planning Inspectorate for examination to determine if the Plan can progress to adoption and, if so, the degree to which final modifications will/will not be required.

At the time of preparing this report, the approval of the Draft Plan for consultation was imminent. It's possible that approval will be made prior to this meeting of the Planning Committee, in which case the policies of the draft Plan will be a material consideration in the determination of the application. Should this be the case, and for the purposes of this report, it's considered that relevant policies in the draft Plan have little weight at this stage and do not materially affect the assessment and recommendation herein including (where appropriate) the framing of conditions or reasons for refusal.

d) **Relevant Planning History**

DOV/10/00823 – refused for 1 dwelling on the land, on 4 grounds ( principle, visual impact, access and lack of need).

DOV/16/00711 – refused for 2 dwellings on the land, on 4 grounds of refusal (Outside the confines and AONB, the use of the private road and absence of preliminary Eco Survey and Assessment).

DOV/17/00792 – Refused, for *“Erection of a detached dwelling, detached garage and creation of vehicle turning area”* on the basis of the impact upon the open countryside and AONB and the private access being unsuitable for further residential access.

The subsequent Appeal was refused in June 2019 on the basis that the Appeal Inspector considered the development to be a sporadic form of development that would encroach into the countryside and would suburbanise the site eroding the rural qualities of the area and the AONB. The visual impact of the residential use of the land (such as vehicle movements, garden furniture, domestic cultivation etc) was considered by the Inspector to further add to the suburbanising effect. With regard to highway safety, the Inspector considered that the access would be suitable to serve an additional dwelling.

DOV/20/00086 – Refused *“Erection of a detached dwelling, double garage and creation of parking”* on the basis of the unjustified location of the development outside the settlement confines, within the AONB, and the harm to the intrinsic character and beauty of the area, in particular the landscape and scenic beauty of the AONB.

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

Environmental Health Officer: No objections, providing a condition is imposed to investigate and assess the risk from any land contamination.

East Kent PROW: No objections are raised.

Parish Council: Raises objections as the site is outside the village confines and within the AONB.

Southern Water: Wishes to draw attention to the need to identify the exact location of the foul sewer and to safeguard it during the construction stages and post construction stages of the development.

Kent Archaeology Unit: "It is possible that the construction of the proposed new dwelling will impact upon buried archaeological remains. I therefore recommend that provision is made in any forthcoming planning consent for a programme of archaeological work." This can be achieved through a planning condition being imposed.

Third Party Reps: 67 responses have been received. There are 36no. responses raising objections and 31no. expressing support. The points raised are summarised below.

Objections -

- contrary to the Development Plan and NPPF
- development outside the village confines and within the AONB
- the access is unsuitable and its additional use would cause damage and be unsafe
- the development would detract from the natural environment
- the design is unsympathetic, underwhelming
- the location of the site is not sustainable
- there are discrepancies and mis-information within the application submission
- previous applications have been refused and their appeals dismissed
- the current proposal is similar to the previous proposals that have been refused and dismissed

Support –

- the proposal would provide a family home
- there is a need for additional housing
- the proposal is a sustainable form of development and eco-friendly
- the proposal would blend well within the surrounding area
- the design is sympathetic and the proposal will enhance the area
- the site is vulnerable to other uses
- the proposal will tidy up the site
- the proposal will lead to investment and employment

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

1.1 The application site comprises a rectangular parcel of land located to the rear of properties in St Vincent Road (located to the north) and adjacent to a dwelling known as The Close Nursery (located to the west), with access from Station Road along a private drive.

1.2 The application site is open and undeveloped and is situated on the north-western side of the valley, within the Kent Downs AONB. There are open views to the site from the countryside, in particular the site is visible from the nearby Public Rights of Way (PROW) ER28 and ER41. PROW ER28 runs from St Vincent Road, alongside the eastern boundary of the application site and to the other side of the valley where it meets Kingsdown Road. The presence of existing vegetation along the eastern boundary of the site limits the visibility of the site from this section of ER28.

1.3 On the site, an area near to the boundary with The Close Nursery has been exposed/scraped away so that the underlying chalk is visible. There is a manhole cover and a water pipe in this part of the site. The remainder of the site is covered in unmanaged grass and shrubs, with gravelled areas underfoot. The site adjoins a further rectangular area located to the south. There is no boundary enclosure delineating the two areas of land, but this parcel is more overgrown and less managed, and could be

served by the private access. It used to contain some dilapidated touring caravans, but these have now gone. Along the southern boundary of this adjoining site there is an established hedgerow.

- 1.4 The Appeal Inspector described the site as better related to its rural surroundings to which the site makes a positive contribution.
- 1.5 Land to the north and west of the site falls within the village confines of St Margaret's. Land to the south and east falls within the open countryside and the Kent Downs AONB. The centre of the village is located further south, on the other side of the valley. A footway exists on the east side of Station Road to facilitate pedestrian access to the centre of the village.
- 1.6 The proposal seeks the erection of a detached two storey dwelling that would have its lower ground floor sunken into the land, such that only its upper floor would be readily visible above the existing topography of the land. The dwelling would have an L-shaped form, with an enclosed sunken courtyard and it would be located slightly west of the centre of the site. It is designed with a flat roof on one section and a gently sloping monopitched roof on the other. Both roofs will have a sedum covering.
- 1.7 A detached garage of similar flat roof design and external appearance is proposed adjacent to the dwelling. The garage is served by a proposed gravel driveway and turning area that will lead from the private drive, off Station Road.
- 1.8 The proposed dwelling will accommodate four bedrooms and ancillary rooms on the lower floor and living, dining, study and kitchen areas with ancillary rooms on the upper floor. Access to the sunken courtyard will be from the bedrooms and steps leading from the garden. An 'at grade' main entrance to the dwelling is provided into the upper floor, adjacent to the location of the proposed garage.
- 1.9 A boundary treatment drawing has been submitted indicating where new tree and hedge planting would take place around three sides of the plot, along with part of the site being proposed as natural grassland.
- 1.10 The applicant considers that the design approach to the building and its surroundings addresses the concerns of the previous Appeal Inspector and addresses the more recent reason for refusal of the earlier 2020 application. The changes to the scheme from the recent refused application will be set out later in this report. The building is considered by the applicant to be contemporary in appearance and constitutes an outstanding and innovative design that reflects high standards in architecture, addresses the need for energy efficiency and responds to the on-set of climate change.

## **2. Main Issues**

- Principle of development
- Impact on the character and appearance of the area and AONB
- Other Matters
- Planning Balance

### **Assessment**

#### **Principle of Development**

- 2.1 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.
- 2.2 Policy DM1 states that development will not be permitted outside 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 outside the defined settlement confines, is not supported by other development plan policies and is not ancillary to existing development or uses. As such, the application is contrary to Policy DM1.
- 2.3 Policy 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. The site is located outside the settlement confines. In view of the distance of the site from the centre of the village and its amenities/facilities, it is most likely that the occupants of the development would be reliant on the use of the car to travel in order to reach all their necessary day to day facilities and services. The development is not justified by other development plan policies. As such, the development is contrary to Policy DM11.
- 2.4 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 it meets one of its exceptions criteria. The degree to which the development affects the character or appearance of the countryside will be considered further in this report; however, the development does not meet any of the exceptions criteria set out in the Policy.
- 2.5 For the above reasons, the development in principle, is contrary to Policies DM1 and DM11 and potentially contrary to Policy DM15 of the Core Strategy.
- 2.6 Whilst the development is contrary to Policies DM1, DM11 and potentially Policy DM15 and 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 delivered less than 75% of the Housing Delivery Test requirement over the previous three years) 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, the Council is currently able to demonstrate a five-year supply of housing. 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.
- 2.8 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. 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 less weight.

- 2.9 With regard to this particular application, the focus of the NPPF is to locate new housing development within suitably sustainable locations. Paragraphs 78 and 79 of the NPPF, seek to locate housing where it will enhance or maintain the vitality of rural communities and to avoid the development of isolated homes in the countryside. As such, the location of the proposed development would enable the vitality of the rural settlement to be supported.
- 2.10 Policy DM11 seeks to locate travel generating development within settlement confines and to restrict development that would generate high levels of travel outside confines. This blanket approach to resist development which is outside the settlement confines does not reflect the NPPF, albeit the NPPF aims to actively manage patterns of growth to support the promotion of sustainable transport. Given the fact that the future occupiers of the proposed dwelling would be able to walk along a footway into the centre of the village, which is some 600m from the site, and there is a reasonable range of amenities and facilities within walking and cycling distance, it is considered that there are reasonable alternatives to travel available to the future occupiers. The blanket 'in principle' objection to the scheme as a result of the restrictive wording of Policy DM11 renders the policy out-of-date with the NPPF which reduces the weight that can be afforded to this Policy. In view of the realistic alternatives to the use of the private car to travel into the village, it is considered that there is no overriding conflict with the NPPF.
- 2.11 Policy DM15 resists the loss of countryside (i.e. the areas outside of the settlement confines) or development which would adversely affect the character or appearance of the countryside, unless one of four exceptions are met; it does not result in the loss of ecological habitats and provided that measures are incorporated to reduce, as far as practicable, any harmful effects on countryside character. Resisting the loss of countryside as a blanket approach is more stringent an approach than the NPPF, which focuses on giving weight to the intrinsic beauty of the countryside and managing the location of development. There is therefore some tension between this Policy and the NPPF. In this instance, the site's appearance within the open countryside does afford a contribution to its intrinsic beauty and character. Consequently, it is concluded that Policy DM15 should attract significant weight for the reasons set out in the section below.
- 2.12 It is considered that Policies DM1, DM11 and DM15 are to a greater and lesser extent in tension with the NPPF, although for the reasons given above some weight can still be applied to specific issues they seek to address, having regard to the particular circumstances of the application and the degree of compliance with NPPF objectives, in this context. Policy DM1 is particularly critical in determining whether the principle of the development is acceptable and is considered to be out-of-date. Having considered the development plan in the round, it is considered that the 'tilted balance' as set out in paragraph 11 of the NPPF should normally be engaged and as such the application should be assessed in the context of granting planning permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 2.13 In the footnote to paragraph 11i, the NPPF states that those policies referred to are those in the NPPF relating to and including ...an AONB. This means, that if it is considered that there are clear reasons for refusing the development proposed in this application by reason of its impact upon the AONB, then the 'tilted balance' towards granting planning permission should not be engaged.
- 2.14 An assessment of the impact upon the AONB and the implications of this for the how the application should be 'weighed' is made later in this report.
- 2.15 As part of the assessment, regard needs to be had of the Appeal Inspector's decision (dated 4 June 2019) and the Council's more recent decision (dated 22 May 2020), which are material considerations in the determination of this application.

#### Impact Upon the Character and Appearance of the Area and AONB

- 2.16 Not an issue of principle, but relating to the consideration of impact of the proposal, is the need for the character and appearance of the countryside to be protected from harm (Policy DM15) and the landscape character to be safeguarded from harm, in accordance with Policy DM16, and for *"great weight to be given to conserving and enhancing landscape and scenic beauty in AONB'S, which have the highest status of protection in relation to these issues"* as set out in in paragraph 172 of the NPPF.
- 2.17 The wider landscape includes dry valleys on the underlying chalk geology and the site and its neighbours on or near to a ridge and hence is visible from the south, at some distance, but particularly at close quarters from the footpaths. The site does not however appear as part of the open agricultural landscape, due to its visual condition and boundary treatment. Notwithstanding, the Appeal Inspector considered that although the previously proposed building would not represent an isolated dwelling in the countryside given the distance from the surrounding dwellings, he still considered that such a sporadic form of development on this site would encroach into the countryside and erode the rural qualities of the area and AONB. The impact would be further exacerbated by the residential use of the land – i.e. how the site would be used and how it would appear.
- 2.18 The last Appeal scheme proposed a detached single storey dwelling (bungalow) and garage on the land, with pitched roofs. The footprint of the buildings covered a slightly greater site area than the recent application proposal (20/00086) and the building lacked any particular design merit.
- 2.19 The recent application proposal (20/00086) paid greater attention to design and proposed a contemporary design approach to the building, seeking to nestle the building into the topography of the land, and thus minimising its visual impact. The submission proposed some energy efficient measures to be

incorporated into the building and the use of the land, but the submission lacked detail.

- 2.20 The current proposal is in essence for the same development as the previously refused scheme, with the one exception that two panels of a 'green' wall are proposed on the south facing elevation of the main building.
- 2.21 As a whole, the current proposal also seeks to pay greater attention and detail to the land around the proposed development and offers tree and hedgerow planting around three boundaries of the site and the planting of natural grassland on part of the garden.
- 2.22 As a precautionary note, it is important in determining this current application to take proper account of the previous decision(s) of the Council, as material planning considerations, as the proposal is covering exactly the same issues as before. In this case, the proposed scale, design and appearance, layout, access, built form and site coverage are the same as the previous scheme, save for the application of a 'green wall' on one of the elevations of the building. It is considered that a green wall and planting around the boundaries of the site could have been requirements of a planning condition imposed on the previous decision if the Planning Committee had been minded to approve - to ensure that the development had an appropriate landscaped setting or softening impact. As such, it is considered by officers that these proposed 'planting' additions from the previous application do not fundamentally change the determination of the key issues.
- 2.23 Taking into account the Appeal decision and the Council's previous decisions, the proposed development would still be seen from the PROWs and it would comprise a visual intrusion into the landscape and lead to an encroachment of the built form into a sensitive part of the AONB and open countryside. The building footprint and hard surfacing around the buildings would take up a significant extent of the site, and the site's visual domestication and residential use would remain as obvious incursions into the countryside. These elements would also not be able to be suitably screened, in any event, due to the topography of the land.
- 2.24 It is also considered that if permitted, the grant of permission would place greater pressure on allowing development on the adjoining rectangular site, because at the moment there is no physical definition/boundary between the two sites and they share the same access. However, that potential impact would be subject of further assessment.
- 2.25 It is concluded that the proposal would result in material harm to the character and appearance of the area and the AONB. Therefore, it would be in conflict with Policies DM1, DM15 and DM16 of the Core Strategy, in conflict with Paragraphs 124, 127, 130, 170 and 172 of the NPPF and in conflict with the policy objectives of the Kent Downs AONB Management Plan – which seek to ensure that developments do not adversely affect the character and appearance of an area and maintain or enhance the natural beauty of the AONB, which is afforded great weight to its protection.

#### Other Matters

- 2.26 The applicant has also referred to a more harmful impact on the AONB from the residential development of a site close-by which has been allocated within the LALP 2015, as Site LA44 – land at the junction of Station Road/Nelson

Park. In response to this point, LA44 is a housing allocation, but also there was a change to the Proposals Map so that the land could be included within the settlement confines. The assumption being that although a site specific policy, development on the site was considered to be appropriate in principle (taking into account DM1 and DM11). Development that has subsequently taken place on that plot of land assimilates well with the street scene and does not appear as a sporadic form of development unrelated to the existing pattern of development. Notwithstanding, the merits of the current application need to be considered on their own and not combined with the merits of an alternative proposal, elsewhere.

- 2.27 The Appeal Inspector did not consider that an additional dwelling served by the existing access would give rise to harm to highway safety. The current proposal does not give rise to any material change in circumstances and as such, there is no objection to the proposal on highway grounds.
- 2.28 The site is located within the area where the development is likely to have an 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.
- 2.29 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.
- 2.30 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.
- 2.31 Having taken into account the Environmental Impact Assessment (EIA) Regulations 2017, and given the nature, scale and location of the proposal, the impacts of the development would not be significant in terms of the receiving environment and existing land uses. Environmental impacts in relation to the nearest designated sensitive areas are unlikely to be significant. Consequently, while there may be some impact on the surrounding area as a result of this development, it would not be of a scale and nature likely to result in significant environmental impact. EIA is therefore not required.

#### Planning Balance

- 2.32 Significant weight is applied to the requirements of the Development Plan and NPPF policies and the materiality of the recent decisions by the Appeal

Inspector (in June 2019) and the Council (in May 2020). As harm to the landscape and scenic beauty of the AONB has been identified in this Report, it is considered that, by reason of the footnote in Paragraph 11i of the NPPF, the 'tilted balance' towards granting planning permission is not engaged and should not be applied.

- 2.33 The design of the proposal is contemporary and seeks to assimilate the building and its associated residential use into the topography of the land and the surrounding landscape. With regard to design, the NPPF places great weight on outstanding or innovative design which promotes high levels of sustainability, or helps raise the standard of design more generally in an area – as long as it fits in with the overall form and layout of its surroundings.
- 2.34 It is considered that although the building is well-designed, it is not of a standard that makes it outstanding or innovative. Although the building will raise the standard of design more generally in this area, it is considered that the building would not be in keeping with the form and layout of its surroundings and neither would it overcome the degree of harm identified to the intrinsic, open character and beauty of the countryside and the landscape and scenic beauty of the AONB.
- 2.35 To be weighed in the planning balance are the benefits of the provision of new housing against the harm arising from the development and specifically the conflict with the development plan, overall travel patterns and the harm to the character and appearance of the area and AONB.
- 2.36 The scheme would provide an additional family sized dwelling which would be a modest public social benefit. The proposal would also provide economic benefits in the form of construction jobs as well as the benefits of additional residents near the village centre and their support for local facilities and services.
- 2.37 Whilst some weight should be afforded to the quality of the design, and the economic and social benefits arising from the proposal, it is considered that these do not overcome the objections to the scheme arising from the impact of the development on the countryside and AONB.

### 3. **Conclusion**

- 3.1 The location of the development and key aspects of the proposal are in conflict with development plan policies and the NPPF. Issues, other than those main issues assessed above, that were raised through the response to the consultation of the application have been considered. These do not affect the assessment of the planning balance or the conclusions of this Report.
- 3.2 Under this application, the proposed development has not materially changed from the previous schemes that have been refused. Consequently, the key issues that have previously been considered and subsequently determined have not changed. As such, it is considered that the proposal is contrary to the Development Plan and the NPPF and there are very limited changes in circumstance that should lead to a different conclusion on the merits of this application.

### g) **Recommendation**

I Planning Permission BE REFUSED for the following reason:

The proposed development is unjustified and would be located outside the identified settlement confines of St Margaret's at Cliffe, within an Area of Outstanding Natural Beauty. By reason of the siting, design, prominence, location, the operational development proposed on the site and the site's residential use, the proposal would visually and physically encroach into the open countryside and cause harm to the intrinsic character and beauty of the area, and in particular the landscape and scenic beauty of the Area of Outstanding Natural Beauty, contrary to Policies DM1, DM15 and DM16 of the Dover District Core Strategy and Paragraphs 124, 127, 130, 170 and 172 of the National Planning Policy Framework and the aims and objectives of policies SD1 and SD2 of the Kent Downs AONB Management Plan.

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

Case Officer

Vic Hester