

- a) **DOV/20/01407 – Erection of a detached dwelling, cycle shed, recycle store, electrical vehicle charging unit and associated parking - Land between South View and Dean Holme, Flax Court Lane, Eythorne**

Reason for report: Number of contrary views.

- b) **Summary of Recommendation**

Planning permission be Refused.

- c) **Planning Policies and Guidance**

**Core Strategy (CS) Policies**

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

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

- 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 170 - Development to contribute to and enhance the natural and local environment.

**The Kent Design Guide (KDG)**

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

**National Design Guide 2019**

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

**Regulation 18 Consultation on the Draft Local Plan 2021**

The Draft Local Plan is undergoing its first public consultation exercise, which is due to expire in March 2021. At this stage only minimum weight can be afforded to the policies of the Plan.

- d) **Relevant Planning History**

DOV/16/01198 – Refused, for “*Erection of a detached dwelling, associated parking and landscaping*”, on the following basis:

*“1. The development, if permitted would be an unjustified, sporadic, intrusive form of development, beyond any settlement confines and would result in the loss of countryside which would be harmful to the appearance and character of the countryside and harmful to rural amenity and constitute an unsustainable form of*

*development, contrary to policies DM1 and DM15 of the Core Strategy and the aims and objectives of the NPPF in particular at paragraphs 7, 14 and 17.*

*2. The location of the 1st floor windows on the rear elevation of the dwelling proposed would lead to an unacceptable level of overlooking into the rear amenity spaces of 2no. single storey dwellings to the rear of the site. This is contrary to paragraph 17 of the NPPF which always seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.”*

The subsequent appeal was dismissed on 7 September 2018. The Inspector considered that the appeal scheme would not form an appropriate location for residential development (being outside the settlement boundary - DM1), it would appear as a sporadic and intrusive form of development that would suburbanise the site, eroding the rural qualities of the area (harm to character and appearance of the area – DM15), and there would be unacceptable levels of overlooking – Paragraph 127 (f) of the NPPF).

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

Eythorne Parish Council: Objections are raised on the grounds that the development is overbearing, a very small plot and outside of the settlement confines.

Kent PROW: Public Right of Way EE345 passes adjacent to the proposed site. No objections are raised, but there is a concern that during the construction phase of the development the access to and use of the Right of Way should not be affected or hindered.

Public Representations: There have been 33 other responses received from the public consultation exercise, 12 support the application and 21 oppose it. The objections raised can be summarised as follows:

- Overlooking, overbearing and out of keeping.
- Loss of light/right to light, privacy and right to peace and quiet.
- Outside the village confines (contrary to DM1).
- Would affect designated heritage assets (proximity to Conservation Area and listed building).
- Harm to character and appearance (DM15), harm to rural lane.
- Would cause noise and disturbance.
- Harm to wildlife and ecology.
- Would cause obstructions to highway, harm to highway safety, hinder access for emergency vehicles and cause flooding onto the PROW.
- Would set a precedent.
- The proposal is contrary to the decision of the Inspector.

Those that support the application consider there to be:

- A visual improvement.
- Good use of land.
- The development would attract families to the village.
- An additional dwelling would help ease the housing need.
- The dwelling would be affordable to local people.
- The development would be in keeping and sympathetic.

- There would be no harm to the environment and access and disruption during construction could be controlled.

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

- 1.1 The application site falls outside Eythorne village confines. The confines of the village are located to the north of the site beyond a Public Footpath (EE345A) which runs immediately north of the boundary of the application site. Access to and from the site and the village would be along Flax Court Lane - the Public Bridleway EE345), which serves other properties and the open countryside. The application site is located between these two public rights of way.
- 1.2 The site is an almost square parcel of land that has been cleared. Beyond the Footpath to the north are the boundary fences and enclosures of the rear gardens of properties that are accessed from Church Hill.
- 1.3 The rear boundaries of the properties to the north of the appeal site provide a physical/definitive urban edge to the settlement. To the west of this, including across the appeal site, the area has more of a semi-rural, open and transitional character and appearance leading to the more open countryside to the west and south. The appeal site relates to this semi-rural character more so than the urban, village confines.
- 1.4 To the north of the appeal site are two sets of semi detached single storey dwellings – Nos. 11 and 12 The Crescent and Landsdowne and Fugazi. These are modest sized dwellings located behind the general line and pattern of development that fronts onto Church Hill.
- 1.5 The public bridleway runs in an east-west direction. It is an unmade, narrow track that serves some 7 dwellings for its first stretch and a further 3 dwellings further west where it meets two public footpaths running in a north-south direction. The footpath that runs immediately to the north of the appeal site stretches from Coldred Road and leads to one of these other footpaths – running behind the Church Hill properties and between paddocks.
- 1.6 Flax Court is located some 30m from the appeal site located behind two modest sized cottages (Flax Cottage and Briar Cottage). Flax Court is a Grade II listed building. It is a two storey dwelling, with rendered walls and with a hipped plain tiled roof and central stack. It dates back to the 17th Century and has been extended in the early 18th Century and 20th Century.
- 1.7 The edge of the Conservation Area is located some 15m to the east of the appeal site. The Conservation Area comprises the historic village settlement of Eythorne, mainly set around the junction of Coldred Road and The Street. It has a number of Georgian and Victorian houses, set close to the back edge of the highway with its hinterland and farmsteads to the south and east forming part of the original settlement.
- 1.8 The Appeal Inspector described the area around the site as being close to the boundary of Eythorne, but having a verdant and distinct open and rural quality that is reinforced by the presence of mature landscaping within this countryside setting. The site forms part of a scattering of dwellings, but it nonetheless better relates to its rural surroundings.

- 1.9 The proposal is for a single storey dwelling, and would be finished in facing brickwork, under a slate roof. The building would be mostly rectangular in form with pitched roofs. It would accommodate two bedrooms and an open plan lounge/kitchen and dining area. It would have a lobby and kitchen window and two parking spaces fronting onto Flax Court Lane. The building would be located on the western side of the site. Its principal elevation would face into a garden area on the eastern side of the site. The garden would have 1.8m high boundary fences.
- 1.10 The building is designed to include measures to promote energy efficiency and the reduction in carbon emissions.

## 2. **Main Issues**

2.1 The main issues are:

- The principle of the development
- The impact upon the character and appearance of the area
- The impact upon residential amenity

### Principle of Development

- 2.2 The application site is outside the village confines of Eythorne, within the countryside. 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. As such, the application 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 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.

- 2.6 Having regard to the most recent Annual Monitoring Report, the Council is currently able to demonstrate a five-year supply of housing, which further demonstrates that the development strategy for the District under Policy DM1 is still able to deliver the current housing need requirements. However, as Policies DM1 and DM11 were devised to deliver housing need on the basis of the Council's Core Strategy 2010, it is considered as a matter of judgement that to some extent these Policies are out of date and should carry less weight. The 'tilted balance' approach as set out paragraph 11 of the NPPF therefore applies.
- 2.7 The location of the proposed dwelling, outside but close to the village confines is not considered to be isolated within the countryside, for the purposes of Paragraph 79 of the NPPF. It is also recognised that under Paragraph 78 of the NPPF the proposed dwelling could be considered to help enhance or maintain the vitality of the rural community and assist its support of local services.
- 2.8 As such, whilst the proposal would be contrary to Policy DM1, and this is the starting position for the determination of the application, Paragraphs 78-79 of the NPPF would appear to support a new dwelling in the proposed location under certain circumstances.
- 2.9 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.
- 2.10 Given the fact that the future occupiers of the proposed dwelling would be able to walk along a bridleway to the centre of the village, 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.
- 2.12 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. This assessment was supported by the Appeal Inspector in 2018, and this is a material planning

consideration. Consequently, it is concluded that Policy DM15 should attract significant weight for the reasons set out in the Report section below.

#### Impact Upon Character and Appearance

- 2.13 The conclusions of the Appeal Inspector are material planning considerations in the determination of this application. In particular, due to the decision being made relatively recently (2018) and as there has been no material shift in policy or significant change to the appearance of the site and the character and appearance of the surrounding area.
- 2.14 The Appeal proposal was for the erection of a three bedroom dwelling house on the land. The Inspector recognised the importance of directing development to within settlement boundaries and found conflict with policy DM1. Secondly, the Inspector considered that even with the scattering of dwellings in this part of Eythorne, the site better related to its rural surroundings to which it makes a positive contribution.
- 2.15 The proposed development would comprise a detached, single storey building and hard standing located on the western side of the site, with a garden on its eastern side. It does not have the same height as the Appeal proposal, but the location of the building and most of the frontage hardstanding would not be discreet; it would be visible from the bridleway (the rural lane) and the amount of development would be perceived as a sporadic form of development within the area, un-related to its prevailing open character and appearance. Furthermore, the additional vehicle movements associated with the residential use, the use of the garden and the erection of boundary fencing (1.8m high close boarded fencing) would lead to a domestication of the appearance of the land and harm the rural qualities of the area. The Appeal Inspector also expressed concern over this “suburbanising effect”.
- 2.16 It is considered that the proposed development would harm the character, appearance and intrinsic beauty of the countryside and would be in conflict with Policy DM15 and Paragraph 170 of the NPPF.

#### Residential Amenity

- 2.17 The Appeal proposal had living accommodation within its roof space that the Inspector considered would lead to overlooking into the gardens and properties located to the north.
- 2.18 The current proposal is for a single storey building, with a relatively low pitched roof. It is not considered that the proposed building would have an overbearing impact upon adjacent properties and it is not considered that the proposal would give rise to overlooking and loss of privacy – as the windows in the proposed dwelling are at ground floor level only. If the proposal was acceptable in other respects, a planning condition could be imposed to secure boundary treatment and a landscape scheme to further reduce the likelihood of overlooking and loss of privacy for those occupiers of properties nearby.

#### Other Matters

- 2.19 The Appeal Inspector did not raise highway safety, loss of wildlife and those other matters raised through the response to the consultation of this application, as reasons to justify dismissal of the previous proposal. As such, refusal of planning permission on the other matters raised is considered to be unjustified.
- 2.20 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, predominantly by dog-walking, to the species which led to the designation of the sites and the integrity of the sites themselves.
- 2.21 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.
- 2.22 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 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, the harm to the character and appearance of the area.
- 3.2 The scheme would provide a 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 in Eythorne and support for local facilities and services.
- 3.3 Whilst the benefits are recognised, it does not follow that the proposal is justified on the application site.
- 3.4 The harm arising from the application proposal significantly and demonstrably outweighs the benefits of this particular proposal, when assessed against the development plan policies and the policies of the Framework.
- 3.5 For the reasons stated above the proposal does not meet the requirements of achieving, and would not constitute, sustainable development.

**g) Recommendation**

I PERMISSION BE REFUSED for the following reasons:

The development, if permitted, would be an unjustified, sporadic, intrusive form of development, beyond the settlement confines and would result in the loss of countryside which would be harmful to the intrinsic character, appearance and beauty of the countryside and harmful to rural amenity and as such would constitute an unsustainable form of development, contrary to policies DM1 and DM15 of the Core Strategy and the aims and objectives of the NPPF in particular at paragraphs 124, 127, 130 and 170.

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

Case Officer

Vic Hester