

- a) **DOV/20/01002 – Change of use and conversion to a single dwelling (Class C3); insertion of 16 rooflights; replacement windows and doors; erection of a detached double garage; associated parking and wood store - The Old Dairy, North Court, North Court Lane, Tilmanstone**

Reason for report: Called in by a Councillor.

b) **Summary of Recommendation**

Planning permission be refused.

c) **Planning Policies and Guidance**

Core Strategy Policies

- CP1 – The location and scale of development in the District must comply with the Settlement Hierarchy.
- CP6 – Development which generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either in place, or there is a reliable mechanism to ensure that it will be provided at the time it is needed.
- 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.
- DM11 – Development that would generate high levels of travel will only be permitted within the urban areas in locations that are, or can be made to be, well served by a range of means of transport.
- DM15 - Development which would result in the loss of, or adversely affect the character and appearance of the countryside will not normally be permitted.
- DM16 - Generally seeks to resist development which would harm the character of the landscape, unless it is in accordance with a Development Plan designation and incorporates mitigation measures, or can be sited to avoid or reduce the harm and/or incorporates design measures to mitigate the impacts to an acceptable level.

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or where there are no relevant policies or the most important policies for the determination of the application are out of date, then also granting consent.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 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 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.'
- Sections 66(1) of Planning (Listed Buildings and Conservation Area) Act 1990  
Section 66(1) of the Act states that, 'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.'

National Design Guide (2019)

Kent Design Guide

**d) Relevant Planning History**

DOV/20/00334 - Prior approval for the change of use from agricultural building to dwelling. Prior approval required and approved.

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

DDC Ecological Officer - I have reviewed the ecological appraisal submitted in support of this application and I accept the findings of the survey. The consultant has made recommendations for biodiversity enhancements. Appropriate conditions could be

used to secure these recommendations via a biodiversity enhancement plan.

DDC Heritage Team – The submitted Heritage Statement provides no assessment of the setting of the adjacent listed building (the thatched barn opposite is grade II listed) yet it states that the design has been led by surrounding buildings. I do not find this to be the case, although the materials are what would be found in modern agricultural units. The Part Q application resulted in a minor change to the setting, with the resulting development having the appearance of a workshop. The now proposed two storey development has a much greater domestic appearance in terms of the number and style of fenestration, and being two storey I am concerned that it would appear overwhelming in the context of the listed barn, and may even be seen from the grounds of the listed farmhouse, North Court. Although no details of boundary treatment/landscaping appear to have been submitted it is likely that some form of definition will be required and this too could exacerbate the residential character of the unit. In my view, the proposed development would be harmful to the rural/countryside setting of the listed barn in particular, and possibly the farmhouse, by virtue of its design and massing. That harm would be less than substantial.

Southern Water - There are no public foul sewers in the area to serve this development. The applicant is advised to examine alternative means of foul disposal. The Environment Agency should be consulted directly foul drainage. The Council's Building Control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development. It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

Environment Agency – no concerns raised.

Environmental Health – no comments received.

Waste Services – no comments received.

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

- 1.1 The application relates to an existing agricultural building which forms part of an existing farmstead. It lies outside of any defined settlement confines and for the purposes of planning, it is considered to be within the countryside. The site lies adjacent to the Conservation Area. To the south of the site approximately 28m lies one of the grade II listed buildings within 'North Court'. To the north and northeast of the application site lies two farm buildings. The building to the north is used primarily for hay storage whilst the building to the northeast is a grain store. To the west is the open farmland and a footpath leading into the fields.
- 1.2 The application seeks permission for the change of use and conversion to a dwelling and erection of a garage with associated parking and landscaping. It is relevant to note that the application site benefits from an extant permission (DOV/20/00334) for the conversion of the existing redundant structures to two dwellings secured under Class Q of the General Permitted Development Order (2015) (amended). It is considered that given the nature of the proposed development, the previous permission constitutes a relevant fallback position. The above said, it would be relevant to assess whether the impacts arising from the existing fallback position secured by the prior approval (Class Q) procedure would be comparable to the proposed development.

- 1.3 Concerns were raised in relation to the scheme with regards to the potential impact on the setting of the Grade II listed building and impact on the countryside. The applicant was offered an opportunity to withdraw the application with a view to submitting a revised scheme. However, the applicant was resistant and eventually the application was called in by a District Councillor for it to be determined by Planning Committee.

## **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
  - The impact on residential amenity
  - The impact on Highways

### **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. However, notwithstanding the primacy of the development plan, paragraph 11 of the NPPF 2019 states that where the policies which are most important for determining the application are out of date (including where the LPA cannot demonstrate a five year housing land supply or where the LPA has 'failed' the Housing Delivery Test), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (known as the 'tilted balance') or where specific policies in the NPPF indicate that development should be restricted.
- 2.3 Having regard for the most recent Annual Monitoring Report 2018/19, the Council are currently able to demonstrate a five-year supply and the Council have not 'failed' the Housing Delivery Test. It is considered that the policies which are most important for determining the application are DM1, DM11 and DM15.
- 2.4 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 596 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 only limited weight.
- 2.5 Policy DM11 seeks to locate travel generating development within settlement confines and restrict development that would generate high levels of travel outside confines. Whilst there is some tension, this policy broadly accords with the NPPF's aim to actively manage patterns of growth to support the promotion of sustainable transport. However, the blanket approach to restrict travel generating development outside of settlement confines is inconsistent with the NPPF. This application is adjacent to the confines of a Village and so the development is contrary to DM11. The degree of harm arising from the infringement with Policy DM11 is considered to be limited. It is therefore

considered that, for the purposes of this application, DM11 is partially out-of-date and should be afforded limited weight.

- 2.6 Policies DM15 and DM16 generally seek to resist development that would result in the loss of, or adversely affect the character or appearance, of the countryside or would cause harm to the character of the landscape. These policies are broadly consistent with the aims of the NPPF including the need to: recognise the intrinsic character and beauty of the countryside. The blanket approach of refusing development which results in the loss of the countryside within DM15 however is at odds with the NPPF and DM15 refers to the importance of “character and appearance” of the countryside, whereas the NPPF seeks to protect “character and beauty”, While the policy DM15 is otherwise consistent with the NPPF, parts of it are inconsistent and not up-to-date. It is considered that DM15 should therefore be afforded less than full weight.
- 2.7 As a whole, it is considered that the main policies for determining the application are not up-to-date and as such the ‘tilted balance’ (paragraph 11, NPPF) must be engaged.

#### Impact on the Character and Appearance of the Street Scene

- 2.8 Policies DM15 and DM16 generally seek to resist development that would result in the loss of, or adversely affect the character or appearance of the countryside and would cause harm to the character of the landscape. These policies are broadly consistent with the aims of the NPPF including the need to: recognise the intrinsic character and beauty of the countryside. Whilst the blanket approach of refusing development which results in the loss of the countryside within DM15 is at odds with the NPPF, the policies are otherwise consistent with the NPPF, are not considered to be out-of-date and continue to carry significant weight in the assessment of this application.
- 2.9 The application site is relatively flat and, whilst the existing vegetation along the northwest boundary of the site provides some screening. The farmstead is a relatively typical and unremarkable group of agricultural buildings in the rural area and retains a strong relationship with its rural context. The existing building is single storey with a shallow pitched roof and sits comfortably within the site. Prior to the assessment of the proposed development, it is necessary to consider whether the proposal would qualify as a genuine conversion as the application is for the conversion of the existing building.
- 2.10 There is an extant prior approval (Class Q) for the conversion of the existing storey building to a dwelling. The assessment in respect of structural integrity of the structure carried out at the prior approval stage was finely balanced. The conversion was considered acceptable in spite of some of the concerns in respect of the existing foundations. Notwithstanding this, it was felt that the conversion could be possible as it was single storey only and had 300mm thick walls. Therefore, it is necessary to draw a comparison between the previous case (extant permission) and the current proposal for a two storey dwelling with a pitched roof. The proposed development would require building of the first floor walls and a new roof which would necessitate erection of deeper foundations to take the load of the new structure. Overall the proposal would be a rebuild and would not classify as a conversion.
- 2.11 Regard must also be had to the visual impact arising from the proposed development on the character and appearance of the countryside. Regard must

be had for the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), which requires that, in relation to listed buildings, “special regard” be had to “the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. Regard must also be had for the provisions of the NPPF, in particular the paragraphs (189 – 196) at Chapter 16: Conserving and Enhancing the Historic Environment. Notwithstanding the statutory duty, the NPPF paragraph 195 requires that regard must be had for whether development would cause harm to any heritage asset (both designated and non-designated), whether that harm would be substantial or less than substantial and whether, if harm is identified, there is sufficient weight in favour of the development (public benefits) to outweigh that harm.

- 2.12 It is necessary to compare the degree of visual harm that would have arisen versus the proposed development. The prior approval scheme was for the conversion of an existing single storey building which was modest in character and the proposed conversion was reflective of the existing agricultural character of the site whilst the proposed dwelling would be two storeys in height with gable ends. It would be finished in timber weatherboarding and would have a metal roof. A new garage would be constructed replacing an existing shed towards the front facing the grade II listed building, the thatched barn. In addition to this, the proposed area of the curtilage is significantly larger which would result in intensification of the domestication of the site. A number of mature trees would have to be removed which would further expose the proposed dwelling. Overall the proposed dwelling would be of a substantial size and given its exposed location, it would appear prominent in views from the public footpath to the west and would be out of keeping with the prevailing agrarian character of the area within which the listed buildings sit. It would be seen together with a range of domestic paraphernalia such as hardsurfacing, fences, walls, gates etc, would jar with the relatively unspoilt rural setting and would have a sub-urbanising effect to the detriment of the rural character and appearance of the immediate area. It would produce a prominent and dominant form of development which would be visually intrusive and at odds with the prevailing character of the area.
- 2.13 Regard has also been had to whether landscaping could help mitigate the visual impact on the countryside and the setting of the nearby listed building. The proposal has not been accompanied by a landscaping scheme. It should be noted that the application property abuts the open fields to the west and as a matter of fact, the existing mature trees which currently screen the building would have to be removed to facilitate the construction of the proposed two storey dwelling. Given the tight space constraints, there is no scope to accommodate any effective vegetation along the western and southern boundaries. Therefore, it is not considered that landscaping could be utilised to help resolve the visual impact arising from the development. Therefore, the development would be highly prominent and by virtue of its scale and design, it would appear out of keeping and detract from the setting of the listed building.
- 2.14 For the foregoing reasons, the proposal would fail to be in keeping with, and would detract from, the rural character of the site, the wider area and the setting of the listed building, which is of significance to the area’s heritage. It would therefore be contrary to policies DM15 and DM16 of the Core Strategy and paragraph 170 of the NPPF. Finally, Paragraph 192 of the Framework indicates that the desirability of sustaining and enhancing the significance of heritage assets should be taken into account in determining planning applications. Whilst the proposal would lead to less than substantial harm to the significance of the

listed building (as described at paragraphs 193, 194 and 196 of the Framework), the harm caused would be material.

#### Impact on Residential Amenity

- 2.15 The nearest properties is sited at a distance of approximately 28m from the application property. Having regard for the adequate separation distances, it is not considered that the proposed development would cause harm to the residential amenity of the neighbouring occupiers.
- 2.16 There are no other residential properties in the vicinity to be directly affected by the proposal. Therefore the proposed development complies with paragraphs 127 and 130 of the NPPF in this regard.

#### Impact on Parking/Highways

- 2.17 Regard has also been had to Policy DM11 which states that development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies. The proposed dwelling would give rise to additional travel in a location beyond settlement confines. It would therefore be contrary to policy DM11 of the Core Strategy. The above said, regard should be had for the fact that there is an extant permission for the conversion to a dwelling in this location, and the travel generated by that dwelling would not be materially different from the dwelling under consideration. Therefore, it is not considered that the additional travel generated would warrant a refusal on this basis.
- 2.18 Table 1.1 of the Core Strategy suggests that a minimum of two independently accessible car parking spaces be provided for residents of the dwelling, together with an additional 0.2 spaces per dwelling for visitors, although parking should be a design-led process. The application proposes a double car parking garage. Garages are not counted towards parking provision as they tend to be used for general storage purposes. It is noted that hardstanding is provided towards the frontage which could accommodate 2 cars. No visitor parking space has been provided. It is not considered that lack of provision of visitor parking space would result in harm to the free flow of traffic.
- 2.19 The development does not include any defined provision of cycle parking spaces. In accordance with the recommendations of the Kent Design Guide (inc. IGN 3) and the NPPF, and to encourage and facilitate the use of this sustainable form of transport, it is considered that details for the provision of cycle parking (at one space per bedroom) should be secured by condition.

#### Ecology

- 2.20 The EU Habitats Directive 1992, requires that the precautionary principle is applied to all new projects, to ensure that they produce no adverse impacts on European Sites. The application has been supported by a Phase 1 Habitat Survey. The following recommendations have been made:
- The provision of bird and bat boxes.
  - log piles for invertebrates.
  - bumble bee nest boxes and pollinator resources.
  - Mitigation measures to prevent harm to the individual badgers and hedgehogs
  - Bat sensitive lighting scheme
  - A scheme of native species landscaping and similar measures.

- 2.21 It is considered that the findings within the ecological appraisal are sound and that the recommendations are sufficient to ensure that the Council's duties in respect of habitats, protected species and ecology generally will be fulfilled. Your officers are satisfied with the information provided and it is recommended that all the recommendations for the enhancements detailed within the ecological appraisal should be secured via suitably worded conditions.

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

- 2.22 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.
- 2.23 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.
- 2.24 Following consultation with Natural England, the identified pathway for such a likely significant effect is an increase in recreational activity which causes disturbance, predominantly by dog-walking, of the species which led to the designation of the sites and the integrity of the sites themselves.
- 2.25 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.
- 2.26 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

- 2.27 The site lies within Flood Risk Zone 1, where there is the lowest risk of flooding. However, given the size of the site, 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.
- 2.28 Southern Water has advised that there are no public foul water sewers in the area to serve this development. Therefore, an alternative should be explored. In essence, they have raised no objection in this instance. Therefore, in the event

that permission is granted, it is considered reasonable to attach the pre-commencement conditions requiring the submission of detailed schemes for both foul water and surface water disposal.

### Other Material Considerations

- 2.29 In respect of the principle of the development and sustainability of the location, the proposed development is contrary to the development plan however, regard must be had to the existing extant prior approval. Notwithstanding this, it should be noted that prior approval procedure does not require the assessment of the sustainability of the location and equally development plan policies and NPPF are not taken into consideration for the purposes of determining Prior Approval applications. As such, these facts were not material in the decision to approve the prior approval application.
- 2.30 It is acknowledged that the proposed dwelling would provide very limited social and economic benefits by making provision for one dwelling, particularly given that Council can demonstrate a 5.39 years housing land supply. The above said, the limited benefits arising from the proposal would not be materially different from those provided by the approved scheme (prior approval). Therefore, on balance, the proposed dwelling would cause harm to the character and appearance of the surrounding area and would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

### 3. Conclusion

- 3.1 The proposal would constitute an incongruous and visually intrusive feature in this important rural environment to the detriment of the character and appearance of this part of countryside and would cause harm to the wider landscape, contrary to policies DM15 and DM16 of the Core Strategy and paragraph 170 of the NPPF. The very limited benefits associated with the proposal are considered to be more than outweighed by the significant and demonstrable harm caused to the wider environment. Furthermore, it would cause less than substantial harm to the significance of the listed buildings and the harm caused would be material.

### g) Recommendation

- I. PERMISSION BE REFUSED for the following reasons:
1. The proposal would result in an overtly domestic form of development within a rural location which would appear as an incongruous and intrusive feature, detrimental to the rural character and appearance of the countryside and the wider landscape, contrary to policies DM15 and DM16 of the Dover District Core Strategy (2010) and paragraphs 127, 130 and 170 of the National Planning Policy Framework (2019).
  2. By virtue of the scale, design and massing of the proposed dwelling, it would have a detrimental impact on the setting of the adjacent Grade II listed buildings causing harm to their historic and architectural character and appearance. It would lead to less than substantial harm to the significance of the designated heritage asset for which no overriding justification (public benefits) has been presented, contrary to paragraphs 192, 193, 194 and 196 of the National Planning Policy Framework.

- II. Powers to 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

Benazir Kachchi