

- a) **DOV/21/01113 – Erection of 3 detached dwellings with associated landscaping, bin and cycle storage, car parking and vehicular access (existing buildings and part boundary wall to be demolished) - Land Rear of 20-34 Western Road, Deal**

Reason for report: Number of representations (30 letters of objection)

- b) **Summary of Recommendation**

Planning permission be granted.

- c) **Planning Policies and Guidance**

Core Strategy Policies

DM1, DM11, DM13, DM15 & DM16

Draft Local Plan Reg 18

The Consultation Draft Dover District Local Plan is a material planning consideration in the determination of this planning application. At this stage in the plan making process however the policies of the draft Plan have little weight and are not considered to materially affect the assessment of this application and the recommendation as set out.

National Planning Policy Framework 2021 (NPPF)

Paragraphs 8,11,38, 92, 110, 111, 119, 122, 124, 126, 130, 131, 132, 134, 152, 180, & 182 and Chapter 16 (historic environment).

National Design Guide 2019

Kent Design Guide

- d) **Relevant Planning History**

DOV/18/01243 - Erection of 6no. dwellings and associated parking (amended drawings and new information). Refused.

DOV/19/01148 - Erection of 3nos terraced dwellings and 2nos semi-detached dwellings with associated parking and vehicular access (existing boundary wall and buildings to be partly demolished). Withdrawn.

DOV/20/01025 - Erection of 5 no. terraced dwellings with associated landscaping, bin/cycle storage, car parking and vehicular access (existing buildings and part boundary wall to be demolished). Refused.

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

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.

Kent Fire and Rescue Service - I can confirm that on this occasion it is my opinion that the emergency access requirements as shown on the Emergency Access Plan, drawing no. SK03 for the Fire and Rescue Service have been met.

Southern Water – no objection. An informative is recommended to be attached to the permission.

Environment Agency – no objection subject to conditions.

DDC Environmental Health – no observations.

Deal Town Council – object to the planning application for the following reasons:

- Insufficient access for emergency vehicles
- Need to preserve a right of way
- Sight lines will be compromised
- Out of character for the area
- Not in keeping
- Does not fit with the Local Plan
- Danger to pedestrians

Public representations

30 letters of objection received making the following comments:

- Lack of parking
- Design out of keeping with the area
- Long delays, interruptions and noise caused by increased traffic
- Lack of access for emergency vehicles
- The safety of the existing footpath would be compromised
- Entrance and exit is dangerous
- Not enough room for a fire engine
- Wrong development in the wrong place
- With various utility and delivery vehicles during the day, this will add to the already crowded pinch points around the Union Road/St Patrick's Road/St David's Road
- Dangerous to people with mobility issues using the busy footpath
- Access for emergency and recycling collection is unacceptable
- Safety, congestion, environmental impact, light/space/outlook, noise
- Overlooking
- Area at risk of flooding
- Loss of green space and wildlife
- Overdevelopment
- Loss of privacy and natural light
- Insufficient parking provision

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

1.1 The application relates to rectangular parcel of land in a predominantly residential area which lies within the settlement confines of Deal and adjacent to Nelson Street Conservation Area. It lies within flood zone 2. The site lies towards the dead end of St Patricks Road (north). The eastern site boundary abuts the public right of way. The application site is surrounded by residential properties to the north, west and south. To the east across the PROW is the vicarage and a grade II listed church. The existing site contains a few redundant outbuildings. The site is largely laid to lawn with no substantial vegetation within the site. It is however noted that the crown of a protected tree which stems from within the curtilage of the listed building overhangs a small portion of the site to the east.

1.2 This application proposes the erection of three two storey 3-bed detached houses constructed in a contemporary style. The site would be subdivided by 1.8m high close

boarded fences and each dwelling would be provided with a private amenity area to the rear. The parking area for cars (6 spaces) has been allocated towards south of the site. It would incorporate EV charging points for the car parking spaces. The existing 2m eastern boundary has been proposed to be retained. An internal footpath has been proposed which would run parallel to the existing brick boundary and would provide pedestrian access to the proposed dwellings.

- 1.3 The proposed dwellings would be finished in brick, with part timber cladding to the front and rear elevations, grey zinc roofing and aluminium fenestration. The proposal also includes installation of solar panels. The internal floor level of the dwellings would be raised by approximately 0.45m. In respect of the hardstanding, the applicant's agent has advised that the materials for the hard surfacing will be dependent on the final drainage design, but the intention is to have permeable paving in the car park area as indicated within the preliminary drainage strategy. In respect of the footpath, it is proposed to have a brick or block paving.

2. **Main Issues**

- 2.1 The main issues are:

- The principle of the development
- Impact on character and appearance
- Impact on the protected tree
- Impact on residential amenity
- Impact on the highway network
- Flooding and drainage
- Impact on ecology

Assessment

Principle of the 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 The site is located within the settlement confines and as such, Policy DM1 applies which limits development to within the confines, unless specifically justified by other development plan policies, functionally requires a rural location, or it is ancillary to existing development or uses. The site lies within the settlement confines of Deal. The proposal is therefore considered acceptable in principle subject to site specific considerations.

Impact on the Character and Appearance of the Area

- 2.4 Regard must be had to the aims and objectives of the NPPF which promote high standard of design and emphasis is laid on raising the bar of design more generally. Paragraph 130 of the NPPF requires that planning policies and decisions ensure that developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; are sympathetic to local character and history, including the surrounding built environment and landscape setting.

- 2.5 The street scene comprises two storey terraced and semi-detached houses to the west and south, apartment blocks to the northwest and church buildings to the east followed by a row of terraced properties to the northeast. It is therefore considered that the area exhibits several styles of housing, such that the introduction of a well-designed modern group of housing would not appear at odds. It is noted that there is a degree of variation in the immediate vicinity of the site in terms of overall scale and design. The proposed dwellings would be laid out in a linear fashion set back from the eastern boundary of the site by approximately 1m to 1.5m. The existing brick wall abutting the eastern boundary of the site is approximately 2m to 2.4m in height would be retained. The proposed buildings would have a contemporary appearance with gabled ends and with stylised sloping roofs with elongated fenestration and brickwork pattern which is considered to create an active/interesting form fronting the public footpath. The dwellings would be two storeys in height with the first floor partially accommodated within the roofspace. The proposed dwellings would be finished in brown brickwork, timber cladding and grey zinc roofing. It would have dark grey aluminium fenestration. Whilst the proposed development would vary in terms of its overall appearance, it would add visual interest to this part of Western Road and uplift the bar of design in the area generally. It would therefore accord with paragraph 130 of the NPPF.
- 2.6 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 (199–202) at Chapter 16. Notwithstanding the statutory duty, the NPPF paragraph 202 requires that regard must be had for whether development would cause harm to any designated heritage assets, 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.
- 2.7 Regard must also be had to whether the proposed development would have an impact on the setting of the Grade II listed Church (St Andrew’s Church) to the east. The Heritage Officer has advised that given the substantial separation distance and limited scale of the proposal, no harm to the setting of the listed building would occur. Furthermore, given the fact that the curtilage of the listed building is surrounded by residential properties to the north and south, the degree of spaciousness which would have originally contributed to the setting of the listed building has already been compromised. For the above reasons and having regard for both the statutory duty of the council under The ‘Act’ and the policy within the NPPF, no harm would be caused to the setting of the Listed Building or the Conservation Area. It would therefore be in accordance with paragraphs 202 and 203 of the NPPF.

Impact on the Protected Tree

- 2.8 Under the previously refused applications (18/01243) and 20/01025 for the application site, the Council’s tree officer raised concerns regarding the impact of the development on the root protection area of the protected tree, the crown of which overhangs the footpath and a small part of the application site. Generally, the root protection area of a tree extends as much as seven times the crown area or 2.5 times the crown radius. In this instance, the proposed dwellings would be sited approximately two metres away from the identified root protection area. Whilst the new hardstanding would encroach over the RPA, the works required would be superficial and are unlikely to have a detrimental impact on the protected tree. A tree survey and an arboricultural impact assessment has been submitted with the application which includes an arboricultural

method statement and a tree protection plan. The tree protection plan identifies the precise location of the trees, crowns and the root protection zones of the trees. A Construction Exclusion Zone (CEZ) has been marked and the protective fence positions have been shown to clearly demarcate the area from the construction zone, to ensure that there is no compaction of the soil or severance of tree roots. In the event of grant of planning permission, appropriately worded conditions be attached to the permission to secure the tree protection measures including protective fencing and hand dug excavation as detailed within the submitted arboricultural impact assessment.

Living Conditions of Future Occupiers

- 2.9 The proposed dwellings would be generously sized and naturally lit and would each have a private garden. Details have been submitted to show storage areas for refuse and recycling for each dwelling. Consequently, the living conditions of future occupants would be acceptable.

Refuse

- 2.10 The maximum distance that bins should be wheeled by residents to the point of collection should not exceed 30 metres. The distance that waste collection crews are permitted to wheel bins to the collection vehicle is 25 metres (Specified in Building Regulations section H6). From the review of submitted drawings, it is apparent that there would be a communal bin store where the future residents will have to wheel their bins to before the collection day. The communal bin store is located to the south within the car parking area. Having regard to the above, it is considered that this arrangement is satisfactory.

Impact on Neighbours

- 2.11 Regard has been had to the paragraph 130 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.

Nos 20-34 to the West

- 2.12 The western boundary of the application site abuts the rear boundary of private gardens of nos 20-34. The separation distance between rear elevations of the proposed dwelling and the existing dwellings is in the range of 11.5m to 16m. No windows are proposed to the first rear elevations of the proposed dwellings. Having regard for the adequate separation distances and lack of openings at a higher level, it is not considered that the proposed development would result in loss of privacy, loss of light, sense of enclosure or overshadowing to the existing occupants of nos 20-34.

Vicarage at St Andrew's Church to the East

- 2.13 The nearest proposed dwelling sited centrally within the site would be at a distance of approximately 14.6m. No windows are proposed to the first floor elevation of the dwelling facing Vicarage albeit a vertical window has been proposed to serve the landing however, given the angular elevations, these would not result in loss of privacy to the occupants of the Vicarage. Finally, having regard to the separation distance, no harm from sense of enclosure or loss of light would occur from the proposal.

No 6 The Avenue to the North-East

- 2.14 No 6 fronts The Avenue which is a cul-de-sac and backs onto the footpath. The

proposed residential unit to the north end of the site is at a distance of approximately 7.7m from the rear boundary of no.6 and approximately 13m from the area of private garden of no.6 The Avenue (to the northwest) immediately close to the rear elevation of the property. No windows are proposed at the first-floor level to rear elevation of the proposed dwelling albeit there is a side facing window which would overlook parking court to the north of the site. Having regard for the relationship between no.6 and the application site, it is not considered that the proposed development would result in loss of privacy, loss of light, sense of enclosure or overshadowing to the existing occupants of no.6.

Highways/Travel Impacts

- 2.15 The existing garage on site would be demolished and offstreet car parking area would be provided which would accommodate 6 cars. Policy DM13 of the Core Strategy requires developments to provide sufficient car parking, having regard for the scale of the development and its location. DM13 does, however, acknowledge that car parking provision should be a design-led process. The site is considered to be in an edge of town centre location. In such locations, Table 1.1 of the Core Strategy advises that 3 bedroom dwellings, such as that proposed, should provide 1.5 independently accessible car parking spaces per dwelling (although these figures are described as being minimums). In addition, 0.2 visitor spaces should be provided for each dwelling. The application has been supported by a car parking plan, which shows that each dwelling would be provided with two independently accessible car parking space together with one space for visitor parking and all parking spaces would incorporate electric vehicle charging points. For these reasons, it is considered that the car parking provision proposed is sufficient to meet the needs of the development.
- 2.16 A number of third-party representations have been received raising concerns in relation to the use of the proposed car parking area and the use of the proposed access. Whilst KCC Highways have made no comments in this instance, it is necessary to consider whether the creation of car parking area and the associated access in this location would be acceptable. The public highway in St Patrick's Road extends up to the proposed vehicular access to the development, thus providing direct access from the development to the highway. Whilst the section of St Patrick's Road serving the site is also a route shared with pedestrians, it is a low speed environment with a straight alignment providing suitable visibility. Vehicle swept paths diagrams have been submitted which demonstrate that the drivers can turn in and out of the access in a single manoeuvre, and pedestrian visibility splays of minimum 1 metre x 1 metre could be provided behind the footway on each side of the access, with no obstructions over 0.6 metres above footway level within the splays. In light of the above, it is considered that the proposed development would provide a safe access and would not result in unmanageable increase in traffic or parking demand. As such, the proposal would accord with paragraphs 110 and 111 of the NPPF.

Drainage and Flooding

- 2.17 The application site lies within Flood Zone 2 which is considered to be an area at 'medium 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.

- 2.18 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
- 2.19 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 $\pm 10\%$ the size of the application site (in sqm).
- 2.20 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 the town of Sandwich which are available. As such, the sequential test is considered to have been passed. By virtue of the site being in flood zone 2, the application does not qualify to be assessed against the exception test as set out in the NPPF. This has also been confirmed by the Environment Agency (EA). EA 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.
- 2.21 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.
- 2.22 The application is accompanied by a Drainage Strategy. The opportunities for managing surface water runoff at the site have been explored and it concludes that the preferred solution for draining the site is to utilise infiltration SuDS. This approach would involve draining all the runoff from the roofs and hard surfacing into a large permeable surfacing system, designed to store water as it slowly infiltrates into the ground. An alternative option has also been explored if in the event the ground conditions are found to restrict runoff from being discharged into the ground. This option utilises permeable surfacing for storage (without permitting infiltration), and also includes a geo-cellular storage tank to store runoff before it is discharged to the public sewer. A hydraulic drainage model has been produced for both drainage options and the model results confirm that sufficient storage can be provided within the SuDS, in order to manage the design rainfall event into a return period of 1:100 years including a 40% allowance for increases in peak rainfall intensity to account for climate change. Whilst the options for surface water drainage have been explored, further investigations would be required to ascertain the option that would be best suited for the site. This could be secured by a suitably worded condition.

- 2.23 In respect of foul water drainage, the proposed foul drainage strategy relies on a connection to the existing foul sewer system. Calculations have been carried out and confirm that the proposed development will result in a small increase in the peak rate foul wastewater, which could be discharged to the existing sewer system. It acknowledges that it may be necessary to undertake upgrades to the sewer network prior to commencement of the development. It is also noted that there is strong and understandable concern locally regarding localised flooding. However, it is evident that a solution for managing foul wastewater discharged from the proposed development is available. Southern Water and Environment Agency have raised no concerns, however, conditions have been recommended to be attached to the permission. Notwithstanding, it is proposed to include a robust condition should this application be approved to ensure that full details of surface and foul water drainage are provided before any development takes place and that the approved drainage is in place before the dwellings are occupied, in accordance with other recent permissions in the area.

Ecology

- 2.24 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

- 2.25 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.
- 2.26 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.
- 2.27 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.
- 2.28 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.
- 2.29 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.

Other Matters

- 2.30 It is necessary to consider the impact that the publication of the Regulation 18 plan has on the assessment of this application. The Consultation Draft Dover District Local Plan is a material planning consideration in the determination of this planning application. At this stage in the plan making process however the policies of the draft Plan have little

weight and are not considered to materially affect the assessment of this application and the recommendation as set out.

- 2.31 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 the plan, unless material considerations indicate otherwise.
- 2.32 Paragraph 11 of the NPPF states that development which accords with an up to date development plan should be approved without delay whilst, where there are no relevant development plan policies or where the most important policies are out of date, permission should be granted unless policies in the NPPF for protected areas or assets provide a clear reasoning for refusing the development or where the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in NPPF as a whole. A footnote confirms that whether policies are out of date also include instances where the local planning authority cannot demonstrate a five year housing land supply or where the delivery of housing falls below 75% of the housing requirement in the previous three years.
- 2.33 It is considered that policy DM1 is the 'most important' policy for determining this application. For completeness, the tilted balance is not engaged for any other reason, as the council has a demonstrable five year housing land supply (5.56 years worth of supply) and have not failed to deliver at least 75% of the housing delivery test requirement (delivering 80%).
- 2.34 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 557 dwellings per annum. Policy DM1 places a blanket restriction on development which is located outside of settlement confines, which is significantly more restrictive than the NPPF. As a matter of judgement, it is considered that policy DM1 is out-of-date and, as a result, should carry reduced weight. 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 settlement confines and therefore accords with Policy DM1.
- 2.35 Policy DM1 is out-of-date and is critical to the determination of this application, being the 'most important policy'. The 'tilted balance' described at paragraph 11 (d) of the NPPF is therefore engaged. It should be noted that the 'tilted balance' can be disengaged if a development is contrary to the NPPF's policies in relation to flood risk (paragraphs 162 to 165). In this instance, whilst the site is within flood risk zone 2, the development has passed the sequential and exceptions tests and, consequential the tilted balance is not disengaged, having had regard for footnote 7.
- 2.36 Notwithstanding the above, the site is within the settlement confines of Deal and as such, the proposal would comply with Policy DM1 of the Core Strategy (CS), subject to other material considerations.

3. Conclusion

- 3.1 It is concluded that no harm would arise in respect of the character and appearance of the wider Conservation Area. It would not cause harm to the residential amenity of the neighbouring occupiers. It is considered acceptable in terms of highways impact and

drainage. Having regard for the above, it is recommended that the application be approved, subject to conditions.

g) Recommendation

- I. PLANNING PERMISSION BE GRANTED, subject to conditions which include:
- 1) 3-year standard time limit
 - 2) Approved plans
 - 3) Samples of materials
 - 4) Provision of parking facilities
 - 5) EV charging points
 - 6) Measures to prevent the discharge of surface water onto the highway
 - 7) Provision of bike and bin storage prior to first occupation
 - 8) Provision and maintenance of 1m x 1m pedestrian visibility splays behind the footway on both sides with no obstruction over 0.6m above the footway level
 - 9) Removal of PD rights (classes A, B, C, D and E)
 - 10) Removal of PD rights for insertion of window openings at first floor level
 - 11) Hand dug condition and tree protection measures
 - 12) Contamination land condition
 - 13) Landscaping scheme
 - 14) Precommencement condition requiring submission of a detailed scheme for surface water disposal
 - 15) Precommencement condition requiring submission of a detailed scheme for foul water drainage
 - 16) Boundary treatment and hard surfacing
- 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