

a) DOV/21/00102 - Outline application for the erection of up to 63 dwellings (with all matters reserved except access) (includes demolition of 14 Archers Court Road) - Land Rear of Archers Court Road, Whitfield

Reason for report – requested by applicant

b) Summary of Recommendation

Planning permission be refused.

c) Planning Policies and Guidance

Planning and Compulsory Purchase Act 2004

Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that “where in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

Dover District Core Strategy (2010)

- CP4 - Housing Quality, Mix, Density and Design
- CP6 - Infrastructure
- DM1 - Settlement Boundaries
- DM5 - Provision of Affordable Housing
- DM11 - Location of Development and Managing Travel Demand
- DM12 – Road Hierarchy and Development
- DM13 - Parking Provision
- DM17 – Groundwater Source Protection
- DM25 - Open Space

Saved policies Dover District Local Plan (2002)

- Policy TR4-A2 Safeguarding Area

Dover District Land Allocations Local Plan (2015)

- DM27 - Providing Open Space

Draft Local Plan Review 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 (NPPF) (2021)

2, 7, 8, 11, 38, 48, 49, 58, 60, 64, 92, 93, 99, 100, 105, 110, 111, 112, 119, 120, 123, 124, 126, 130, 131, 132, 133, 134, 167, 174, 180, 182, 185, 186

Kent Design Guide (2005)

National Design Guide (2019)

Model Design Code (2021)

d) **Relevant Planning History**

DOV/16/01328 - Outline application for the erection of up to 28 dwellings (30% affordable), creation vehicular access (to include demolition of 14 Archers Court Road) Refused - Allowed at Appeal.

DOV/13/00360 - Outline of up to 28 dwellings, construction of vehicular access including demolition of 14 Archers Court Road - Refused. Appeal dismissed on highway safety and capacity grounds.

(Appeal to High Court was successful and the matter was referred back to the Planning Inspectorate for determination. On 12th January 2016 the Inspector appointed dismissed the appeal on the grounds that the application would fail to protect local biodiversity and as such would be contrary to paragraphs 17, 109 and 118 of the NPPF. The Inspector considered the effect of the proposal on highway infrastructure and held it would not have a harmful effect on it and as such accords with paragraph 32 of the NPPF.)

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

DDC Tree Officer: No objections to the proposed outline development in principle subject to a full pre-development tree survey and report in accordance with BS5837:2012 providing the details are submitted with any reserved matter application.

DDC Ecology: Preliminary ecological appraisal and Phase 2 Protected Species Surveys. The report recommends bat activity surveys. An assessment of the building on site did not confirm a bat roost, but there is no assessment of the trees. Since the possible presence of protected species is a material consideration in the planning process the application should not be determined until all survey work is complete. The report states that trees will need to be removed along the boundary of the broadleaved woodland. It does not explain why, but no assessment of the potential of these trees to support bat roosts has been provided. I would suggest that the consultant should also assess the trees as part of the further survey work needed. Please ask the applicant to clarify this issue and explain why nocturnal emergence/re-entry surveys were not required. I am also unclear about the timing of the bat survey work. The report states that the bat survey of the building and dormice survey work was carried out between the 24th of May to the 18th of November 2020.

DDC Environmental Health: Although no objections to the application, we have some considerable reservations relating to air quality, noise and other matters. Should the development be approved, we recommend that conditions are applied.

In terms of air quality, this was assessed initially in 2012 based on an AQ report submitted by Peter Brett in respect of the Whitfield Development area in general and modelled a number of receptor points in the Whitfield area. For subsequent applications 13/00360 and 16/01328 air quality was not considered further and we understand the latter was eventually granted on appeal. Having reviewed this application we note a substantial increase in the number of residential units, from 28 to 63, which will, in itself, generate a significant number of increased vehicle movements. The view taken in 2012 regarding the impact of road traffic on the nearby A2 was based on modelling and AADT traffic figures for the A2 route to the docks in 2010. The number of traffic

movements will have significantly changed since that time and is also very likely to increase with the new Border Control Facility which has been approved under the Government's Special Development Order whereby there will be a significant increase in HGV vehicles using the A2 corridor. In view of the above and the fact that the site plan submitted for this application shows the nearest residential unit to be only c.17m from the A2 we would recommend that the developers should:

Prior to the commencement of the development details of a site-specific air quality report which should examine the impact of nitrogen dioxide and particulate PM10 emissions on future residents in the proposed development. The report should take account of the impact of the Border Control Facility, predicting emissions at agreed receptor locations using ADMS-Roads or other appropriate modelling software and comprise updated traffic data, and updated Emissions Factor Toolkit version 10.1 developed by Defra. The report should also examine the increase in vehicle movements from future residents on local air quality levels. These details shall be submitted and approved by the LPA.

Paragraph 35 of the NPPF states that plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people and suggests a number of means to achieve this. The incorporation of facilities for charging plug-in and other ultra-low emission vehicles is noted as one means of achieving this. Further support is provided under paragraph 124 which states that planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. We therefore recommend EVC points for all units by condition.

The noise report conducted by Sound Planning was carried out in 2017 and shows significant daytime and night-time noise levels generated from traffic using the A2. Following Planning & Noise Professional Practice Guidance, the noise would potentially cause a medium to high risk of adverse effect. The report recommends significant noise mitigation measures including the installation of a 4.5m high acoustic barrier spanning the southern site boundary which runs adjacent to the A2 and acoustic glazing and ventilation that provide a minimum sound reduction index of 36 dB Rw. The report, however, is now out of date, particularly in terms of potential traffic noise generated from the up-coming potential increased HGV use of the A2 in the locality and a condition is recommended.

Conditions should also be included in terms of potential land contamination on the site and any remediation, along with a construction environmental protection plan.

DDC Infrastructure/open space: Planning contributions in relation to open space provision.

Accessible green space £7,580.37

Outdoor sports facilities £28,259.09

Children's Equipped play area £27,299.69

Thanet Coast and Sandwich Bay SPA Mitigation Strategy £3,714.42

KCC Archaeology: The site lies within an area of multi-period archaeological potential, including for later prehistoric and Romano-British activity. The proposed development could impact any below-ground archaeological remains at the site and I recommend

that in the event that planning permission is granted a condition requiring an archaeology evaluation is applied to any forthcoming consent.

KCC LLFA: At this stage, we would expect to see the drainage system modelled using FeH rainfall data in any appropriate modelling or simulation software. Where FeH data is not available, 26.25mm should be manually input for the M5-60 value, as per the requirements of our latest drainage and planning policy statement (November 2019); 2. The British Geological Survey information for the site area show that the site has poor infiltration viability, therefore, as there is no watercourse or surface water sewer in the area infiltration testing completed to BRE Digest 365 is required. 3. The calculations provided shows that the site is discharging through a hydrobrake at a rate of 5l/s rather than infiltration that has been stated in the Drainage Strategy. We would recommend that further information is provided to respond to the comments above before the application is approved.

KCC Development Contributions: The County Council has assessed the implications of this proposal in terms of the delivery of its community services and is of the opinion that it will have an additional impact on the delivery of its services, which will require mitigation either through the direct provision of infrastructure or the payment of an appropriate financial contribution. The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) (Regulation 122) require that requests for development contributions of various kinds must comply with three specific legal tests. These tests have been duly applied in the context of this planning application and give rise to the following specific requirements. In addition, wheelchair accessible dwellings for all affordable units and a broadband condition.

The following contributions should be secured:

- Primary education towards a new primary school – Dover Whitfield Aspen of £428,400
- Secondary education towards expansion of selective and non-selective secondary schools in the Dover district of £286,020
- Community Learning towards equipment and resources for the additional learners at Dover Adult education centre of £1,934.46
- Youth Service towards additional resources and services for the Dover Youth Service of £4,126.50
- Library Bookstock towards additional services and stock for Dover library of £3,493.35
- Social Care towards specialist care accommodation within the District of £9,253.44
- Waste Services towards new works at Dover HWRC to increase capacity

KCC Highways: Highways England have advised they would be inclined to place a Grampian Condition upon the development ensuring that occupation is restricted to no more than 28 units (the number of units approved in the extant planning consent) until after the implementation of the Whitfield Roundabout mitigation scheme (identified under the Whitfield Urban Extension application DOV/10/01010) for a signalised

junction. The applicant has agreed that this is a reasonable and sensible way forward. On this basis I have no objections to the proposals subject to additional detailed highway safety matters being secured by condition including a construction management plan and EVC charging points.

KCC Public Rights of Way: The proposed development directly affects Public Right of Way ER54. The existence of the right of way is a material consideration. The Definitive Map and Statement provide conclusive evidence at law of the existence and alignment of Public Rights of Way. While the Definitive Map is the legal record, it does not preclude the existence of higher rights, or rights of way not recorded on it. The application makes a brief reference to the existence of Public Right of Way ER54 which is directly affected by the proposals. The proposal does not address the impact on access and rights of way. The proposal would have a detrimental impact on the use and amenity of access and rights of way in the locality. ER54 appears to be obstructed by the developments indicative site plan. As the application is currently presented I object to it for the above reason. I would ask that the applicant submit an amended application reflecting the existence of the right of way and indicating how it will be dealt with.

The granting of planning permission confers on the developer no other permission or consent or right to close or divert any Public Right of Way at any time without the express permission of the Highway Authority.

Highways England/National Highways: No objection, subject to conditions. The SRN is a critical national asset and as such Highways England ensures that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case, the A2 within the vicinity of Whitfield Roundabout as the site lies adjacent to the A2. Comments relate to:

1. Traffic impact upon the SRN by virtue of traffic generated, attracted or diverted as a result of the development

2. Development impact upon the environment/land under Highways England control

Trip Generation: Highways England accepts the Trip generation proposed by the applicant for the site noting that there are 25 AM and PM two-way peak hour trips proposed. Highways England notes that within the trip distribution, 100% of all traffic generated by the site is proposed to pass through Sandwich Road and Archers Court Road. Highways England accepts this distribution given then proximity of the site access to Whitfield Roundabout and the SRN.

Cumulative Impact Assessment: There has been no assessment of the cumulative impact of the development within the wider area on the SRN. While the individual site itself does not generate a significant amount of traffic, cumulatively within the area, the committed development for Whitfield and Dover has seen a significant number of proposals approved. The previous application and subsequent appeals on the proposed development site (for 28 dwellings), did not raise any highways issues and the Planning Inspector noted that a mitigation scheme in place for Whitfield Urban Extension (DOV/10/01010) proposed a signalised junction improvement at Whitfield Roundabout likely to be in effect. In reality, this signalised junction is tied to the buildout trigger of 801 dwellings and has yet to be reached. Interim development has come forward in the meantime which has increased traffic on the roads and decreased capacity further. Highways England has now taken the approach that any traffic within the area is required to undertake a cumulative impact assessment upon the Whitfield

Roundabout and A2 in order to ensure that interim mitigation measures are not required.

Our initial response requested further information with regards to cumulative impact development, especially with regards to the Whitfield Roundabout and Duke of York Roundabout. The Whitfield Roundabout, in particular, is showing signs of severe congestion and little to no remaining capacity upon certain arms of the junction. We consider that any planning application in this area, whether forming part of the Local Plan or not, would be required to provide a cumulative impact assessment upon this junction in order to ensure that sufficient capacity remains to accommodate the proposed development and background traffic growth. The mitigation measures associated to the proposed early phases of the Whitfield Urban Extension (DOV/10/01010) are for a proposed signalised junction improvement at the Whitfield Roundabout, with a trigger of 801 dwellings.

The applicant's Transport Consultant response suggests that:
'any other application to have come forward (since the inspector's decision) should have considered the site as committed development' and that the site 'has already been considered within the cumulative assessment of any other development that has come forward after its approval'

We note the reference made to two separate appeals 2015 for 28 units (dismissed) and 2019 for up to 28 units (upheld). We note that the Inspector's found that *'the level of additional traffic movements would not be severe'*. However, we do not consider that this statement sets a precedent for the following reasons:

- a. this proposed development is not for 28 units; it is for 63 residential units (double and hence materially different to the original application)
- b. any previous assessment would have been made on the smaller quantum over two years ago. While in some cases data can remain relevant, we do not consider it to be the case regarding the A2 due to other factors such as growth in port use per se, routing via the A2 etc
- c. while we accept the site would have been considered within other developments' cumulative assessment the total quantum of the Whitfield Urban Expansion would have been included as background growth only. This development directly affects the Whitfield Roundabout which the general assessment would not have assessed
- d. the previous Transport Statement stated that 100% of all traffic would be utilising Sandwich Road and Archers Court Road. Other developments, further afield within the wider area, may not have had such a direct connection to this junction.
- e. The Inspector's seemingly have only looked at capacity. There are concerns regarding both the capacity and safety of the Whitfield and Duke of York Roundabouts. C2/13 contains 2 tests, one relating to whether any residual impacts are severe i.e. there is an element of quantification and potential tolerance. The other test, in paragraph 10, concerns safety, for which there can be no tolerance or compromise. Therefore, the request to assess each application on its own merit and the impact of cumulative development is not considered to be unreasonable.

In conclusion we need to ensure that the Whitfield Roundabout can cope with the proposed development and background growth for further developments in the area and that the development will not materially affect the safety, reliability and/or operation of the strategic road network (the tests set out in MHCLG NPPF Para 108-11 & DfT Circ 02/13 Para 8 -11) in this location and its vicinity. Additionally, a cumulative impact assessment would identify whether there is a need for any interim mitigation measures to be put in place. If the applicant is unwilling to undertake a cumulative impact

assessment of Whitfield Roundabout junction, HE would be inclined to place a Grampian Condition upon the development ensuring that occupation is restricted to no more than 28 units until after the implementation of the Whitfield Roundabout mitigation scheme (DOV/10/01010).

The Applicant either undertake a cumulative impact assessment of the traffic implications of development upon the Whitfield and Duke of York Roundabouts or agree to the implementation of a Grampian Condition restricting occupation to no more than 28 units until after the implementation of the Whitfield Roundabout mitigation scheme (DOV/10/01010), for a signalised junction.

The Applicant submitted a Transport Assessment Addendum Letter in which it is agreed that a Grampian Condition can be accepted. The Applicant has suggested wording along similar lines to that of a previous HE response in Somerset. Based upon this suggested wording, and the extant planning permission for 28 units our recommended Grampian Condition for the proposed development is:

No more than 28 dwellings of the development hereby permitted shall be occupied until the scheme of works approved under Planning Permission DOV/10/1010 Condition 10 relating to the A2 Whitfield Roundabout (or some other such scheme that may be agreed by the local planning and strategic highways authority in writing to at least the same effect) have been opened to the public.

Reason: To ensure that the A2 Trunk Road continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety.

Construction Management Plan: Given the location of the site and sensitivity of the A2 Whitfield Roundabout, a construction management plan is required to be submitted for Highways England to review and approve. The construction management phase of the proposed development is likely to have an associated increase in trip numbers for both HGVs and vehicles due to the number of staff involved at the site during construction. Any permission granted should have a CMP condition attached.

Drainage and Flood Risk Assessment/Geotechnical Assessment: The A2 is on a low height embankment at this point. At some point it will be necessary for the applicant to demonstrate that no works or construction will modify or adversely impact on our earthwork and there will be no deep excavations in close proximity to the embankment. The applicant may choose to fulfil these obligations prior to the grant of any outline permission, or accept a condition to the same effect

No works shall commence on the site hereby permitted (including site clearance or preparation) until the details of all proposed ground and/or building works demonstrating that they safeguard and maintain the geotechnical stability of the A2 embankment during construction and occupation of the site have been submitted to and approved in writing by the lpa. Thereafter the construction and occupation of the development shall be in strict accordance with the approved scheme unless otherwise agreed in writing by the lpa.

Reason: To ensure that the A2 Trunk Road continue to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety.

A2 Boundary – Hard & Soft Landscaping (inc. acoustic features):

We note the Landscape and arboriculture integration plan and the Illustrative layout plan. Any permission granted should have a condition attached such that any/all hard and soft landscaping in the vicinity of the A2 is subject of HE assessment and agreement. It should be noted that any acoustic measures proposed must be placed within the site. Moreover, any boundary fencing etc must be placed sufficiently within the site to allow its construction, use and maintenance without the needs for people, plant or materials to occupy any land under HE control and be capable of preventing children and pets from straying onto HE land.

Southern Water: The exact position of the public sewers must be determined on site before the layout of the proposed development is finalised.

- The 150 mm diameter gravity sewer requires a clearance of 3m on either side of the gravity sewer to protect it from construction works and to allow for future maintenance access.
- No development or tree planting should be carried out within 3m of the external edge of the public gravity sewer without consent from Southern Water.
- No soakaway, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5m of a public sewer.
- All existing infrastructure should be protected during the course of construction works.

Furthermore, 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.

We have restrictions on the proposed tree planting adjacent to Southern Water sewers, rising mains or water mains and any such proposed assets in the vicinity of existing planting. Reference should be made to Southern Water's publication "A Guide to Tree Planting near water Mains and Sewers" and the Sewerage Sector Guidance with regards to any landscaping proposals and our restrictions and maintenance of tree planting adjacent to sewers, rising mains and water mains.

Our initial investigations indicate that Southern Water can provide foul sewage disposal to service the proposed development. Southern Water requires a formal application for a connection to the public foul sewer to be made by the applicant or developer.

Where SuDS rely upon facilities which are not adoptable by sewerage undertakers the applicant will need to ensure that arrangements exist for the long-term maintenance of the SuDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.

This initial assessment does not prejudice any future assessment or commit to any adoption agreements under Section 104 of the Water Industry Act 1991. Please note that non-compliance with Sewers for Adoption standards will preclude future adoption of the foul and surface water sewerage network on site. The design of drainage should ensure that no groundwater or land drainage is to enter public sewers.

Whitfield Parish Council: Object to this current application

I refer you to previous objections submitted under applications 13/00360 and 16/01328 which are still relevant today. Permission was given after a lengthy appeal procedure. The current application is for 63 dwellings a case of too many houses in the wrong place entirely. With 5,750 houses planned in the village and the numerous back garden

application together with developments such as Fitzwarin Place off of Singledge Lane only adding to the problem.

The additional traffic movements along Archers Court Road if the application is granted will create a danger to Traffic Cyclists and Pedestrians. The fact that the developer intends to construct a Priority junction at the point of vehicle access at 14 Archers Court Road. Is ill conceived and would create even more chaos.

The appeal granted outline permission for up to 28 houses and used this number of dwellings to assess the amount of traffic, and loss of green space. This application is for more than double the number of houses, so the volume of traffic and daily vehicle movements generated will also more than double. The site is on a designated Open Space under Policy DM25 of the CS and the increase in number of houses greatly reduces the open recreational areas. This loss of open space was of concern to the Planning Inspector who granted permission on the basis that the site gave sufficient mitigation for its loss if used for 28 households. The amount of open area will be greatly reduced with the proposals to build 63 dwellings as the building themselves are on a larger footprint that covers over 50% more area and extends further down the site and closer to the A2. The requirement is also for more than double the number of parking spaces and so also removes a much larger area of open area and recreational.

Third Party Representations - 121 letters of objection have been received, raising the following issues:

- Wildlife site, used by birds, owls, bats, hedgehogs and foxes
- Cumulative impact of development in area
- Pressure on local highway infrastructure
- Archers Court Road junction at breaking point
- Adverse impact on highway safety
- Residential development next to A2 breaches WHO guidelines
- Adverse impact on existing residents
- Doesn't Whitfield already have enough development proposed
- Adverse impact on biodiversity
- More congestion for Whitfield
- Loss of trees subject to TPO's
- Impact and potential loss of a public right of way
- Loss of open space regularly used by local residents
- These spaces are needed for recreational use and mental health
- The council have a responsibility to provide green spaces for residents
- Loss of wooded area/Newlands Wood
- Generation of noise and light pollution
- Increase in greenhouse gases and air pollution, existing trees help with the carbon dioxide from the A2
- Proximity to existing properties would give rise to loss of privacy, overlooking and loss of amenities
- Existing infrastructure cannot cope at present
- Adverse health impacts due to traffic increase
- Scheme no different to what was refused planning permission and dismissed on appeal
- Site is identified as open space in the Whitfield masterplan
- Whitfield roundabout is already not fit for purpose
- Site is a designated open space
- The existing dwelling has been left derelict to gain permission

- Existing site creates a natural sound barrier to the A2
- The site is not suitable for development
- Overdevelopment, density of housing is too high
- Insufficient car parking on site it will overspill onto Archers Court Road
- Increased risks of accidents and safety
- How is it possible to get 63 units on this site
- Already flooding in the local area
- This small area of greenspace and all existing trees need to be retained
- Why develop one of the last few areas of natural greenspace
- The cumulative effects of development in Whitfield must be considered
- How does development of this site contribute to being carbon neutral or net zero
- Development is out of keeping with surrounding development, especially bungalows
- Why would anyone chose to live on this site
- There is no justification for this residential development in Whitfield

f). The Site and Proposal

- 1.1 The site is a triangular parcel of land which lies between the rear of the residential properties off Archers Court Road and the A2. The site is heavily overgrown and is in part subject to a Tree Preservation Order (No. 8 1981). It is currently accessible via a Public Right of Way (ER54) running along the southern part of the site connecting the underpass on Whitfield Roundabout with Archers Court Road and continuing through the field towards the A258. The site is immediately outside the Whitfield Urban Expansion (WUE) area but within the urban settlement boundary of Dover. The site sits below the level of the A2 and has an area of 1.65 hectares. It is allocated in the Core Strategy as protected open space. The site is situated in Flood Zone 1 and in Groundwater Source Protection Zones 2 & 3. The site is also an Archaeological Protection Area.
- 1.2 It is understood that the site once formed part of a caravan site but is now residual land from the road works to the A2. Part of the site remains under the A2 safeguarding designation (Saved Policy TR4). To the north west of the site are mostly detached dwellings with large rear gardens on Archers Court Road, to the north semi-detached dwellings on Courtland Avenue and to the east is a residential development dating from 1980's and 90's of detached and semi-detached dwellings, mostly bungalows on Newlands.
- 1.3 The proposal is for outline planning permission for 63 dwellings, with all matters reserved except access. At this stage an indicative housing schedule has not been provided. The proposal would involve the demolition of 14 Archers Court Road, a detached two storey dwelling, to facilitate the creation of a new vehicular access into the site. The proposed access road would be 5.5m wide and includes a 2m footpath to the east, traffic calming, car parking and a turning head to serve the development.
- 1.4 The indicative layout plan identifies a footprint of buildings which is L-shaped, showing 17 individual dwellings with rear gardens and two flat blocks. The flat blocks measure approximately 19m x 42m, with a footprint of 798sqm and it would be assumed contain 46 units, 23 units in each block. A mixture of dwellings and flats are proposed but no information has been provided in respect of their layout, form, or heights of the proposed building, although requested. It has been advised that the two blocks of flats would be 4 storeys in height. A community public open space is proposed in the central section of the site. This would include a Locally Equipped Play Area (LEAP) no further

details have been provided. A landscape buffer/screen zone is shown to be incorporated along the A2 boundary with the woodland to the east to be managed. A 4m high acoustic fence is also shown along the A2 boundary, no details are provided. The PRow indicates that one of the flat blocks would be sited over the line of the PRow.

2. **Main Issues**

2.1. The main issues to consider are:

- Background
- Principle of Development
- Affordable Housing/Mix
- Density, Layout & Scale
- Residential Amenities
- Highway Matters
- Open space
- Impact on Trees
- Public Right of Way
- Noise and Air Quality
- Drainage and Flood Risk
- Ecology and Appropriate Assessment
- Archaeology
- Contamination
- Planning Obligations

Background

- 2.2 The original application (ref. DOV/13/00360) was refused on the ground that the local highway infrastructure did not have the capacity to absorb additional traffic movements generated by the development, taking into account the increased traffic that would be generated by other developments using the highway network.
- 2.3 The applicant lodged an appeal against this decision and the appeal was dismissed by the Planning Inspector. This decision was successfully challenged in the High Court by the appellant and the matter was referred back to the Planning Inspectorate for determination. On 13th January 2016, this appeal was dismissed. In the decision, the Inspector considered the main issue was the effect of the proposed development on biodiversity.
- 2.4 The Inspector did not find the proposal, together with the impact of other developments, would result in a severe cumulative impact on the local highway infrastructure and determined that the development was in accordance with paragraph 32 of the NPPF (2012). He advised that the LPA were unable to provide cogent evidence that there was insufficient capacity in the local highway network to accommodate a 'relatively small development' that was supported by a Transport Statement and Technical Note. The reason for refusal was therefore overturned by the Planning Inspector.
- 2.5 However, the Inspector did find that there was a lack of sufficient information submitted in respect of the impact on biodiversity and could not be certain that the proposal would not result in significant harm to biodiversity, as identified in paragraph 118 of the NPPF (2012). Consequently, the proposal would fail to achieve one of the core planning principles of the NPPF, namely, to conserve and enhance the natural environment. In

this regard it was concluded that the proposed development would fail to protect local biodiversity and was contrary to the NPPF (2012).

- 2.6 The Inspector also found in favour of matters such as the provision of affordable housing and the residential use of the site, noting the proposal would provide a positive social and economic role but its failure on the environmental aspects outweighed the benefits of the proposal and the appeal was dismissed.
- 2.7 A subsequent application DOV/16/01328 was refused by planning committee on the grounds of the loss of public open space, following a lengthy consideration of highway impacts and the commissioning of an independent transport report, that identified no significant impact on highway capacity at the junction with Archers Court Road and Sandwich Road. This decision was also the subject of an appeal which was allowed. The Inspector found the development would not have a harmful effect on the provision of public open space and it would not be contrary to the aims of Policy DM25 or to the general aims of the advice in the Framework.
- 2.8 This outline planning application before Members is therefore submitted on the same application site area but for an increased number of residential units, an uplift of 35 residential units and includes the submission of a viability report that sets out the site is not viable for the provision of affordable housing.

Assessment

Principle of Development

- 2.9 The application site lies within the urban settlement confines of Dover. The proposal is therefore considered to be in accordance with policy DM1 of the Core Strategy, as it is within the settlement boundaries and is therefore considered appropriate, in principle for residential development.
- 2.10 Legislation and the NPPF confirm that applications must be determined in accordance with the development plan unless material considerations indicate otherwise and that sustainable development which accords with the development plan should be approved without delay. Having regard for the most recent assessment on housing supply, the Council is able to demonstrate a five-year housing land supply of 6.39 years and the Council have not 'failed' the Housing Delivery Test (88%). This includes a 5% buffer, as required by the housing delivery test and in line with paragraph 73 of the NPPF.
- 2.11 However, at the time of the determination of the earlier planning applications and appeal decisions the LPA could not demonstrate a 5-year supply of housing land and the district's housing policies were not in accordance with the NPPF. This position was not a key determinative issue at the time of these decisions and in the context of the NPPF as a whole, it was determined that the site could satisfactorily accommodate the outline residential development proposed, being identified as a sustainable location.
- 2.12 Nevertheless, due to the age of the Local Plan, its evidence base and its policies, in summary, are largely considered partially out of date or not fully up to date and therefore the 'tilted balance' identified in paragraph 11 of the NPPF is engaged. An assessment as to whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the development therefore needs to be undertaken and assessed against the policies in the NPPF taken as a whole or whether there are any other specific policies in the NPPF (or material considerations) that indicate permission should be restricted.

- 2.13 The following report sets out the key paragraphs in the NPPF and material considerations that direct that planning permission for an increased number of residential units on the site should be refused. An assessment of the planning balance as required by Paragraph 11 of the NPPF, known as the tilted balance, is also undertaken.

Affordable Housing/Housing Mix

- 2.14 One of the NPPF's key objectives is to deliver a choice of high-quality homes of mixed tenures that widens opportunities for home ownership and creates sustainable, inclusive and mixed communities. This objective is reflected in policy CP4 of the CS which aims to ensure that the housing meets the needs of the present and future generations. This application contains limited details of the proposed dwelling mix and therefore consideration of the SHMA and justification for a proposed housing mix would need to be submitted at Reserved Matters stage should permission be granted.
- 2.15 Policy DM5 of the Core Strategy seeks residential development of 15 dwellings or more to provide the provision of 30% affordable housing of dwelling sizes that address the prioritised needs in the SHMA. For this proposal this equates to 19 affordable units (13 social rent and 6 shared ownership). The application was submitted with a viability statement/report that concludes that the site is not financially viable with any form of affordable housing being provided or any financial contributions.
- 2.16 The applicants report concludes that *“the viability assessment on an all open market development basis shows a viability deficit and therefore no surplus is generated by the development to support any affordable housing contribution or other s106 costs”*.
- 2.17 This has been assessed for DDC by independent viability consultants – Dixon Searle Partnership. They have concluded below, (which I have summarised where appropriate):

The submitted approach to assessing the viability of the proposed development appears to be appropriate overall, in our opinion.

We also consider the majority of the assumptions to be within the range we would expect. However, there are areas which we have queried or where a difference of opinion exists. These are as follows:

- *BLV – we have made a downward adjustment from £928,750 to £737,500.*
- *GDV – we have increased the assumed values of the 1- and 2-bed flats and the 4-bedroom houses. The total GDV has increased from £17,024,430 to £17,769,030.*
- *Marketing costs – we have reduced these costs from 2.75% to 2.5%*

The DVR states that the proposed scheme, as presented, produces a residual land value of £152,099 and when compared to the submitted BLV of £928,750 produces a deficit of -£776,651.

We have carried out sensitivity testing based on making our suggested amendments to the development appraisal. When making the amendments as referred to throughout this report, the scheme (using a 17.5% GDV profit level and without ground rents) produces a residual land value of £686,994. When compared to our revised BLV of £737,500, the scheme produces a deficit of -£50,506. When including the ground rent investment within the appraisal, the scheme produces a residual land value of £934,193 and when compared to DSP's revised BLV of £737,500, produces a surplus of £196,692.

In conclusion, only when the ground rent investment is included does the scheme appear sufficiently viable to support affordable housing. If a contribution towards affordable housing cannot be agreed, the Council may wish to consider relevant s106 provision in relation to ground rents, for example, either a potential claw back or, a restriction on charging them on this development.

- 2.18 The independent report therefore supports the applicant's position that there is very limited provision for affordable housing provision and financial contributions on this site. Affordable housing could be provided if ground rent investment is included but otherwise the site would not be viable.
- 2.19 However, on further consideration of some of the figures used within the reports it was identified that applicant's viability report was based on the 2009 Viability Assessment for the Core Strategy. An updated Viability Assessment has been produced in respect of the draft Local Plan and is a more accurate viability position than the 2009 document. On this basis I have asked the DDC appointed consultants to reconsider in light of this report, as this could have an impact on the viability of the site to provide affordable housing and financial contributions. At the time of writing this additional information and review has not been received, any update available shall be provided verbally at the Planning Committee meeting, including any change to the proposed reasons for refusal if applicable.

Density, Layout & Scale

- 2.20 Compared to the extant planning permission (for 28 units), the proposal would result in a significant uplift in the number of residential units being proposed on this restricted site, immediately adjacent to the A2. The increase would be 35 units. Due to the constrained nature of the site, this uplift in numbers (as illustrated on the indicative plans) is shown as 46 units provided in two 4 storey blocks of flats - an estimate of 23 units per block of flats. No details of the size of these units, mix or layout have been provided at this stage. The indicative layout plan proposed shows one of these blocks extending across the definitive line of the PRoW and the retention of mature trees to the southern, north eastern and north western site boundaries. These trees are also proposed to screen the development from existing adjacent residential properties and the A2. However, to achieve the increased number of units two large blocks are proposed to the eastern side of the site, these could be at least 12m in height although no indicative heights have been provided.
- 2.21 The previous scheme for 28 units proposed 2-2.5 storey development in keeping with the height of surrounding development on Archers Court Road, although Newlands to the north-east comprises a mix of predominantly bungalows and chalet bungalows. The introduction of two large four storey blocks of flats (whilst indicative) is a reasonable indication of the form of development required to accommodate this number of units. As presented, it suggests a form of development that would be out of keeping with the character and context of surrounding built development. It neither respects the built form, nor is it sympathetic to the local character, which are two key aspects of well-designed spaces and good quality urban design set out in the NPPF and the National Design Code, as set out at paragraph 130 of the NPPF.
- 2.22 Both the NPPF and the National Design Code put great emphasis on the need for well-designed spaces, buildings and a high standard of amenity for future residents including useable and meaningful outdoor amenity space that functions well and adds to the quality of the area as well as being visually attractive and results in a good layout, architecture and landscaping. The increased numbers of the proposed development would result in a large number of car parking spaces that are all proposed to the front

of the buildings and between the buildings and the public open space. Based on the indicative layout, it suggests that in order to accommodate the level of development sought, the proposal would be likely to result in a car dominated environment, with limited landscaping. The result would be a poor quality layout, with no sense of place or a sense of arrival that would make it a distinctive place to live.

- 2.23 This large car parking area divides the site with the buildings sited to the eastern and northern boundaries and the proposed open amenity space (that has reduced in size from the previous proposal and is also proposed to incorporate a LEAP) on the other side of the car parking area adjacent to the southern boundary that adjoins the A2. This minimises the usefulness of the proposed amenity land and does not seek to integrate it and the car parking effectively into the proposed development.
- 2.24 Directly adjacent to the proposed car parking areas, with limited separation or landscaping would be the proposed buildings of between 2-2.5 and 4 storeys in height. The 2 x 4 storey blocks of flats would extend across almost the full width of the eastern boundary with limited relief and would be a minimum of 12 metres in height. At this height a large proportion of the morning sunlight coming from the east would be reduced, reducing the sense of a high-quality environment and limiting the use of the retained open space and amenity land that is proposed adjacent to the southern boundary.
- 2.25 To the southern boundary the existing mature trees are shown to be retained but also a 4.5m high acoustic fence is required to be erected along the length of the southern boundary to address noise pollution from the A2. The ability to retain the existing trees and erect an acoustic fence of 4.5m has not been fully demonstrated. Nevertheless, with a 12 metre high buildings sited to the east and a 4.5m high acoustic fence sited to the south, the level of light to the open space and amenity area will be further restricted and will reduce the quality of the resulting space proposed.
- 2.26 The retention of the existing mature trees to all the site boundaries is welcomed and encouraged, however, this will also result in a further loss in the quality and use of the amenity space to the rear of the blocks of flats. This is a fairly limited area to serve 46 residential units and is sited between mature trees, to the east and 12 metre high development to the west. This would effectively reduce sunlight to large parts of this space throughout the day, resulting in an unwelcoming and under used space. This is also the only dedicated amenity space to serve 46 units. External balconies could be proposed; however, it is unlikely that these would off-set the need for external space, particularly at higher levels, due to the potential noise pollution from the A2. In addition, due to the orientation of the flat elevations to the east and west, the same issues of reduced light to these primary elevations would apply.
- 2.27 This results in limited or unusable external amenity space for the 46 residential units in the proposed flats and does not provide a high quality environment for future residents or a requirement for high quality urban design, as set out in the NPPF and fails to achieve the aims of paragraph 130 of the NPPF. These issues do not apply to the same extent to the individual dwellings proposed to the north, north-western boundary.
- 2.28 It has not been demonstrated therefore that the number of residential units proposed would result in an acceptable or high quality layout and does not achieve the aims set out in the NPPF or the National Design Guide to provide well designed and high quality spaces that are beautiful, enduring and successful. The application also has not demonstrated, with the limited indicative site plan, that 63 residential units can result in a high-quality residential environment. It therefore fails the tests set out in paragraph

130 of the NPPF and does not provide a high standard of amenity or a sense of well-being for future occupants. Consequently, for these reasons it also fails to address the social sustainability objective set out in paragraph 8 of the NPPF that states:

“A social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being...”

- 2.29 Paragraph 134 of the NPPF states that development that is not well designed should be refused. Neither does it provide a high level of sustainability, raise the standard of design nor fit in with the overall form and layout of its surroundings. It is therefore recommended that the outline application for 63 dwellings be refused for these reasons, as the poor quality design is ostensibly considered to be dictated in large part by the density of development currently sought through this proposal.
- 2.30 In terms of the need to make effective use of land and build at a higher density to address local housing needs, the emphasis as set out in paragraph 119 and 120 of the NPPF is to ensure safe and healthy living conditions and to use previously developed and brownfield land. This site does not fall within those categories. The proposal is also not consistent with the prevailing height and form of neighbouring properties or the overall street scene and is not considered to be well designed or attractive.
- 2.31 No identified local housing need has been demonstrated and the council has a 6.39 year supply of housing and have not failed the housing delivery test. The need to provide housing on sites to ensure an appropriate supply of housing doesn't currently apply and the proposal also doesn't provide any form of social housing or a contribution towards social housing, therefore it does not provide for a local need within the district. The application consequently does not demonstrate or provide a sufficient case to increase the number of units or density of development on this site, and as set out above, the proposal does not fulfil the social objective of sustainability.

Residential Amenities

- 2.32 Local concerns have been raised in relation to the siting and layout of the proposal and the impact this will have on existing residential amenities. Although the proposal represents a form of backland development, its cul-de-sac form is not completely out of character with the existing pattern of development in the local area. However, a density at circa 26 dwellings per hectare is being proposed and this would be higher than development within Whitfield, which is around 20 dwellings per hectare.
- 2.33 The indicative layout plan is similar to previous applications and those considered at appeal. It identifies an L-shaped layout to the proposed buildings that would be set back between 18-20m from the site boundaries and would retain a significant proportion of the existing trees and landscaping. The individual properties are shown to have private rear gardens and amenity space that would have an outlook onto a public open space and tree/landscape buffer along the southern boundary of the site. The two proposed blocks of flats would, as identified above, have a limited level of private outside amenity space and it is not clear how these would be arranged due to the limited information provided. But there would be views towards the open space to the front elevation and the rear towards the retained tree screening.
- 2.34 In terms of the impact on the amenities of existing residential properties, the proposed built form would be set back from all the respective residential boundaries with a

substantial tree screen between the existing and proposed units. As a result, the impact is limited in terms of the proposed distances between the existing and proposed built forms. Nevertheless, it is unclear and insufficient information has been provided, to fully assess the impact and scale of the two 4 storey blocks of flats on existing residential properties, particularly during the winter months when there are no leaves on the retained trees. It is likely that due to their scale, there could be some potential for overlooking from the upper floors of the proposed flats, that could affect the residential amenities for existing properties, but this cannot be fully established at this stage. However, it adds further weight to the view that the site is not appropriate for up to 63 residential units. The proposed access road would be sited between two existing residential properties but would be sited away from the boundaries with landscaping and a hedge to both sides, its impact has therefore been mitigated and is considered appropriate.

- 2.35 The retention and enhancement of a significant proportion of the existing tree planting along the site boundaries could ensure that views into the site from the surrounding area would be limited. However, it is not possible for the reasons set out above, to confirm the impact on views of the proposed blocks of flats. The retention of the tree screen to the southern boundary could (if not affected by the 4.5m high acoustic fence) maintain the visual amenity and natural screening line for the existing properties in Archers Court Road, Newlands and Courtland Avenue. The proposed development could therefore retain a large proportion of the existing landscape features and have a neutral impact on the visual amenities of the immediate and wider area, nevertheless, an assessment of the visual impact of the proposed flats cannot be undertaken at this stage and they could potentially be highly visible beyond the application site.

Highway Matters

- 2.36 The relevant Core Strategy policies are DM11, DM12 and DM13. DM11 requires planning applications for development that would increase travel demand to be supported by a systematic assessment to quantify the amount and type of travel likely to be generated and include measures that satisfy demand to maximize walking, cycling and the use of public transport. 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.
- 2.37 Policy DM12 requires that developments that would involve the construction of a new access onto a trunk or primary road will not be permitted if there would be a significant increase in the risk of crashes or traffic delays unless the proposals can incorporate measures that provide sufficient mitigation. Whilst Policy DM13 requires that development provides a level of car and cycle parking which balances the characteristics of the site, the locality, the nature of the proposed development and design objectives.
- 2.38 Full details of the means of access are submitted under this application which includes a single 5.5m wide access road to serve the site from Archers Court Road, which would reduce to 4.8m away from the junction. The access road will include traffic calming with a 2m wide pedestrian footpath. Although indicative, car parking spaces are proposed to the front of the built development in the form of dedicated parking areas adjacent to the open space.
- 2.39 The first planning application DOV/13/00360, was refused on highway capacity and safety grounds. This decision was overturned at appeal and no significant harm to either highway capacity or safety was identified. Similar concerns were also raised in the consideration of the last application DOV/16/01328 where an independent traffic

report was commissioned. This identified that there was no impact on highway safety and no capacity issues at the junction with Sandwich Road. There is, however, a known capacity issue in respect of the Whitfield Roundabout where a mitigation scheme needs to be identified and implemented in advance of the approval of further applications for residential development within the local area.

- 2.40 National Highways were consulted on this application and their comments are set out in the representation section above. In this they have identified the need to impose a number of conditions, that includes a Grampian condition in respect of the implementation and completion of mitigation works to Whitfield roundabout in advance of any more than 28 units being occupied on this site. The 28 units that already have an extant planning permission could therefore come forward, but occupation of any further units would require the mitigation works to be completed prior to first occupation. The applicants have accepted this proposed condition and it passes the 6 legal tests in respect of planning conditions. With the inclusion of this suggested condition National Highways have raised no objection.
- 2.41 KCC Highways have also raised no objection to the application, on the basis of the above view from National Highways and subject to conditions, the increase from 28 to 63 units is not considered to cause a severe highway impact. This includes the impact of the proposal on the junction with Archers Court Road and Sandwich Road where no form of mitigation to support an additional 63 dwellings has been identified. Conditions could be included for the provision and maintenance of visibility splays with no obstructions over 1m within the splays and the submission of a construction management plan.
- 2.42 Local Plan Policy TR4 identifies land along the A2 to be safeguarded for any future widening of the A2. However, National Highways have confirmed there are no current plans to undertake any road widening. Policy TR4 should not therefore be a constraint to development.
- 2.43 It has therefore been established, through the application and former appeal decisions that the proposed development would not have a significant or detrimental impact on highway capacity or safety and the development would be acceptable in this regard, subject to conditions, and in accords with paragraph 111 of the NPPF.

Open Space

- 2.44 The site is currently designated as Protected Open Space in Policy DM25 of the CS and despite being overgrown, does have value as an informal woodland recreation area. Policy DM25 does not permit development which would result in the loss of open space unless:
- i there is no identified qualitative or quantitative deficiency in public open space in terms of outdoor sports sites, children's play space or informal open space; or
 - ii where there is such a deficiency the site is incapable of contributing to make it good; or
 - iii where there is such a deficiency the site is capable of contributing to making it good, a replacement area with at least the same qualities and equivalent community benefit, including ease of access can be made available; or
 - iv the case of a school site the development is for educational purposes; or
 - v in the case of small-scale development it is ancillary to the enjoyment of the open space; and

- vi in all cases except point 2, the site has no overriding visual amenity interest, environmental role, cultural importance or nature conservation value.
- 2.45 The application would result in the loss of an area of protected open space and it has not been demonstrated in the application submission whether there is an identified qualitative or quantitative deficiency in public open space as set out in criteria i of Policy DM25. However, criteria iii states that where a site is capable of contributing to making good, a replacement area with at least the same qualities and equivalent community benefit, including ease of access, could be acceptable. This proposal includes the provision of an area of public open space including a Locally Equipped Area of Play (LEAP) and the future management of the retained woodland/trees. Therefore, a managed area of open space being proposed could achieve a wider community benefit than the existing space and could, with the public footpath, provide safe and enhanced pedestrian access to local amenities and services. However, at this stage and with the increased number of residential units and car parking spaces, it remains unclear if there would be sufficient space to provide an appropriately sized LEAP and/or a meaningful level of provision of public open space to off-set the loss.
- 2.46 The principle of the proposed retention and enhancement of an area of public open green space adjoining a public footpath would also improve informal surveillance. This could be subject to an agreed layout to include the incorporation of a LEAP, which could be controlled further by a condition. In addition, a significant number of trees are proposed to be retained and managed as part of the development which could further enhance the local area. Accordingly, and on balance, it is considered that the development does not conflict with the objectives of Policy DM25 of the Core Strategy, even with some uncertainty, and as such the development could potentially be in line with Policy DM25. Additionally, it is not anticipated to carry forward in the draft Local Plan the open space allocation or include this land as protected, due to the extant outline planning permission for 28 residential units.
- 2.47 It is also important to note that the Inspector, in considering the last appeal, acknowledged that the proposed development would enhance the area of open space and raised no, in principle, objection to a residential development on this site.
- 2.48 Following on from the consideration of policy DM25, policy DM27 requires residential development for 5 or more dwellings to provide or contribute towards the provision of open space which would be in the form of an off-site contribution towards appropriate facilities. Open space contributions have been identified for this proposal and are set out in the contributions section below. However, the viability assessment has identified at this stage that the scheme would not be viable if any contributions or affordable housing were to be provided. Consideration of this is set out above, but no offer of contributions has been made by the applicant on this occasion.

Impact on Trees

- 2.49 A TPO covers part of and some of the trees on the site and was made because *"the trees provided a line of visual amenity to the locality of Whitfield and a natural screen to the housing in Archers Court Road and the adjoining housing estates, which should otherwise be prominent in an open landscape when viewed from the south, in particular the A2 Jubilee Way"*. The TPO covers a number of different tree species and was made in 1981. A number of the trees listed are no longer present and some of the remaining trees are dangerous or dead, with the lack of maintenance being a key factor in this die back and decline. However, the remaining trees make a significant contribution to public visual amenity and should be retained.

- 2.50 The application submission includes a Landscape and Arboriculture Assessment and the scheme proposes the retention of a tree/landscaped buffer zone to the southern/A2 boundary, the eastern boundary that includes most the trees covered by the TPO and mature trees to most of the boundaries. The location of the proposed buildings also facilitates the retention of a large number of trees within the overall site. Furthermore, it is also proposed to retain and enhance the tree planting to all boundaries of the site, with works taking place to the retained trees that is considered to be good horticultural practice. The DDC Tree Officer had raised no objections in principle, as the removal of the large amounts of dead and diseased trees would be beneficial arboriculturally. In addition, the majority of the trees proposed to be felled lie towards the inner section of the site and should not cause a visual amenity impact, as a high number are poor quality specimens of limited value.
- 2.51 It is also noted that the Landscape and Arboricultural Assessment includes proposals to repopulate the loss of the dead and diseased trees and there is a need for the management of the existing woodland (to the east) due to neglect over past years. Any permission could therefore be subject to conditions requiring tree protection measures during the construction phase, details of tree retention, management, with further details requiring submission at reserved matters stage or covered by conditions. The impact on the trees on site that are covered by the TPO have been or can be appropriately addressed and managed to ensure their long term enhancement, thus ensuring the impact on visual amenity is maintained throughout.
- 2.52 Notwithstanding the above, a couple of points need to be noted. The trees on the site have grown significantly since the report was initially carried out and notably parts of the site are covered by trees, albeit these are sampling and the site has not been managed for some time. An updated tree survey and associated reports would therefore be required and have been recommended by the Tree Officer if permission were to be approved. The significant number of trees on the site does result in significant shading to parts of the site, and as identified above, will have an impact on the practical use of the proposed amenity spaces and some elevations of the proposed flats.

Public Right of Way

- 2.53 A Public Right of Way (PRoW) ER54 runs along the southern section of the site, however, its location on site is not as clearly defined as the PRoW definitive map. The proposed indicative block plan also shows the southern block of flats would extend over the line of the PRoW. The extension of the proposed building over the line of the PRoW is as a result of the increased number of residential units being proposed and the size and scale of the buildings proposed. Concerns have therefore been raised by KCC PRoW Team that the development will directly affect the public footpath and they object to the proposal. The plans submitted are only indicative at this stage, being an outline application, therefore it will be necessary for the line of the PRoW to be clarified at a later date and this has been accepted in principle, with this approach accepted by the Planning Inspectorate. Nevertheless, the indicative plans for the smaller 28 residential units proposal did not show the built form extending over the PRoW and therefore there was a greater scope and a less intensive level of development to enable the line of the PRoW to be addressed and incorporated accordingly within the proposal. Paragraph 100 of the NPPF identifies that planning decisions should protect and enhance public rights of way and access, including opportunities to provide better facilities for users. This adds further weight to the position stated above, that the application site cannot adequately support the increased level of development being proposed and provide a high quality development that can take into account all the relevant material considerations, without causing a level of harm or disbenefits.

- 2.54 KCC have identified that the applicants will need to divert the path through formal proceedings. It is important to note that the approval of a planning application does not grant the right to close, alter or build over a right of way in any way, even temporarily. It is a criminal offence to obstruct a right of way unless the necessary legal order has been made, confirmed and brought into effect. Furthermore, planning conditions should not be used to duplicate matters regulated under other legislation and it would be inappropriate for conditions to be used to seek compliance with a separate legal process relating to any formal diversion. To clarify the position of the PRow and ensure it is not affected by the development, a planning condition could require that no development to take place until the confirmation is submitted of the route of the PRow within the context of the proposed development and/or its diversion or extinguishment has been obtained under formal proceedings. As a result, the PRow on site is not considered to be a constraint to determination at outline stage.

Noise and Air Quality

- 2.55 A Noise Impact Assessment has been submitted in support of this planning application, this has not recently been updated but is reasonably representative and accounts for a 70% increase in traffic on the A2. This includes an assessment of the current noise levels (background noise) on site, which should be noted already exceeds all recommended standards for residential developments (both internally and externally), due to the A2 directly adjacent. The submitted report considers the options for noise mitigation measures to prevent traffic noise impacting on residential amenities and to enable internal noise levels in the proposed buildings and external noise levels in the proposed amenity space/gardens to fall within appropriate limits. The report concludes that noise levels can be made acceptable through enhanced acoustic glazing to all windows and doors and mechanical ventilation which would address noise levels within the proposed buildings. It should be noted that this requires windows to be shut at all times to provide appropriate internal noise levels. Externally, a 4.5m high acoustic fence is recommended and proposed (although no details have been provided) along the southern boundary of the site, adjacent to the A2, with further recommendations for additional acoustic fencing to private amenity areas of the indicative development blocks.
- 2.56 DDC Environmental Health (EH) broadly accept this approach but has advised that noise in external amenity areas can only be mitigated through the erection of an acoustic fence/screen of 4.5 metres in height along the southern boundary. Additionally, prior to commencement of development an up to date noise assessment should be undertaken, although the absence of this prior to determination of this application could not be supported by a reason for refusal. Further details of the proposed acoustic fence and the other acoustic mitigation measures could to be required by conditions to ensure noise is appropriately mitigated and addressed. The proposed development, can in principle, control the impact from noise from traffic associated with the A2 and therefore subject to conditions a residential development has been previously accepted on this site. As a scheme is capable of addressing the noise concerns it therefore adequately addresses paragraph 185 of the NPPF that requires – mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on health and quality of life. However, it does raise questions on whether residential accommodation that requires all windows and doors to remain closed at all times to all elevations results in either healthy living conditions or a high quality residential environment and further calls into question whether such a significant increase in the number of residential units on this site is appropriate and achieves the social objectives of sustainable development set out in the NPPF.

- 2.57 In respect of air quality considerations EH have raised no objections in principle with regards to air quality impacts but would require a full and site-specific air quality report to be undertaken prior to commencement. Frequent monitoring of air quality is undertaken regularly in respect of the A2 and for both Nitrogen dioxide and particulates PM10. Current road traffic levels are not at a point whereby National Air Quality Objectives are likely to be breached, both with and without this proposed development. However, traffic levels could increase as a number of proposed developments in the local area come forward and this needs to be taken into account prior to the development coming forward. Paragraph 186 of the NPPF identifies that any new development in Air Quality management Areas and Clean Air Zones is consistent with the local air quality action plan. The site is not currently within either of the air quality designated areas, and therefore subject to a precautionary approach, controlled through the EH suggested condition, air pollution does not need to be considered further in respect of this outline application and would be in accordance with the relevant guidance and the NPPF tests.

Drainage and Flood Risk

- 2.58 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 states that lpa's 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.
- 2.59 A Flood Risk Assessment (FRA) and a Surface Water Drainage Strategy have been submitted in support of the application. The site also lies on a principle aquifer as well as in Groundwater Source Protection Zones 2 & 3. The FRA demonstrates that the proposal will be safe in terms of flood risk for its life and will not increase the flood risk elsewhere. The Surface Water Drainage Strategy identifies that infiltration drainage is proposed to deal with all surface water and run-off by infiltration into the subsoil, so that there will be no increase in run-off from the site as a result of the proposed development. This will be in the form of soakaways, porous paving and rainwater harvesting as the key measures to deal with an increased run-off during storm events.
- 2.60 In respect of foul drainage, Southern Water have confirmed that there is sufficient capacity in the foul sewer system to accommodate the additional flows from this development and no objection has been raised or a pre-commencement condition suggested.
- 2.61 In terms of surface water disposal, the method of an infiltration SuDS system could be acceptable, however, infiltration testing has not yet been undertaken on site to confirm the final design of the SuDS system that can be implemented. This could therefore be either a deep bore system or if ground conditions allow a shallower sub-surface system. It is expected that one of these designs can be implemented.
- 2.62 As a result the EA have not raised an objection in principle but have identified the need for infiltration testing to finalise the SuDS design and conditions in respect of the protection of groundwater and pollution prevention as the site is situated on a Principle Aquifer and in Groundwater Source Protection Zones 2 & 3. However, KCC as the Lead Local Flood Authority (LLFA) have raised an objection due to the need for infiltration testing to enable the design of the SuDS proposals and as this has not been demonstrated, the indicative details submitted cannot be agreed at this stage.

- 2.63 Nevertheless, it is the LPA's view that the detailed elements of the surface water drainage strategy could be dealt with at a later date and be adequately controlled by conditions. It is suggested that a condition to require full details of the surface water drainage strategy and its management at the reserved matters stage could address any outstanding concerns. In addition, conditions could also ensure the protection of the groundwater quality and pollution prevention. In conclusion, it is considered that with these conditions, the drainage aspects relating to this development have or can be addressed and the proposed drainage measures for this outline proposal are therefore adequate at this stage and accord with the relevant policies of the NPPF.

Ecology and Biodiversity

- 2.64 In accordance with the Habitats Directive 1992 (to ensure the precautionary principle is applied) and the Wildlife and Countryside Act 1981, it is necessary to ensure the application has no adverse impact on European Sites. The LALP establishes that residential development across the district will cause, in combination, effects on the Thanet Coast and Sandwich Bay SPA. The LALP seeks to address these cumulative impacts by setting out a mitigation strategy to manage potential impacts, comprising a financial contribution to provide monitoring and wardening at Sandwich Bay and towards the Pegwell Bay and Sandwich Bay Disturbance Study. The contribution required would be £3,714.42 and a s106 legal agreement could secure this contribution. Consequently, it is not considered that the development would cause a significant effect on the SAC or SPA. This mitigation payment would need to be paid regardless of any viability considerations.
- 2.65 In furtherance to the impacts on the off-site designations, regard must be had for whether the development would cause any harm to habitats or species on or adjacent to the application site, in accordance with paragraphs 174 and 180 of the NPPF. In addition, regard must be had for Natural England's Standing Advice. The application has been supported by a Phase 1 Ecological Survey which considers both the flora and fauna of the site, as well as the relevant species surveys.
- 2.66 The Inspector in the decision dismissing the appeal against the 2013 scheme cited insufficient evidence, given the likelihood of protected species being present on the site. The Inspector also took account the need for ecological surveys in advance of a planning decision, if the type and location of development is such that the impact on biodiversity may be significant and the existing information is lacking or inadequate. This appeal was therefore dismissed due to the lack of ecological information submitted.
- 2.67 The submitted surveys have been assessed by the Council's Ecologist who noted there are no ecological constraints to development. They identified that there was no evidence of reptile or dormouse activity on the site, but it was being used by a number of different species of bats for foraging and commuting. There would, therefore, be a requirement for ecological protection measures to be addressed by way of conditions to mitigate any potentially adverse impacts on biodiversity. In particular, external lighting is a key consideration due to bats using the site and no details have been submitted. Lighting on the site would need to be appropriately mitigated and controlled with the type, level of illuminance, direction and levels of light spill controlled. This could be addressed at reserved matters stage and could be included in the condition listing requirements for the reserved matters stage. It is therefore concluded that the scheme is acceptable in ecological terms, subject to conditions and would accord with paragraphs 174 and 180 of the NPPF.

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

- 2.68 The individual impacts of the development are all considered and assessed in this report. It is also necessary to consider the specific likely significant effects on a European Site in terms of the potential disturbance of birds due to increased recreational activity at Sandwich Bay and Pegwell Bay.
- 2.69 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.
- 2.70 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. 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.
- 2.71 For proposed housing developments in excess of 14 dwellings (such as this application) the Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy requires the applicant to contribute to the Strategy in accordance to a published schedule. This mitigation comprises several elements, including the monitoring of residential visitor number and behaviour to the Sandwich Bay, wardening and other mitigation. Natural England has been consulted on this element of the appropriate assessment and concludes the assessment is sound.
- 2.72 Having had regard to the proposed mitigation measures, it is considered that the proposal would not have a likely significant adverse effect on the integrity of the protected Thanet Coast and Sandwich Bay 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. A contribution of £3,714.42 would therefore be sought to this effect in any draft s106 agreement.

Archaeology

- 2.73 The application site lies in an area of archaeological interest arising from recent findings to the south and north of Whitfield. Groundworks associated with the proposed development therefore have the potential to affect buried remains of archaeological interest. Consequently, KCC Archaeology recommend that a programme of archaeological work on the site can be dealt with by condition. This could address any potential archaeology on site and accords with the relevant section of the NPPF.

Land Contamination

- 2.74 The likelihood of contaminants on site is limited due to the previous use of the land, nevertheless, as the proposed end use is residential it is susceptible to risks of contamination. Conditions could ensure that should any contamination be identified during construction then further investigation, remediation and/or mitigation measures

would need to be submitted and approved should planning permission be granted.

Planning Obligations

- 2.75 The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) require that requests for development contributions must comply with three specific legal tests, being necessary, related to the development, and reasonably related in scale and kind.
- 2.76 Policy CP6 sets out that development that generates a demand for infrastructure will only be permitted if the necessary infrastructure to support it is either already in place or there is a reliable mechanism to ensure that it will be provided at the time it is needed. It is considered the tests have been duly applied in the context of this planning application and give rise to the following specific requirements. If permission were to be recommended for approval the following should to be included in a s106 legal agreement:
- Secondary education - £286,020 towards expansion of selective and non-selective schools in Dover
 - Primary Education- £428,400 towards a 2FE Primary school Whitfield Aspen
 - Library - £3,493.35 contribution towards services and book stock at Dover library
 - Social Care- £9,253.44 towards specialist care in the district
 - Community learning- £1,034.46 towards equipment and resources at Dover Adult Education Centre
 - Youth Services- £4,126.50 towards additional resources and services for the Dover Youth Service
 - Waste - £3,431.61 to increase capacity at Dover HWRC
 - Outdoor sports facilities £28,259.09
 - Accessible green space £7,580.37 (offset by area identified below)

 - Public Open Space – The provision of a community space scheme to include a LEAP, future management scheme of the open space and woodland and the completion of the LEAP before occupation of any dwellings on site.
 - Thanet Coast and Sandwich Bay SPA Mitigation– contribution of £3,714.42
 - Monitoring fee of £236 per event
 - Payment of all associated legal costs
- 2.77 The viability assessment submitted with this application and discussed in detail above, identified that site would not be viable to provide affordable housing or any development contributions and this would include the full range of contributions set out above. As stated previously, this position has been considered by independent viability consultants who have raised that there could potentially be scope to secure some limited contributions. Our viability consultants are further considering the position in respect of viability, following the identification of some of the assumptions used being potentially out of date, and their revised report is still outstanding. It is hoped this report will be received in advance of the planning committee, or if it cannot be reported verbally at the meeting, the resolution seeks to delegate to officers the final consideration of this matter. Notwithstanding, the revised report would not alter the proposed recommendation for refusal, at this stage, on layout and overdevelopment of the site. The only exception to the above, would be the need to make the SPA mitigation payment in respect of the Appropriate Assessment which is not relevant to viability considerations. Members will be updated according at the committee meeting.

3. Conclusion

- 3.1 This application is for outline planning permission for up to 63 dwellings and the demolition of 14 Archers Court Road to facilitate a new vehicular access onto the site. All matters are reserved apart from access. A viability assessment submitted with the application has identified that the site would be unviable with the provision of affordable housing or any planning contributions. Members will be provided with clarification on this position verbally at the committee meeting.
- 3.2 In respect of highway matters various the proposed development will not be likely to give rise to highway safety or capacity issues, KCC Highways and National Highways have raised no objection subject to conditions that meet the legal tests. Officers remain aware of the concerns of Members and the local community in respect of highway matters, particularly those expressed on Archers Court Road. However, in the absence of documented evidence it is strongly advised that this matter has been satisfactorily addressed, in this case, and that no undue harm would result.
- 3.3 In terms of the principle of a form of residential development on this site, this has been established with the approval, at appeal, of an outline permission for 28 units that remains extant. The key issue in this case is whether the increased provision in the number of units on the site, by 35 additional residential units, is appropriate on this restrained site. The report has set out that the proposal has not demonstrated that the site is capable of accommodating these additional units without harm to the quality of the resulting layout and residential development including the amenity needs of future residents. This fails one of the key aims set out in the NPPF of providing high quality development, spaces and fostering a sense of place. These aims also accord with the social objective of sustainable development and are expanded further in the National Design Guide and National Model Design Code. It therefore demonstrates that the development does not accord with the objectives of the NPPF, taken as a whole.
- 3.4 The applicants have also identified their position in terms of the development being sustainable and the under delivery of housing sites. The site is not previously developed or brownfield land and is not providing for an identified local need, as no affordable housing is being provided. The council has a 6.39-year supply of housing that can be delivered and have not failed the housing delivery test. A more in-depth discussion of the Council's housing land position and its deliverability is not, therefore, required at this stage.
- 3.5 Accordingly, it is appropriate to weigh up any economic, social and environmental benefits that do not result in demonstrable harm against any negative effects, in accordance with the approach identified in the NPPF under paragraph 11, known as the 'tilted' balance. Paragraph 11 (d) sets out that planning permission should be granted for the development "unless 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". The case for the economic, social and environmental objectives of sustainability is set out in paragraph 8 of the NPPF.
- 3.6 When weighing up the benefits of the development identified in the report, a number of materials considerations can be appropriately addressed by planning conditions. There are some benefits of providing additional housing and bringing the site into an active use that would have some economic benefits. It could also be argued that there are some environmental benefits in the management of the woodland and the provision of an amenity space. However, these are off-set by the harm identified in the report that also includes no provision for affordable housing or planning contributions to serve the development along with the resulting poor quality environment, poor layout and overdevelopment of the site, especially for the future residents of the proposed flats. The report sets out that these elements significantly and demonstrably outweigh the benefits

of providing the additional housing units on this site and the proposal does not achieve the social objectives of sustainable development set out in the NPPF.

- 3.7 Other material considerations could be dealt with satisfactorily and controlled through conditions and could be in line with the development plan and NPPF Framework. Nevertheless, when taking into account the poor design and layout issues, the adverse impacts of granting planning permission for the increased number of units would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole and on this basis the application is recommended for refusal.

g) **Recommendation**

- I. PLANNING PERMISSION BE REFUSED for the following reason/s:
1. The outline application has not demonstrated that the number of residential units proposed could be accommodated on the site in a manner that would result in a form of development that would deliver an appropriately high standard of urban design as sought by the NPPF and National Design Guide. The proposal would likely result in overdevelopment of the site, with a poor layout that does not provide a high quality development, beautiful or successful place to live, nor provide a high standard of amenity for future users contrary to paragraphs 8 and 130 of the NPPF and the National Design Guide and in line with paragraph 134 of the NPPF.
 - II. Powers to be delegated to the Planning and Development Manager to settle the final and most appropriate planning refusal reasons, in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Lucinda Roach