

- a) **DOV/22/00044 – Change of Use of land for dog walking, erection of 1.8m fence for the formation of enclosure and parking for 2no. cars.**

**Land South of Crossways and East of Dover Road, Eastry, CT13 0JN**

**Reason for Report:** Number of contrary views (11)

- b) **Summary of Recommendation**

Planning Permission be REFUSED

- c) **Planning Policy and Guidance**

Dover District Core Strategy (2010)

DM1, DM11, DM13, DM15, DM16

Regulation 18 draft Dover District Local Plan

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

National Planning Policy Framework (2021) (NPPF)

Paragraphs 2, 7, 8, 11, 84, 85, 110, 111, 130, 179,180, 189-208

Kent Design Guide

National Design Guide

Section 72(1) of Planning (Listed Buildings and Conservation Area) Act 1990

- d) **Relevant Planning History**

No relevant planning history

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

Eastry Parish Council– No objections to this application

Historic England – *Historic England has significant concerns over the impact to the archaeology of the proposal. However, it is not currently possible to provide comment on this application as the submitted documents do not adequately address the impact to the historic environment, both physical impact to below-ground remains and also the setting of the scheduled monument.* Further explained below.

Heritage Team – Concerns raised regarding lack of information about the depth of archaeology and the impact of the depth of proposed fence posts upon this. Acknowledged that the planning application could be determined in isolation to the Scheduled Monument Consent.

Natural England – *The consultation documents indicate that this development includes an area of priority habitat, as listed on Section 41 of the Natural Environmental and Rural Communities (NERC) Act 2006.*

Kent Wildlife Trust – No comments received.

Kent Highways – *The application proposes utilising an existing agricultural access.. Given that there will be a slight increase in vehicle movements for the site, visibility splays will need to be demonstrated on a scale plan. Visibility splays of 2.4 x 43m will be sufficient given the proximity to the bend in the road on the approach to the roundabout with the A257. These splays must have no obstruction over 0.6m, and the splays must only fall over land that falls under the control of the applicant or KCC as the local highway authority.*

*The applicant has submitted drawings which show a gated entrance into the dog walking enclosure but has not specified if the existing gated entrance will remain. It is a requirement that the entrance is a minimum of 4.1m in width to allow for 2 cars to pass. Currently there is a single track entrance into the site which will need to be widened for the first 6m from the edge of the highway. This is to ensure there will be no conflict with vehicles exiting and entering the site, mitigating stationary vehicles on Dover Road.*

Environmental Health – *The proposed site is a considerable distance to nearby houses and while barking is likely with its use, it is likely that the sound level of barking would be below any guidance levels for disturbance. That said, I am not suggesting that disturbance could not be caused especially when background levels from the nearby A256 reduce and certainly given the low sound background level in a rural setting.*

*One concern is the use may continue outside of the times stipulated or that the area may be used by more dogs than identified in the application. With this in mind I request that the times of operation offered are conditioned. The description of summer is too open in my view and we also object to the 20:00pm use as this moves into the evening period where disturbance in my view is more likely. We are happy to agree to times of 08:00am until 18:00pm Monday to Saturday and 09:00am until 17:00pm Sundays and Bank Holidays. A later start on a Sunday could give nearby residents more opportunity for peaceful enjoyment.*

*In terms of the amount of dogs, we note that the applicant mentions 12 with general use later in the day. We request that the amount of dogs using the area at any one time is limited to 12 but are happy to agree a small increase to allow for slight expansion. I feel that the control of the amount of dogs at the site will be key to both noise control but also the control of accumulations of dog faeces at the site.*

Environment Agency – No comments to make.

KCC Ecology – *No ecological information has been submitted with this application. As a result of reviewing the data we have available to us (including aerial photos and biological records) and the information submitted with the planning application, we advise that further information is sought with regards to the potential for ecological impacts to arise as a result of the proposed development.*

*Habitats and features, including priority habitat deciduous woodland are present on and around the site, indicating ecological value and the potential for protected species presence that must be taken account of in the planning decision. It is also assumed that the grassland would require a change in management to facilitate the dog walking area (such as more intensive management). Therefore, there is a potential that if the grassland holds intrinsic biodiversity value that this would be lost as a result of the proposed development. Therefore, we would expect an assessment of the grassland*

*alongside any proposed changes in management and the impact that this would have on any grassland.*

*As such, a preliminary ecological appraisal (PEA) must be undertaken by a suitably qualified ecologist, in accordance with good practice guidelines - the PEA will assess the habitats and features within and around the site and identify if there is a need for further ecological surveys to assess ecological value and/or confirm protected species presence/likely absence.*

*To ensure that the planning determination is adequately informed in respect of all potential ecological impacts, we advise that the PEA report, OR, if further surveys are required, an Ecological Impact Assessment (EclA) report, detailing all surveys and outcomes, must be sought as part of the planning application. This is in accordance with paragraph 99 of ODPM 06/2005 which states: "it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision". An EclA is a process of identifying, quantifying and evaluating the potential effects of development on habitats, species and ecosystems, so providing all ecological survey information alongside any necessary avoidance, mitigation and compensation proposals within one document.*

*One of the principles of the National Planning Policy Framework is that "opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity". We advise that Dover City Council should seek to ensure that ecological enhancement measures are delivered within the proposals, with the applicant's ecological advisor providing site-appropriate recommendations in the submitted ecological reports."*

*County Archaeologist – The site includes the area of a large early medieval cemetery which is a Scheduled Ancient Monument. A part of the 'Updown' cemetery has been archaeologically excavated but the proposed fence posts would potentially impact on parts of the scheduled area where graves and other below-ground archaeological remains may exist. This issue of archaeological interest and impacts is in part recognised in the submitted Heritage Statement. However, it is not possible at this stage to understand in sufficient detail what impact the proposals would have and a more detailed assessment of the site and likely impacts is needed. This information will be needed by Historic England to consider any application for Scheduled Monument Consent.*

*The planning application should be paused or refused until further detailed assessment is undertaken.*

*The Kent Historic Environment Record includes a copy of the 1989 excavation report for the Eastry bypass and this information along with information from 1976 (if it can be located) and any other relevant information will need to be used to inform an assessment of the site and likely impacts. The applicant will need to engage a professional archaeologist to undertake this work. Whilst it is up to the applicant to decide who they wish to employ it would probably be sensible for them to contact the Canterbury Archaeological Trust to act on their behalf in this case.*

*East Kent Public Rights of Way – No comments to make*

*Rural Property Consultant – The proposed change of use would not appear to preclude a reversion to agricultural use at some future date, if so required. Consequently, it is not considered that the current proposal would result in significant, permanent loss of agricultural land.*

Third Party Representations - A total of 11 individuals have commented in support of the proposal. Comments referred to the proposal being an excellent idea for the area where such a facility is not currently available. The area would be useful for nervous dogs and training purposes and would allow nervous dogs to run free in a safe area away from traffic, and if needed away from other dogs.

## **1 The Site and Proposal**

- 1.1 The application relates to a field located to the northeast of Dover Road, Eastry and lies outside of the settlement confines. The field is accessed by a private entrance off Dover Road, 60 metres from the Eastry Roundabout on the A256. The field is flat with planting to all boundaries. The field is bounded by 1 and 2 Eastry Place located to the northwest and Crossways and Crossways Cottage to the north. The residential dwellings are separated from the field by dense woodland.
- 1.2 The application is for the change of use of the field to be an enclosed area for dog walking. The proposal includes the erection of a 1.8 metre fence and gates at the access point to the south of the site to contain part of the site for the dog walking.
- 1.3 No buildings are proposed in connection with the use and no indication has been given that any light or structures/ training obstacles would be installed. The applicant has stated that the enclosed field will be used by Liberty Pet Services in the mornings for the exercising of up to 12 dogs which would be collected in a van by staff members. In the afternoons the field would be available for private hire in one hour time slots. Users of the field would be given a code for the gate and parking would be provided using parking mesh close to the entrance to the site. During the hours of private hire, which would be between 8am and 5pm in winter months, and between 8am and 8pm in summer months, a maximum of two vehicles would be able to access the site at any one time. All waste will be removed by users of the site.

## **2 Main issues**

- 2.1 The main issues for consideration are considered to be:
  - The principle of the development
  - Impact on visual amenity
  - Impact on ecology
  - Impact on scheduled monument and archaeology
  - Residential amenity
  - Highway Safety

### **Assessment**

#### **The principle of the development**

- 2.2 The site is located outside of the settlement confines where development would usually be resisted unless it can be justified by other development plan policies, functionally requires such a location or is ancillary to existing uses. The dog walking field would require a rural and more remote location, away from other uses and

residential properties due to the extent of the land required and the nature of the proposed use relating to potential noise and disturbance. Furthermore, Paragraph 84 supports rural businesses, providing they are sustainable and respect the character of the countryside. Therefore, the principle of the proposed use and the scale of the proposed activity is considered to be acceptable in this instance in this location, subject to further material considerations.

#### Impact on visual amenity

- 2.3 The NPPF states that planning decisions should ‘recognise the intrinsic character and beauty of the countryside’ (Paragraph 174) ensure that developments ‘will function well and add to the overall quality of the area’, be ‘visually attractive as a result of good architecture, layout and appropriate and effective landscaping’, be ‘sympathetic to local character and history’ and ‘establish or maintain a strong sense of place’ (paragraph 130).
- 2.4 The application site is located outside of the confines of Eastry and is considered to be in the countryside and is therefore subject to Policies DM15 and DM16. DM15 resists the loss of ‘countryside’ (i.e. the areas outside of the settlement confines) or development which would adversely affect the character or appearance of the countryside, unless one of four exceptions are met. This is provided that measures are incorporated to reduce, as far as practicable, any harmful effects on countryside character. The proposals would result in minimal visual changes within the plot of land, with 1.8 metres high fencing to contain the dogs using the space. There will also be a parking area for two cars using reinforced grass mats. These changes would be largely screened from the wider area due to the planting around the field. It is therefore not considered that the proposals would result in any harm to the visual amenity of the street scene or wider area in accordance with DM15.
- 2.5 In respect of the impact on the wider landscape, due to the containment of the site and the limited development on the land, it is considered that the proposal would not result in harm to the character of the wider landscape area, in accordance with DM16.
- 2.5 For the above reasons, the development is considered to be acceptable in this location and would preserve the intrinsic character and scenic beauty of the countryside in accordance with paragraph 174 of the NPPF (2021) and Policies DM15 and DM16.

#### Impact on Ecology

- 2.7 Paragraph 174 (a) of the NPPF (2021) states that “Planning policies and decisions should contribute to and enhance the natural and local environment by: protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan).
- 2.8 KCC Ecology are of the view that due to the habitats and features of the site there is the potential for protected species to be present on the site together with the potential for the loss of grassland of biodiversity value. As a consequence, they have requested a Preliminary Ecological Appraisal to be undertaken prior to the application being determined. This might conclude that further survey work is

required to inform any consideration of the impacts of the proposed development on the natural and local environment. Whilst requested this information has not been submitted as part of the planning application. In the absence of this information, it is considered that the proposals would result in harm to protected species and land of biodiversity value. and would be contrary to Paragraph 174 of the NPPF (2021).

#### Impact on scheduled monument and archaeology

- 2.9 Paragraphs 201 and 202 require that regard must be had for whether development would cause harm to any heritage asset (both designated and non-designated), whether that harm would be substantial or less than substantial and whether, if harm is identified, there is sufficient weight in favour of the development (public benefits) to outweigh that harm. Regard must also be had for Section 72(1) of Planning (Listed Buildings and Conservation Area) Act 1990 which states that, 'In the exercise, with respect to any building or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Furthermore, Paragraph 194 states that local planning authorities (LPA) *should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.*
- 2.10 Historic England has advised that they have significant concerns about the impact of the development upon matters of archaeological importance and they continue to say that they are unable to comment further as the application does not adequately address the impact to the historic environment, both physical impact to below-ground remains and also the setting of the schedule monument.

The proposals impact upon the scheduled monument of Large cemetery north of Sangrado's Wood (list entry number 1004211). This designation means that it has been recognised a nationally important archaeological monument by the Scheduled Monuments Act 1979 and there should be careful management of any development there. The need for Scheduled Monument Consent (SMC) is therefore required from Historic England in addition to planning permission.

The cemetery includes the archaeology of an early medieval inhumation cemetery containing several densely populated east-west aligned burials, and associated ring ditches and pits. The proposal includes fencing to be constructed through the centre of the cemetery and along the extents of it, all within the scheduled monument. The fencing would be dug 1.2 metres into the ground for corner posts and 0.6 metres every 3 metres across the site.

- 2.10 While a Heritage Statement was submitted with the application, which stated that "the installation of the fence posts will not have any harmful impact on the ancient monument as the driven fence posts will be above any buried remains." There is no evidence for this claim. Historic England raised concerns regarding the preservation of burial sites, but also the long-term use of the site and how any

activity could impact the setting of the ancient monument. Furthermore, concerns were raised by Historic England that the addition of a fence in this location would divide an open monument with modern fencing, removing its' openness and wholeness, resulting in significant harm to the setting of the monument.

- 2.11 Historic England recommended the applicant engage with an archaeological consultant to prepare additional information to be submitted as part of the application to enable the significance of the site to be fully understood. This has not been provided.
- 2.12 Therefore, in the absence of information to the contrary, the proposed erection of a fence on the application site would result in substantial harm to the below ground archaeology and the setting of the monument and would be contrary to Paragraphs 194, 199 and 202 of the NPPF (2021). There would be no substantial public benefit from the development to outweigh the harm identified.

#### Residential Amenity

- 2.13 Due to the nature of the proposals there would be no overlooking, overbearing impact or loss of privacy as a result of the change of use, or fence installation.
- 2.14 Environmental Health initially raised concerns regarding potential noise disturbance from the site, but after a site visit were satisfied that the distance between the residential dwellings and the area proposed for dog walking was sufficient to prevent an unacceptable level of noise. A condition was requested to limit the operational hours to be different from those set out in the application form.
- 2.15 As such it is considered that there would no harm to the residential amenity of nearby properties and the proposals would accord with Paragraph 130 of the NPPF (2021).

#### Highway Safety

- 2.16 Kent Highways requested further information to be submitted regarding visibility splays from the site given the proximity to the bend on the road on the approach to the roundabout, and also that the entrance to the site would need to be widened to allow 2 cars to pass and prevent any conflict with vehicles existing and entering the site. This information was requested from the applicant and was not provided. In the absence of this information, it is considered that the proposals may result in harm to highway safety. This would be contrary to Paragraphs 110 and 111 of the NPPF (2021).

### **3 Conclusion**

- 3.1 Due to the nature of the proposals, they would not result in harm to the visual amenity of the area or negatively impact the residential amenity of neighbouring properties. However, in the absence of requested information the proposals may result in harm to an ancient monument and its setting. Furthermore, as no information was submitted regarding the ecological impact of the proposals, it is considered that there may be harm as a result of the change of use. Lastly, requested information was not received to demonstrate that users of the site could safely enter and exit without resulting in harm to Highway safety. Consequently, due to lack of sufficient information, the proposals would conflict with the overarching

aims and objectives of the NPPF and it is recommended that planning permission should be refused.

**g) RECOMMENDATION**

I Planning permission be REFUSED for the following reasons:

1. Insufficient information has been submitted to allow a full assessment to be made of the implications of the development on below ground archaeology and the setting of a scheduled monument and would therefore be contrary to Paragraphs 194-208 of the NPPF (2021).
2. Insufficient information has been submitted to allow a full assessment to be made of the implications of the development on the ecology and wildlife within the site and the ecological and nature conservation value of the site. The proposal is thus contrary to Paragraph 174 of the NPPF (2021).
3. Insufficient information has been submitted to allow a full assessment to be made of the implications of the development on Highway safety and would therefore be contrary to Paragraphs 110 and 111 of the NPPF (2021).

II Powers be delegated to the Head of Planning and Development to settle any necessary issues in line with the matters set out in the recommendation and as resolved by planning committee.

Case Officer  
Amber Tonkin