

- a) **DOV/21/01170 – Variation of Condition 1 of planning permission DOV/21/00284 (a variation of Condition 2 of DOV/17/01137) to incorporate design changes - in the form of windows in the front and rear elevations at top floor level, changes to rooflights, enlarged rear dormer windows at first floor level, elevational changes and increased depth of garages (retrospective & S73 application), and compliance with Conditions 4, 5, 7 & 10 and non-compliance with Condition 14 of DOV/21/00284.**

**36-38 The Droveaway, St Margaret's Bay CT15 6BZ**

**Reason for report:** Number of contrary views

b) **Summary of Recommendation**

Planning permission be Granted

c) **Planning Policy and Guidance**

Dover District Core Strategy (2010)

Policies - CP1, DM1 & DM16

National Planning Policy Framework 2021 (NPPF)

Chapters 5 (housing), 12 (design) and 15 (natural environment). Paragraph 176 applies great weight to conserving and enhancing landscape and scenic beauty in an Area of Outstanding Natural Beauty.

The Kent Design Guide 2005

National Design Guide 2021

Draft Dover District Local Plan

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

d) **Relevant Planning History**

DOV/15/01215 – Erection of two detached dwellings with associated vehicular access (existing building to be demolished) – Refused

DOV/16/00418 – Erection of two detached dwellings, formation of access and parking (existing building to be demolished) – Refused

DOV/17/01137 – Erection of two detached dwellings, detached garages, formation of vehicular access and associated landscaping (existing dwelling to be demolished). Approved.

DOV/17/01137/B - Non-material amendment Application for a revision to roof fascia height. Refused.

DOV/17/01137/C – Non-Material Minor Amendment to 17/01137 - Revision to mono pitched roof to rear of houses to parapet type flat roof with roof lanterns. Additional windows in gables to street elevation at roof level. Minor revisions to interior layouts. Refused.

DOV/19/01130 - Variation of Conditions 2 and 3 (approved plans and samples) pursuant to outline permission DOV/17/01137 (application under S73). Approved.

DOV/20/01316 - Variation of condition 2 (approved drawings) of DOV/17/01137, to incorporate the following amendments - retaining wall to parking area, amended stair arrangement, increased height to detached garages, increased height to dwellings including increased eaves height, amended elevational details, amended siting of dwellings within application site (application under S73) (part-retrospective). Refused.

DOV/21/00284 - Variation of Condition 2 (approved plans) to incorporate design changes of planning permission DOV/17/01137, including increased height to garages, green roof to garages removed, dwarf wall to front bank, relocation of pedestrian steps, amended siting, flat roof to rear projections, amended windows to rear elevation, increased building height, increased eaves height (part retrospective) (application under S73). Approved.

DOV/21/00567 - Variation of Condition 2 (approved plans) to incorporate design changes of planning permission DOV/17/01137, including increased height to garages, retaining wall to parking area, amended landscaping, relocation of pedestrian steps, amended siting, flat roof to rear projections, amended windows to front and rear elevations, increased building height, increased eaves height, addition of chimney stacks (part retrospective) (application under S73). Refused.

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

There have been five consultation exercises during the progress of the application. The responses reported below refer to the current iteration of the scheme and those previous iterations submitted under this application.

St Margaret's Parish Council: Object to any increase in height - Object to changes away from original permission - Object to increase in height of the garage buildings.

Third-party Representations: There have been 13 respondents raising objections to the iterations of the proposal and 1 respondent in support. The objections are summarised as follows:

- The proposal amounts to a three storey development
- The proposal has a dominant impact, it is more imposing than previous schemes, it has an increased massing and is overbearing
- The proposal results in overlooking, loss of privacy and harm to the living conditions of near neighbours
- The additional height of the garages and retaining wall compound the visual impact
- The air source heat pumps will give rise to noise nuisance
- The garages will give rise to harm to highway safety

- The previously approved grassed bank should be implemented
- The previously imposed planning conditions have not been adhered to and should be
- The proposal has been allowed to proceed without planning permission
- The proposal sets a precedent
- Enforcement action should proceed
- The drawings and information submitted with the application are incorrect.

One response in support of the application states that the proposal is in keeping with the area.

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

- 1.1 The application site is located within the village settlement of St Margaret's Bay. It was formerly occupied by one building used and split into two dwellings and is now occupied by two detached dwellings and garages. These have been substantially completed with internal fitting out now taking place and coming to completion with amendments that are the subject of this application.
- 1.2 The site is located along a residential street of an eclectic mix of building designs and types. The land is on a higher level (approximately 3-4m) than the highway and the two dwellings appear prominent within the street scene.
- 1.3 There are properties beyond the side and rear boundaries as well as a property located directly opposite. Neighbouring the site to the south-east are the rear gardens 7 and 9 Salisbury Road. No. 9 has been extended and is sited close to the dividing boundary. Neighbouring the site to the north-east is 38a The Droveaway, a recently constructed dwelling on land that previously formed the rear garden to 9 Salisbury Road. To the south-west is 34a The Droveaway, another recently constructed dwelling.
- 1.4 Due to the topography of the site and surrounding area, the property on the other side of The Droveaway is constructed at a lower ground level. Whilst the road runs in front of the application site, there is also a Public Right of Way (PRoW) almost opposite which leads in a north-west direction into the valley and up the other side, into the Area of Outstanding Natural Beauty (AONB). The PRoW also connects with other PRoWs in the area.
- 1.5 The proposal seeks a minor material amendment to the scheme approved under DOV/21/00284 and variation and approval of conditions imposed under that permission. This process is achieved through a Section 73 application. The details of the amendments are:
  - In the front and rear facing gables of the roof, windows are proposed. The rear facing windows will have obscure glazing and have mechanisms to restrict opening.
  - Dormer window extensions are proposed on the rear elevation of the dwellings, at first floor level. These include some obscure glazing and restricted opening mechanisms.

- A reduction in the number of roof lights per dwelling and the relocation of other rooflights are proposed. On Plot 1, there are fewer roof lights on the NE roof slope and SW roof slope (and one new rooflight in the SW roof slope). The proposed dormer window at first floor level removes a rooflight from the SE roof slope. On Plot 2, there is a reduction in the number of rooflights in the SW and NE roof slopes (one additional rooflight in the NE elevation) and the dormer window at first floor level removes a rooflight from the SE roof slope.
- A window is proposed in place of a door on the ground floor side elevation of the dwellings.
- The garage buildings located in front of the dwellings are proposed to conform with the previous approved height (2.625m) whilst the depth of the garage building has increased from 5.5m to 6m.
- With regards to the compliance with conditions:
  - Condition 4 relates to the approval of materials for the external surfaces of the development.
  - Condition 5 relates to the approval of details of windows including the use of obscure glazing and opening restrictors.
  - Condition 7 relates to the approval of details for refuse and recycling storage.
  - Condition 10 relates to the approval of details of provision of cycle storage (5 per unit).
  - Condition 14 relates to the approval of the details for earthworks, site levels and contours.

## 2. **Main Issues**

2.1 The main issues are:

- Procedure
- The principle of the development
- The impact upon the character and appearance of the area
- The impact upon residential amenity
- Other material considerations

### Procedure

2.2 A Section 73 (s73) planning application functions to allow minor material amendments to an existing planning permission where their scale and/or nature results in a development which is not substantially different from the one which has been approved. A s73 application can also be used to vary or remove conditions associated with a planning permission. In this case, condition 1 (list of approved plans) of the previous planning permission is sought to be varied as part of the current application proposal. Other conditions are also sought to be complied with, removed or varied under this application as set out above.

2.3 If this permission is granted, this new planning permission will sit alongside the 3 other planning permissions, which will remain intact and unamended, being DOV/17/01137, DOV/19/01130 & DOV/21/00284. In effect, these previous planning permissions can function as a fallback position, should permission not be granted for this application proposal. However, DOV/21/00284 is the most relevant permission as the applicant has confirmed that this has and is being

implemented on site. The decision on this current application is based upon the amendments being sought, as well as the approval of those conditions.

2.4 The applicant has confirmed that DOV/21/00284, is the scheme that is being implemented and against which variations to that permission are now being sought. As such, it is suggested to the Planning Committee that an appropriate assessment of the current proposal would be to compare it with the proposal granted, under DOV/ 21/00284:

- to understand the differences or changes between the proposals
- to assess whether the differences or changes are material to the extent that they cause harm to the visual quality of the street scene and character and appearance of the area, and whether they give rise to additional adverse impacts upon the living conditions of the occupiers of the adjacent properties.

2.5 These are the principal issues to assess, although there are other material planning considerations which are also raised through the responses to the consultation exercises.

Principle of Development

2.6 The application site falls within the village settlement of St Margaret’s Bay. As such, under policies CP1 and DM1, the proposed housing development and associated works are acceptable in principle in this location, subject to an assessment of other material considerations and impacts.

Impact upon Character and Appearance

2.7 It is important to assess the visual impact of the proposed changes to the scheme, from the approved DOV/21/00284 planning application. In the following Table, comparisons between the height, depth and width between the current scheme, the approved scheme and the refused scheme (for completeness) are set out. The ‘As Built’ measurements were undertaken at the time of writing this report. There are marginal differences in scale between the ‘as approved’ and the ‘as built’ (current proposal) development. These differences are considered to be immaterial in terms of how they might change the impact of the scheme on the character and appearance of the area and the living conditions of neighbouring occupiers.

Application	Height (M)	Width (M)	Depth (M)
DOV/21/00284 - Plot 1	8.57	10.66	12.11
DOV/21/00284 - Plot 2	8.57	10.65	12.09
DOV/21/01170 - Plot 1	8.55	10.66	12.09
DOV/21/01170 - Plot 2	8.57	10.65	12.11
<b>As Built – Plot 1</b>	<b>8.4</b>	<b>10.8</b>	<b>11.8</b>
<b>As Built – Plot 2</b>	<b>8.4</b>	<b>10.7</b>	<b>11.7</b>

2.8 The main differences between the approved drawings relate to the design of the dwellings. On the front elevation facing The Drove way, the proposal is to include a window in the gable of the roof, to facilitate the accommodation already constructed within the roof space. The window is designed to match those on the other parts of the dwellings. Its location within the existing gable is

proportionate with, and subordinate to, the height and depth of the windows on the first and ground floors.

- 2.9 Under previous s73 applications that have been refused, there were concerns expressed regarding the scale and design of the fenestration, along with the design of the projecting, gabled element of the dwellings as the proposals exacerbated the vertical emphasis of the dwellings, thus making them appear disproportionate and out of scale with the design and appearance of the dwellings and, in addition, the impact on the visual quality of the street scene. The current application being considered has scaled back the amount of fenestration within the gable, such that the resulting window design does not exacerbate the 'verticality' or vertical emphasis of each of the properties. The proposed change with the inclusion of this window is considered to be in keeping with the design of the dwellings and is now appropriate.
- 2.10 On the rear elevation, the window in the gable is also proposed (albeit with obscure glazing), along with an increase in the width of the first floor dormer windows. These windows serve a bedroom and ensuite. The end pane of glazing in the dormers is proposed to be obscure glazed, with restricted opening. An amendment to the wording of the existing condition 7 relating to obscure glazing can be imposed to address the concern with regard to the potential for additional overlooking from these end panes – as they are closer to the boundaries with the properties on either side.
- 2.11 An elevational change is proposed to the side elevations of both the dwellings that face towards the neighbouring properties, which involves the replacement of a door with a window. This amendment is not considered to give rise to any material increase in amenity impacts on the respective neighbouring properties.
- 2.12 There is an overall reduction in the number of roof lights. The roof lights will be retained at least a 1.7m in height from their cills to the internal floor of the room that they serve, thus ensuring that the potential for overlooking is limited.
- 2.13 The alterations to the side and rear elevations of the dwellings would not be prominent or otherwise overtly visible from the highway or other public vantage points and as such these would not have a material bearing on the visual quality of the street scene or the prevailing character and appearance of the area.
- 2.14 In conclusion the design changes proposed are sympathetic with the form, design and appearance of the dwellings, as constructed, and would not materially alter the visual impact of the development on the street scene or visual amenity of the area beyond the visual impact from the last approved planning application DOV/21/00284.
- 2.15 Although the dwellings would be visible from the AONB, (located to the north of the site), it is not considered that their impact would have any material bearing on the landscape or scenic beauty of the AONB. The buildings are already visible and are within the context of the setting of the existing built environment and they do not encroach into the protected landscape.

### Garages

- 2.16 The garages are located in front of the dwellings adjacent to the highway. Their location is not proposed to be amended; however, their 'as built' dimensions have changed. There has been an increase in their height from the approved

2.62m to 3.0m and an increase in their length from an approved 5.5m to 6m. Through the submission of amended drawings, it is now proposed to lower the height of the garages to their approved height of 2.625m. Their width and depth remain as 4.5m and 6m respectively.

- 2.17 The height of the garage buildings has previously been considered an important part of the overall design and appearance of the scheme, due to their prominent location adjacent to the highway. Under this application, the proposed height of the garages at 2.625m is the approved height, and a decrease from the 'as built' 3m. Condition 3 of DOV/21/00284 (which required the lowering of the heights of the garage buildings to 2.625m) was imposed out of concern that the garages would harm visual and residential amenity if they were not reduced in height, this concern remains. The additional length of the garages is not considered to be harmful to the prevailing character and appearance of the street scene, but for the purposes of securing good design the previous condition imposed to reduce the height of the garage buildings prior to the first occupation of the dwellings, is considered necessary and important to the design and impact of the scheme. As such, at 2.625m in height the proposed garage buildings are considered to be acceptable.

#### Conditions

- 2.18 The application also includes compliance with and non-compliance with conditions imposed on DOV/21/00284. Condition 4 relates to external materials. It is considered that the proposed facing brickwork (Safier Bespoke), stone cladding and slate roofs are acceptable materials for the buildings. Their use preserves the existing character and appearance of the area. These materials were previously approved under DOV/19/01130.
- 2.19 Condition 7 relates to details of the proposed refuse and recycling facilities. A location forward of the garage buildings was approved under an earlier permission DOV/17/01137. However, out of concern with their prominence, the applicant has relocated the storage areas to the side/rear gardens of the dwellings and out of view from the highway. As such, these details are considered acceptable and appropriate.
- 2.20 Condition 10 relates to details of cycle storage facilities. On the proposed plans, these cycle storage spaces are located within the garage buildings. Their location would not be visible from the highway and would be acceptable.
- 2.21 The proposal does not seek to comply with condition 14 of DOV/21/00284. This relates to details of earthworks, mounding, site levels etc. At the time of the imposition of this condition, there was a lack of clarity with the proposed earthworks, but now the dwellings have been substantially completed, the earthworks are visible from the street and can be assessed. It is considered that the landform around the buildings is visually acceptable, and with the proposed boundary enclosures, would not result in any undue levels of overlooking or loss of privacy for the occupiers of adjacent properties.
- 2.22 In conclusion around the issue of conditions, the Planning Committee can decide to either reimpose the same conditions as those set out under DOV/21/00284, vary their wording, or impose new conditions – providing they meet the relevant tests for conditions as set out in the NPPF. As such, if there is one part of the proposed application where a condition is considered necessary to avoid undue harm and should be repeated or varied, despite the proposed amendments set out in the application (to vary, comply or not comply

with a condition), the application could still be favorably determined, but with a condition re-imposed as originally worded.

- 2.23 It is considered that the scheme, as amended, meets the objectives of good design and the requirements of Paragraph 130 of the NPPF.

#### Impact upon Residential Amenity

- 2.24 This s73 application does not significantly change the form or appearance of the previously approved scheme to warrant any material changes in how the development would affect the living conditions of the occupiers of adjacent properties.
- 2.25 The proposal does, however, introduce additional windows which should be assessed on whether any additional overlooking and loss of privacy might occur. The additional window in the front elevation of the dwellings is set within the gabled roof. It does not come closer to either the highway, or those properties opposite than the existing or approved windows at ground and first floor on the front elevation. Although the plans do not show the layout of the rooms in the roof space, the assumption is that this would be a bedroom with an ensuite – a bedroom was shown within the roof space of the previous application, DOV/21/00284. A bedroom window facing the street has a limited impact compared to the existing bedroom windows on the first floor. As such, it is not considered that the introduction of this window would materially alter, or add to, the potential for overlooking and the levels of privacy enjoyed by the occupiers of the properties opposite the application site.
- 2.26 The additional window in the gable on the rear elevation is proposed to be top hung, opaque glazed with a restricted opening. This type of window and its opening mechanism has already been approved for other windows in the dwellings, where the potential for overlooking was assessed as requiring these type of windows. As such, once obscure glazed and restricted in their opening, these windows should not give rise to unacceptable levels of overlooking and loss of privacy to the occupiers of adjacent properties to the side and rear of the application site. This can be adequately controlled by re-wording condition 7 of DOV/21/00284.
- 2.27 The widening of the rear dormer window and inclusion of an additional bedroom window, would in a similar manner to the front window, not materially increase, or add to, the levels of overlooking that would already exist. There is already a bedroom window proposed in the rear elevation of the dwellings and gives rise to views towards the properties beyond the rear boundary, in Salisbury Road. The end window pane in the proposed dormer windows would be obscure glazed and fitted with a restricted opener, to ensure that undue levels of overlooking are not available for the new occupiers towards the gardens of the adjacent properties.
- 2.28 The roof lights are reduced in number and their cills are proposed at 1.7m above the threshold level of the rooms they serve. This would meet the Council's normal requirements for ensuring that views from such roof lights would be upward rather than downward, and would therefore avoid undue levels of overlooking or loss of privacy for the occupiers of adjacent properties. Roof lights sited 1.7m above internal floor levels are accepted as unlikely to cause harm to amenities and are acceptable in principle.

#### Other material considerations



- 2.29 In addition to those main issues set out above, other issues have been raised as part of the consultation process. Many of the issues raised do not go to the crux of the matter before this Planning Committee, which is the acceptability or otherwise of the current amendment proposal, regardless of how this application has progressed, been amended or sought to 'catch up' with the evolution of the construction of the proposed development – which is now substantially complete. Some of the other matters that have been raised were either addressed under previous applications, or otherwise are not material to the outcome of this application.
- 2.30 Planning application DOV/21/00284 assessed the impact of the two dwellings on the Thanet Coast/Sandwich Bay Special Protection Area (SPA). Whilst the current application is not to increase further the number of dwellings on the site, it would form a new permission, and regard should still be had to the likely significant effect of the proposed development on the SPA and the implications of The Conservation of Habitats and Species Regulations 2017, Regulation 63. Given the limited scale of the development proposed by this application, a contribution towards the Council's Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy was not required as the costs of administration would negate the benefit of collecting a contribution. However, this proposed development would still be mitigated by the Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy as the Council will draw on existing resources to fully implement the agreed Strategy. Having had regard to the proposed mitigation measures, it is considered that the proposal would not have an adverse effect on the integrity of the protected Thanet Coast and Sandwich Bay SPA and Ramsar sites. The mitigation measures (which were agreed in consultation with Natural England) will ensure that the harmful effects on the designated site, caused by recreational activities from existing and new residents, will be effectively managed.

### **3. Conclusion**

- 3.1 In effect, a new planning permission is being sought for the development of the site. This is an amendment (under s73) to the previous permission granted under DOV/21/00284. The focus of the assessment for this application is mainly on whether the amendments or differences from the approved permission are material and whether they should lead to a different outcome on their planning merits. In addition, the proposal seeks approval of details to comply with conditions and seeks to justify or show why other conditions should not be reimposed.
- 3.2 The manner about which the planning permission has been implemented on site has caused a lot of discontent and consternation among local residents, as can be seen from the submitted correspondence. However, this should not detract from the need to properly assess the scheme as proposed, on the basis of the development plan, as the starting point and then on other material planning considerations. To this end, it is considered that the alterations to the design are acceptable and should be granted. The submitted details to comply with conditions are acceptable.
- 3.3 In conclusion, the application is recommended for approval, with condition 3 retained, as currently worded, to ensure the garage buildings return and are constructed to their approved heights. Condition 7 should be amended to ensure that the obscure glazing is installed to avoid overlooking and loss of privacy.

### **g) Recommendation**

I PLANNING PERMISSION BE GRANTED with the conditions on planning permission DOV/21/00284 reimposed, removed or updated as such:

1. Approved plans
2. Provision of the grassed bank to replace visibility of the retaining wall
3. Lowering of height of garages (retained condition as originally worded) - prior to first occupation of the dwellings
4. Previously approved obscure glazed windows and the relevant new windows to be obscure glazed – prior to first occupation of the dwellings
5. Hard and Soft landscaping to be submitted for approval
6. Refuse and recycling to be provided in accordance with approved details
7. Provision of vehicle parking and retention thereof
8. No access to garage roofs except for maintenance or emergency
9. Bicycle parking to be provided in accordance with the approved details
10. Bound surface to be provided
11. No surface water on highway
12. Provision of a visibility splay
13. PD removal - for Classes A, B
14. Provision of infrastructure for electric car charging

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

Case Officer

Vic Hester