

- a) **DOV/22/00751 - DESCRIPTION OF DEVELOPMENT: REMOVAL OF CONDITION 15 OF PLANNING PERMISSION DOV/19/01112 (APPLICATION UNDER SECTION 73): ERECTION OF 2NO. DWELLINGS WITH ASSOCIATED PARKING, CHANGE OF USE AND CONVERSION OF 2NO. ANNEXE BUILDINGS TO 2NO. DWELLINGS WITH REPLACEMENT DOOR TO WINDOW ON FRONT ELEVATION OF UNIT 5 AND CREATION OF GATED ENTRANCE (AMENDED SCHEME REDUCING THE NUMBER OF NEW-BUILD DWELLINGS FROM 3 TO 2)**

**SITE ADDRESS:** The White Cliffs Hotel High Street St Margaret's at Cliffe

**Reason for report:** The planning committee considered the previous applications and at the discretion of the Head of Planning, Regeneration and Development, the application has been referred to planning committee.

- b) **Summary of Recommendation**

That Condition 15 of planning permission DOV/19/01112 be removed.

- c) **Planning Policy and Guidance**

Development Plan

The statutory development plan comprises:

- Core Strategy (2010) ("the Core Strategy")
- Land Allocations Local Plan (2015) ("the LALP")
- Saved Policies of the Local Plan (2002)

Relevant policies of the Core Strategy include:

- CP1: Location and Scale of Development
- CP2: Provision for Jobs and Homes
- CP4: Housing Quality, Mix, Density and Design
- CP5: Sustainable Construction Standards
- CP6: Infrastructure
- DM4: Re Use or Conversion of Rural Buildings
- DM11: Location of Development and Managing Travel Demand
- DM13: Parking Provision
- DM24: Retention of Rural Shops and Pubs

As is the case with the development plan, where existing policies were adopted prior to the publication of the National Planning Policy Framework (July 2021) ("**the Framework**"), the weight to be given to them depends on their degree of consistency with the policies of the Framework (paragraph 219).

Other Material Considerations

The Framework sets out the Government's planning policies for England and how these are expected to be applied. It is therefore a material consideration, to which significant weight should be attached in determining the application.

Sections of the Framework are referred to, as relevant, in the assessment section of this report below.

#### Draft Dover District Local Plan:

The draft Dover District Local Plan sets out planning policies and proposals for new development in the District over the period from 2020 to 2040 and when adopted will replace the existing development plan. But it is still at an early stage in its preparation, with the Regulation 18 consultation closing in March 2021. In accordance with paragraph 48 of the Framework, whilst the draft Dover District Local Plan is a material consideration, only limited weight should be afforded to it at this time

#### Legislation

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the statutory development plan in determining an application for planning permission, the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.

This planning application is under s.73 of the Town and Country Planning Act 1990 (as amended) ("the TCPA"), relating to development of land without complying with conditions subject to which a previous planning application was granted.

For such an application, the local planning authority shall consider only the question of the conditions subject to which planning permission was granted, as to whether or not planning permission should now be granted subject to conditions differing from those originally imposed.

#### d) **Relevant Planning History**

02/01101 & 02/01102 – Erection of single storey kitchen extension to inn; external alterations to ancillary buildings; extension/alterations to ancillary building to create two self-catering units; and revisions to forecourt layout. Planning permission and listed building consent granted (02/12/02).

04/00805 – Erection of building [to the side of the main hotel building] to form two units of self-contained holiday accommodation. Planning permission granted (14/09/04) and implemented.

04/00875 – Raise height of existing boundary wall, rebuild south west and south east facing elevations, replacement windows, insertion of rooflights, external and internal alterations. Listed building consent granted (06/09/04).

07/00466 – Erection of detached dwelling [on land to the rear of the main hotel building]. Planning permission granted (19/10/07).

10/00131 – Renewal of planning permission 07/0466 for erection of detached dwelling [on land to the rear of the main hotel building]. Planning permission granted (04/05/10).

19/01112 – Erection of two dwellings with associated parking [on land to the rear of the main hotel building]; and change of use and conversion of annexe buildings to two dwellings [to the side of the main hotel building]. Planning permission granted (27/03/20) and implemented.

19/01113 – Conversion of two annexe buildings from self-catering accommodation to residential units; internal alterations to remove & insert new partitions, infill & insert new openings to form ground floor living accommodation; replace front elevation door with window. Internal alterations to remove & insert new partitions to form ground floor wc & first floor ensuite, bathroom & bedroom. Insert access gate with new piers to boundary wall. Listed building consent granted (27/03/20) and implemented.

21/01249 – Erection of a detached dwelling with driveway, associated parking, cycle shed, and recycle store [on land to the rear of the main hotel building]. Under consideration.

20/01566 – Change of use to and conversion into 3 dwelling-houses with associated parking; first-floor extension to one side with double-hipped roof and associated external/internal alterations. Resolution to grant planning permission (24/03/22).

20/01567 – Alterations to listed building facilitate conversion to 3 residential units. Resolution to grant listed building consent (24/03/22).

e) **Consultee and Third Party Representations**

Representations can be found in full in the online planning file. A summary has been provided below:

**St Margaret's at Cliffe Parish Council –**

*First response*

Condition 15 of planning permission 19/01112 requires the bar and restaurant facilities in the hotel to cease to offer facilities to non-residents and only be available for the use of resident guests of the hotel. The reason for the condition was to ensure adequate car parking facilities for the proposed residential dwellings. Condition 15 should be removed because:

- it was not suggested or considered necessary by KCC Highway;
- it is not necessary to restrict car parking as there is a public car park opposite the hotel;
- a 'residents parking notice' would have been more reasonable, without restricting the use of the bar / restaurant;

- the limitation on the bar / restaurant use would blight the commercial viability of the hotel, contrary to Local Plan Policy DM24;
- it would affect the amenity for the local community and tourism; and
- the consequences of its inclusion materially changed the development without further consultation with the local community.

#### *Further comments*

Further comments from the Parish Council have been received in response to other representations:

- the loss of the White Cliffs bar/restaurant effectively reduces the choice of pubs in St Margaret's at Cliffe to one;
- the hotel/pub has been operating for circa 140 years
- the loss of public use of the bar/restaurant is a material change in the use of the building.

#### KCC Highways

This development proposal does not meet the criteria to warrant involvement from the Highway Authority. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

#### Third Party Representations:

The owners of The White Cliffs Hotel have submitted representations:

- the submitted redline is incorrect [*officer comment: the redline of the s.73 application is consistent with 19/01112*];
- there are a large number of places to eat and drink in the village, St Margaret's Bay and within 1 mile of the site;
- there would be no change of use of the property, as the bar/restaurant facilities are part of the hotel;
- development carried out under 19/01112 has been carried out and completed. Sale of units are agreed on the basis of the current planning application;
- there would be late night noise from non residents leading the bar/restaurant;
- there would be disturbance from servicing/deliveries to the bar/restaurant.

Eight representations of support have been received, which make the following comments:

- there is only one eatery in the village;
- this has been a place for villagers to use and enjoy;
- it was a going concern;
- should be designated an asset of community value;
- the village attracts thousands of visitors each year;
- the Smugglers pub/restaurant is extremely popular, with no car parking.

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

- 1.1 The site comprises The White Cliffs Hotel, located on the corner of High Street and Cripps Lane in the centre of St Margaret's at Cliff.
- 1.2 The hotel building is Grade II listed; and the site is within the St Margaret's at Cliffe Conservation Area.
- 1.3 The application site comprises the hotel building described above, along with a gravel forecourt (served by an existing vehicular access from the south western end of Cripps Lane) and garden to the rear.

**Surrounding Area**

- 1.4 Centrally located in the village, the site is within walking distance of local amenities including convenience shop, pub, primary school and public car park.
- 1.5 Opposite the site is the Church of St Margaret (Grade I listed), but generally screened from High Street by a treed hedge; to the rear beyond the former hotel car park is a single storey cottage; to the north west is the more imposing (three storey) building of Cliffe House (Grade II listed); and to the south east, beyond the former hotel annex buildings, is a row of terraced houses.

**Proposal**

- 1.6 Planning permission under s.73 of the TCPA is sought to remove Condition 15 from planning permission 19/01112.

Condition 15 states:

*Upon the first use of either unit 4 or 5 as an independent self-contained dwelling, or the first occupation of either unit 1 or 2, whichever of these events occurs first, the bar and restaurant facilities within the hotel/bunkhouse shall cease to offer facilities to non-residents and shall thereafter only be available for the use of resident guests of the hotel.*

*Reason: To ensure that adequate car parking facilities are available to serve the proposed residential dwellings, in the interests of highway safety*

**2. Assessment**

**Background**

- 2.1 Planning permission reference 19/01112 was granted in March 2020 for development at The White Cliffs Hotel comprising (i) the erection of two dwellings on land to the rear of the main hotel building; and (ii) the change of use and conversion of annexe buildings (to the side of the main hotel building) from hotel to dwellinghouse use.

- 2.2 Condition 15 was imposed on planning permission 19/01112 for reasons relating to car parking – to ensure that the new dwellings within the converted annexe building and retained hotel would have adequate car parking.
- 2.3 19/01112 has been implemented through the conversion of the annexe buildings.
- 2.4 This current s.73 application is submitted to seek to allow the bar/restaurant facilities within the hotel, as retained by the 19/01112 development scheme, to remain open to non-residents should the owners of the hotel wish to do so.
- 2.5 In the consideration of this application, it is of note that (i) if Condition 15 is removed, this does not *require* the bar/restaurant facilities to be open to the public; and (ii) the existing planning permission 19/01112 (and the development it has approved) remains in place regardless of whether or not this s.73 application is approved.
- 2.6 Whilst the applicant of this current s.73 application is a third party to the site and different from that who made application 19/01112, that does not have a material bearing on matters. Rather the current application must be considered on its planning merits.

#### Consideration of Application 19/01112

- 2.7 The Committee Report for application 19/01112 includes matters relating to the loss of the bar/restaurant as a public facility. This identified relevant local and national planning policy that seeks to guard against the unnecessary loss of valued facilities and services; then as a matter of planning judgement considered that the number of other premises offering food and drink in the village would still provide a sufficient range and choice without overriding harm to the amenities of the area.
- 2.8 No in principle reason was identified in the Committee Report for 19/01112 to resist the loss of the bar/restaurant as a public facility.
- 2.9 With regard to car parking, the Committee Report for 19/01112 concludes that there would be an under provision of car parking (as reinforced by public consultation comments). However as this under provision was likely to be less than previously on the site (i.e. a betterment), the Committee Report considered there was no reason to refuse that application on such car parking grounds.

#### Consideration of Condition 15

- 2.10 Government guidance relating to planning conditions requires that each must satisfy relevant tests of necessity, relevance, enforceability, precision and reasonableness in all other respects.
- 2.11 Various arguments made by the Parish Council (as applicant) are noted. That considered most relevant to this s.73 application relates to the contribution and

negative impact the public closure of the bar/restaurant facility has had to the financial viability of the hotel.

- 2.12 This viability impact is evidenced with regard to the financial report (November 2021) submitted in relation to planning application 20/01566 for the change of use and conversion of The White Cliffs Hotel to three dwellinghouses. The financial viability report concludes that "*The White Cliffs Hotel has no long term viability for use as a hotel, bar and restaurant.*"
- 2.13 In light of this greater understanding (of the contribution the public closure of the bar/restaurant facility makes to the financial viability of the hotel, to a position where the owners of The White Cliffs Hotel consider the business to be no longer financially viable), it is considered that removing condition 15 and imposing a new condition, requiring a 'car parking, servicing and delivery management plan' in respect of the bar/restaurant (to be submitted to and approved by the local planning authority) would be a proportionate response to the application and would achieve the legitimate planning objective of condition 15 (ensuring adequate car parking facilities for the proposed residential dwellings) in a manner which would have a lesser impact on the financial viability of the business.
- 2.14 The management plan could refer to available car parking in the public car park opposite, include details of 'residents only' signage in the hotel car park, and should consider the best way to manage servicing/deliveries to the site.
- 2.15 Whilst walking between the public car park and the site would be via narrow footways or on the carriageway, this arrangement is not uncommon within the village. Both pedestrians and motorists are aware of this. From experiencing transport conditions in the centre of the village, vehicle speeds are generally low and pedestrians behave with awareness of the narrow footways. KCC Highways confirm it had no comments to the original scheme (19/01112) or to this current application.
- 2.16 The Parish Council presents other arguments that the limitations of Condition 15 has effectively resulted in the material change of use the bar/restaurant facility, which went beyond the scope of the development proposed and advertised under application 19/01112. However, given the position on Condition 15 reached above, and that 19/01112 remains an extant and unchallenged planning permission in any event, this matter has not been considered further.
- 2.17 Representations from the owners of The White Cliffs Hotel that public use of the bar/restaurant facility, as well as from servicing/deliveries, would lead to noise and disturbance are noted. But houses close to eating / drinking establishments in a village centre are a normal / established part of such character; and management of servicing/deliveries would be covered by the management plan referred to above.

### **3. Conclusion**

- 3.1 Overall, as the objectives of Condition 15 of 19/01112 may be achieved in a manner which has a lesser impact on the financial viability of the business by imposing a new condition as described above, planning permission should be granted for development as first approved under application 19/01112 but with Condition 15 removed.
- 3.2 A new condition to secure a parking, servicing and delivery management plan in respect of the bar/restaurant facilities is recommended.

### **4. Recommendation**

I PERMISSION BE GRANTED subject to conditions:

- 1) Time limit to commence development (three years from 27/03/20)
- 2) Plans
- 3) Material samples – external surfaces
- 4) Material samples – enclosures and hard surfacing
- 5) External joinery details
- 6) Landscaping scheme
- 7) Construction management plan
- 8) Surface water drainage details
- 9) Provision of parking
- 10) Restriction of PD rights
- 11) Unforeseen contamination
- 12) Refuse/recycling storage details
- 13) Roof light details
- 14) Protection of trees
- 16) Cycle storage facilities
- 17) EV charging
- 18) Parking, servicing and delivery management plan to include signage

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

Case Officer:

Andrew Somerville