

- a) **DOV/22/01245 - Erection of bridge piers with railing, boundary fence, partial infill to section of former railway cutting, new planting and biodiversity enhancements (temporary hoarding and boundary wall to be removed) – Land Adjacent to Hours, Church Road, Coldred**

Reason for report – Number of contrary views (6)

- b) **Summary of Recommendation**

Planning permission be refused.

- c) **Planning Policy and Guidance**

Core Strategy Policies (2010):

CP1 – Settlement Hierarchy
DM1 – Settlement Boundaries
DM15 – Protection of Countryside
DM16 – Landscape Character

National Planning Policy Framework (NPPF) (2021)

Paragraphs 7, 8, 11, 130, 174, 197, 203

National Planning Practice Guidance

National Design Guide (2021)

National Model Design Code (2021)

Kent Design Guide (2005)

SPG4 Kent Vehicle Parking Standards

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 (Regulation 19) the policies of the draft can be afforded some weight, but this depends on the nature of objections and consistency with the NPPF:

CC8 – Tree Planting and Protection
PM1 – High Quality Design
NE2 – Landscape Character and the Kent Downs AONB
HE1 – Designated and Non-Designated Heritage Assets
HE3 - Archaeology

- d) **Relevant Planning History**

DOV/22/00484 – Groundworks to include partial infilling with inert material – Refused 10/06/2022 for the following reason:

‘The proposed infilling of the historic railway cutting in the form proposed would result in unjustified harm to a Non-Designated Heritage Asset and its setting through the substantial loss and corresponding loss of legibility of a rare remaining section of

cutting of the East Kent Railway and the local industrial heritage, without overriding justification. The proposal would therefore fail to comply with Policies DM15 and DM16 of the Core Strategy (2010) and paragraphs 174 and 203 of the National Planning Policy Framework (2021).'

DOV/21/00311 - Groundworks to include infill with inert material to stabilise bank for the protection of (TPO) trees – No Decision Made – Appeal Dismissed 10/12/2021

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

DDC Environmental Health – No concerns with the proposed infill of the railway cutting, however should the erection of bridge piers involve the breaking of ground which could contain historical contamination, we would require a relevant safeguarding condition to be secured.

DDC Heritage Officer - This site has been subject to a recent refusal on the basis of loss of an undesignated heritage asset. An earlier application was appealed following non-determination and a recommendation for refusal on the basis of harm to a NDHA and lack of information justifying the need for the loss was upheld by the Inspectorate. The Inspector noted the significance of the railway cut goes beyond the feature itself and "together with the former railway buildings, located a short distance to the east, the cutting forms part of the history of Coldred, as well as that of the East Kent Coalfield. These factors all contribute to the significance of this non-designated heritage asset."

The current proposal differs slightly from the previous application through the rebuilding of brick piers on the roadside and slightly less infill than the latest refusal. However the principle remains the same as previously, and I remain concerned that the works will erode the character of the heritage asset unacceptably, compromising its legibility as a manmade industrial feature, with no explanation on why this loss is necessary. I previously noted that the structural engineers report (also resubmitted) demonstrated that there is no urgent safety issue to resolve (by which infill would be the only solution) and noted that this raised the question on the rate of the natural slumping which had been occurring since the removal of the railway track in 1935 and whether there was a stabilised level that would develop naturally that would be less than the proposed infill and therefore in essence retain more of the character of the cut than would be achieved through the proposal.

While it is appreciated that the site is private land, an adjacent footpath allows some opportunity for the public to appreciate the impact the former industry had on the countryside. The proposal also seeks to build brick piers and erect metal railings. There is no historic photo within the submitted heritage statement so I'm unclear on what evidence this aspect of the proposal is founded, but in my view the introduction/conjectural restoration of this feature would be confusing with no explanation (there is a suggestion of an interpretation panel in the heritage statement but nothing shown on the plans). I do not consider this aspect of the proposal to be sufficient mitigation for the loss of the cut itself.

Recommendation

In my view, the infill of the cut would hinder its interpretation as a manmade structure; the 'evidence' it existed would be confined to maps only. There is an accumulative heritage value of the cut and railway buildings and I consider that infilling the cut in the manner proposed would erode the value of the industrial heritage of the district; it is important to note here that features demonstrating the once intensive East Kent Coalfield are noted in the Dover District Heritage Strategy as being 'a diminishing

resource' and are of considerable significance to the historic environment of the district with loss being extensive.

The development would result in unjustified harm to the heritage asset and I object on that basis.

DDC Natural Environment Officer – For this resubmission (of 22/00484), they haven't resubmitted the previous Preliminary Ecological Appraisal report, but I have had regard to it as it is still relevant. I remain of the same view as previously, that there is potential for ecological impacts and that these can be dealt with using the precautionary measures outlined in the Preliminary Ecological Appraisal. My previously suggested conditions are in principle still valid, but they refer to the measures recommended in the Preliminary Ecological Appraisal report, so I have reworded my suggestions slightly:

Biodiversity method statement

No development will take place (including any ground works, site or vegetation clearance), until a method statement for the protection of wildlife, including nesting birds, reptiles, amphibians, hedgehogs and badgers, during infilling works has been submitted to and approved in writing by the local planning authority. The content of the method statement will include the:

- *Purpose and objectives for the proposed method statement aligned with the development proposals*
- *Working methods, including timings, necessary to achieve stated objectives*
- *Extent and location of proposed works shown on appropriate scale plans*
- *Persons responsible for implementing works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works.*

The works will be carried out in accordance with the approved details.

Biodiversity enhancements

Within XX months of this planning permission, details of the locations, specifications and timings for enhancing biodiversity on the site will be submitted to and approved in writing by the Local Planning Authority. These will include the provision of bat, bird and insect boxes, log piles and the use of native species planting and appropriate management thereof for biodiversity. The approved details will be implemented and thereafter retained in accordance with the details.

I note that some proposed ecological enhancements are provided within the submission and advise that these provide a good starting point – I would expect the detailed submission to include specifications for heights / elevations of bird and bat boxes, and that to ensure durability, and prevent woodpecker damage, none of the boxes will be made only from wood.

DDC Tree and Horticultural Officer – The details submitted in the above application go some way to alleviate previous concerns, for instance it appears that it is intended to back-fill sections of the cutting around the trees to provide an undulating topography with inert and porous material, and with the layer of topsoil above being pervious to water and air, which should extend the rooting environment for them. However, no details of what this material will consist of have been provided. Should it be minded to approve the application, full details will need to be provided.

The current application includes an Arboricultural Report dated 23/8/2022 that appears to be an identical copy to the version submitted with the previous application, but it should be noted that the tree survey contained within it has been undertaken in accordance with BS5837:2012 Trees in relation to design, demolition and construction, it is of a preliminary statement and is not intended to be a risk assessment. Similarly, the submitted Consulting Engineers report dated 18th August 2022 states that 'shallow root bowls could present a significant hazard to users of the foot path as well as a possible hazard to the property known as "Hours"... and that in order to remove any risks associated with the regression of the railway cutting sides the best action is to infill the cutting.... as trees along the top of the cutting will be at far lesser risk of sliding down the banks...' Neither of the above documents provide firm evidence to prove that the trees currently pose an unacceptable risk that can only be alleviated by the infilling of the cutting.

The current application proposes new planting and biodiversity enhancements, but the location and quantity of the existing trees shown on the Block Plan 05/65/2022 (Sept 2022) do not correspond with the information provided in the Tree location, size and constraints plan contained within the Arboricultural Report dated 23/8/2022, where there are 24 trees plotted but only 14/15 shown on the Block Plan. Similarly, the Block Plan shows 6/7/new trees whereas the Heritage Statement suggests extensive planting. It would be useful to gain clarification of both these points to avoid confusion.

The Arboricultural Report does not contain an Arboricultural Impact Assessment or a Tree Protection Plan. Should it be minded to approve the application, these documents will need to be provided.

KCC Archaeology (Comment on former application DOV/21/00311) -

The application involves the infilling of a cutting of the (dismantled) East Kent Light Railway (EKLR). The EKLR was opened in stages from 1911/12 and was constructed to support the development of new collieries and formed part of Colonel Stephens's group of light railways. The EKLR ran from its terminus at Shepherdswell (where there was a connection to the mainline) to Port Richborough, with a branch to Wingham. Smaller branches along the line served various collieries at Tilmanstone and Hammill. The cutting in question forms part of a branch-line that connected to Guilford Colliery, located about 1km to the east of the application site.

It is understood that the rails were lifted from the Guilford Colliery branch of the EKLR in 1937, although rails were later re-laid over part of the branch to provide stabling for rail-mounted guns during WW2.

The remains of the EKLR are of industrial archaeological interest, both in their own right, but also as part of the story of the East Kent Coalfield. The remains of the railway should be thought of as a non-designated heritage asset. The infilling of the cutting and loss of this section of the former track-bed would be regrettable.

The applicant notes the infilling is necessary to stabilise the roots of trees subject to a Tree Preservation Order (TPO 1997, 6 – self-seeded woodland). It is for your council to determine whether the infilling of the railway cutting as a non-designated heritage asset is justified by the safeguarding of the TPO trees. I would note however that the TPO does not identify any specific individual trees but covers the "self-seeded woodland with a canopy predominantly of Ash and Sycamore over an understorey dominated by Hawthorn". The arboricultural evaluation survey submitted with the application seemingly identifies that the majority of the trees present are mature Ash trees that show varying evidence for Ash die-back and many are identified for felling because of this. The application form states the works are required to preserve the life

expectancy of root-exposed oak trees. Three oaks are listed in the arboricultural evaluation survey, however based on the grid-references provided only two of the oaks fall within the cutting. I wonder therefore whether more localised works might be possible, that would serve to protect the two oak trees without resulting in the infilling of the former railway cutting?

KCC PROW – No comments.

KCC Highways – The applicants should be advised that separate prior approval will be required from KCC for the proposed bridge, railings and boundary fence adjacent to the highway.

Shepherdswell with Coldred Parish Council – The Parish Council are pleased with the new application. We are still somewhat concerned about the loss of a heritage asset. If permission is granted care must be taken to monitor the material deposited and a traffic management plan should be put in place.

Public Representations:

6 letters of support have been received in response to the application. The material considerations included within these letters have been summarised below. Matters such as impact on an individuals' property value, financial intentions of the applicant etc. are non-material considerations and are not included below.

The letters of support raise the following points:

- The proposal would improve safety.
- The proposed infill would look better than it does at the moment.
- The depth of the cutting is concerning so close to the road which could cause danger to the public highway and others. The proposal would address this.
- The bridge is unsupported and has not been maintained since the railways closure. Erecting bridge piers and railings will define this as a bridge.
- Infilling the cutting raises no issues as the other side of the cutting was filled in long ago.
- There is no chance of the cutting being reinstated as a railway.
- Partially infilling the cutting will provide support to the surrounding area, road and trees.
- The infilling will help support future planting adding to the biodiversity of the area.
- The back section of the cutting which can be seen from the footpath would still be evident.

f) 1. The Site and the Proposal

1.1 The application site relates to a section of a former railway cutting associated with the former local collieries, joining up with the wider East Kent Light Railway (EKLR). The existing cutting, whilst evident by the deep (4m) trench to the north of Hours (a residential property), has been subject to erosion and landslip in the past and now roughly forms a 'V' rather than a crisp rectilinear cutting. A number of trees (largely sycamores/field maple and including oak) have self-seeded in the cutting. There is a blanket TPO which covers all self-seeded trees.

1.2 The former cutting has been separated into two separate sections; one section which runs the full length of the residential land of Hours (and adjoins Hours) and ends at a public footpath crossing (ER94), and a second section of cutting beyond the footpath (to the east) surrounded by open farmland. These two sections of the cutting are some of the only remaining unfilled parts of the former

rail line in this area and are considered to be non-designated heritage assets. Both sections of the cutting are in the ownership of Hours but do not constitute residential or garden land. The location of the site is shown in Figures 1 and detail of the levels of the railway cutting is shown in Figure 2.

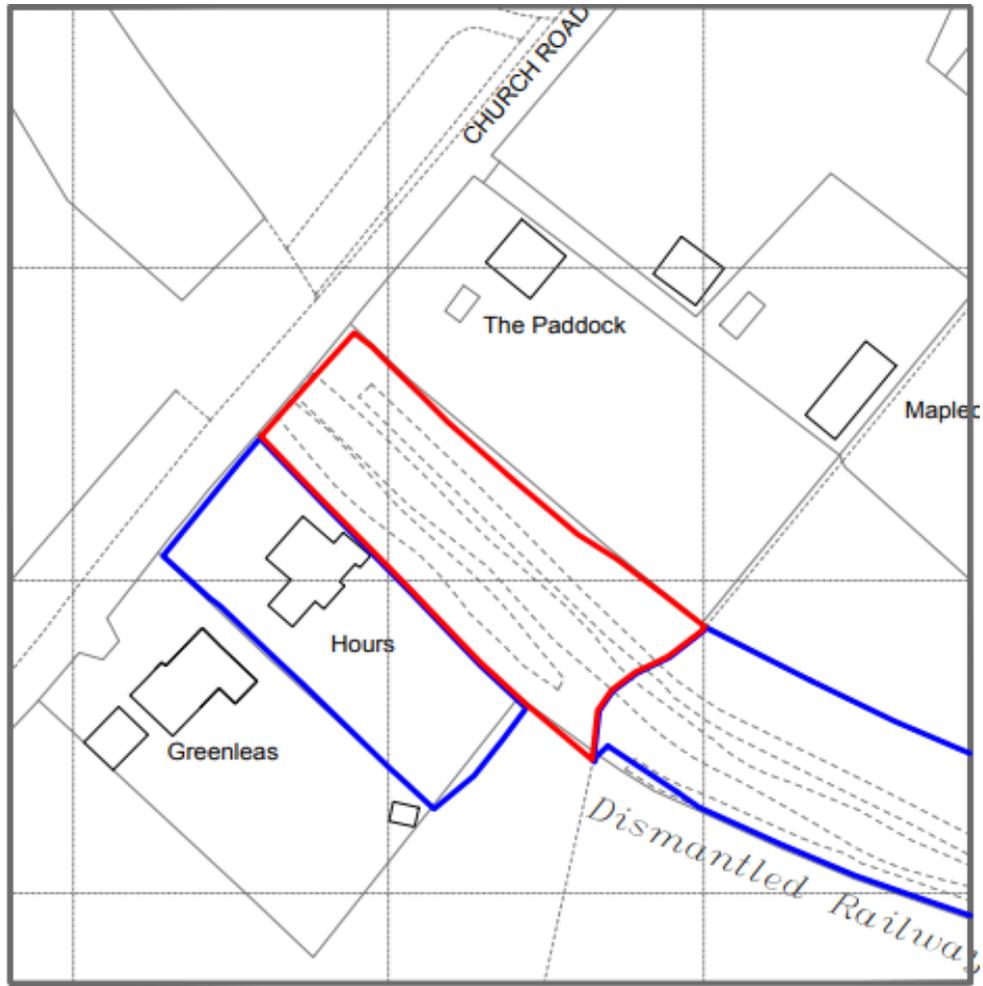


Figure 1: Site Location Plan



Figure 2: Existing Block Plan

- 1.3 The EKLK was opened in stages from 1911/12 to support the development of new collieries and this particular cutting formed part of a former branch line that connected to Guilford Colliery, which was abandoned in 1921. The only remnants of the colliery are the winding house and one other building which are now in residential use. As the only remaining section of this particular railway cutting, the application site is of local industrial archaeological and historical interest. Both on its own and together with the former railway buildings, located a short distance to the east, the cutting forms part of the history of Coldred, as well as that of the East Kent Coalfield. These factors all contribute to the significance of this non-designated heritage asset.
- 1.4 This application follows the recently refused application reference DOV/22/00484 which was refused on 10th June 2022 and the former non-determination application reference DOV/21/00311 which was dismissed at appeal on 10th July 2021. Both applications proposed to infill the front section (north west from the footpath crossing) with inert spoil (mainly chalk) with a layer of topsoil above.
- 1.5 The first application proposed a level infill of the cutting and was justified on the basis of safeguarding 2no. oak trees which have had their root systems largely exposed and were stated to be at risk of falling, alongside the desire to make the area safer for the use of the owners of the land and reinforce the public footpath to the south east of this front section. This application contained limited supporting information and a full tree survey, arboricultural assessment, structural survey and heritage statement were not submitted with this application. The Inspector considered that the proposal would result in the total loss of part

of the cutting and a number of trees which mark the line of the railway line. This would have a materially harmful impact on the significance of the non-designated heritage asset and its setting, and the proposal would need to be essential to outweigh such harm. Given the lack of information submitted with the application, the proposal did not demonstrate that it was necessary or appropriate to completely fill the cutting, and the inspector concluded that the proposal would result in unjustified harm to a non-designated heritage asset and its setting.

- 1.6 The second, and most recently refused application formed a resubmission of the first application, with some changes and further supporting information. This proposal sought a dished profile to the proposed infill and was supported by a planning statement, heritage statement, structural geotechnical statement, arboricultural report and a Preliminary Ecological Assessment. This application sought to justify the development on the basis of safeguarding a number of trees which were stated to be slipping into the cutting as well as making the site safe. This application, whilst providing a greater amount of supporting information, did not consider lesser works and measures to address the perceived harm and risks associated with the regression and erosion of the cutting raised. As such, it remained unclear whether it was necessary or appropriate to completely fill the western part of the cutting, or whether less invasive methods could address the concerns raised. In addition, the submitted arboricultural survey and report did not conclude that the proposed works is required in order to safeguard the trees, and instead states that the proposed works should have very little or no arboricultural impact. The tree officer objected to the proposal on the basis that the proposed infilling could result in detrimental impacts to many of the trees set at a lower level by raising the level of soil to an unacceptable level, which would conflict with the stated aims and partial justification of the proposal, together with the lack of information and the lack of consideration of other options.
- 1.7 Overall, it was concluded that the former application did not demonstrate that the proposed dished infill works were essential and did not consider lesser works or measures to address the perceived harm and risks. The public benefits of the proposal would not outweigh the severe harm that would be caused to the non-designated heritage asset, through the substantial, near total loss of a substantial setting of the remaining railway cutting to this line. It was therefore considered that the proposal had not been demonstrated to be necessary or appropriate and continued to result in unjustified material harm to the non-designated heritage asset and its setting.
- 1.8 This application is a resubmission of the former applications and continues to propose a dished infill of the north western section of the former railway cutting. This application differs from the former application in that it proposes partial backfilling of sections of the cutting around the trees, to produce an undulating topography as opposed to the more uniform dished profile proposed through the former application. The application also proposes the erection of bridge piers with railings adjacent to the road following the removal of the existing temporary hoarding and boundary wall, together with new planting and biodiversity enhancement measures such as bat boxes.
- 1.9 The current application seeks to justify the development on the basis of safety and instability concerns relating to the general presence of the cutting and raises particular concern regarding the section of Church Road immediately adjacent to the cutting, which is unsupported on the cutting side, with fill below the road stated to be starting to collapse. The applicant further justifies the development on the basis of safeguarding the trees and reducing risk of instability of the trees,

aiding the identification of the route of the former railway line through the removal of the hoarding and reinstatement of bridge piers, and the introduction of new planting and bird and bat boxes making a positive contribution to biodiversity. The application is supported by a planning statement, a heritage statement and structural geotechnical statement, both of which are dated August 2022 but contain the same content as the heritage and structural geotechnical statements submitted with the former application. The existing and proposed sections of the former railway cutting are included at Figure 3 and 4. The proposed block plan and ecological enhancement measures are included at Figure 5 and the existing and proposed street elevations are included at Figure 6 and 7 below.

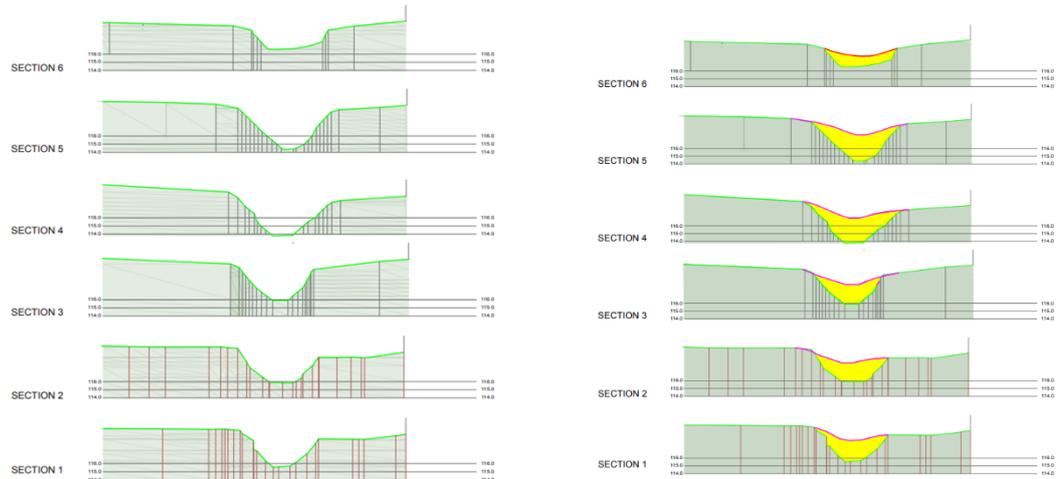


Figure 3: Existing Sections

Figure 4: Proposed Sections



Figure 5: Proposed Block Plan and Ecological Enhancement Measures

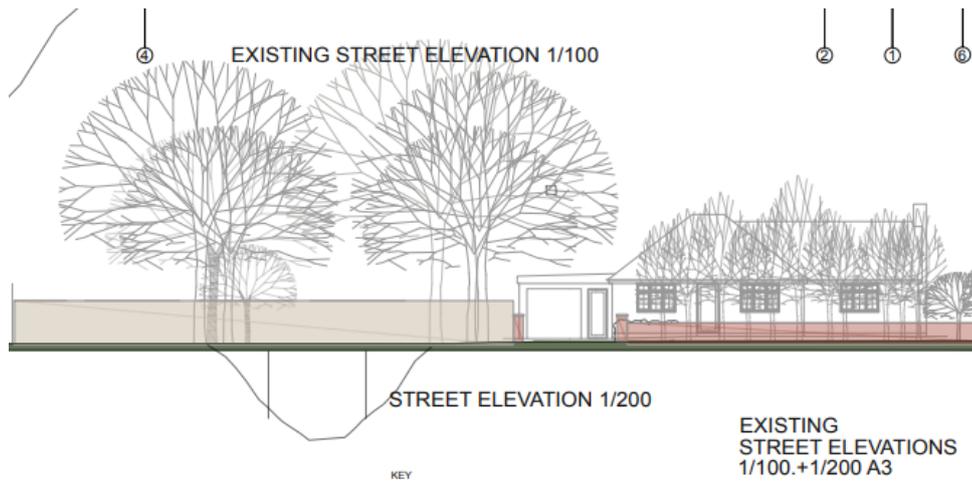


Figure 6: Existing Street Elevation



Figure 7: Proposed Street Elevation

2. Main Issues

2.1 The main issues for consideration are:

- The principle of the development
- Impact on protected trees and structural stability
- Impact on a non-designated heritage asset
- Impact on character and appearance of the countryside and landscape
- Impact on ecology and biodiversity.

Assessment

Principle of Development

2.2 The starting point for decision making, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990, is the adopted development plan. Decisions should be taken in accordance with the policies in the plan unless material considerations indicate otherwise. The site lies outside any defined settlement confines and is located within the countryside for planning purposes. There are no applicable policies or paragraphs within the NPPF which specifically relate or

conflict with the principle of the proposed development. The proposal is therefore considered to be acceptable in principle, subject to the assessment of all material planning considerations.

Protected Trees and Structural Stability

- 2.3 The application site is subject to the blanket Tree Preservation Order TPO 1997, 6 – self-seeded woodland. The railway cutting pre-dates the trees and TPO. The site previously contained a greater number of trees (with the original application (DOV/21/00311) referencing 24 Ash trees which were proposed to be felled through this application. As such, a large degree of the trees are no longer present and the character of the site has subsequently altered, and the collective amenity value of the trees reduced since the original dismissed application to infill the cutting.
- 2.4 The application has been partially justified on the basis that the proposed works are needed in order to safeguard the long term future of the existing trees, which are stated to be sliding into the cutting and have become unstable as their root systems have become exposed; to reduce the risk of the trees damaging the application property, Hours, and safeguard pedestrians using the public footpath. The dismissed appeal for the original application concluded that in absence of a full tree survey, arboricultural assessment and structural survey, it was unclear whether it is necessary or appropriate to completely fill the western part of the cutting, or whether less invasive methods could be used to stabilise the banks, secure the long term health of the trees and prevent further subsidence to the dwelling at 'Hours'.
- 2.5 The application is supported by an Arboricultural Survey and Report and Geotechnical Structural Statement which contains the same content as the respective reports submitted with the former application (DOV/22/00484). The Arboricultural survey and report records 24 trees within or adjacent to the railway cutting, with the most frequent trees being Field Maple (6), Sycamore (5) and Oak (4). The report states that individually the trees are of no great significance with the trees graded category B and C, with their collective value being greater. It is further stated that as these trees are located in a low density rural environment this value is part of the rural landscape with some public visibility but little else. The tree survey records that the majority of the trees are early mature trees, with 5 mature trees. It is considered that the greatest contribution these trees make to the amenity and character of the area is through providing physical evidence of the former railway line and forming part of the setting of the non-designated heritage asset, albeit reduced following the removal of the Ash trees. The report further states that with the deterioration of the cutting soil has been naturally translocated into the cutting and over its surfaces, with some roots likely to be growing where soil has moved into the slope and that long term, with no maintenance, further soil will wash into the cutting until an inevitable end point.
- 2.6 The Arboricultural Impact Assessment of the report is brief and appears to focus on the infilling of the cutting to prevent further erosion and is approached on the basis of whether the trees would constrain the proposal (paragraph 5.4 'I therefore do not consider the existing trees constrain the development as it has been described to me') rather than on the basis that the works are required to safeguard the TPO trees and address instability concerns, as is indicated by the Heritage Statement and former applications. The submitted Arboricultural Report only considers the proposed development and does not consider alternative or lesser works to stabilise the banks and secure the long term health of the trees

and does not consider the perceived risks posed by the trees should no works be undertaken. The tree officer notes that the submitted Arboricultural Report is a preliminary statement and is not intended to be a risk assessment.

- 2.7 This application differs from the former application in that it proposes to partially back fill sections of the cutting around the trees to provide a dished infill to the western section of the cutting with an undulating topography with inert and porous material, with a layer of topsoil above. Limited details of this have been provided, and the Arboricultural Report has not been updated to incorporate this approach. The application is further justified on the basis of new planting and biodiversity enhancements, however the supporting information submitted with the application is unclear and contradictory. The location and quantity of the existing trees shown on the proposed block plan (08/65/2022) does not correspond with the information provided in the tree location, size and constraints plan contained within the Arboricultural Report dated 23/8/2022, where there are 24 existing trees plotted but only 14/15 shown on the proposed block plan. Similarly, the heritage statement suggests substantial tree planting, however the proposed block plan contains what appears to be 6 new trees, with the key to the plan not clearly identifying the existing and new trees,
- 2.8 The proposed partial backfilling of sections around the existing trees with an undulating topography is an improvement upon the previous application, and the tree officer no longer raises concerns that the proposal could result in detrimental impacts to the trees set at a lower level than the proposed infill. However, the Arboricultural Report does not conclude that the proposed works would benefit the trees or is required to safeguard the trees and instead states that the proposed works should have no or very little arboricultural impact. In addition, the supporting information is contradictory and appears to propose a reduction in the number of trees present, resulting in a reduction in the amenity and biodiversity benefits of the site in comparison to the existing situation, alongside failing to correspond with the justification put forward that the works are required to safeguard the existing trees. Therefore, it continues to be considered that the proposed development has not demonstrated that the proposal is required or justified on the basis of safeguarding the protected trees, the stability of the trees, or additional planting benefits, and no consideration of other lesser works and measures to safeguard the trees and address the perceived stability concerns have been considered through the application.
- 2.9 In relation to structural stability, the applicant has raised concerns regarding the structural stability of the cutting generally in relation to its immediate environment and has also provided an updated Planning Statement which raises concerns regarding the structural stability of the highway, Church Road, adjacent to the railway cutting. This updated planning statement states that when the railway was dismantled the original bridge was removed and part of the cutting infilled to make up the road. The fill is supported on 3 sides and exposed adjacent to the cutting, where it is stated that the fill is starting to collapse, with associated structural concerns. The application does not provide any structural information or evidence to substantiate these highway concerns raised. A structural geotechnical statement has been provided in relation to the general stability concerns raised. This structural statement contains the same content as the geotechnical statement provided through the former application.
- 2.10 The submitted structural geotechnical statement states that quite extensive regression of the sides of the railway cutting has occurred following the decommissioning of the railway line. The chalk sides of the cutting have generally

eroded and slumped to the base of the cutting, together with superficial soils which lie on the top of the chalk. It further states that where trees grown with roots only in a relatively shallow mantle of soil overlying chalk, their root bowl is shallower and trees can more easily be blown over or move down the slope. It is stated that this slumping presents the greatest problem to the south west of the cutting where the regression appears to be of the greatest magnitude and its proximity to the neighbouring building and the garage to 'Hours'. In addition, it is stated that the shallow root bowls of the trees nearest to the public footpath presents a hazard to users of the footpath as well as a possible hazard to 'Hours'. The report concludes that in order to remove any risks associated with the regression of the railway cutting sides the best action is to infill the cutting.

- 2.11 It is not considered that the Structural Statement demonstrates whether there is an urgent issue arising from the slumping of the cutting. It is indicated that the slumping is a slow and natural regression which will eventually stabilise at a certain gradient. The report only considers the option of infilling the cutting as proposed which would 'remove any risks associated with the regression of the railway cutting' and does not consider lesser works and measures which could address or minimise the perceived risks associated with the slumping of the railway cutting.
- 2.12 On the basis of the information provided and in the absence of consideration of lesser works and measures to address the perceived harm and risks associated with the regression and erosion of the cutting together with the lack of structural information and evidence relating to the highway concerns, it remains unclear whether it is necessary or appropriate to completely fill the western part of the cutting, or whether less invasive methods could be used to stabilise the banks, secure the long term health of the trees and prevent further subsidence to the dwelling at 'Hours'. The proposal has therefore not sufficiently addressed this element of the Inspectors report of the dismissed appeal.

Impact on Non-Designated Heritage Asset

- 2.13 Paragraph 203 of the NPPF states: 'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.' As has been previously noted, much of the eastern parts of the former East Kent Light Railway has been infilled, with farmland or woodland above. This makes the remaining exposed sections of the cuttings more significant in terms of the historical understanding of the previous railway line which supported the nearby collieries. The application site and the adjacent cutting to the east form the only remaining sections of this particular railway cutting.
- 2.14 The application proposes the retention of the section of the railway cutting to the east of the public footpath, and so whilst the proposal would not result in the full loss of the Non-Designated Heritage Asset, the application site forms a substantial section of the cutting (just under half). The proposal does not propose a level infill of the cutting, and instead proposes an undulating dished infill, to address concerns regarding the health of the trees and demonstrate the route of the cutting. Whilst the dished profile would provide some reference to the cutting, the proposal would result in a substantial, near total, loss of the cutting with only a minor reference and indication remaining. Consequently, there would be a near total loss of the visible presence of the cutting and the legibility of the cutting

would be severely compromised. The proposal has therefore not overcome our former concerns.

- 2.15 This substantial loss of this substantial section of the Non-Designated Heritage Asset would result in a further erosion of this asset's significance and remove more of the asset from view. It would also further reduce the legibility of the route the former railway took between the mainline railways (with access to Port Richborough) and The Winding House on Singledge Lane (part of the former Guilford Colliery). Whilst the treeline does retain this line to some degree, this is only legible in maps and in aerial views, not from the ground where it would appear as simply a woodland/row of trees. This new development, in addition to all the other infills, has a cumulative impact that is greater than the actual development itself. Given this, it is considered that the proposal would result in material harm to this non-designated heritage asset through the substantial loss of a further section of the former railway line/cutting, contrary to Paragraph 203 of the NPPF and Draft Policies HE1 and HE3 of the Draft Dover District Local Plan.

Impact on the Character and Appearance of the Countryside and Landscape

- 2.16 The application site is located outside of the settlement confines, within the countryside. Paragraph 174 of the NPPF seeks for development to contribute to and enhance the intrinsic character and beauty of the countryside. Policy DM15 directs that planning permission for development that adversely affects the character or appearance of the countryside should be refused, unless one of four criteria is met, and the development does not result in the loss of ecological habitats. Regard must also be had for whether the development would harm the landscape character of the area, in accordance with Policy DM16. Draft Policy NE2 sets out that proposals should have regard to their landscape character area.
- 2.17 The existing railway cutting is not visible from the highway given the existing hoarding and does not have wider landscape visibility. The cutting is, however, clearly visible from the public footpath crossing the cutting. The change in views from this part of the footpath would be significant. Where once there was a clear ditch to both the north-west and south-east of the footpath, the land levels would be brought up to the level of the footpath with an undulating dished profile to match the footpath to the north west. From this vantage point, the substantial, near total, loss of the non-designated heritage asset would be readily seen. It is considered that this would result in harm to the character and appearance of the countryside and the landscape, albeit limited, with the main concern being the substantial, near total loss of the non-designated heritage asset and its setting. Lesser works such as the backfilling to support the 2no. oak trees, rather than the full dished infilling of the cutting, would have far less visual impact on these views. No such lesser alternatives have been explored or proposed.
- 2.18 This proposal proposes further external works in comparison to the former applications in the form of the replacement of the front fence/hoarding with brick piers and railings to reference the former bridge and timber post and rail fence with soft landscaping behind. This would soften the appearance of this part of the site from Church Road compared to the existing high hoarding/fencing, providing some visual benefits and would reveal the site to a greater extent from the highway. However, as the cutting would be infilled to a substantial degree, the heritage benefits of doing so would be minor as the proposal would involve the near total loss of this section of the railway cutting, which would remove the

cutting from view. It is also noted that no historical evidence has been provided (for example through a historic photograph) to provide the basis on which the brick piers and railings are founded.

- 2.19 The Planning Inspector considered that the proposed infill of the cutting would result in some harm to the character and appearance of the site and setting and would be contrary to Policies DM15 and DM16 and paragraph 174 of the National Planning Policy Framework. The dished profile whilst providing some reference to the former cutting, would still form a substantial and near total infill, and has therefore not overcome this harm. The proposed external works, whilst providing some minor visual benefits in relation to the removal of the hoarding, would not outweigh the harm resulting to the character and appearance of the site and setting, and the harm to the non-designated heritage asset arising from the infill.

Impact on Ecology and Biodiversity

- 2.20 The planning statement makes reference to the biodiversity benefits of the proposal, which forms part of the justification put forward for the development. The proposal proposes new tree planting, natural grassland over the infill, and proposes ecological enhancement measures in the form of bird and bat boxes. The former application was supported by a Preliminary Ecological Appraisal (PEA), which has not been submitted with this application.
- 2.21 The Natural Environment Officer has had regard to the former submitted PEA and remains of the view that there is potential for ecological impacts arising from the development, and these could be dealt with using the precautionary measures outlined in the former PEA. As this has not been submitted with the application, the Natural Environment Officer has suggested applicable conditions to cover this, including the approval of a method statement for the protection of wildlife prior to development and securing ecological enhancement measures. These conditions would be secured should planning permission be granted. However, as noted above, the supporting information is unclear and contradictory and appears to propose a reduction in the number of trees present (with a discrepancy between the location and quantity of the existing trees shown on the plan accompanying the Arboricultural Report (24/25) and those on the proposed block plan (14/15)) resulting in a reduction in the amenity and biodiversity benefits of the site in comparison to the existing situation. Accordingly, it is considered that the biodiversity benefits of the scheme are limited, and do not provide sufficient justification for the proposed development.

3. Conclusion

- 3.1 The proposed infilling of the former railway cutting would result in material harm to the Non-Designated Heritage asset, alongside adversely affecting the character and appearance of the site and its setting. The undulating dished profile, whilst providing some reference to the cutting, would still result in the substantial, near total loss, of a substantial section of the remaining railway cutting to this line, which forms a Non-Designated Heritage Asset, and as such has not overcome the heritage and character and appearance concerns with the former applications.
- 3.2 The application is supported by an Arboricultural Survey and Report and Structural Geotechnical Statement which contains the same content as those submitted with the former application (DOV/22/00484) together with a Heritage Statement and updated Planning Statement. These reports provide some detail and information, however, the Arboricultural Survey and Report and Structural

Statement do not consider lesser works and measures to address the perceived harm and risks associated with the regression and erosion of the cutting raised, and do not provide firm evidence that the only option to alleviate the perceived concerns is a complete (undulating dished) infill of this section of the cutting as proposed. No information or evidence has been provided to substantiate the structural concerns raised regarding the highway adjacent to the cutting. As such, the proposal is not considered to have demonstrated that it is necessary or appropriate to completely fill the western part of the cutting, or whether less invasive methods could be used to stabilise the banks, secure the long-term health of the trees and prevent further subsidence to the dwelling at 'Hours'. The proposal has therefore not sufficiently addressed this element of the Inspectors report.

- 3.3 In addition, the Arboricultural Survey and Report does not conclude that the proposed works would benefit the trees or is required to safeguard the trees and instead states that the proposed works should have no or very little arboricultural impact. The application includes unclear and contradictory information, with a discrepancy between the number of existing trees present on the Arboricultural Survey and the proposed block plan, which does not correspond with part of the justification put forward on the basis of safeguarding the existing trees and additional planting and biodiversity benefits. In addition, this application relates to a considerably reduced number of trees, as the Ash trees referred to in the dismissed appeal have been removed, which has subsequently altered the character of the site and reduced the collective amenity value of the trees, with the majority of the trees remaining being early mature trees of low individual amenity value.
- 3.4 The Inspector noted through the dismissed appeal that given the level of harm the proposal would cause to the Non-Designated Heritage Asset and its setting, the proposal would need to be essential to outweigh such harm. The application has not demonstrated that the proposed undulating dished infill works are essential and has not considered lesser works or measures to address the perceived harm and risks. The public benefits as stated in the heritage and planning statement such as removing the frontage hoarding to better reveal the site and reinstatement of the bridge piers, safeguarding the future of the trees and the provision of new planting and ecological enhancements would not outweigh the severe harm that would be caused to the Non-Designated Heritage Asset through the substantial, near total loss of a substantial section of the remaining railway cutting to this line. Strong concerns were previously raised by KCC Archaeology in relation to the dismissed appeal and it is not considered that anything has fundamentally altered which would alter these comments. The Heritage Officer considers that the proposal would unacceptably erode the character of the heritage asset, compromise its legibility as a manmade structure and result in accumulative harm to the industrial heritage of the district.
- 3.5 Overall, therefore, it is considered that the proposal has not been demonstrated to be necessary and the harm which would be caused by the proposal in terms of heritage loss, would not be outweighed by the stated need to safeguard the remaining trees, stability concerns or public benefits. The proposal would therefore result in unjustified material harm to a non-designated heritage asset and its setting, contrary to Policies DM15 and DM16 of the Core Strategy (2010), Draft Policies NE1, HE1 and HE3 of the Draft Dover District Local Plan and paragraphs 174 and 203 of the National Planning Policy Framework (2021).

g) Recommendation

I PERMISSION BE REFUSED for the following reasons:

- 1) The proposed infilling of the historic railway cutting in the form proposed would result in unjustified harm to a Non-Designated Heritage Asset and its setting through the substantial loss, and corresponding loss of legibility, of a rare remaining section of cutting of the East Kent Railway and the local industrial heritage, without overriding justification. The proposal would therefore fail to comply with Policies DM15 and DM16 of the Core Strategy, Draft Policies NE1, HE1 and HE3 of the Draft Dover District Local Plan and paragraphs 174 and 203 of the National Planning Policy Framework.
- II Powers to be delegated to the Head of Planning and Development to settle any necessary wording in line with the recommendations and as resolved by the Planning Committee.

Case Officer

Jenny Suttle