

a) **DOV/23/00124 – Erection of a dwelling, car port and access - Southbank, Newcastle Lane, Ewell Minnis**

Reason for report – Number of contrary views (13)

b) **Summary of Recommendation**

Planning permission be refused.

c) **Planning Policy and Guidance**

Core Strategy Policies (2010): CP1, DM1, DM11, DM13, DM15, DM16

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) (NPPF), the weight to be given to them depends on their degree of consistency with the policies of the Framework (paragraph 219).

Draft Dover District Local Plan to 2040 (March 2023)

The Submission Draft Dover District Local Plan is a material planning consideration in the determination of applications. At submission stage the policies of the draft plan can be afforded some weight, depending on the nature of objections and consistency with the NPPF. The relevant policies are: SP1, SP2, SP3, PM1, PM2, TI1, TI3, NE1, NE2

Kent Downs Area of Outstanding Natural Beauty Management Plan 2021- 2026

National Planning Policy Framework (NPPF) (2021): Paragraphs 7, 8, 11, 126, 130, 174, 176, 180

National Design Guide & National Model Design Code (2021)

d) **Planning History (most recent)**

DOV/20/00092 Erection of single storey side/rear extensions, porch to north east elevation and alterations to windows and doors (existing conservatory to be demolished) - Granted

Site address described as land adjacent to Maytree Cottage for the following applications:

DOV/04/01340 Outline application for the erection of a dwelling - Refused for the following reasons:

- 1. The proposed development is located outside the confines of any built up area and would constitute undesirable sporadic development in the countryside which is within the designated Kent Downs Area of Outstanding Natural Beauty and North Downs Special Landscape Area. As such the proposed development is contrary to Kent Structure Plan policies HS1, CO1, CO2, CO3 and DD1.*
- 2. The narrow and undulating nature of the approach roads leading to the site are unsuitable for serving the increase in both vehicular and pedestrian traffic likely to be generated by the proposed development.*
- 3. The proposed development would be contrary to Dover District Local Plan policies TR1 and TR2 which seek to restrict new development to defined urban area and village confines to reduce the need to travel in the interests of securing sustainable development.*

Appeal Dismissed

DOV/00/01267 Outline application for Residential dwelling-Refused for the following reasons:

1. *“The proposed development is located outside the confines of any built-up area and would constitute undesirable sporadic development in the countryside which is within the designated Kent Downs Area of Outstanding Natural Beauty and the North Downs Special Landscape Area contrary to the provisions of the development plan , in particular Policies RS1, RS5, ENV1, ENV3 and ENV4 of the Kent Structure Plan 1996, the Dover and Western Parishes Local Plan policies HO2, NE1 and NE2, and the Dover District Local Plan policies CO1, CO2, CO3 and HS1.”*
2. *In the opinion of the District Planning Authority the narrow winding and undulating nature of the approach roads leading to the site are unsuitable for serving the increase in both vehicular and pedestrian traffic likely to be generated by the proposed development.*
3. *The proposal if permitted would be contrary to policies TR1 and TR2 of the Dover District Local Plan which seek to restrict new development to within urban boundaries and village confines to reduce the need for travel in the interests of sustainability.”*

Appeal Dismissed.

DOV/97/00508 One residential dwelling - Refused

DOV/91/00697 Bungalow & Garage - Refused and appeal dismissed.

DOV/88/00166 One bungalow with garage - Refused and appeal dismissed.

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

Representations can be found in the online planning file, a summary is provided below:

Parish Council – raise following concerns:

- History of refusals at the site
- Is an infill appropriate in this rural location?
- Row of laurels they consider to be a hedge

Third party Representations: 1 objection has been received and is summarised below:

- Increased traffic would present a danger to those walking in the area in the narrow roads
- Impact on AONB
- Could set a precedent for other parcels of land

1 representation neither supporting nor objecting notes:

- Planning Statement says there is no Planning History for the site which is untrue as various applications have been refused at the site in the past.

13 representations in support of the proposal have been received, some from those not living locally and summarised below:

- Site is ideal for development and the proposal is considered to represent a suitable addition that would enhance the area

- Proposal does not cause any concerns with regard to parking
- Proposal would not affect the privacy of others
- Proposal would generate additional financial contributions
- Unable to understand why the proposal could not go ahead

Southern Water

The applicant has not stated details of means of disposal of foul drainage from the site. Southern Water requires a formal application for a connection to the public foul sewer to be made. The Council's Building Control officers or technical staff would need to comment on the adequacy of soakaways to dispose of surface water from the proposed development.

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

- 1.1 Southbank is a detached bungalow set on a large plot on the south eastern side of the junction of Newcastle Lane with Wolverton Hill. To the front of the site is a detached garage with driveway parking space for several cars. The site slopes down slightly from front to rear and lies within the Area of Outstanding Natural Beauty (AONB) and outside of any settlement confines.
- 1.2 The application relates to an area of grassed land with detached outbuilding, situated between Southbank and the adjoining property to the north east. This dwelling is known as Maytree Cottage, a two storey house with a detached pitched roof garage on the southern side. The application site measures approximately 69m in depth by 41m in width. It is understood the land has been associated with Southbank for approximately the last three years and that prior to this the land was associated with Maytree Cottage.
- 1.3 There is an established hedge along the boundary with Southbank incorporating several mature trees, whilst the rear boundary comprises a hedge with a smaller piece of land beyond. Along the site frontage is a lower evergreen hedge, whilst the boundary with Maytree Cottage comprises a beech hedge approximately 2.5-3m in height.
- 1.4 Full planning permission is sought to erect a three bedroom chalet bungalow on the land, to be reached via a new access from Newcastle Lane. The proposed dwelling would be constructed of face brickwork, with render and clay tiles and is shown sited in the rear half of the land. A detached double car port with pitched roof is shown sited to the front of the dwelling, adjacent to the boundary with Southbank.
- 1.5 Little supporting information relating to the planning background for the site has been provided. The application form states that there are no trees or hedges at the site and that there is no likelihood of the proposal affecting biodiversity features or habitats. The application was submitted in the absence of tree or ecological surveys.

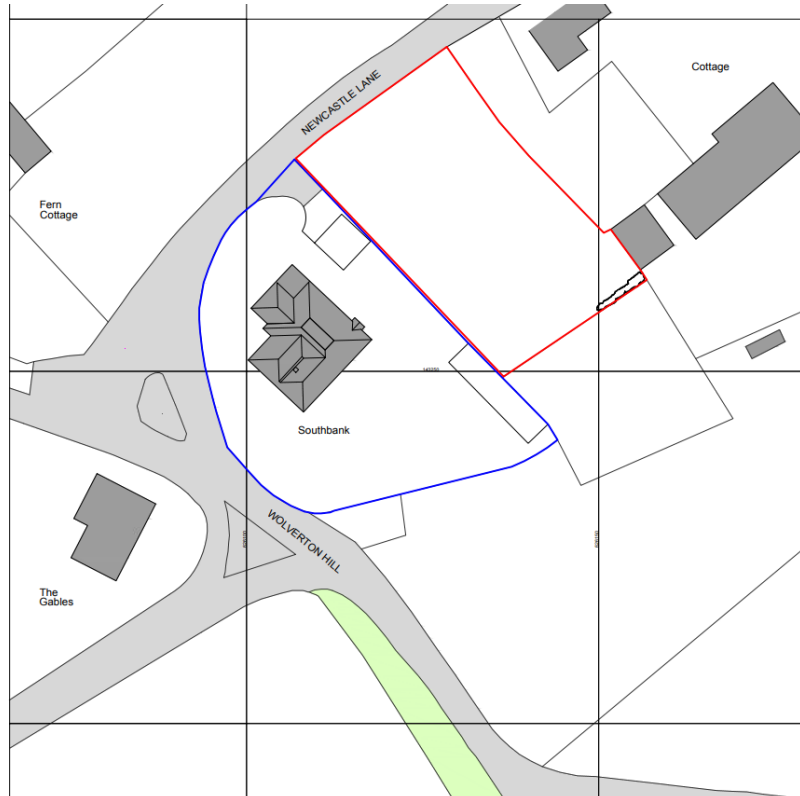


Figure 1 Site location plan

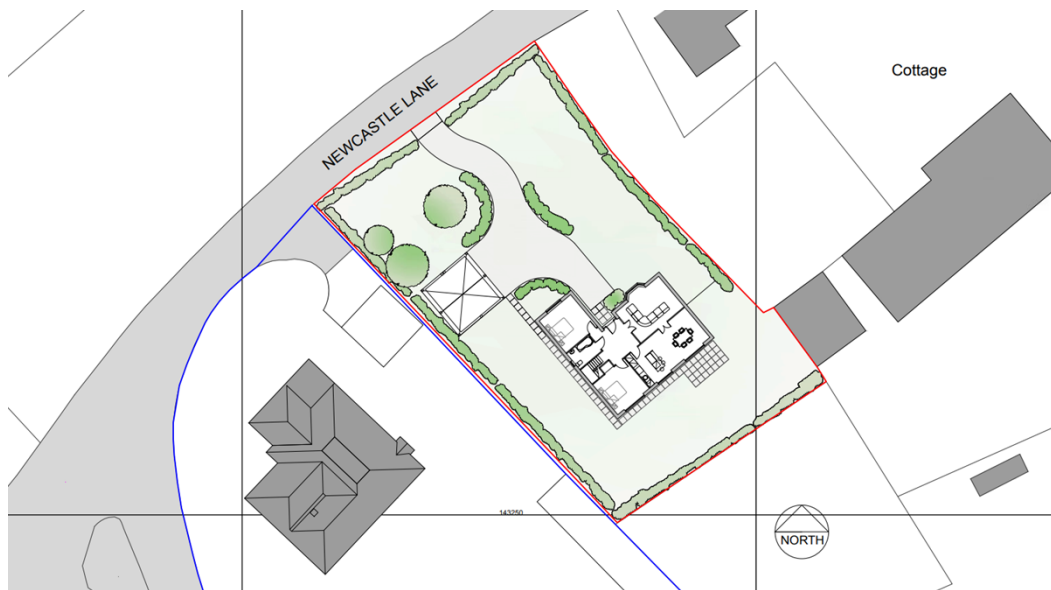


Figure 2 Proposed Block Plan

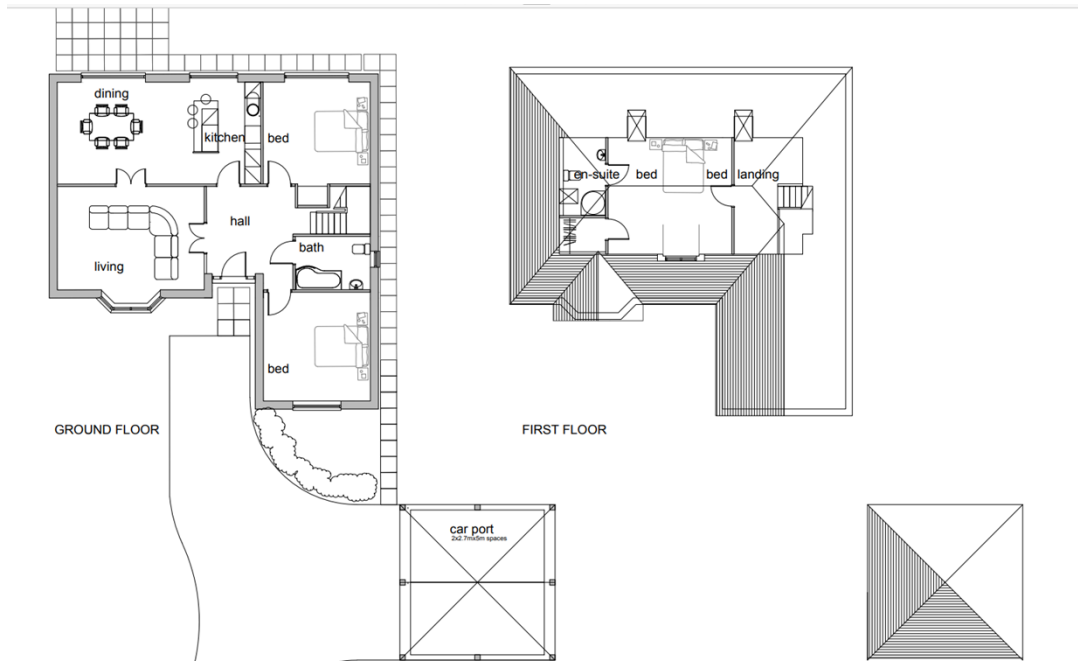


Figure 3 Floor layouts

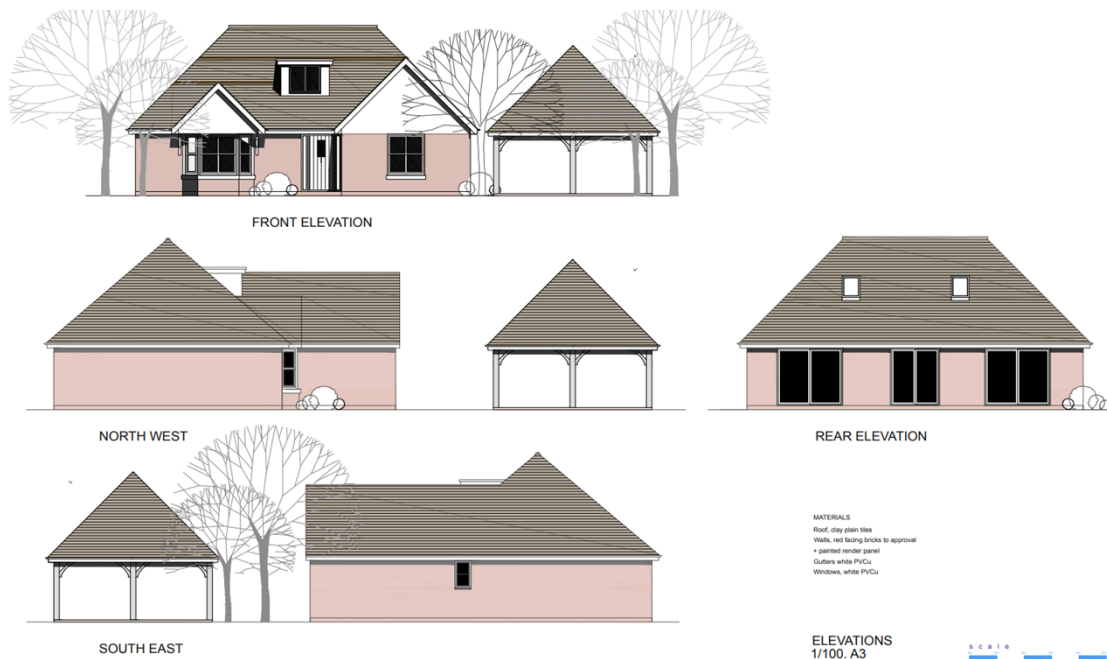


Figure 4 Elevations

2. Main Issues

2.1 The main issues for consideration are:

- Planning history & principle of the development

- Impact on the character and appearance of the area and AONB
- Impact on residential amenity
- Highway & Parking matters
- Impact on Trees & Ecology

Assessment

Planning History

- 2.2 It is necessary to have regard to the lengthy planning history associated with this piece of land, that is relevant to the determination of the current application. In summary, the planning records indicate that the principle of residential development on this land has consistently been resisted over the years as it has been found to be contrary to the national and local planning policies in place when the various applications were received. Whilst adopted local and national planning policies have evolved over time, the reasons for refusal in the cases outlined above have related to the following three main areas:- a)The site lies outside settlement confines and represents an undesirable form of development in the countryside, b) the narrow approach roads would be unacceptable for increased vehicle traffic generated by the proposal and c) the development would be contrary to the interests of sustainability. Several appeals were submitted following these refusals, all of which were dismissed. The appeal Inspectors have identified that the main issues were the effect of the proposal on the character and appearance of the area, the impact on local highway conditions and the aim to reduce the need to travel in the interests of sustainable development.
- 2.3 It was noted that Ewell Minnis forms a loose cluster of dwellings around a crossroads in a predominantly rural area. Inspectors noted that the site falls within the countryside and whilst there are dwellings on either side of the application site, they do not form a substantially built up road frontage and that it would not be appropriate to treat the site as an infill. It was considered that the erection of a new dwelling at the site would consolidate a loose cluster of dwellings in an area of the countryside that has special landscape quality. Such development was considered harmful by the Inspectors, having regard to the rural character and appearance of the area, detracting from its natural beauty and in conflict with development plan policies for the protection of the countryside and AONB.
- 2.4 In addition to visual harm to the character of the area the Inspector noted that the application site was served by narrow rural lanes, generally single track in width and often with reduced visibility. One additional dwelling was considered to have a harmful effect on local highway conditions by generating more traffic on these lanes. The Inspector also concluded that development that would generate travel would not generally be permitted outside of settlement confines. At appeal the conclusion has consistently been that the erection of a permanent dwelling would be in conflict with the adopted policies of their time and all appeals were dismissed.

Principle of Development

- 2.5 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 2.6 Ewell Minnis is a hamlet as identified in policy CP1 without defined settlement confines and therefore for the purposes of planning falls within the countryside. Policy DM1 of the Core Strategy seeks to control development outside of the

settlements unless justified by other planning policies, it functionally requires such a location or it is ancillary to existing development. No information has been provided in connection with the application to support these exceptions.

- 2.7 The proposed development involves the introduction of a stand alone new dwelling into the countryside, outside of any settlement confines that does not functionally require a rural location. There do not appear to be any compelling reasons for introducing a dwelling to this location and the proposal would represent a departure from policy DM1. It is noted that policy DM1 is in some tension with the aims of the NPPF and as a result should hold less weight, whilst having regard to all other material considerations, as outlined below.
- 2.8 It is recognised that draft policy SP3 aims to provide for housing growth but that this will be met through a combination of committed or allocated sites and suitable windfall proposals. Draft policy SP4 concerning residential windfall sites is not considered to provide any support for this proposal as the site does not lie adjacent to any settlement confines identified under this policy.
- 2.9 The introduction of a dwelling onto this land would make a minor contribution towards housing provision in the district. The Council however currently has a housing land supply of 6.03 years and therefore there is no justification in terms of housing provision policies to support the application. The proposal is therefore not in accordance with the aims of either policy DM1 or draft policies SP3 or SP4 and the principle of residential development is unacceptable having regard to the current policy context.

Character and Appearance (including AONB)

- 2.10 The statutory duty prescribed by Section 85 of the Countryside and Rights of Way Act 2000 needs to be fully recognised. This requires that in exercising or performing any functions in relation to, or so as to affect, land in an AONB, a relevant authority shall have regard to the purpose of conserving or enhancing the natural beauty of the AONB. The NPPF states that planning decisions should ensure that developments 'will function well and add to the overall quality of the area', be 'visually attractive as a result of good architecture, layout and appropriate and effective landscaping', be 'sympathetic to local character and history' and 'establish or maintain a strong sense of place' (paragraph 130). Paragraph 174 of the NPPF requires that planning decisions should contribute to and enhance the natural and local environment by (inter alia) protecting and enhancing valued landscapes.
- 2.11 In this case, the application site is located within the Kent Downs AONB, which the NPPF (para 176) identifies as having the highest status of protection with 'great weight' required to be given to conserving and enhancing the landscape and scenic beauty of these areas. The application is also considered in relation to policies DM15, DM16 and draft policy NE2.
- 2.12 Policy DM15 requires that applications which result in the loss of countryside, or adversely affect the character or appearance of the countryside, will only be permitted if it meets one of the exceptions. These include being in accordance with Development Plan Documents, justified by the needs of agriculture, to sustain the rural economy or community, it cannot be accommodated elsewhere and does not result in the loss of ecological habitats. Policy DM16 states that development that would harm the character of the landscape, as identified through the process of landscape character assessment will only be permitted if:

- i) It is in accordance with allocations made in Development Plan Documents and incorporates any necessary avoidance and mitigation measures; or
- ii) It can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impacts to an acceptable level.

Draft policy NE2 states that proposals within the AONB must have regard to the purpose of conserving and enhancing the natural beauty of the Kent Downs AONB.

- 2.13 With the above in mind and the previously identified concerns about developing this site for residential purposes it is necessary to consider whether there remain concerns about the visual impact of the current proposal on the character of the AONB.
- 2.14 The drawings show a dwelling of reasonable overall design in terms of its architectural style and proportions, but it is also necessary to consider the impact of the proposal in the context of the site rather than as a stand alone feature. The introduction of built form comprising a chalet property and detached double car port building together with the formation of a new vehicle access and associated hard surfacing for vehicle turning space would undoubtedly have an impact through the domestication of the site. The rural character of the site which provides an open break between houses would be lost and the special landscape qualities of the AONB would be eroded, to the detriment of the visual amenities of the locality and contrary to draft policy NE2 and relevant paragraphs of the NPPF. The proposals may also lead to pressure for the removal of mature trees at the site, although it has not been possible to make an accurate assessment of this matter in the absence of a tree survey.
- 2.15 The clearing of this rural site to create a residential plot would mean that harm to the landscape character could not be avoided. There would be some erosion of the visual qualities of this location due to the introduction of a three bedroomed home, garage and domestication of the site with the laying of hard surfacing and removal of part of the frontage to create a vehicle access with satisfactory visibility splays. It is considered that the development would not meet the exceptions listed in Policy DM15 and would result in some erosion of the countryside. Together the combination of the works are considered to be harmful to the landscape character and contrary to policy DM16.
- 2.16 All of the identified works would combine to significantly alter the form of the site and would erode the rural unharmed character of the land, harmful to the open and undeveloped qualities of the landscape in this locality in the AONB. The associated activities, garden paraphernalia and vehicle movements that would result from constructing a home in this location would also alter the rural character and appearance of the site, contrary to policy SD 8 of the Kent Down's AONB Management Plan (Second Revision). The proposal would not maintain the areas prevailing character and setting and would be contrary to paragraphs 174 and 176 of the NPPF.

Residential Amenity

- 2.17 Paragraph 130 (f) of the NPPF sets out planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. The proposed dwelling would be situated a satisfactory distance away from the neighbouring properties and would only incorporate clear glazed windows in the front and rear elevations. As a result, the proposal should not result in unacceptable

loss of light, sense of enclosure or overlooking as to justify a reason for refusal. Impacts on residential amenity did not give rise to the refusal of previous applications.

Highways

- 2.18 The application has been considered in relation to policies DM11, DM13 and draft policies TI1 and TI3. Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 2.19 Ewell Minnis is a small hamlet without key local facilities or services, is accessible only via narrow rural lanes which lack footpaths and is located away from any bus routes. This site in the countryside is not considered to be as sustainable as those within or adjacent to the confines of existing settlements, where there is access to public transport and local facilities. The site is a significant distance away from the nearest settlements offering day to day facilities and services, would not be served by regular public transport services and is not well serviced by hard surfaced footpaths or cycle paths. Whilst there are some streetlights, the routes to and from services are not fully lit such that walking or cycling would be supported. The occupants of a dwelling in this location would most likely be dependent on a car to get around and reach shops and services in larger settlements as there are no nearby amenities. As outlined above and in terms of policy DM11 and draft policy TI1, this location is considered to be unsustainable for a new dwelling.
- 2.20 The submitted drawing shows sufficient parking and manoeuvring space within the site for vehicles to enter and leave in a forward direction. Visibility splays have not been highlighted but would need to be to acceptable standards, possibly involving some removal of the front hedge that currently exists at the site. In general, the proposal appears in accordance with policy DM13 and draft policy TI3 with regard to off street parking provision.

Impact on Trees and Ecology

- 2.21 Under the Natural Environment and Rural Communities Act (2006), "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity". In order to comply with this 'Biodiversity Duty', planning decisions must ensure that they adequately consider the potential ecological impacts of a proposed development.
- 2.22 The Framework states that "the planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and delivering net gains in biodiversity where possible." Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System states that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision."
- 2.23 The application was submitted without a tree or preliminary ecology survey both of which are considered necessary given that this is an undeveloped site in the countryside and may contain certain habitats or species of note. These surveys

were requested from the applicants' agent but have not come forward and as a result it has not been possible to make a full assessment of the proposal on these aspects. In particular there is concern about the impact of the siting of the proposed garage on mature trees that are established along the boundary with Southbank.

- 2.24 In the absence of a preliminary ecological appraisal, the application has failed to demonstrate whether protected species are likely present or absent. Planning Practice Guidance states "An ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate". In the absence of a survey, it cannot be established whether the development would have an impact on protected species or their habitats (and consequently whether significant harm can be avoided, mitigated or compensated for), contrary to the Wildlife and Countryside Act 1981, as amended, and paragraphs 174 and 180.
- 2.25 There is also a need to consider the likely significant effects on European Sites and the potential disturbance of birds due to increased recreational activity at Sandwich Bay and Pegwell Bay. The Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy as set out in the emerging Local Plan, sets out the best current scientific evidence for impacts and how these impacts can be avoided or mitigated. The strategy requires that developments within 9km of the SPA could have an impact on the area and will need to mitigate their impacts. This site lies outside of the 9km Zone of Influence and would not, therefore, have a likely significant effect on SPA.

Tilted Balance

- 2.26 For the above reasons the development is contrary to policies DM1, DM11, DM15 and DM16 of the Core Strategy. Whilst the development is contrary to these policies and notwithstanding the primacy of the development plan, paragraph 11 of the NPPF states that where the policies which are most important for determining the application are out of date (including where the LPA cannot demonstrate a five year housing land supply) permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (known as the 'tilted balance') or where specific policies in the NPPF indicate that development should be restricted. However, the 'tilted balance' is specifically disapplied where a developments impact on the AONB would warrant refusal (paragraph 11 (d) (i)). Consequently, in this case, a traditional or flat balance should be applied in this instance and not the 'tilted balance'.
- 2.27 Having regard to the most recent Annual Monitoring Report the Council are currently able to demonstrate a 6.03 years of housing land supply and has not failed the housing delivery test by more than 25% (achieving a score of 88%). It is, however, necessary to consider whether the "most important policies for determining the application" outlined above are out of date. As a matter of judgement it is considered that policy DM1 is in tension with the NPPF, is out-of-date and, as a result should carry only limited weight.
- 2.28 Policy DM11 seeks to locate travel generating development within settlement confines and restrict development that would generate high levels of travel outside confines. The blanket approach to resist development which is outside of the settlement confines does not reflect the NPPF, albeit the NPPF aims to actively manage patterns of growth to support the promotion of sustainable transport. Given the particular characteristics of this application and this site, it is considered that the

use of the site as proposed would weigh against the sustainable travel objectives of the NPPF. Whilst the blanket restriction of DM11 renders the policy out-of-date it can be afforded some weight, having regard to the degree of compliance with NPPF objectives in the circumstances presented by this application. It is also noted that the topics of sustainable transport and travel are continued in draft policy TI1 which now holds some weight.

- 2.29 The aims of policy DM15 to resist the loss of the countryside or development that would harm the countryside is more stringent than the NPPF which focuses on giving weight to the intrinsic beauty of the countryside and managing the location of development. There is some tension between this policy and the NPPF. In this instance the sites appearance within the countryside does afford a contribution to the character of the landscape. Consequently, it is concluded that policy DM15 should attract moderate weight. The significance of conserving or enhancing the natural beauty of the AONB landscape is recognised in draft policy NE2 and now holds some weight.
- 2.30 Consequently, whilst the most important policies are 'out of date', the 'tilted balance' is not applicable in this instance due to the developments conflict with the need to conserve and enhance the landscape and scenic beauty within the AONB.

3. Conclusion

- 3.1 The application proposes the introduction of a chalet property and carport building onto land that falls outside settlement confines and within the countryside. The principle of such development has been attempted several times over the years, each time resulting in applications being refused for the reasons outlined above. The principle of residential development at the site has been tested several times through the appeal process and has been supported by Planning Inspectors.
- 3.2 The current application has been considered in relation to the adopted Core Strategy, the draft Local Plan policies and the NPPF, whilst having regard to the planning history. Despite changes to adopted policy documents several Core Strategy policies continue to hold degrees of weight in the consideration and as supported by emerging policies.
- 3.3 The introduction of a dwelling in this location which is considered to be in the countryside for planning purposes, would be contrary to the objectives of policy DM1 which encourages development within the confines of settlements and policy DM11 which resists unsustainable forms of development. It would also be in conflict with the approach in the NPPF which seeks to locate development where it has access to and can support local services. The construction of a dwelling in this location would be detrimental to the rural character of Newcastle Lane at this point and the character of the landscape setting as part of the Kent Downs AONB, contrary to policy DM15 and draft Local Plan policy NE2 in addition to paragraphs 174 and 176 of the NPPF. Further reasons for refusal relate to the lack of necessary supporting assessments of the impact on trees and potential biodiversity matters at the site.
- 3.4 Overall, the proposal is not consistent with the aims and objectives of the above policy context and the NPPF. In reaching this conclusion, regard has been had to the purpose of conserving or enhancing the natural beauty of the AONB, which has been afforded great weight. Notwithstanding the application is a flat planning balance, the adverse impacts identified would significantly and demonstrably outweigh the benefits of one extra dwelling in the housing supply in the district.

Accordingly, it is considered that this application is unacceptable, and as such it is recommended that planning permission be refused.

g) Recommendation

I PLANNING PERMISSION BE REFUSED, for the following reasons:

1. The proposed development, if permitted, would result in a dwellinghouse outside of any defined urban or village confines and in a location where travel for day-to-day needs would be reliant on the use of the car, the need for which has not been demonstrated sufficiently to override normal sustainability objectives. The proposal would result in an unsustainable and unjustified residential development in this rural location, which would be contrary to policies DM1 and DM11 of the Dover District Council Core Strategy and draft Dover District Local Plan policies SP3 and TI1 and paragraphs 7, 8, 11 and 80 of the National Planning Policy Framework.
 2. The introduction of a dwelling and associated works onto this undeveloped site would be out of keeping with the rural character of the area. The proposal would neither conserve nor enhance the landscape and scenic beauty of the Area of Outstanding Natural Beauty, contrary to Policies DM15 and DM16 of the Core Strategy, draft Dover District Local Plan policy NE2 and paragraphs 174 and 176 of the National Planning Policy Framework.
 3. The narrow and undulating nature of the approach roads leading to the site, which lack footpaths or consistent lighting, are unsuitable for serving the increase in vehicular, bicycle and pedestrian traffic likely to be generated by the proposed development which would be prejudicial to sustainable transport objectives and highway safety, contrary to Core Strategy policy DM11, draft Dover District Local Plan policy TI1 and paragraphs 104, 105, 110, 111 and 112 of the NPPF.
 4. The application has not been supported by a Preliminary Ecological Appraisal or species specific surveys to demonstrate whether protected species are present on the site. In the absence of evidence to the contrary, the proposal has failed to fully consider the impact of the proposal on protected species and demonstrate that this site would protect, enhance and minimise impacts to biodiversity contrary to paragraphs 174 and 180 of the National Planning Policy Framework (2021) and paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System.
 5. The application has not been supported by a Tree Survey. In the absence of evidence to the contrary, the proposal has failed to fully consider the impact of the proposal on trees present at the site and demonstrate that this site would protect, enhance and minimise impacts on trees, contrary to Core Strategy policies DM15 and DM16, draft Dover District Local Plan policy CC8 and paragraphs 113 and 174 of the NPPF.
- II Powers to be delegated to the Head of Planning and Development to settle any necessary reasons for refusal in line with the issues set out in the recommendation and as resolved by the Planning Committee.

Case Officer
Hilary Johnson