

- a) **DOV/22/01666 – Erection of 3 dwellinghouses with associated access, landscaping and parking (outbuildings to be demolished) - Ashen Tree House, Ashen Tree Lane, Dover**

Reason for report – Number of contrary views (26 objections)

- b) **Summary of Recommendation**

Planning permission be granted

- c) **Planning Policy and Guidance**

Core Strategy Policies (2010): CP1, DM1, DM11, DM15, DM16, DM27

National Planning Policy Framework (NPPF) (2021): Paragraphs 2, 7, 8, 11, 38, 47, 48, 60 – 62, 86, 79, 110 - 112, 120, 123, 130 - 135, 167, 168, 174, 180, 194-207

National Planning Practice Guidance & Kent Design Guide

National Design Guide & National Model Design Code (2021)

Planning (Listed Buildings and Conservation Areas) Act 1990

SPG4 Kent Vehicle Parking Standards

Draft Dover District Local Plan (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, SP4, SP13, SP14, SP15, CC1, CC2, CC4, CC5, CC6, CC8, PM1, PM2, H1, TI1, TI3, NE1, NE4, NE5, HE1, HE2, HE3

- d) **Relevant Planning History**

Various applications including:

DOV/95/01008 – Change of use to non-residential institution (class D1) – Raise no objection

DOV/97/00316 – Erection of rear two storey extension – Granted

DOV/18/01378 – Change of use to a single dwelling, rear first floor extension together with building alterations and conservation works – Granted

DOV/20/00692 – Erection of 2 no. detached dwellings with associated landscaping, bin/cycle stores and associated parking (3 no. outbuildings, concrete hardstanding and timber shed to be demolished) (amended details) – Refused

DOV/21/00357 – Erection of single storey side extension for mixed residential/commercial office use and additional section to top of existing brick boundary wall – Granted

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

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

Dover Town Council – Support

KCC Highways and Transportation –this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements (an informative is suggested).

Heritage Team - Drafting error - 221017-P-001 REV A received 17/03/23 - The rear north east elevation does not illustrate the proposed chimneys. Other than the drafting error the detail design issues appear to have been addressed. The development is considered to be an appropriate response to this particular site and area which has very limited modern development and a significant number of historic buildings.

It is important that the construction is carried out to the highest quality. I therefore recommend the following details are conditioned:

- Joinery detail sections at full/half size
- 1:10 scale drawings illustrating proposed eaves and ridge detailing
- Material samples
- Details of mechanical ventilation or flues to be installed including location, dimensions, colour and material

KCC County Archaeology – From an archaeological perspective the impacts of the scheme remain broadly similar, therefore could you carry my previous comments and recommended condition over to this new application. Previously advised: The proposed development site lies on the north-eastern side of the Dour Valley, on the lower slopes of Castle Hill, directly below Dover Castle. The site occupies a strip of land between Ashen Tree Lane and Laureston Place, the latter road being a route of some significance, following as it does the line of the main medieval route between the castle and the medieval town. This road descended Castle Hill passing the Norman church of St James, and then via St James’s Street (now occupied by the St James development) to a crossing over the Dour and thence to the core of the medieval town. The site lies in an area that was historically known as ‘Upmarket’, being the site of an out-of-town market alongside this busy route and serving the inhabitants of the Castle and St James’s parish. It has long been conjectured that this area, lying as it does close to the castle, but outside the urban core of medieval Dover may also have been periodically occupied by the large itinerant workforce that would have gathered at Dover Castle during phases of major building work. Previous archaeological investigations by the Canterbury Archaeological Trust immediately to the north have revealed archaeological features of medieval date. Here a ditch, and shallow-cut terraces along with pits were identified ahead of the construction of an extension to St Mary’s Primary School. Dating from the pits suggest that these were filled during the late twelfth or early thirteenth century. The finds from these pits suggest some form of occupation here in the medieval period, beyond just a temporary marketplace. It is possible that further archaeological evidence for medieval activity, potentially including former buildings may be present. Recommends a condition is imposed for a programme of archaeological work in accordance with a written specification and timetable.

Southern Water – requires a formal application for a connection to the public foul sewer to be made by the applicant or developer (contact details advising on this

process to be included as an informative if permission is granted). The Councils building control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development. It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

Kent Fire and Rescue Service - no response received.
Tree and Horticulture Officer - no response received.
Waste Officer - no response received.
Environmental Protection – have no observations on this application.

Third Party Representations:

26 letters of objection have been received (including from The Castle Conservation Area Group) and are summarised below:

- Scale of development – 2no well designed dwellings with side parking would be more suitable. 3 houses squeezed across the width of the plot, too far back into the plot, overdeveloped, incongruous, too near boundaries of neighbouring listed properties. Similar footprint and fails to address previous reasons for refusal.
- Design – fenestration is heavy and overworked, bricks should be reclaimed and/or combination with flint, sliding sash timber windows, timber doors, recessed brickwork pointing, natural slate roof, more detail to front. Design is of no architectural merit, too imposing, does not create mews effect, takes no note of architectural language present in adjacent listed building, fails to reference structural or architectural details or use materials that would help to maintain visual literacy across conservation area. Would further deplete natural openness area currently has. Dwellings are too high and too far back on the site and too near the boundaries of neighbouring listed buildings
- Impact on conservation area – does not preserve or enhance the area, contrary to draft Policy HE2, appearance of the site has been degraded
- Loss of residential amenity, overbearing and concerns regarding noise from proposed air source heat pumps, too close to boundary wall. Loss of privacy and light to garden. Noise, dust and dirt during construction.
- Wildlife/ecology – site home to newts, bats, endangered species. No ecology or arboricultural impact assessment to address biodiversity loss
- Development not needed due to proximity of empty premises in area
- Errors/omissions – application is incomplete and potentially misleading, not giving sufficient scale or reference points to surrounding properties (particularly levels). Has exposed boundary walls to the risk of collapse. Although retaining walls are proposed to rear of site, there does not appear to be a retaining wall to southeast boundary. Existing walls are significantly higher than proposed houses site and driveway and in part have been undermined during the clearing of the site. If the remaining walls are not buttressed or supported by retaining walls these will probably collapse into the house at plot 3 and/or onto the proposed driveway. No reference to noise generated by air source heat pumps, noise suppression or re-siting should be included if these exceed normal acceptable levels. Limited information on Policy in design and access statement. Contrary to NPPF Paragraphs 119, 206 and section 12. Boundary lines of site and neighbouring property are incorrect based on land registry data.
- Parking/traffic/highways safety

3 letters of support has been received (including from The Dover Society) and are summarised below:

- Succession of planning application for this site but new application is for much reduced scale of development
- Site lies within Dover Castle Conservation Area and sits within area close to listed buildings in Castle Street and Laureston Place
- Design using yellow stock bricks, slate roof and timber framed sash windows is in keeping with the locality
- Land is basically waste land in need of use.
- Cannot see any issues with privacy or boundaries, most practical design submitted so far, will enhance the area

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

1.1 The site relates to land to the northeast side of Ashen Tree Lane, to the rear (northeast) of Ashen Tree House; a detached two storey property constructed from brick and flint with a slate roof and white painted timber framed sash windows. The site is within the settlement confines, in Dover Castle Conservation Area and is in proximity to a number of Listed Buildings to the north (at higher ground level on Laureston Place), southwest (1, 3 & 5 Castle Street) and southeast (4 & 6 Castle Hill Road).

1.2 The proposals are to demolish the existing outbuildings and to erect a terrace of three dwellinghouses, with associated access (from Ashen Tree Lane), parking and landscaping (shown in Figure 2). The dwellings would be built into the slope of the site, containing a bedroom, ensuite, utility and cycle store at ground floor level. At first floor level, there would be a further bedroom, bathroom and lounge/kitchen/finer providing access to the gardens to the rear (northeast – at a higher ground level). Each dwelling would be provided with one parking space and a visitor space would also serve the development. The properties would be finished in London yellow stock brickwork with reconstituted stone cills, white double glazed sash style timber windows and a slate roof (shown in figure 1).



Figure 1. Proposed south west (front) elevation

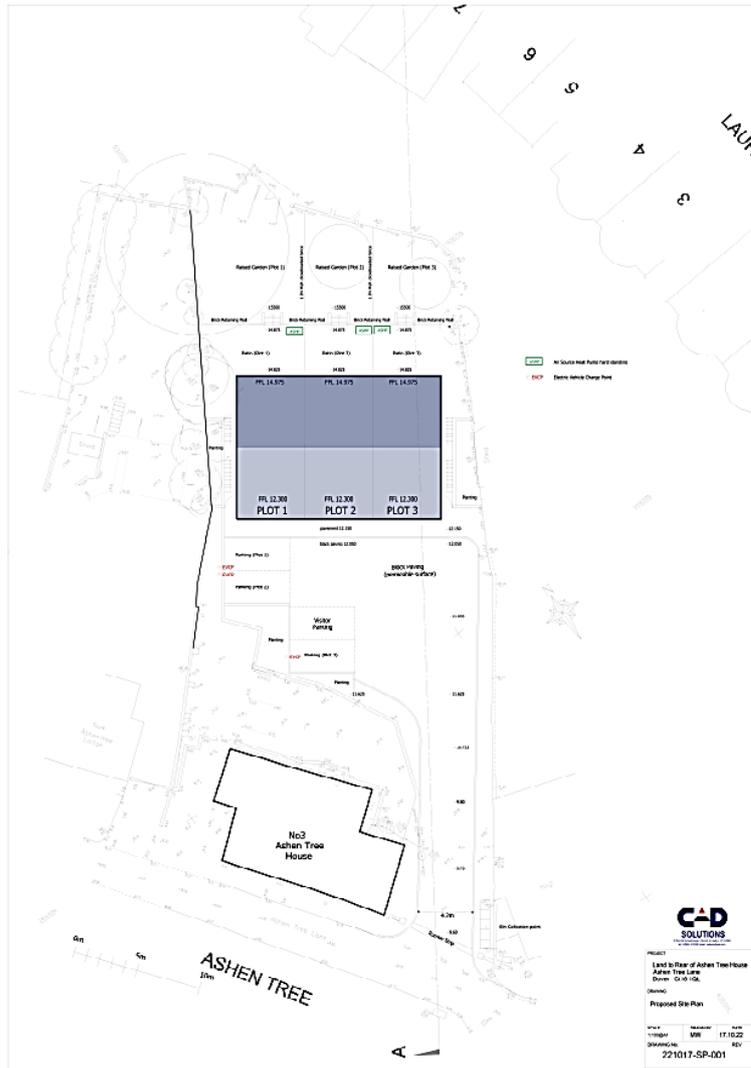


Figure 2. Proposed Block Plan

2. Main Issues

2.1 The main issues for consideration are:

- The principle of the development
- Impact on visual amenity
- Impact on heritage assets
- The impact on residential amenity
- Other material considerations

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.

- 2.3 Policy DM1 states that development will not be permitted outside of the settlement boundaries, unless it is justified by another development plan policy, functionally requires a rural location or is ancillary to existing development or uses. The site is located within the settlement confines and as such, the proposed residential development would accord with DM1.
- 2.4 The NPPF advises, at paragraph 11, that proposals that accord with an up-to-date development plan should be approved without delay. An assessment of the most important policies for the determination of the application must be undertaken to establish whether the 'basket' of these policies is, as a matter of judgement, out-of-date. Additionally, criteria for assessing whether the development plan is out-of-date are explained at footnote 7 of the NPPF. This definition includes: where the council are unable to demonstrate a five-year housing land supply; or, where the council has delivered less than 75% of the housing requirement over the previous three years (the Housing Delivery Test). The Council are currently able to demonstrate a five-year supply and have delivered 88% of the required housing as measured against the housing delivery target; above the 75% figure which would trigger the tilted balance to be applied. It is, however, necessary to consider whether the 'most important policies for determining the application' are out of date.
- 2.5 Policy DM1 and the settlement confines referred to within the policy were devised with the purpose of delivering 505 dwellings per annum in conjunction with other policies for the supply of housing in the Council's 2010 Adopted Core Strategy. In accordance with the Government's standardised methodology for calculating the need for housing, the council must now deliver a greater number of dwellings per annum. 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 of this, should carry only limited weight.
- 2.6 The Draft Local Plan was submitted for examination in March 2023 and its policies are considered to be material to the determination of applications, with the weight attributed to the policies dependant on their compliance with the NPPF. Draft Policy SP1 of the Submission Draft Dover District Local Plan seeks to ensure development mitigates climate change by reducing the need to travel and Draft Policy SP2 seeks to ensure new development is well served by facilities and services and create opportunities for active travel. Draft Policy TI1 requires opportunities for sustainable transport modes to be maximised and that development is readily accessible by sustainable transport modes.
- 2.7 Draft Local Plan Policy SP4 sets out the appropriate locations for new windfall residential development which seeks to deliver a sustainable pattern of development, including within the rural area where opportunities for growth at villages (in line with Paragraph 79 of the NPPF) are confirmed. The policy is underpinned by an up-to-date evidence base of services and amenities at existing settlements and takes account of the housing need across the district. The site is located within the draft settlement confines and would accord with SP4.
- 2.8 It is considered that policy DM1 is in tension with the NPPF, although for the reasons given above some weight can still be applied to specific issues it seeks to address, having regard to the particular circumstances of the application and the degree of compliance with NPPF objectives, in this context. The development would also accord with the objectives of draft Policy SP4, which is considered to attract moderate weight in the planning balance, being devised on the basis of current housing targets and the NPPF. Notwithstanding this, Policy DM1 is particularly critical in determining whether the principle of the development is acceptable and is considered to be out-of-date, and as such, the tilted balance approach of Paragraph 11 of the NPPF is

engaged. An assessment as to whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits (and whether this represents a material consideration which indicates that permission should be granted) will be made at the end of this report.

Impact on Visual Amenity

- 2.9 The proposals would result in the removal of the existing gated access to the site, which would be opened-up and would lead to the landscaped parking area and proposed dwellings. The dwellings would sit at a higher ground level than the highway and although positioned to the rear of the existing two storey Ashen Tree House, would be visible from the public highway to the south. The pattern of development, being set back from the road behind the existing development, would be contrary to the road fronting development in the area, albeit the wider area displays an irregular pattern of development. However, the development would not be prominent in views and, as a result of the simple design of the dwellings featuring timber sash windows and materials which are considered to be in keeping with the existing material palette of the area, the proposals are considered to preserve the character and appearance of the street scene, in accordance with the objectives of NPPF Paragraph 130 and draft Policy PM1.

Impact on Heritage Assets

- 2.10 The site is located within the Dover Castle Conservation Area and as discussed in Paragraph 1.1, is in close proximity to a number of Grade II Listed Buildings. Chapter 16 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out requirements relating to the assessment of the impact on listed buildings and conservation areas. In respect of Listed Buildings, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. In respect of conservation areas, special attention must be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 199 of the NPPF sets out that great weight should be given to the conservation of heritage assets, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 202 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Paragraph 203 sets out that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application and 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. In addition, Submission draft Local Plan Policy HE1 seeks to conserve or enhance heritage assets and sets out criteria by which development that would cause total loss or substantial harm may be accepted. Draft Policy HE2 seeks for development in conservation areas to preserve or enhance the special architectural or historic character and appearance of the area.
- 2.11 In accordance with NPPF Paragraph 194, heritage is briefly discussed within the design, access and heritage statement. Whilst the conservation area contains a number of listed buildings, due to their location, intervening buildings and separation

distance (as shown in Figure 3) from the proposals, it is not considered the proposed development would result in harm to the significance of their settings; thereby conserving their significance.

2.12 In respect of the impact on the conservation area (CA), the Heritage Team have reviewed the proposals. Following their initial advice, minor amendments were made to the design (particularly in relation to the windows and with the addition of chimneys). They note a drafting error remains (the chimneys are only shown on the front elevation), however consider the detailed design issues appear to have been addressed and that the development is an appropriate response to this particular site and area which has very limited modern development and a significant number of historic buildings. It is important the construction, if approved, is carried out to the highest quality and conditions are suggested requiring the submission of joinery detail sections, scale drawings illustrating the proposed eaves and ridge detailing, samples of external materials and details of mechanical ventilation or flues to be installed. It is also considered necessary to suggest permitted development rights for alterations to the roofs and porches which could affect the character and appearance of the conservation area and that the chimneys are provided prior to the first occupation of the dwellings, to ensure they are completed in the interests of visual amenity. Subject to the imposition of these conditions, it is considered the development would preserve the character and appearance of the conservation area, resulting in no harm to its significance and providing the public benefit of contributing three dwellings in a highly sustainable location towards the five year housing land supply. The proposals are therefore considered to accord with the objectives of NPPF chapter 16, draft Policy HE1 and the Planning (Listed Buildings and Conservation Areas) Act 1990.

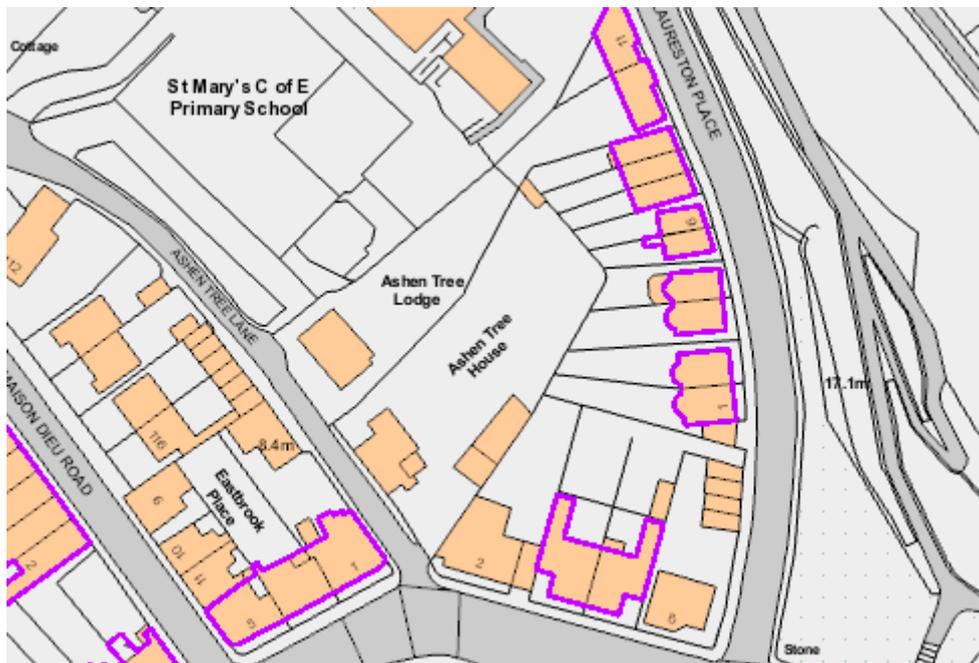


Figure 3. Plan showing location of Listed Buildings (in purple) in the vicinity of the application site (Ashen Tree House)

Impact on Residential Amenity

2.13 The proposed dwellings would be positioned to the rear (northeast) of Ashen Tree House and would be visible from a number of neighbouring properties. Properties to the north and northeast of the site (Laureston Place) are set at a higher ground level, whereas the properties of Castle Hill Road (to the southeast of the site) are set at a

lower ground level, rising towards the east. The row of dwellings has been designed to sit within the slope of the site (see Figure 4), being a single storey when viewed from the rear. Due to the scale of the development, separation distance and design, the proposals are considered unlikely to result in significant harm to the visual amenities of nearby residents in respect of any overbearing impact, and shadow cast from the development would largely fall within the site itself, such that the proposals are not considered to result in unacceptable overshadowing. In respect of privacy, the dwellings would predominantly overlook the proposed car parking area to the southwest, or the proposed gardens to the rear (northeast). Whilst there may be some views towards the rear elevations of Ashen Tree Lodge, Ashen Tree House and No. 2 Castle Hill Road, due to the positioning of the dwellings and distance to neighbouring properties, on balance, the development is considered unlikely to result in significant harm to neighbouring privacy and would accord with the objectives of NPPF Paragraph 130(f) and draft Policies PM1 and PM2. Concerns have been raised in public representations in respect of noise and disturbance from the proposed air source heat pumps; as no details have been provided, it is considered appropriate to suggest a condition is imposed requiring the submission of further details of these.

- 2.14 In respect of the amenities of occupants of the proposed dwellings, each would be provided with private gardens, accessed from the upper floor of the dwellings. The dwellings would contain two bedrooms, with a living/kitchen dining room leading out to the gardens and all habitable rooms would be of a good size and naturally lit and ventilated. Having had regard to the objectives of NPPF Paragraph 130(f) and draft Policy PM2, it is considered the proposals would provide a good standard of amenity for future occupiers.

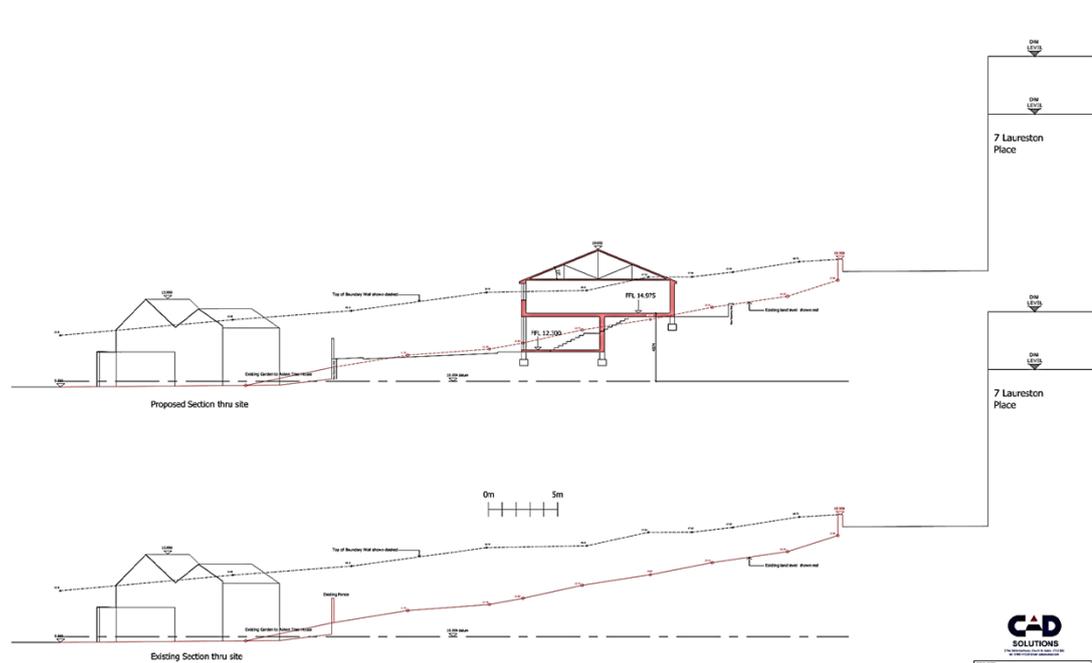


Figure 4. Proposed and existing cross sections through site

Other Material Considerations

Archaeology

- 2.15 The site is located in an area of archaeological potential surrounding Prehistoric, Roman, Medieval and Post Medieval occupation, town, port, harbour and fortress. KCC County Archaeology has been consulted, requesting their previous advice for

development at the site is followed. As it is possible that the groundworks for the development may impact remains of archaeological interest, a condition for a programme of archaeological works is recommended. Subject to the imposition of this condition, the development is considered to be acceptable, having had regard to the objectives of draft Policy HE3.

Parking

- 2.16 Vehicular access to the site would be achieved from Ashen Tree Lane and each dwelling would be provided with one parking space (with an EV charging point). In addition, one visitor parking space would be provided within the site, which would accord with the parking provision requirements of Policy DM13 and draft Policy TI3. The site is in a sustainable location, within walking distance of the town centre and associated facilities and services, as well as public transport, weighing in favour of the development. Bicycle storage would be provided within the ground floor level of each of the dwellings.

Previous Planning Application

- 2.17 Whilst each application is assessed on its own merits, it is noted from the planning history that permission for two detached dwellings at the site was previously refused. Under DOV/20/00692, permission was sought for two, two-storey, four-bedroom detached dwellings with gardens to the rear (north). The dwellings were refused for two reasons;
1. The proposal, by reason of the scale, layout, design, amount of hard standing and due to the topography of the site, would appear as a dominant and incongruous form of development which would not be visually attractive and would fail to add to the overall quality of the area. The proposal would therefore fail to preserve or enhance the character of the conservation area and setting of the nearby listed buildings and would be contrary to paragraph 130, 197 and 206 of the National Planning Policy Framework.
 2. The proposal, by reason of the scale, design and proximity to the shared boundaries, would constitute a significantly dominant and overbearing form of development and would result in an adverse loss of privacy from the first-floor rear windows. The proposal would therefore result in a significant adverse loss of amenity to the detriment of the adjacent residential properties contrary to paragraph 130(f) of the National Planning Policy Framework.
- 2.18 For the reasons set out in the above report, the terrace of dwellings sought under the current application (DOV/22/01666) are considered to be of a suitable scale, layout, design and orientation such that they would preserve the character and appearance of the street scene, conservation area and setting of listed buildings and would not result in significant harm to neighbouring residential amenity, sufficiently addressing the previous reasons for refusal.

Impact on Flood Risk/Drainage

- 2.19 The site is located in flood zone 1 which has the lowest risk from flooding and as such, the sequential and exceptions test are not required. Furthermore, due to the size of the site, a flood risk assessment is not required. The application form states that surface water would be disposed of to a soakaway and foul sewage would be disposed to the main sewer. No objections have been raised by Southern Water, however if permission is granted, their advice would be included as an informative.

Planning Balance

- 2.20 The principle of the development accords with Policies CP1 and DM1 (and draft Policy SP4). It is acknowledged that some of the key (adopted) policies in the determination of the application are out of date and hold reduced weight and as such, the tilted balance approach set out in Paragraph 11 of the NPPF is engaged. In such circumstances, permission must be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 2.21 Policies CP1 and DM1 carry limited weight, however draft Policy SP4 carries moderate weight in favour of the proposals. The impact on visual amenity, on the character and appearance of the conservation area and setting of listed buildings, on residential amenity and in respect of other material considerations has been discussed above and is considered to be acceptable, weighing in favour of the proposals. Overall, it is considered that the disbenefits of the scheme do not significantly and demonstrably outweigh the benefits, with material considerations indicating that permission should be granted, subject to relevant conditions.

3. Conclusion

- 3.1 As outlined above, the site lies within the settlement confines identified in Policies CP1 and DM1, as well as the draft settlement confines identified in SP4 and is considered to be acceptable in principle. The tilted balance approach set out at Paragraph 11 of the NPPF is considered to be engaged as the Policies most important for determining the application are out-of-date and in conflict to a greater or lesser extent with the NPPF. The design of the proposals is considered to preserve the character and appearance of the conservation area, as well as the significance of the setting of nearby listed buildings, in accordance with the objectives of Chapter 16 of the NPPF, draft Policies SP15, HE1 and HE2 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposals would result in the public benefit of providing three new dwellings in a sustainable location, contributing towards the five year housing land supply. The impact on residential amenity and other material considerations has been addressed and subject to the imposition of the suggested conditions, is considered to be acceptable, addressing the previous reasons for refusal of development at the site. In light of Paragraph 11 of the NPPF, and in taking into account other material considerations, it is considered that the benefits of the development outweigh the disbenefits and it is recommended that permission be granted.

g) Recommendation

- I PLANNING PERMISSION BE GRANTED subject to the following conditions:
- (1) time condition
 - (2) list of approved plans
 - (3) samples of materials
 - (4) programme of archaeological work
 - (5) provision of parking spaces prior to occupation
 - (6) joinery detail sections, including the depth of reveals (of no less than 100mm)
 - (7) eaves and ridge detailing
 - (8) details of mechanical ventilation and/or flues
 - (9) details of air source heat pumps
 - (10) removal of permitted development rights for Schedule 2, Part 1, Classes B, C and D
 - (11) provision of chimneys prior to first occupation of the development

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

Case Officer

Rachel Morgan

The Human Rights Act (1998) Human rights issues relevant to this application have been taken into account. The Assessment section above and the Recommendation represent an appropriate balance between the interests and rights of the applicant (to enjoy their land subject only to reasonable and proportionate controls by a public authority) and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties).