

- a) **DOV/23/00678 - Creation of 1.5-metre-wide access through boundary wall (Listed Building Consent)**

DOV/23/00679 - Variation of Condition 2 (approved plans) for amendments to DOV/17/00246 relating to pedestrian access and creation of opening in listed wall (Section 73) (Erection of 9 detached dwellings, landscaping, creation of vehicular access and parking) (Variation of Condition)

The Old Rectory, Church Hill, Eythorne

Reason for report – Called in by Cllr. David Beaney (23/00679). The reasons given are highways impact.

- b) **Summary of Recommendation**

Grant planning permission and listed building consent.

- c) **Planning Policy and Guidance**

Core Strategy Policies (2010): CP1, CP6, CP7, DM1, DM11, DM13, DM15, DM16

Land Allocations Local Plan (LALP): DM27, LA36

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.

Draft policies SP1, SP2, SP4, SP11, SP13, SP14, SP15, CC2, CC4, CC5, CC6, CC8, PM1, PM2, TI1, TI3, TI5, NE1, NE2, HE1, HE2, HE3

National Planning Policy Framework (NPPF) (2023): Paragraphs 7, 8, 11, 12, 47, 48, 55, 56, 57, 60, 96, 108, 114, 115, 116, 123, 124, 128, 135, 136, 139, 140, 162, 180, 186, 200, 201, 203, 208, 209

National Design Guide & National Model Design Code (2021)

- d) **Relevant Planning History**

08/00387 - Erection of two detached dwellinghouses with associated garages (existing dwellinghouse to be demolished) – Refused Planning Permission

13/00033 - Erection of two detached dwellings with associated garages – Granted Planning Permission

17/00246 - Erection of 9no. detached dwellings, landscaping, creation of new vehicular access and parking -Granted Planning Permission

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

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

Eythorne Parish Council- Objects for the following reasons:

- The residents of Rectory Bungalows will not have safe pedestrian access from their properties onto Church Hill.
- For the residents of Rectory Bungalows one of whom is disabled - parking arrangements for these properties are not shown on any of the plans. This needs to be addressed before any further development.
- Effect on listed building and conservation area. The wall that the developer proposes to make and entrance from the site into Church Hill has listed wall status, which would cause irreparable damage to the wall and the heritage of the Village.
- The visibility splays for vehicles leaving the site would be severely compromised. There is already a problem with speeding traffic in the vicinity and Church Hill already has a narrow single section of road to accommodate only one car at a time.
- Highway safety issues noting that proper traffic calming measures need to be put into place before any further development of the site.

Southern Water – No objection

Southern Gas Networks- No response

KCC Archaeology- No response

KCC Highways – *Initial consultation*: The amended plans appear to retain the on-street parking restrictions as approved within application DOV/17/00246 which will continue to allow two vehicles to pass each other whilst one is waiting to give way at the narrowing and to allow suitable turning and passing room at the location of the site access. However, due to the relocation of the crossing pedestrian visibility splays of 2m x 2m are required for further assessment, there should be no obstruction over 0.6m within these splays and they should fall within land that is under the control of the applicant or KCC. The uncontrolled crossing will also require a stage 1 road safety audit being undertaken at this stage. Therefore, KCC would be grateful if amended plans inclusive of pedestrian visibility splays were submitted by the applicant, in addition to a stage 1 road safety audit so that further assessment may be made.

Second consultation following receipt of amended plans: No objection provided the following requirements are secured by condition or planning obligation:

- Provision and maintenance of the pedestrian visibility splays shown on the submitted plans with no obstructions over 0.6 metres above carriageway level within the splays, prior to the use of the site commencing.
- Prior to the commencement of development submission and approval of detailed designs for the pedestrian crossover as indicatively shown on the submitted plans T-2020-189-SK3 Rev D. No occupation of any dwellings shall take place until these Highways works have been completed in accordance with a Section 278 agreement with the Highway Authority, unless otherwise agreed in writing by the Highway Authority.

Third consultation: An alternative pedestrian access path plan has been submitted however the reason for amending the prior plans are unclear. The alternative path is both narrower and longer, with hard boundaries on either side which may reduce accessibility. It is acknowledged that prior plans indicate the path is on a gradient, this gradient should be confirmed to further assessed the proposed plans. KCC Highways would be grateful therefore if you would forward any amended plans or additional information to me for my further consideration.

KCC Lead Local Flood Authority- The application under the above reference number therefore falls outside the definition of major development and also falls outside of KCC's remit as statutory consultee.

DDC Heritage team – The impact of the proposed works to the boundary wall would lead to less than substantial harm and would be at the lower end of the scale, however, this is subject to details. DDC heritage team have suggested a condition is attached to the listed building consent requiring submission of detailed drawings of new opening and any repairs prior to commencement.

DDC Environmental Health – No comments

DDC Ecology- *“I have reviewed the October 2023 Bat report submitted by the applicant. It is concluded in the report that the wall and ivy do not provide suitable opportunities for bats and as such “There is therefore no impact on bats from the proposed development”. No mitigation measures for bats are therefore required. Nesting birds will need to be taken account of in the timing of vegetation removal. I advise that an informative reminding the applicant of their legal obligation can be attached to the planning permission, if granted.*

The walnut tree, reported to be retained within the scheme, is “considered to be likely to hold roosting bats”. If this tree is not proposed for retention, or if the position changes, there will be a need to secure the submission and implementation of a method statement for the felling of this tree.”

DDC Ecology officer has suggested an informative that vegetation should only be removed outside of the bird nesting season.

DDC Tree officer- Second consultation (revised scheme): *“Whilst I have no objections in principle to the proposed pedestrian access path, I would like to request a 'No dig' Arboricultural Method Statement and Tree Protection Plan to demonstrate how the path is to be constructed within the RPA of T74 and T72 without causing damage to them.*

Third consultation (revised scheme): “The Arboricultural Report, Method Statement & Tree Protection Plan dated 5th December 2023 in respect to those trees to be retained appears satisfactory provided that the recommendations are strictly adhered to. However, the report and associated drawings show that it is proposed to remove the B category Walnut (T74) to allow for the removal of Japanese Knotweed at the site. Without evidence to prove that other methods such as the use of herbicides, burning on site etc., have been considered and ruled out and that the only viable way to remove the Knotweed is by excavating the surrounding area and digging out the roots as well as the Walnut tree, I object to its removal.”

Kent Fire and Rescue- This application relates to conditions that were not requested by KFRS. As it concerns amendments to pedestrian access and the creation of an

opening in a listed wall, it does not alter emergency access requirements for the Fire and Rescue Service.

Kent Police- No response.

Third party Representations:

2 letters of objection have been received as summarised below:

- The creation of a gap would affect the structural stability of the wall. The opening of a part of the wall will seriously damage the listed wall and I expect will lead to a further demolition of the wall as rendered not safe.
- The need for this facility. There is an existing vehicular access into the development site, which will be retained as the future access to the development. Why cannot a pedestrian access be included in this main access?
- Have any investigations and reports been prepared to look at the desire line direction of pedestrians exiting the development? It could be expected that the majority of movement would be to the nearby infants/junior school, Tilmanstone Welfare Club leisure facility or Woodpecker Court grounds rather than to the south towards Upper Eythorne and the village shop and Crown Inn. The latter two facilities would most likely be accessed by car.
- Even if the majority of pedestrians do wish to walk to the south of the development in Church Hill, the proposed revised access arrangements only save a few metres of walking distance but the potential for damage to and loss of the listed wall and mature trees is huge.
- Highway safety. The proposed pedestrian footway along the western side of Church Hill to create a suitable access for pedestrians, will cause a significant and unexpected narrowing for vehicles entering Church Hill from Wigmore Lane, Shepherdswell Road and Shooters Hill. This could lead to vehicle accidents and possible queuing of vehicles out onto the White Horse crossroads.
- The safety of cyclists using Church Hill at the point of the proposed carriageway narrowing, extra over the existing narrowing, will be prejudiced.
- Traffic speeds along this length of Church Hill are often excessive despite the recently installed 20mph speed limit.
- These works will be within the Public Highway and will need to be constructed under a Section 278 Highway Agreement so they will need to be the subject of a full Highway Safety Audit.
- Objection to the proposed opening in the listed wall when previous planning indicated a crossing opposite rectory bungalows for them to safely access their vehicles parked on the new site.

0 letters of support have been received.

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

1.1 The application site is an irregular shaped parcel of land totalling approximately 0.73 hectares, located to the west of Church Hill and to the north of Shepherdswell Road, within the village confines of Eythorne. Eythorne is identified within the Dover Core Strategy as a Village – the tertiary focus for development in the rural area; suitable for a scale of development that would reinforce its role as a provider of services to essentially its home community.

- 1.2 The site is currently undeveloped scrub and grassland and was the garden area associated with the former The Old Rectory. The application site was formerly occupied by The Old Rectory (a Grade II listed building), however following a fire in 2007, the building was de-listed in 2008 and no above-ground traces of the building are apparent. Garden features such as the walls and steps remain on site.
- 1.3 To the northeast the site is bound by Church Hill and the boundary of the site is defined by a red brick wall (Grade II listed and associated with The Old Bakery). The site also falls within close proximity to a number of listed buildings, including The Church of St Peter and St Paul, The Old Bakery and Granary.
- 1.4 The site includes the land allocated under Land Allocations Local Plan policy LA36 as well as land that (whilst within the village confines) does not form part of this allocation.
- 1.5 Pre-commencement conditions under 17/00246 have been approved and the permission has therefore been lawfully commenced on site, with the foundations of one of the garages laid.
- 1.6 The proposal under the S73 application seeks to amend the proposed layout. The proposed variation of condition amendment includes the following:
 - Removal of proposed footpath at the existing vehicle access to the site
 - Relocation of proposed pedestrian crossing approximately 50m to the southeast along Church Hill to previously proposed location.
 - Forming of a 1.5m wide opening in the listed wall adjacent to the proposed pedestrian crossing
 - Creation of a footpath through the site
 - Proposed relocation of 4 no. parking spaces further south within the site
- 1.7 The proposals have been amended during the course of the application, principally with the aim to minimise impact on mature trees on the site covered by a Tree Protection Order (TPO 2008, No. 1).

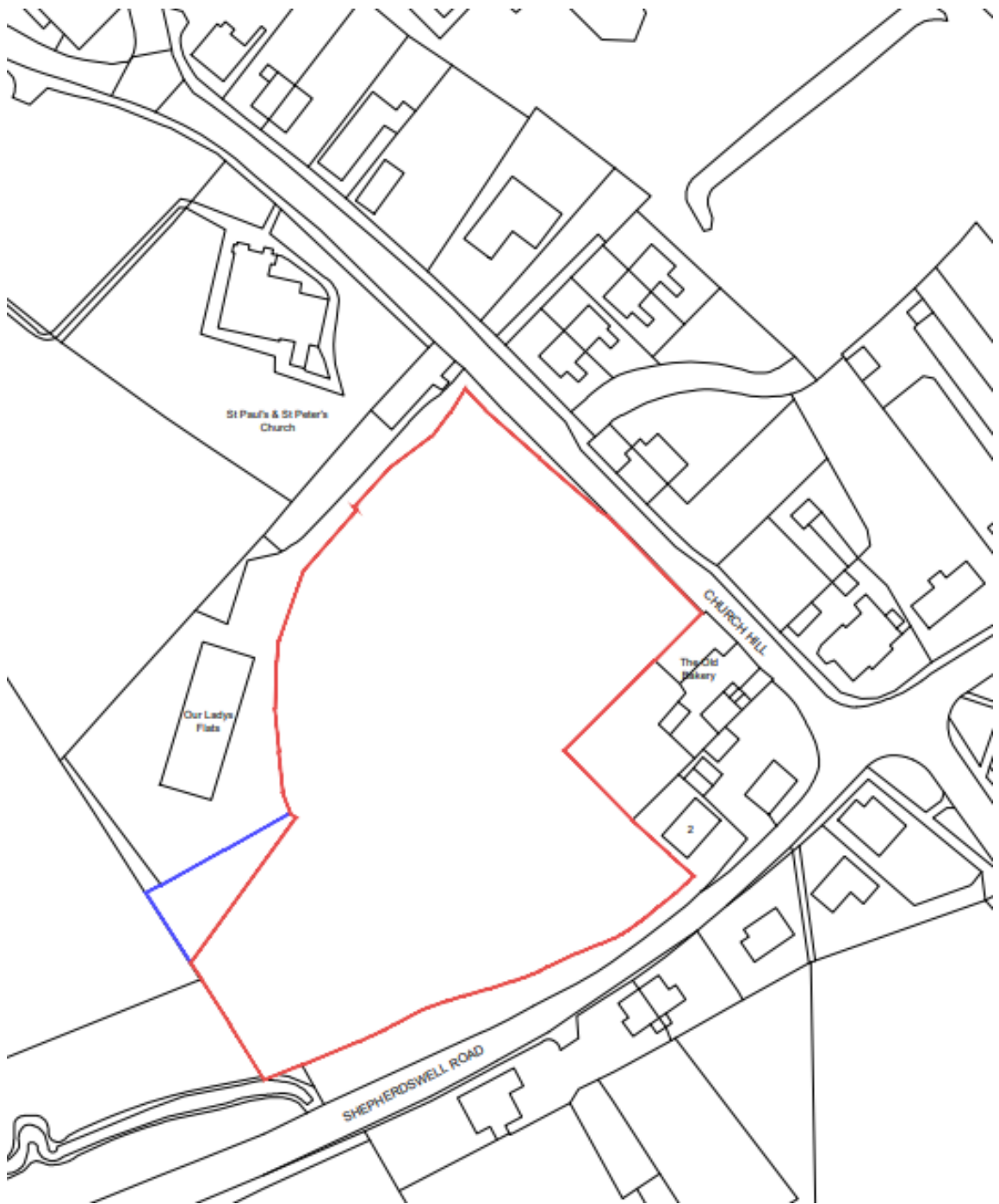


Figure 1: Site location Plan (not to scale)

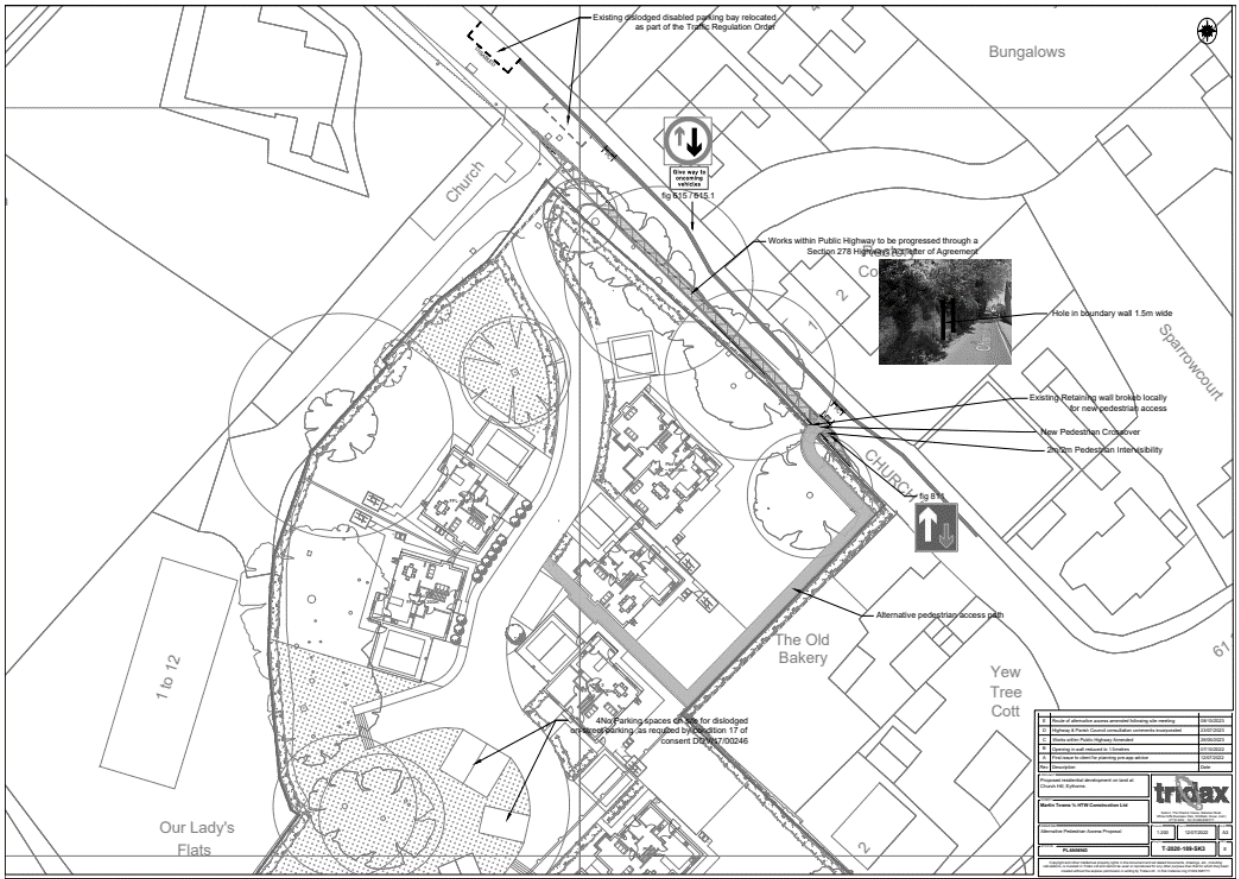


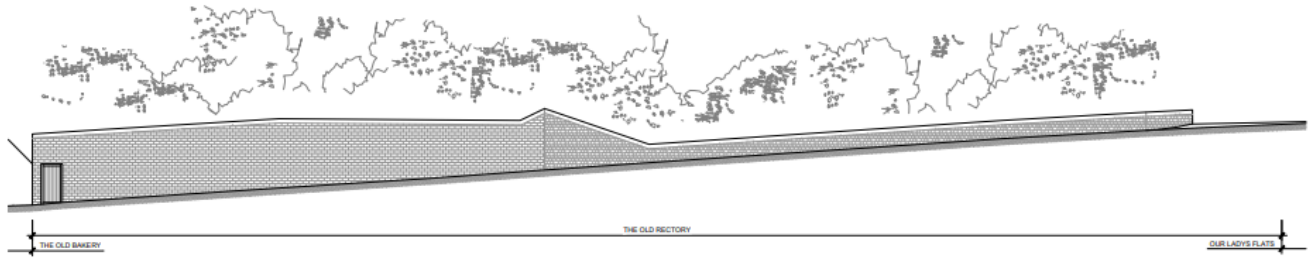
Figure 2: Part site plan, showing off site highway works -revised scheme (not to scale)



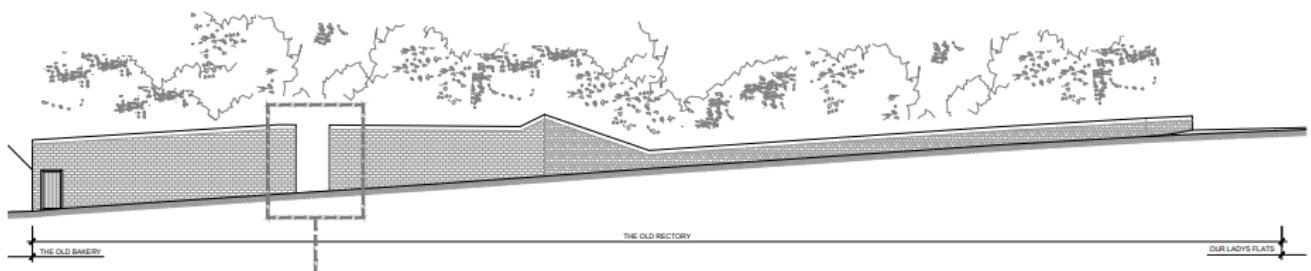
Figure 3: Site plan -revised scheme (not to scale)



Figure 4: Tree protection plan-revised scheme (not to scale)



EXISTING BOUNDARY WALL ELEVATION
Scale: 1:200 @ A3



PROPOSED BOUNDARY WALL ELEVATION
Scale: 1:200 @ A3



IMAGE FROM CHURCH HILL
Scale: NTS

Figure 5: Proposed opening to listed wall (not to scale)



Figure 6: View looking northwest along Church Hill, with the site on the left



Figure 7: View looking southeast along Church Hill, with the site access on the right (taken from Google maps)



Figure 8: View looking south towards corner of site and existing access gates onto private street, with Church Hill on left on photograph



Figure 9: View looking south into the site through existing access gates

2. Main Issues

2.1 The main issues for consideration are:

- The principle of development
- Design
- Heritage Impact
- Landscape Impact
- Impact on living conditions
- Highway issues
- Ecology
- Trees
- Flood risk and drainage
- Archaeology
- Contamination

f) **Assessment**

Principle of Development

- 2.1 In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning decisions must be taken in accordance with the 'development plan' unless material considerations indicate otherwise. The requirements of the National Planning Policy Framework are a significant material consideration in this regard.
- 2.2 Notwithstanding the primacy of the development plan, Paragraph 11d of the NPPF states that "where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date" permission should be granted unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (7); or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.

2.3 The Council are currently able to demonstrate a five-year housing land supply (5.38 years)(as identified in the most recent Housing Technical Paper 2023) and have not failed the housing delivery test.

2.4 The principle of development on this site was assessed and found to be acceptable under grant of permission 17/00246.

Under 17/00246, Policies DM1 and LA36 were considered to be the most relevant in determining the principle of development. The ‘basket’ policies used to determine the principle of development under 17/00246 is considered to be out of date now due to conflict with the NPPF, with particular weight given to DM1 in coming to this conclusion.

2.5 Consequently, it is considered that the ‘tilted balance’ would be engaged, and that paragraph 11 of the NPPF would be relevant in the assessment of any forthcoming application. Sub-paragraph (ii) would be relevant, and in order to grant planning permission, it should be demonstrated at planning stage that any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

2.6 The Submission Draft Local Plan was submitted for examination in March 2023. The Plan is at an advanced stage and is considered to be an important material consideration in the determination of the application. In relation to the Draft Local Plan, policy SP4 is considered most relevant to the principle of development.

2.7 Draft policy SP4 seeks to ensure windfall development is in a sustainable location and relates to an existing settlement. It is considered that the proposals broadly accord with SP4. However, concerns have been raised over the design of the layout, and its compatibility with the layout and fabric of the settlement. This is discussed further in the design section.

Design

2.8 Paragraph 96 of the NPPF states that decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of well-designed, clear and legible pedestrian and cycle routes.

2.9 Paragraph 135 of the NPPF states that decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development, and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

2.10 Paragraph 139 of the NPPF Development that is not well designed should be refused,

- 2.11 Draft policy SP1 seeks to ensure that all new built development contributes to the mitigation of, and adaptation to climate change. This is echoed in draft policy CC2 which provides details of Sustainable Design and Construction including life cycle and adaptation of buildings and minimisation of waste.
- 2.12 Draft policy SP2 seeks to ensure development creates opportunities for better active travel, including provision for safe cycle and pedestrian routes, and that new developments are designed to be safe and accessible, to minimise the threat of crime and improve public safety. It also seeks to promote social interaction and inclusion in new developments through the provision of high-quality people focussed spaces that are convenient and welcoming with no barriers to access, and that all new development achieves a high standard of design both internally and externally.
- 2.13 Draft policy PM1 requires that development achieves a high quality of design, promotes sustainability, and fosters a positive sense of place. It also states development should respect and enhance character to create locally distinctive design or create character where none exists.
- 2.14 The permitted scheme which has planning permission under 17/00246 included the use of the existing vehicle access from Church Hill to access the site, and the creation of a new short length of footway on the western side of Church Hill extending into the site, allowing for a new pedestrian crossing point to the existing footway of the eastern side of Church Hill. The scheme also included a new highway verge to the western side of Church Hill running parallel with the site boundary.
- 2.15 The proposal included the narrowing of Church Hill in the vicinity of 1 and 2 Rectory Bungalows and the new verge, and the provision of double yellow lines and new give way signage indicating the proposed priority arrangement.
- 2.16 In order to replace on-street parking which would be displaced by the development, Condition 17 of 17/00246 requires that *“Before the development is first occupied, an additional four on-site parking spaces (two to be suitable for disabled use) for the use of the residents of the Rectory Bungalows shall be provided and made operational. Details of the size and location of these spaces shall be submitted to and approved in writing by the local planning authority before any development commences”*.
- 2.17 Condition 18 of 17/00246 requires that *“Before the first occupation of the development hereby approved, a pedestrian crossing shall be provided on Church Hill to facilitate a crossing between the Rectory Bungalows and the application site.”*
- 2.18 The applicant has submitted plans under the current S73 application which seeks to amend the proposed layout. The proposed variation of condition amendment includes the following:
- Removal of proposed footpath at the existing vehicle access to the site
 - Relocation of proposed pedestrian crossing approximately 50m to the southeast along Church Hill to previously proposed location.
 - Forming of a 1.5m wide opening in the listed wall adjacent to the proposed pedestrian crossing

- Creation of a footpath through the site
 - Proposed relocation of 4 no. parking spaces further south within the site
 - Relocation of 1 no. on-street disabled parking space further north on Church hill
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- 2.19 The proposed plans retain the on-street parking restrictions as approved within application DOV/17/00246 which will continue to allow two vehicles to pass each other whilst one is waiting to give way at the narrowing and to allow suitable turning and passing room at the location of the site access.
- 2.20 As discussed above the proposed amendment application seeks to remove the proposed footway at the vehicle entrance and replace this with pedestrian access further to the south, with the creation of a 1.5m opening in the listed wall, with a pedestrian crossing in this location. The opening in the wall would then lead to a 1.5m wide footpath within the site providing off-road pedestrian access into the site.
- 2.21 The drawings as first submitted under this S73 application, indicated a shorter length of footpath, but still considered to be indirect and convoluted, which would have cut into the root protection areas of a number of mature trees near the boundary to Church Hill. Excavation would be needed, with a 1.6m retaining wall and 1.8m close boarded fence also shown between the proposed footpath and plot 1. Concern was also raised over lack of natural surveillance.
- 2.22 The proposals have been amended during the course of the application, with the aim of reducing the amount of excavation required and to minimising impact on mature trees within the site. The route of the proposed 1.5m wide footpath has now been amended so that after entering the site, it runs along the eastern boundary then turns to run along southern boundary, behind the gardens of plots 1 and 2, then turns to run between plots 2 and 3 to meet the main access road within the site. The footpath would initially be at a 1:80 gradient, then 1:15, and finally 1:12.5.
- 2.23 Concern is raised over the convenience and accessibility of the pedestrian route proposed into and through the site, the lack of natural surveillance opportunities for this route, the lack of footway adjacent to main vehicle access and therefore the overall standard of design of the layout.
- 2.24 Regarding the location of the footpath, which runs along between rear gardens and the boundary of the site and it lacking natural surveillance. In addition, the footpath provides a convoluted route for residents of the scheme and also residents of Rectory Bungalows accessing parking spaces dedicated to them within the site.
- 2.25 The amendment application does not propose any other changes to the general arrangement or design of the dwellings on the site.
- 2.26 Although concerns are raised over the layout of the proposals, as discussed above, it is not considered that there would be any unacceptable impacts on visual amenity and that the character and appearance of streetscape and immediate area would be preserved.

Heritage Impact

- 2.27 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on decision makers, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 2.28 The NPPF requires the local planning authority, when assessing an application to identify and assess the particular significance of any heritage asset that may be affected by the proposal.
- 2.29 Paragraph 208 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.
- 2.30 Draft policies HE1 and HE3 relate to protection of heritage assets and listed buildings.
- 2.31 The proposal would affect the fabric of a listed wall, with a 1.5m wide section of wall removed. Due to the overall amount of the wall to be removed and the significance of the wall itself, it is considered that the proposal would constitute a minor loss and the overall significance of the listed wall is not harmed. The works are considered to constitute less than substantial harm and at the lower end of the scale, however, this is subject to consideration of details.
- 2.32 DCC Heritage have been consulted and recommend the following condition:
Prior to the commencement of the relevant works scale sections at 1:20 showing the proposed new opening including details of any repairs to the existing listed wall necessary as a result of the creation of the new opening shall be submitted to and agreed in writing by the local planning authority and the works thereafter shall be carried out in accordance with the approved detail.
- 2.33 Although less than substantial harm is identified, this is at the lower end given the small scale of change, and due to the overall small scale of the works, it is considered that the benefits would outweigh the harm, having regard to paragraph 208 of the NPPF.

Landscape Impact

- 2.34 Paragraph 174 of the NPPF states that development should contribute to and enhance natural and local environment by protecting and enhancing the intrinsic character and beauty of the countryside.
- 2.35 Draft policy NE2 states that proposals should demonstrate regard to the Landscape Character Area, as defined by the Dover District Landscape Character Assessment 2020, in which they are located.
- 2.36 The site is located within the village confines between developed areas of the settlement. Due to the location, the overall amount and scale of development, and the amount of vegetation retained on the site, it is not considered that there would be any unacceptable impacts on the surrounding landscape. To conclude, it is considered that the proposed development would not have an unacceptable visual impact on views from the countryside and surrounding area.

Impact on Residential Amenity

- 2.37 Draft policy PM2 relates to quality of residential accommodation and requires that all new residential development, must be compatible with neighbouring buildings and spaces and not lead to unacceptable living conditions for neighbouring properties through overlooking, noise or vibration, odour, light pollution, overshadowing, loss of natural light or sense of enclosure. Development should be of an appropriate layout with sufficient usable space and contain windows in all habitable rooms to facilitate comfortable living conditions with natural light and ventilation.
- 2.38 Whilst the Nationally Described Space Standards are yet to be formally adopted, they are referenced in the emerging plan in respect of internal accommodation. Well-designed private or shared external amenity space should be provided on-site, that is of appropriate size and fit for purpose. It also states that all new build development is to be built in compliance with building regulation part M4(2).
- 2.39 The variation of condition application does not propose any changes to the layout, design or position of the proposed dwellings on the site. The same assessment is therefore reached as the previous planning permission 17/00246 in relation to living conditions and residential amenity. Overall, it is considered that the proposals would be acceptable in relation to living conditions of future residents and impacts on neighbouring residential amenity.

Impact on Highways, Public Rights of Way and Parking Provision

- 2.40 NPPF paragraph 114 states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users.
- 2.41 NPPF paragraph 115 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. Paragraph 116 states that within this context (described above), applications for development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; address the needs of people with disabilities and reduced mobility in relation to all modes of transport; and create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles.
- 2.42 Draft policy TI1 states that development should, in so far as its size, characteristic and location, be readily accessible by sustainable transport modes through the provision of high quality, engineered, safe and direct walking and cycling routes within a permeable site layout, contribute to sustainable transport proposals including off-site improvements to cycling and walking routes and public transport facilities, and make provision for secure cycle parking and storage in accordance with the Parking Standards. It states that the Council will safeguard the Public Rights of Way network, and other existing cycle and walking routes, from development that would compromise their use and will encourage their enhancement and extension.
- 2.43 Draft policy TI3 requires proposals to meet the requirements of Kent Design Guide Review: Interim Guidance Note 3 in relation to vehicle parking. Policy DM13 sets requirements for parking provision in compliance with SPG4 which sets out standards for the maximum number of parking spaces.

- 2.44 As discussed previously in the design section of the report, this amendment application seeks to make changes to the layout to reposition the pedestrian crossing further south along Church Hill and remove the section of footway at the vehicle entrance. Pedestrian access would therefore be through the new 1.5m opening in the listed boundary wall (with provision of a crossing point on Church Hill) and via a 1.5m footpath to the rear and sides of plots 1,2 and 3. The footpath would initially be at a 1:80 gradient, then 1:15, and finally 1:12.5.
- 2.45 Concern is raised by officers with both the originally submitted layout for the s73 and the revised layout. This is due to pedestrian accessibility into the site. The consented scheme under 17/00246 provides a footpath into the site next to the existing vehicle access and with an adjacent crossing proposed to Church Hill. The amendment seeks to move the pedestrian access and crossing away from the vehicle access. This does raise concerns that pedestrians would still use the vehicle access and walk on the highway, as this access is located closer to amenities in the north of Eythorne, including the nearby primary school, and the Tilmanstone colliery welfare and social club, as well as to walk to Elvington. Notwithstanding this, it is considered that the amendments are an improvement to the initial submission whilst not providing the optimum solution, but this is not always possible and has to be weighed up in the planning balance.
- 2.46 In order to replace on-street parking which would be displaced by the development, Condition 17 of 17/00246 requires that an additional four on-site parking spaces (two to be suitable for disabled use) for the use of the residents of the Rectory Bungalows shall be provided on the site. Condition 18 of 17/00246 requires that a pedestrian crossing shall be provided on Church Hill to facilitate a crossing between the Rectory Bungalows and the application site.
- 2.47 The plans indicate these additional parking spaces located within the centre of the site to the south of plot 3. In addition, a new on-street disabled parking space is indicated on the street to replace the existing one close to the vehicle access to the site. The replacement space is approximately 10m to the north of the existing space.
- 2.48 KCC Highways have advised that due to the relocation of the pedestrian crossing, pedestrian visibility splays of 2m x 2m are required with no obstruction over 0.6m within these splays and they should fall within land that is under the control of the applicant or KCC. The uncontrolled crossing will also require a stage 1 road safety audit being undertaken at this stage.
- 2.49 After amended and additional information was submitted KCC Highways raised no objection subject to conditions or planning obligation to secure the provision and maintenance of the pedestrian visibility splays, and submission and approval of detailed designs for the pedestrian crossover as indicatively shown on the submitted plans. The highway works will need to be completed in accordance with a Section 278 agreement with the Highway Authority.
- 2.50 KCC Highways were also consulted on the revised scheme for an alternative pedestrian access path (seeking to reduce impact on trees). KCC Highways stated that this revised scheme indicates a path that is longer, with hard boundaries on either side which may reduce accessibility. It is acknowledged that prior plans indicate the path is on a gradient, this gradient should be confirmed to further assessed the proposed plans.
- 2.51 There are existing conditions on 17/00246 relating to earthworks, proposed levels, landscaping and boundary treatments. It is considered that these should

be reimposed to allow for more detailed consideration by planning officers and the highway authority including of gradients proposed.

- 2.52 In addition to the above conditions. It is noted there was no condition relating to details of external lighting to be provided. It is considered, given the amendments, a condition should be imposed requiring details for lighting to be submitted and approved.
- 2.53 It is also considered by DDC officers that a condition should be imposed requiring guarding/ railings at the end of the pedestrian route onto Church Hill, due to the constriction of the existing wall on each side.

Ecology

- 2.54 Paragraph 180 requires that when determining planning applications, local planning authorities should refuse planning permission if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or compensated for. It also states that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity.
- 2.55 Draft policy SP14 echoes this requiring that every development connects to and improves the wider ecological networks in which it is located, providing on-site green infrastructure that connects to off-site networks. Proposals must safeguard features of nature conservation interest, and retain, conserve and enhance habitats.
- 2.56 An ecological scoping report was submitted with the 2013 application under reference 13/00033. There was no updated ecological scoping report submitted with the 2017 application, however a reptile report was submitted and translocation of reptiles was required under the s106 undertaking. Details relating to the translocation have been approved and the translocation has been undertaken.
- 2.57 This current application does not include an updated ecological scoping report or appraisal; however, a preliminary bat survey of trees and a wall has been submitted. The submitted report states that no evidence of bats or their roosts was found anywhere in either the tree or the wall. It also states that no other protected or notable species or their habitats were observed during the bat building survey.
- 2.58 The DDC Natural Environment Officer is satisfied that the potential for bat presence has been adequately assessed. However, it is considered that if works to the walnut tree are required, further ecological input will be necessary due to the tree's potential to support roosting bats. The walnut tree is "considered to be likely to hold roosting bats". If this tree is not proposed for retention, there will be a need to secure the submission and implementation of a method statement for the felling of this tree. A revised arbiocultural method statement and tree protection plan have been submitted now indicating this tree will be retained.
- 2.59 There is also potential for nesting birds which will need to be taken into account in the timing of the vegetation removal (including the ivy on the wall). An informative reminding the applicant of their legal obligation can be attached to the planning permission. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove,

damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Suitable habitat is likely to contain nesting birds between 1st March and 31st August inclusive. Vegetation with suitable breeding bird habitat is present on the application site and is to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

Trees

- 2.60 Draft policy CC8 relates to Tree Planting and Protection, and states that trees protected by Tree Preservation Orders should be retained wherever possible, unless it is demonstrated by an arboriculturist report that they are dead, dying, diseased or represent a hazard to public safety; or the Council deems the felling to be acceptable with regards to the Council's policy on tree management; or the benefit of the proposed development outweighs the benefit of their retention. If felling is deemed acceptable then the planting of two replacement trees for each tree felled in an appropriate location will be required
- 2.61 The application site is the subject of Tree Preservation Order through an Area designation. The original proposal for this amendment application included a proposed new footpath through the site. This would have been located within the root protection areas of a number of mature trees and would have involved reduction in ground levels within these RPAs. The layout has been amended during the course of the application to re-route the footpath to seek to minimise impact on mature trees.
- 2.62 An Arboricultural Report composed of Arboricultural Method Statement & Tree Protection Plan have been submitted as additional information during the course of the S73 application.
- 2.63 The proposals were revised during the course of the application to indicate an alternative route for the footpath, with a mature walnut tree (T74) of 15m in height and assessed as being category B within the submitted tree survey, shown to be removed due to presence of Japanese knotweed. The tree officer advised that without evidence to prove other methods of eradication had been considered and ruled out, the removal of this tree would be objected to.
- 2.64 The applicant has now submitted an amended method statement and tree retention plan which indicate the retention of this tree. However, it is not considered that the method statement provides sufficient information, and as such an amended statement is sought prior to any planning permission being issued.
- 2.65 Therefore, the proposals for the amendment application now align with the original planning permission (17/00246) in relation to the trees to be retained. No additional trees are to be removed through the amendment application, beyond what was permitted through the original permission.

Flood Risk and Drainage

- 2.66 Draft policy SP1 seeks to mitigate and adapt to climate change by ensuring development does not increase flood risk, including by taking a sequential

approach to location of development. Draft policy CC5 states that development on sites at risk of flooding will only be permitted where it is demonstrated by a site-specific flood risk assessment that the development would not result in an unacceptable risk on flooding on the site or elsewhere.

- 2.67 NPPF paragraph 173 states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.
- 2.68 The site is located within Flood Zone 1. Foul and sewage disposal details are required by conditions 8 and detailed sustainable surface water drainage scheme for the site 15. These conditions have been discharged.

Archaeology

- 2.69 Draft policy HE3 relates to archaeology. Condition 13 requires that a programme of archaeological works is submitted and approved. A written scheme of investigation has been submitted and approved and the condition has been part discharged.

Contamination

- 2.70 The NPPF states (Paragraph 189) that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
- 2.71 DDC Environmental protection have been consulted and have raised no comments. There were no conditions relating to contamination previously imposed and as such it is considered that none should be imposed on this variation of condition application.

3. Conclusion/Planning Balance

- 3.1 Paragraph 11 of the NPPF sets out that when the local policies are considered out of date that any decision should rest on the tilted balance so that development should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.” As the most important policies in determining this application are considered out of date, paragraph 11 of the NPPF is relevant.
- 3.2 The proposal is located within the village confines. There is a footway on the opposite side of Church Hill and some limited street lighting. There would be some socio-economic benefits provided by the development at construction stage and when built, including by providing new homes in a sustainable location, which in turn would provide support for the vitality of the village and nearby settlements in relation to NPPF paragraph 83. It is considered that the proposals as amended during the course of the application would preserve the visual amenity of the area.
- 3.3 However, there are considered to be adverse effects, which are the design quality of the layout, with particular regard to the location and convoluted route of the footpath and lack of natural surveillance. Coupled with this is the location of the 4 parking spaces for 1-4 Rectory Bungalows. The spaces have been moved further into the site and are less accessible for the residents of 1-4

Rectory Bungalows. However, it is noted that 1 no. disabled space would be re-provided on Church Hill.

- 3.4 Notwithstanding the above, during the course of considering the application, officers have worked with the applicant in order to seek to improve the proposals and overcome some of the concerns, going through a number of iterations and options. Whilst this has not resulted in an optimum solution, this cannot always be possible and has to be weighed up in the final planning balance.
- 3.5 Given the above, it is considered that the adverse impacts of the scheme would balance out the benefits. However, when considering the “tilted balance” under NPPF paragraph 11, the adverse effects are not considered to significantly and demonstrably outweigh the benefits. Accordingly, in light of the above it is recommended that planning permission is granted subject to the conditions set out below.

g) Recommendation

I LISTED BUILDING CONSENT BE GRANTED (for DOV/23/00678) subject to conditions:

- 1) Standard time condition
- 2) List of approved plans
- 3) Prior to commencement scale sections at 1:20 showing the new opening and details of any repairs to the existing listed wall

PLANNING PERMISSION BE GRANTED (for DOV/23/00679) subject to approval of a final Arboricultural method statement and the following conditions:

- 1) Date of approval
- 2) Approved plans
- 3) Accordance with previously approved samples of materials
- 4) Accordance with previously approved construction details
- 5) No external meter cupboards etc to be installed on elevations fronting a highway
- 6) Details of earthworks to be approved
- 7) Details of finished levels to be approved
- 8) Accordance with previously approved details of foul drainage
- 9) Provision of parking spaces
- 10) Provision of cycle parking and refuse/ recycling store
- 11) Accordance with previously approved construction management plan
- 12) Removal of some PD rights
- 13) Accordance with previously approved programme of archaeological work
- 14) Hard and soft landscaping details to be approved
- 15) Accordance with previously approved details of surface water drainage
- 16) Accordance with previously approved foundation details
- 17) Additional four on-site parking spaces for residents of the Rectory Bungalows to be provided. Details to be approved.
- 18) Pedestrian crossing to be provided on Church Hill. Submission and approval of detailed designs for the pedestrian crossover and all other off-site highway works (Subject to separate S278 agreement).
- 19) Provision and maintenance of pedestrian visibility splays
- 20) Provision and maintenance of vehicle visibility splays
- 21) Proposed external lighting, details to be submitted

- 22) Details of guarding for footpath at/ near boundary of site through wall
- 23) Adherence to arboricultural method statement and tree protection plan

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

Case Officer

Nicola Kingsford

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).