

- a) **DOV/22/01652 - Outline application for the erection of 1 self-build dwelling (all matters reserved except access) following demolition of former dwelling - Danefield House, St Mary's Grove, Tilmanstone**

Reason for report – Return to committee due to the Local Plan now having been adopted, the presumption in favour of sustainable development, under paragraph 11 of the NPPF (“Tilted Balance”) no longer being applicable and the change of recommendation. Originally reported to committee due to number of contrary views (54) and called-in by Cllr. Steve Manion. The reasons given for the original call-in were it contravenes draft policy SP4, is outside the village confines and it does not have appropriate vehicle access.

- b) **Summary of Recommendation**

Refuse outline planning permission

- c) **Addendum to Committee Report of 11 July 2024**

Introduction

- 1.1. This application was presented to Planning Committee on 14 December 2023, when it was recommended by officers that the application be granted outline permission, subject to completion of s106 legal agreement in relation to a SAMMS contribution, habitat management and reptile translocation, and in addition the submission of an addendum to address the additional ecology information required in an Ecological Impact Assessment and conditions.

- 1.2. At the meeting, members resolved:

(a) That, subject to the completion of a Section 106 legal agreement in relation to a SAMMS contribution, habit management and reptile translocation and, in addition, the submission of an addendum to address the additional ecology information required in an Ecological Impact Assessment, Outline Application No DOV/22/01652 be APPROVED subject to the following conditions: (i) Submission of reserved matters; (ii) Time limit for reserved matters; (iii) Time limits; (iv) Approved plans; (v) Materials; (vi) Contamination remediation strategy; (vii) Verification report for contamination; (viii) Contamination safeguarding; (ix) Refuse and cycle parking provision; (x) Parking provision; (xi) Visibility splays; (xii) Gates set back from highway by 5 metres; (xiii) Bound surface for first 5 metres of access; (xiv) Programme of archaeological works; (xv) Final arboricultural method statement; (xvi) Tree and hedge protection, retention and replacement plan; (xvii) Biodiversity Method Statement, including update surveys; (xviii) Ecological enhancements.

- 1.3. A copy of the December 2023 Committee Report, which addresses all the relevant material considerations, is attached (Appendix 1).

Principle

- 1.4. The original committee report set out the history of the site, in that there was a residential dwelling and use on the site since at least the 19th Century. It is understood that the original dwelling was last inhabited in the 1980s and there was a fire in 2002. There is a documented planning history on this site over the last 30

years. This includes permission for a C2 use in 1990, but not implemented and in 1998 permission was granted for a dwelling (C3 use) on the site.

- 1.5. In the original report, consideration was had to whether the residential use and the original house had been abandoned, with regard to the legal framework regarding the issue of abandonment. The legal framework regarding the issue of abandonment in planning is summarised as follows. If a building or land "*remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned*", (Lord Denning, *Hartley v MHLG* [1970] 1QB 413) then the concept of abandonment would apply. It involves a cessation of use in such a way, and for such a time, as to give the impression to a reasonable onlooker, that it was not to be resumed, (*Nicholls v SSE and Bristol CC* [1981] JPL 890, J.363).
- 1.6. In *Trustees of Castell-y-Mynach Estate v Taff-Ely BC*, [1985] JPL 40, the Court suggested four criteria for abandonment, these are: the period of non-use, the physical condition of the land or building, whether there had been any other use, and the owner's intentions as to whether to suspend the use or to cease it permanently. In *Hughes v SSETR* [2000] 80 P&CR 397, the Court found that the test of the owner's intentions should be objective and not subjective, on the authority of *Hartley and Castell-y-Mynach*. In *Bramall v SSCLG* [2011] JPL 1373 Wyn Williams J affirmed the four criteria of abandonment and concluded that the weight to attach to each is a matter of planning judgment for the decision taker.
- 1.7. In respect of the period of non-use, it is understood that the site/building has not been used since the 1980s when the condition of the building started to deteriorate. The period of non-use therefore equates to at least approximately 35 years. In respect of the physical condition of the land or building, it is understood that the condition of building began to deteriorate in the 1980s. There was a fire in 2002. At present the building is a ruin with large sections of wall and roof missing and is overgrown.
- 1.8. In respect of there being any other use, it is understood that the site had also been used for commercial uses throughout the latter half of the last century. In respect of the owner's intentions as to whether to suspend the use or to cease it permanently, there has been a considerable planning history on the site with permission granted in 1998 for C3 use.
- 1.9. To conclude, given the above, and apportioning weight to the physical condition of the ruin, it could be considered that the use of the building/land for a residential use has been abandoned, and the previous planning use has fallen away.
- 1.10. It is noted that the site, (although abandoned) would constitute previously developed land and a former residential use. Permission was granted in 1998 residential use on the site, after a previous permission for C2 use in 1990. This planning history is also a material consideration in determining this application.
- 1.11. Paragraph 48 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 1.12. When the application was first reported to committee in December 2023, the local plan had not yet been adopted and was at submission draft stage. The adopted policies considered most important in determination of the principle were considered to be CP1, DM1, DM11 and DM15.

- 1.13. At that stage in December 2023 consideration was had for whether the “tilted balance” would be engaged, having regard for Paragraph 11 of the NPPF. Some of the adopted policies relevant for determining the application were considered to be out of date to varying degrees, with Policy DM1, which was considered particularly crucial in assessing the principle of the development, being particularly so. Given the weight to policy DM1 it was concluded that the ‘basket’ of adopted policies was out of date. Consequently, it was considered that the ‘tilted balance’ would be engaged and paragraph 11 the NPPF would be relevant in the assessment. Sub-paragraph (ii) of Paragraph 11 states in order to grant planning permission, it should be demonstrated 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.
- 1.14. It was previously considered when applying the “tilted balance” under NPPF paragraph 11, the adverse effects would not significantly and demonstrably outweigh the benefits, and the application was therefore recommended for approval. In reaching this conclusion weight was given to the previous land use of the site, being previously developed residential land, with planning permission granted in 1998 for a residential use and the desire to bring the site back into an appropriate use, with an appropriate amount of development.
- 1.15. The Dover District Local Plan was adopted in October 2024 and it’s policies now carry full weight. Policies SP1, SP2, SP4 and H5 are considered most relevant to the principle of development. Policy SP1 seeks to ensure development mitigates climate change by reducing the need to travel and Policy SP2 seeks to ensure new development is well served by facilities and services and create opportunities for active travel.
- 1.16. The proposals are not considered to accord with SP1 and SP2 due to the lack of footpath and lack of streetlighting along St. Mary’s Grove into the village and the limited access to sustainable transport modes from the application site.
- 1.17. Policy SP4 seeks to ensure windfall development is in a sustainable location and relates to an existing settlement. Policy SP4 identifies two categories of settlement. The first are settlements that are capable of meeting some or all of the daily needs of their inhabitants and are identified as suitable for additional residential development either within or immediately adjoining the settlement confines. The second are settlements that are identified as suitable for minor residential development or infilling of a scale that is commensurate with that of the existing settlement and within the boundaries. Tilmanstone falls into the second category of settlement. Policy SP4 also applies other criteria to assess the appropriateness of development in these locations.
- 1.18. The proposal is located outside of the confines and does not therefore comply with the first part of draft policy SP4.
- 1.19. In terms of the second set of criteria in draft policy SP4, the proposal is considered to be of an appropriate scale, compatible with the layout, density, fabric and appearance of the settlement, would not result in an unacceptable intrusion into the open countryside, and would not generate a level of traffic that would result in severe impacts to the highway network that cannot be mitigated. The proposal is therefore considered to accord with the second part of draft policy SP4.

- 1.20. SP4 also sets out exceptional circumstances where new dwellings (both isolated and non-isolated) in the countryside outside of settlement boundaries will be permitted. The proposal is not considered to comply with any criteria set out under SP4 for exceptional circumstances and is also not considered to comply with part 3 of SP4.
- 1.21. Accordingly, the proposal is not considered to comply with policies, SP1, SP2 and SP4. It should be noted that in December 2023 some weight could be given to the emerging policies, however since the adoption of the local plan, full weight can now be given to these policies.
- 1.22. Policy H5 supports self-build house schemes on non-allocated windfall developments, subject to compliance with the other policies in the Plan and where overall, this would not result in an over-provision of this type of housebuilding when compared to the Council's supply/demand evidence. This adds some weight in favour of the development, notwithstanding the conclusion in relation to the other important policy, SP4, as set out above.
- 1.23. NPPF paragraph 83 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Where there are groups of smaller settlements, development in one village may support services in a village nearby. Paragraph 84 states that planning decisions should avoid the development of isolated homes in the countryside. Paragraphs 83 and 84 of the NPPF are relevant, in that housing should be located where it will enhance or maintain the vitality of rural communities and that decisions should avoid the development of isolated homes in the countryside. It is not considered that the site is in an isolated location, as it is located between the clusters of development which make up the village of Tilmanstone. At the closest point, the application site is approximately 120m from the village confines. There are also two other properties accessed off St. Mary's Grove, Beech Tree Cottage to the northeast and St. Mary's Grove Cottage to the west.
- 1.24. NPPF paragraph 124 states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. NPPF paragraph 129 states that decisions should support development that makes efficient use of land, taking into account the identified need for different types of housing and the availability of land, local market conditions and viability, the desirability of maintaining an area's prevailing character and setting and the importance of securing well-designed, attractive and healthy places.

Conclusion

- 1.25. Paragraph 48 of the NPPF states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 1.26. The application site is located outside the nearest settlement confines, within the countryside. The location of the site is considered to be unsustainable. The proposal would be located outside of the confines, with no footway and limited street lighting linking the development to the village, representing a lack of a safe pedestrian route, as well as limited access to sustainable transport options.
- 1.27. The NPPF supports the development of brownfield land for housing but recognises the importance of these being in sustainable locations. The principle of

development would therefore not be supported by adopted policies. The development is considered contrary to Policies SP1, SP2 and SP4.

- 1.28. There would be some environmental effects on trees, including the loss of one mature tree and a length of hedgerow, however replacement hedgerows and trees could be secured by condition, if the application had been found to be acceptable in other respects. The proposal would result in an area of priority habitat of deciduous woodland within the curtilage of a dwelling. However, the retention of the woodland, and its future management, could also be secured by condition, if the application had been found to be acceptable in other respects.
- 1.29. There would also be some ecological effects, with some impact on habitats for a number of species, however it is considered that these could also have been adequately mitigated and secured by conditions.
- 1.30. The proposal would provide one new home and there would be some limited socio-economic benefits provided by the development at construction stage and when built, including by providing new homes, which in turn would provide support for the vitality of the village and nearby settlements (NPPF paragraph 83).
- 1.31. It is considered that the proposal would enhance the character and appearance and visual amenity of the area, by bringing a long-standing derelict site back into use and improving the overall appearance of the site and immediate area. There would therefore be some environmental benefits of the proposal.
- 1.32. Given that the development is contrary to the development plan, permission should be refused unless material considerations indicate otherwise. The development would provide benefits, in relation to limited socio-economic and environmental benefits discussed above. However, it is not considered that these material considerations are of sufficient weight to indicate that permission should be granted, contrary to the development plan
- 1.33. In light of the above assessment, it is recommended that outline planning permission is refused.

Ecology

- 1.34. It was considered that further information was needed to be sought to address considerations in relation to: bat roosting potential within trees and any mitigation required; the extent of reptile habitat loss and further details of the receptor site; the extent of nesting bird habitat to be lost and any further mitigation required; the submission of a Natural England-countersigned 'Impact Assessment and Conservation Payment Certificate' in relation to Great Crested Newts; and information to indicate that a net biodiversity gain can be achieved on site. This was delegated to officers to assess.
- 1.35. Subsequent to the December 2023 planning committee, an addendum to the Ecological Impact Assessment was submitted to address the additional ecology information required, as listed above. The submitted information was considered acceptable.

Conditions and S106

- 1.36. NPPF paragraph 56 states that Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use

of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. NPPF paragraph 57 states that Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

- 1.37. A s106 legal agreement or unilateral undertaking was originally sought to secure SAMMs payment, a habitat management plan and reptile translocation.
- 1.38. SAMMs payment can now be taken via telephone payment. If the application was otherwise considered acceptable, it would now be considered that this no longer needs to be secured through a s106.
- 1.39. A habitat management plan was originally to be secured as part of the s106, however it is now considered that, if the application was otherwise acceptable, it would be more appropriate to secure this via a condition, in line with the NPPF, principally as a management plan would relate to habitat within the application site.
- 1.40. If the application was considered appropriate, the reptile translocation would also now be secured through a condition which will require 5 years of management and monitoring prior to commencement of the development.

d) **Recommendation**

I PERMISSION BE REFUSED for the following reason:

- 1) The proposed development would be located outside of any settlement confines, with limited access to services and amenities and limited sustainable transport options. It would not be ancillary to existing development. There are not considered to be any material considerations which would outweigh the application being contrary to the development plan. It would therefore represent an unsustainable form of development contrary to policies SP1, SP2 and SP4 of the Dover District Local Plan.

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

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).