

**PLANNING COMMITTEE – 8 NOVEMBER 2018**

**DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>DEF ITEM 1 REFERENCE NO - 18/503274/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of 1 detached 3 bedroom chalet bungalow.			
<b>ADDRESS</b> 82 Church Lane Newington Sittingbourne Kent ME9 7JU			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The changes proposed from approved bungalow would have an acceptable impact upon residential amenity, visual amenity and parking provision.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Newington	<b>APPLICANT</b> Mr K Cooper <b>AGENT</b> T Fleming Homes Ltd	
<b>DECISION DUE DATE</b> 25/10/18	<b>PUBLICITY EXPIRY DATE</b> 20/09/18		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
Land to the rear of 80 and 82 Church Lane;			
18/501586/REM	Reserved matters of access, appearance, scale, layout and landscaping pursuant to outline permission 16/505663/OUT for erection of 1 detached 2 bedroom bungalow.	APPROVED	01.06.18
16/505663/OUT	Outline application for the erection of 1 detached 2 bedroom bungalow with all matters reserved for future consideration.	APPROVED	20.10.16
<i>This application was reported to Planning Committee at the same time as the below application. Officers recommended approval, and the application was approved, with a condition added restricting rooms in the roof space of the bungalow.</i>			
16/505653/OUT	Outline application for the erection of 2 no. 3 bedroom semi-detached houses with all matters reserved for future consideration.	REFUSED	20.10.16
<i>This application was reported to Planning Committee, with Planning Officers recommending approval, however this was overturned and the application was refused.</i>			

Existing bungalow at 82 Church Lane;			
18/500652/FULL	Conversion of loft into a habitable space and creation of a car port, including the removal of the existing roof and erection of a new wider roof with an increased ridge height.	APPROVED	29.03.18

**1.0 BACKGROUND**

- 1.01 Members will recall that this application was reported to the Meeting on 11<sup>th</sup> October, recommended for approval. After a wide ranging discussion, the Planning Committee was minded to not accept the officers recommendation to approve.
- 1.02 Determination of the application was therefore deferred to this meeting in accordance with the Terms of Reference of the Planning Committee, since a refusal of planning permission would have been contrary to my recommendation, contrary to policy and guidance, and as in my view Members had failed to demonstrate sound planning reasons for refusing the application which could be substantiated on appeal.
- 1.03 In this new report I do not intend to repeat the assessment of the application as set out in the original report. I will though assess the possible implications of a decision to refuse planning permission for the reasons mooted at the previous Meeting, and confirm my recommendation that permission be granted.

**2.0 POSSIBLE IMPLICATIONS OF A DECISION TO REFUSE PLANNING PERMISSION**

- 2.01 My concerns over a possible decision to refuse planning permission for this development is based on the need for planning decisions to reflect a proper assessment of planning policies and other material considerations and for Members, when overturning officer recommendations, to present sound, justifiable and defensible planning reasons for refusal related to the likely impact of the proposed development;
- 2.02 At the Meeting, the discussion of the Committee centred around a number of issues, which I set out below.

The proposed development would be contrary to the conditions imposed on the outline planning permission for a bungalow here

- 2.03 The development proposed included two roof lights to the rear, and two bedrooms (together with a bathroom) in the roof space. The conditions imposed on the outline permission prevent the exercise of permitted development rights *once the building is complete and in use as a dwelling*. This is a full application for planning permission for a single storey dwelling with rooms in the roof space. It is not therefore contrary to the conditions imposed on the outline planning permission, but rather a separate proposed development.
- 2.04 Notwithstanding this, the imposition of conditions removing permitted development rights simply gives the Council control over future development at sites, and means that an application for planning permission is required. It does not follow that planning permission should automatically be refused for applications required for development restricted by condition. To do so would be to refuse planning permission simply on the basis that planning permission is required. Such a reason would not stand up to

scrutiny on appeal and would result in costs being awarded against the Council for an unreasonable refusal of planning permission.

- 2.05 The imposition of such conditions allows the Council to consider and appraise the development proposed, and to assess whether any material planning harm arises from it such that the refusal of planning permission would be justified. This assessment is carried out in the report presented to the previous Meeting and appended to this report. My officers have considered the development and concluded that no significant harm would arise. As such, in my view, there is no justification for the refusal of planning permission.
- 2.06 The Planning Committee is of course fully entitled to reach a different conclusion, but this must be based on an appraisal of the scheme against planning policy, guidance and having considered the material planning considerations inherent in the development proposed. That the development proposed requires planning permission is not a material consideration and cannot be taken into account.

The proposed development would be larger than the approved scheme

- 2.07 The external size of the dwelling remains unchanged between the current scheme and the approved scheme. As such, planning permission cannot reasonably be refused on this basis.
- 2.08 It is of course correct that the development currently proposed seeks to add rooms in the roof space. However – in order to refuse planning permission, Members need to identify material planning harm. It is not enough to simply refuse planning permission on the basis that the internal living space would increase.
- 2.09 The key issue in this respect, is any increase in parking requirements and vehicle movements. The scheme before Members includes parking provision in excess of that required for a three bedroom dwelling – 3 off street parking spaces, when the requirement is for a maximum of two. In my view the additional vehicle movements associated with a three bed as opposed to a two bed unit will be negligible in the context of the amount of traffic using Church Lane and the wider area, and the Council would be unable to substantiate, on appeal, that an additional bedroom in this dwelling would give rise to such harm to highway safety and convenience that planning permission should be refused. Finally, in this regard, the increase in vehicle movements would not have any material effect on the AQMA in Newington or air quality in the area generally.

The proposed development could be subdivided internally to include an additional bedroom

- 2.10 If the building were to be constructed as a four bedroom unit, this would not accord with the plans and would require planning permission. Members cannot determine any application on the basis that a developer may not build what is shown on the approved plans.
- 2.11 The subdivision of rooms within a dwelling to provide additional bedrooms *after* construction is not development and cannot be controlled by planning conditions. Whilst I note Member's concerns in this regard, this applies equally to every dwelling granted planning permission. To determine applications on the basis that the occupiers might choose to carry out works which do not in themselves require planning permission at some point in the future is, therefore, to do so based on speculation, relating to matters which cannot be controlled by the planning system,

and which could not be adequately defended at appeal. The Council would lose such an appeal and lose costs.

- 2.12 Notwithstanding this, even if the dwelling was at some point to be altered internally creating a fourth bedroom, the parking requirement would remain unchanged – two off street parking spaces would be required, and this scheme proposes three.

Planning permission should be refused for the same reasons as previously

- 2.13 The only recent refusal of planning permission at this site was for the erection of a pair of semi-detached houses. The reasons for refusal were as follows:

*(1) The proposal by virtue of the location of the site and the likely scale of the development proposed in comparison to the size of the plot would result in harm to the character and appearance of the area, contrary to Policies E1 and E19 of the Swale Borough Local Plan 2008.*

*(2) The proposed development would give rise to an increase in vehicle movements within Church Lane which, taken cumulatively with existing vehicle movements and those occurring as a result of development approved elsewhere in Church Lane, would compound existing problems relating to congestion and the free flow of traffic in the lane, leading to harm to the safety and convenience of all users of the highway. The proposed development would be contrary to Policy E1 of the Swale Borough Local Plan 2008.*

- 2.14 Members should be clear that reasons for refusal relating to different developments should not be reused without a proper consideration of the development proposed, an assessment of the material considerations relevant to the development proposed and consideration of any appropriate reasons for refusal. In certain circumstances, for example, where a resubmission of a previously refused scheme does not overcome the reasons for refusal, it may be appropriate to repeat them.
- 2.15 In this case, the refused scheme and the current proposal are materially different in terms of the number of dwellings, the design of the dwellings, and the parking and highways impacts of the dwellings. It would be fundamentally wrong to refuse planning permission for a bungalow with rooms in the roof space for reasons relating to the scale of the proposal in relation to the plot, particularly where, as I set out above, the development currently proposed matches the approved bungalow in terms of size and location on the plot. Such a reason plainly would not be sustainable on appeal.
- 2.16 Equally, as I set out above, the increase from two to three bedrooms is unlikely to give rise to a noticeable increase in vehicle movements nor to harm to highway safety and convenience. Clearly the impact of two houses would be different in highway terms to a single three bedroom bungalow, and Members should not in my view refuse planning permission on this basis.

### **3.0 CONCLUSION**

- 3.01 Reasons for refusing planning permission need to be based on relevant planning policy, guidance and/or material planning considerations relevant to the development proposed. As I set out above, I do not consider that the Planning Committee's consideration of this development gave rise to such reasons, hence why the application was deferred to this Meeting.

- 3.02 It is imperative that planning permission be refused only where material planning harm is likely to arise and where that harm cannot be controlled by planning conditions. If no such harm can properly be identified as arising from the proposed development, planning permission should be granted.
- 3.03 In this case, I am very firmly of the view that the proposed development would not give rise to material planning harm justifying the refusal of planning permission, and I do not consider that Members' consideration of the scheme demonstrate any such harm as arising. I remain of the view that planning permission should be granted, and accordingly recommend approval.

**4.0 RECOMMENDATION – GRANT** Subject to the following conditions:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (3) The scheme of tree planting and landscaping shown on the submitted plans shall be carried out within 12 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area.

- (4) Prior to the commencement of development, details of the means of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its first occupation.

Reason: To secure appropriate foul and surface water drainage.

- (5) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0800 – 1800 hours, Saturdays 0830 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (6) Prior to the commencement of development, a programme for the suppression of dust during the construction of the development shall be submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed

throughout the period of construction unless any variation has been approved by the Local Plan Authority.

Reason: In the interests of residential amenity.

- (7) Prior to the commencement of development, details of ecological enhancements at the site such as bat and bird boxes shall be submitted and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its occupation.

Reason: To secure ecological enhancements.

- (8) The area shown on the submitted plan as car parking spaces shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (9) Before the development hereby permitted is first used, the proposed windows in the side elevations of the bungalow shall be obscure glazed and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

- (10) No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

Reason: In the interest of promoting energy efficiency and sustainable development.

- (11) The development hereby permitted shall be carried out in accordance with the following approved drawings: 7530.BR4, 7530PL1 and 7530.PL2.

Reason: For the avoidance of doubt and in the interests of proper planning.

- (12) Upon completion, no further development, whether permitted by Classes A, B, C or D of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

Reason: In the interests of the amenities of the area.

## **INFORMATIVES**

- (1) The developer should contact Southern Water to arrange for a connection to the public sewerage system by calling 0330 303 0119.

### **The Council's approach to this application:**

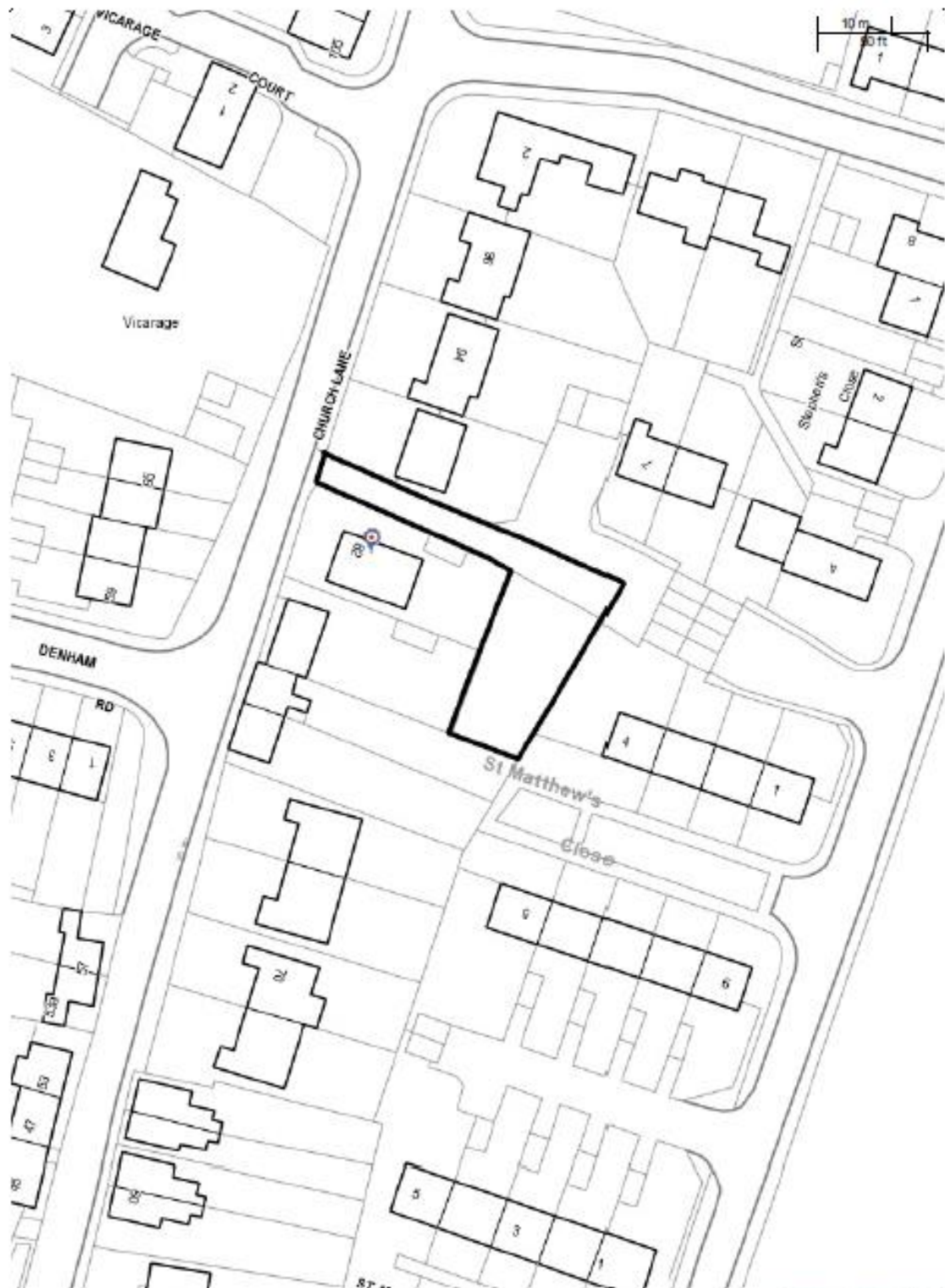
In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

If your decision includes conditions, there is a separate application process to discharge them. You can apply online at, or download forms from, [www.planningportal.co.uk](http://www.planningportal.co.uk) (search for 'discharge of conditions').

**NB** For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



18/503275/FULL - 82 Church Lane  
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