

PLANNING COMMITTEE
10 SEPTEMBER 2014
REPORT ON APPEAL DECISIONS
APRIL – JUNE 2014

Report from: Robin Cooper, Director Regeneration, Community and Culture

Author: Dave Harris, Head of Planning

Summary

This report informs members on appeal decisions. The summary of appeal decisions is listed by ward in Appendix A. Further information on costs is given in Appendix B and C.

A total of 29 appeal decisions were received during April to June 2014, of which 9 were allowed 19 dismissed and 1 split decision.

1. Budget and Policy Framework

1.1 Not applicable.

2. Background

2.1 When a planning application is refused, the applicant has the right to appeal within six months of the date of decision for non-householder appeals. For householder applications the time limit to appeal is 12 weeks. A householder application means (a) an application for planning permission for development of an existing dwelling house or development within the curtilage of such a house for any purpose incidental to the enjoyment of the dwelling house or, (b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development.

2.2 Appeals can also be lodged against conditions imposed on a planning approval and against the non-determination of an application that has passed the statutory time period for determination.

2.3 Where the Council has taken enforcement action through the serving of an Enforcement Notice then an appeal can be lodged in relation to that. An appeal cannot be lodged though in relation to a breach of condition notice on the basis primarily that if the individual did not like the condition then they could have appealed against that at the time it was originally imposed.

2.4 The appeals are determined by Inspectors appointed by the Secretary of State and administered by the Planning Inspectorate, which informs Medway Council of the Inspector's decision.

3. Options

3.1 Not applicable.

4. Advice and analysis

4.1 Not applicable.

5. Consultation

5.1 Not applicable.

6. Financial and legal implications

6.1 An appeal may be determined after a Public Inquiry, a Hearing or written representations. It is possible for cost applications to be made either by the appellants against the Council or vice versa if it is alleged that either has acted in an unreasonable way.

6.2 It is possible for decisions made by Inspectors on appeal to be challenged through the courts but only if it is considered that an Inspector has erred in law, for instance by not considering a relevant issue or not following the correct procedure. A decision cannot be challenged just because an Authority does not agree with it. A successful challenge would result in an Inspector having to make the decision again in the correct fashion, e.g. by taking in to account the relevant factor or following the correct procedure. This may lead ultimately to the same decision being made.

6.3 It is possible for planning inspectors to make a "split" decision, where they allow one part of an appeal but not another. This is not possible for the Council when it makes its original decision on the planning application other than for an advert application.

7. Risk Management

7.1 Monitoring of all appeal decisions is undertaken to ensure that the Council's decisions are being defended thoroughly and that appropriate and defensible decisions are being made by Committee and under delegated powers. The lack of any monitoring could lead to more decisions going contrary to the Council's decision possibly resulting in poorer quality development and also costs being awarded against the Council.

8. Recommendations

- 8.1 This report is submitted for information only and therefore, there are no recommendations for the Committee to consider.

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Background papers

Appeal decisions received from The Planning Inspectorate for the period April – June 2014.

Appeal Decision Summaries

CUXTON & HALLING

White Hart, 1 Rochester Road, Cuxton, ME2 1AD (MP):

MC12/2967 – failure to give notice within prescribed period (would have been refused) – delegated

Construction of two detached houses with access from Rochester Road and landscaping / earthworks.

Allowed with conditions (11 April 2014).

Procedural Matter:

The Council failed to give notice of its decision within the prescribed period and have since confirmed that the proposal would have been refused.

Summary:

The main issues are:

1. The effect of the proposal on the character and appearance of the area.
2. The living conditions for future occupiers of the development in terms of noise.
3. Whether adequate outdoor amenity space would be provided, having regard to existing trees.

Character and Appearance:

The two detached dwellings would be partially set into the sloping ground, meaning they would not appear obtrusive or excessively high. Although rising above the Public House, the ridge heights of the dwellings would be set below the highest properties in nearby Hillcrest Drive. The dwellings have been attractively designed so would not appear discordant or spoil the character of the area.

Noise:

According to the noise survey submitted, the predicted levels within the bedrooms closest to the road and the living room closest to the road would exceed the 'reasonable' values as specified within BS8233:1999. The predicted levels within the gardens would generally be at or below 55db, which would meet the Council's requirements. Various mitigation measures including roof lights, double glazed windows, mechanical ventilation and acoustic boundary fencing are proposed.

Trees:

Concerns were raised that the trees within the proposed rear gardens would result in overshadowing leading to future pressure for their removal. The trees are of variable quality and none are protected. The development proposes the removal of one hawthorn tree.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 523:P01 Rev C (proposed site plan and site elevations), 623; P02 Rev A (unit 1: proposed floor plans & elevations), 623:P03 (unit 2: proposed floor plans & elevations), 623:P05 Rev A (proposed sections), 623:P06 (proposed sections), 623:P10 (shadow study drawing), P04:623 (site location plan), SK100 (proposed vehicular dropped kerb access for 2 dwellings).
3. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and permanently retained thereafter.
4. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatments to be erected. The boundary treatments shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking that Order with or without modification), no alteration to the dwellings or other works permitted by Classes A, B, C, D or E of Part 1 of Schedule 2 of the Order shall be made.
6. The dwellings shall not be occupied until the area shown on the submitted plans for vehicle parking and garaging has been drained and surfaced in accordance with details submitted to and approved by the Local Planning Authority, and that area shall not thereafter be used for any purpose other than the parking of vehicles.
7. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of occupation of the dwellings.
 - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority.
 - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted in the same place and that tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the Local Planning Authority.
 - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall

any excavation be made, without the written approval of the Local Planning Authority.

8. Construction work shall not begin until a scheme for protecting the proposed dwellings from noise from the A228 (Rochester Road) has been submitted to and approved in writing by the Local Planning Authority. This shall include full details of all internal measures within the dwellings, as well as the design, type and siting of the acoustic sound barrier fencing along the A228. All works that form part of the scheme shall be completed before any part of the development is occupied and permanently retained thereafter.
9. The dwellings shall not be occupied until the means of access shown on Plan SK100, or an alternative scheme to be agreed with the Local Planning Authority, has been constructed.

The Cedars, 20 Vicarage Road, Halling, Rochester, ME2 1BE (MSP):

MC13/2043 – refused (31 December 2013) – delegated

Engineering works to facilitate block paved hard standing to the front.

Allowed with conditions (12 May 2014).

Summary:

The main issues are:

1. The effect of the details of the proposal on the Vicarage Road street scene.
2. Highway safety.

Street Scene & Highway Safety:

The development would result in a loss of a soft landscaped garden. The initial proposal indicates the potential for larger cars to overhang the highway, which would cause obstructions to pedestrians and vehicular movement. Amended plans have increased the depth of the parking area and retained area for planting.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with Drawing No. PT01 Version 2 dated 30 November 2013; Site Location Plan; Planning Application Supplementary Information received by the Local Planning Authority on 26 September and 30 November 2013.
3. The proposed parking area hereby approved shall be of permeable construction and the proposed soakaway shall be implemented prior to the parking area being brought into use in accordance with the approved details. Once installed, the permeable surface and soakaway shall thereafter be maintained.

GILLINGHAM NORTH

65 Ingram Road, Gillingham, Kent, ME7 1SE (AG):

MC/13/3290 – refused (20 December 2013) – delegated

Change of use of existing dwelling to 2 flats on ground floor and 2 flats on first floor.

Allowed (26 June 2014)

Summary:

The main issue is whether the proposed flats would provide an acceptable standard of living.

Although the two first floor flats fall below the Housing Design Standards, it is concluded that an exception to the standards is justified. As the property is also sustainably located, the exception to parking standards is also justified. Suitable areas are also set aside for bin storage, external stores including bicycles and drying areas.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. No development shall take place until full details of the resurfacing of the car park and demarcation of the 3 car parking spaces and bin storage area have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details before any part of the development hereby permitted is first occupied; and the car parking spaces and bin storage area shall thereafter be permanently retained as such.
3. The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing no. 0309/13/01: Location Plan – scale 1:1250
Drawing no. S65/1: Existing Ground Floor Plan – scale 1:100
Drawing no. S65/2'a': Existing First Floor Plan – scale 1:100
Drawing no. S65/3: Parking Area as Existing – scale 1:100
Drawing no. S65/4: Elevation of Parking Area as Existing – scale 1:100
Drawing no. Z06/01: Proposed Ground Floor Layout – scale 1:50
Drawing no. Z06/02A: Proposed First Floor Layout – scale 1:50
Drawing no. Z06/04: Rear Area and Car Park Layout – scale 1:100.

GILLINGHAM SOUTH

9a Lawrence Street, Gillingham, ME7 5TY (MP):

MC12/3031 – refused (9 May 2013) – Committee

Demolition of existing house and construction of 5 two bedroomed flats with associated parking.

Dismissed (9 April 2014)

Summary:

The main issues are:

1. Whether the proposal would result in the unacceptable loss of family housing.
2. The effect of the proposal on the character and appearance of the area.
3. The effect of the proposal on the living conditions of nearby residents – particularly visual impact.

Family Housing:

This proposal would be in conflict with criteria (i) and (ii) of Policy H6 insofar as the surrounding area is predominately single household occupation.

Character and Appearance:

The proposed building would have a staggered footprint, recessed behind the adjoining property and would be largely unseen in the street scene. The 2-storey frontage would reflect the adjoining terrace and the 3-storey form to the rear, although noticeable, would not necessarily appear out of scale within its setting.

Living Conditions:

The proposed building would extend into the existing rear garden, within 1m of the site's rear boundary at the minimum point and rising to 3 storeys in height. Due to the scale and proximity, the development would present a significant bulk that would appear overbearing and visually dominant.

Other Matters:

There would be little or no impact from overspill parking upon the surrounding highway network due to the proposed on-site parking and highly accessible services and public transport.

The windows facing the site's side boundary would not serve main habitable living spaces and therefore the neighbours' privacy could have been safeguarded.

LORDSWOOD & CAPSTONE

Land at Highview Farm, Lordswood Lane, Walderslade, Chatham, Kent, ME5 8JP (WS):

MC/12/2984 – refused (16 December 2012) – Committee

Outline planning application for the construction of five detached dwellings with garages.

Allowed (16 June 2014)

Summary:

The main issue is the effect of the proposed development upon the character and appearance of the area.

The application site is located in the vicinity of Beechen Bank, an area of ancient woodland and Area of Local Landscape Importance (ALLI). The five detached houses could be comfortably accommodated in large plots with generous space around and between them; there would also be scope for various landscaping and ecological enhancements. An appeal in 2002 was dismissed and planning permission refused on the conclusions that the site performed an important function

as a valuable part of the local landscape and that it contributed to the ALLI designation. However, since the 2002 appeal decision, a 1.8m close boarded fence has been erected under permitted development rights along the boundary, which has resulted in vegetation and trees growing against it. This now creates an opaque barrier and limited views of Beechen Bank, thus the openness of the site has significantly reduced. It is concluded that the proposed development would cause no significant harm to the character and appearance of the area.

Conditions:

1. Details of the access, appearance, landscaping, layout and scale (hereinafter called “the reserved matters”), shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority no later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. If, during the course of development, any contamination is found which has not been identified in the site investigation previously undertaken (Report No D3014-13 by ESG, dated February 2013), an investigation and risk assessment shall be carried out by a competent person. Should remediation be required, measures for the remedy of the source of contamination shall be submitted to and approved in writing by the local planning authority. The works shall take place in accordance with the approved measures.
5. Within 3 months of the remediation of the site in accordance with condition 3, a verification report, to demonstrate that the works are complete and identifying any requirements for longer term monitoring, maintenance and contingency arrangements, shall be submitted to the local planning authority for its written approval. The verification report shall include details of the data collected to demonstrate compliance with condition 3.
6. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. The days of the week and hours of work during which construction takes place.
 - ii. The parking of vehicles of site operatives and visitors,
 - iii. The route to be taken by construction vehicles entering and leaving the site. This shall not be via Old Lords Wood Lane.
 - iv. Loading and unloading of plant and materials.
 - v. Storage of plant and materials used in construction the development.
 - vi. Wheel washing facilities and measures to ensure that the surrounding roads are kept clear of mud and debris from the site.
 - vii. Measures to control the emission of dust and dirt during construction.
 - viii. A scheme of lighting during the construction phase.
7. No development shall take place until a scheme of landscaping has been submitted to, and approved in writing by, the local planning authority. The scheme shall be carried out and maintained thereafter as approved. It shall include:

- i. A tree survey indicating the position, height, spread and species of all the existing trees and hedgerows on the site, specifying details of those to be retained together with measures for their protection during construction.
 - ii. Details of the management responsibilities and maintenance schedule for the area shown in blue on the plan referred to in condition 9.
 - iii. Details of any ecological enhancements, including wildlife corridors and native planting, and the management responsibilities and maintenance schedules thereof.
8. In this condition “retained tree” means an existing tree which is to be retained in accordance with the scheme provided under condition 7; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of the occupation of the dwellings.
- i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)].
 - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
9. The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan PP1A, showing an area of land between the development site and Old Lords Wood Lane within a blue line.
10. No point of access shall be created through the area shown within the blue line on the plan referred to in condition 9.
11. The design of the dwellings hereby permitted shall not exceed two storeys.

LUTON & WAYFIELD

Land Between 32 and 34 Roosevelt Avenue, Wayfield, Chatham, ME5 0ER (MH):

MC13/0985 – Refused (31 July 2013) – Committee

Construction of 6 two-bedroomed houses and 3 flats comprising 2 two-bedroomed and one 1-bedroom (for disabled person) together with provision for car parking.

Dismissed (2 April 2014)

Summary:

The main issues are:

1. The effect of the proposal on the adequacy of private outdoor space
2. Whether the occupiers of the flats would have acceptable living conditions – with regard to noise and disturbance
3. The effect on the character and appearance of the surrounding area

Living Conditions:

The rear terraced area for each dwelling (5m in width), would fall significantly below the Housing Design Standards (HDS) 2011 of 10m and 7m in constrained areas, thus providing inadequate private outdoor space. Combined with the high fences to protect privacy, the terraced areas would feel very constrained. There would be some noise and disturbance in relation to the use of the rear terraced area, however, it would not be at unacceptable levels. The development would be contrary to the National Planning Policy Framework (NPPF), which requires development to provide a good standard of amenity.

Character and Appearance:

The boundary fences on Roosevelt Avenue are noticeable as they are close to the pavement. The appearance of the houses on Roosevelt Avenue would make a positive contribution. The proposal would increase the levels of natural surveillance directly on to Ironside Close. The dwellings would be slightly more forward of the rear elevation, which would result in the development being significantly more dominant. The rear terraced area would also be a dominant feature on the rear elevation. The number of boundary fences to provide privacy would also add prominence to the terrace and draw the eye to the detriment of the character and appearance of Ironside Close.

PENINSULA

Woodview Farm, Buckhole Lane, High Halstow, Rochester, Kent, ME3 8SE (AM)

ENF/13/0161 – Enforcement Notice dated 15 October 2013

Without the benefit of planning permission the stationing of a shipping container on the Land.

Allowed, the enforcement notice is quashed and planning permission granted. (20 June 2014)

The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the deemed application.

Woodview Farm, Buckhole Lane, High Halstow, Rochester, Kent, ME3 8SE (SF)

MC/13/1273 – refused (1 August 2013) – Committee

Retrospective application for the siting of a shipping container for storage of agricultural products and equipment.

The container stands between two existing and lawful buildings, some 1m from the access and close to other shelters. The surrounding area is dominated by rolling open countryside. The site and container are visible from the access and a nearby public footpath, but does not appear isolated or incongruous in form. The container, when clad in wood appears sympathetic to the adjacent buildings and less conspicuous, thus reducing the harm to the character and appearance of the landscape. To further reduce any harm, appropriate landscaping should be provided in the strip of land between the container, adjoining buildings and access track.

Allowed (20 June 2014)

Summary:

The main issue is the effect of the development on the character and appearance of the surrounding rural area.

Conditions:

1. The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan (annotated copy of title plan issued on 17 January 2008) and 'diagram one'.
2. The container shall be sited in its current location only namely between the two existing buildings on the land.
3. The container hereby permitted shall be removed and all materials resulting from the works shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 3 months of the date of this decision schemes for a) the cladding of all exposed sides of the container in wood and b) landscaping the are between the container the adjoining buildings and the access track and c) a timetable for implementation shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. Within 11 month of the date of this decision, if the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted schemes shall have been approved by the Secretary of State.
 - iv. The approved schemes shall have been carried out and completed in accordance with the approved timetable.
4. The cladding approved and implemented in accordance with condition 3) shall be retained as such thereafter.
5. If within a period of five years from the date of the planting of any tree or hedgerow shrub, that tree or shrub, or any planted in replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the

same place.

Buttercrook Wharf, Vicarage Lane, Hoo St Werburgh, Rochester, ME3 9LQ (WS):

ENF/12/0473 – Enforcement Notice dated 4 July 2014

Operational Development: (i) the depositing of waste & other materials to raise land levels across the Site; (ii) the construction of a commercial building on the Site, shown in the approximate position cross hatched blue on the Plan, with supporting infrastructure including car parking area and paths, drainage system, lighting gas tanks and gas system; (iii) the erection of boundary fencing measuring over two metres in height on the Site; (iv) the stationing of 2 shipping containers on the Site; and (v) the construction of a roadway to the rear of the commercial building: and Material Change of Use: (vi) the change of use of a building, shown in the approximate position cross hatched blue on the Plan, to use for class B2 industrial operations.

Allowed in part and planning permission granted subject to conditions. (2 June 2014)

Summary:

The enforcement notice is corrected by:

Section 3;

the deletion of allegation (i) and its replacement by “(i) the depositing of materials to raise land levels across the Site”

in allegation (iv) the replacement of the word “stationing” with the word “installation”

Section 5;

Requirement (iii) the replacement of the word “Property” with the word “Site”

Requirement (iv) the replacement of the word “Property” with the words “new building”

The enforcement notice is varied by:

Requirement (vii) the deletion of the words “Remove the new boundary fencing on the eastern and northern boundaries and reduce the remainder” and the replacement by the words “Reduce the new boundary fencing”

Substitute 8 months for 1 month as the period for compliance with requirement (xi).

The appeal is dismissed insofar as it relates to the erection of boundary fencing measuring over two metres in height on the Site, the installation of 2 shipping containers on the Site, the construction of a roadway to the rear of the commercial building so far as it relates to the section of roadway south of the south-eastern corner of the new building, and the change of use of a building to use for class B2 industrial operations.

The appeal was considered under grounds (a), (b), (c), (f) and (g).

The appeal on ground (a):

The main issue is the effect of the development on the character and amenity of the area. Subject to conditions relating to the colour of the new building and landscaping, the building and associated development would be considered acceptable. However, the fencing and part of the roadway cause demonstrable harm to the character and visual amenity of the area. The appeal under ground (a) is partially allowed. Conditional planning permission is granted for the main building

and other works. The submission, approval and implementation of dust mitigation measures are required to ensure use falls within Class B1.

The appeal on ground (b):

Relating specifically to allegations (i), (ii) and (vi). The materials used for surface re-profiling on site are inert and allegation relating to depositing of waste can be withdrawn. There has been landraising affecting not-insignificant parts of the site. Subject to notice correction and in relation to allegation (i), the appeal on ground (b) fails. In relation to allegation (ii), which related to the height of the building was withdrawn. Allegation (iv) relates to one of the old office buildings and is a change of use, which is considered under ground (c).

The appeal on ground (c):

Relating specifically to allegations (iv), (vi) and (v). It is found that the current use of the former office building is a B2 use and that there has been a material change of use, for which planning permission is required. The one remaining shipping container is considered a building and does not benefit from planning permission. Therefore, the appeal under ground (c), insofar as it relates to that container, fails. The notice does not need to be corrected or varied to reflect the removal of the second shipping container, which had been removed shortly before the Inquiry. With regard to the constructed roadway, the new building is considered unlawful and the original office buildings are an integral part of unlawful development and therefore, do not have the benefit of permitted development rights.

The appeal on ground (f):

All matters, with the exception of the boundary fencing, were fully considered under ground (a). The notice requirement should be varied to require the reduction of all boundary fencing to 2m.

The appeal on ground (g):

The cessation of Class B2 use is considered under ground (g). The notice is varied to extend the compliance time from 1 month to 8 months.

Conditions:

1. The requirements of the enforcement notice dated 4 July 2013 shall be complied with within 8 months of the failure to meet any one of the requirements set out in a) to k) below:
 - a) within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority details of a scheme for painting or re-cladding the walls and roof of the new building. The scheme shall include a timetable for its implementation and the scheme shall be implemented as approved.
 - b) Within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority details of hard and soft landscape for the site, to include planting plans, written specifications (including cultivation and other operations associated with grass and plant establishment, aftercare and maintenance): schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate; details of hard surfacing materials; means of enclosure; minor artefacts and structures; and any earthworks and changes in ground levels, together with an implementation/aftercare programme

which shall include a minimum maintenance period of 10 years. The details shall include a timetable for implementation and the scheme shall be implemented as approved.

- c) Within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority a scheme for the drainage of the site, including measures for the prevention of contamination and an action plan to deal with any oil or petrol spillage. The scheme shall include a timetable for its implementation and the scheme shall be implemented as approved.
 - d) Within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority details of any external lighting. The details shall include a timetable for its implementation and the scheme shall be implemented as approved.
 - e) Within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority a scheme for the minimisation of the generation of dust and mitigation of the impact of dust produced by site activities. The scheme shall include a timetable for its implementation and the scheme shall be implemented as approved.
 - f) Within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority details of the arrangements for the storage and removal of waste materials from future activities at the site. The scheme shall be implemented as approved.
 - g) Within 2 months of the date of this decision there shall have been submitted to the Local Planning Authority details of a scheme for the protection of the Oak tree in the north eastern corner of the site, including consideration of the restoration of ground levels in the rooting area. The scheme shall be implemented as approved.
 - h) The details of cycle parking submitted to and approved by the Council in respect of Condition 15 of planning permission MC/11/2379 shall be implemented as approved.
 - i) I) If the Local Planning Authority refuse to approve any of the said schemes, plans, measures or arrangements or fail to give a decision thereon within 6 months of the date of this decision there shall have been submitted to and accepted by the Secretary of State an appeal against any such refusal or failure; and
 - j) If an appeal is made pursuant to sub-paragraph I) above, that appeal shall have been finally determined and allowed by the Secretary of State; and
 - k) The approved schemes, plans, measures or arrangements shall have been fully implemented in accordance with the details and timetables referred to therein.
2. No industrial processes, repairs or maintenance activities, or the storage of materials, plant or other equipment shall take place outside of a building with the prior written approval of the Local Authority.
 3. Notwithstanding the provisions of any Development Order no building shall be extended or altered, no plant or machinery installed, no sewer, main, pipe, cable or other apparatus provided and no hard surfaces shall be laid.
 4. The use of the site shall only operate (including loading and unloading) between the hours of 0800 and 1800 Mondays to Fridays inclusive and

between the hours of 0800 and 1300 on Saturdays and no working shall take place at any time on Sundays or public or Bank Holidays.

5. No loud speakers, tannoy systems or other types of speaker system shall be installed within the development on the exterior of the buildings with the prior written approval of the Local Authority.

PRINCES PARK

Rear of 364 Lordswood Lane, Lordswood, Chatham, ME5 8JS (MS):

MC13/2379 – refused (18 November 2013) – delegated

Outline application with all matters reserved for construction of a single detached 4-bedroom house with associated off-road parking/turning facilities with other associated external works.

Dismissed (8 April 2014).

Summary:

The main issue is the effect of the proposal on the character and appearance of the area and impact upon protected trees.

Character and Appearance:

The proposed dwelling would comprise tandem development, which Policy H9 of the Medway Local Plan expressly states will not be permitted. The outlook to the rear of the properties has a strong sense of space and so any dwelling to the rear of No 364 would have a strong visual presence. This would introduce a dominant built form at odds with the surrounding pattern of development.

Protected Trees:

The document entitled “Development Tree Survey and Arboricultural Report” states that a dwelling and access could be accommodated with minimal and acceptable encroachment into the root protection areas. However, the document depicted asymmetrical proportions to the growth of these trees, which contradicts the existing/proposed plans of the site showing symmetrical tree growth. It is considered that the surrounding trees would form a strong and imposing form of enclosure, especially when in leaf. Significant alterations to the topography would be required for the access, which would fall within the root protection area of the Oak trees nearest to the existing dwelling.

RAINHAM CENTRAL

Land Adjacent to 29 Shelden Drive, Rainham, Gillingham, Kent, ME8 8JH (MS):

MC13/1235 – refused (23 September 2013) – delegated

Construction of a single storey detached bungalow. Demolition of existing garage.

Dismissed (18 June 2014)

Summary:

The main issues are the effect of the proposed development on the living conditions of future occupiers in respect of privacy and the effect on the character and appearance of the area.

Living conditions.

The Medway Housing Design Standards refer to a 20m separation distance between new and existing dwellings, the proposed development falls short at a distance of 13.5m. An unacceptable lack of privacy would be very harmful to future occupiers due to the clear and direct views over the boundary fence across the site and down towards the lounge window from No 14 Mierscourt Road.

Character and appearance.

The overall form, scale and appearance of the proposed dwelling would not be significantly out of place in the context of the surrounding area, which would respect the character and appearance of the area.

The proposed development would not cause harm to the character and appearance of the area but would cause harm to the living conditions of future occupiers, therefore, the appeal is dismissed.

RAINHAM SOUTH

30 Silverspot Close, Rainham, Gillingham, Kent, ME8 8JR (ME):

MC13/2582 – refused (6 January 2014) – delegated

Change of use of amenity land to garden area and the construction of a fence.

Dismissed (9 June 2014).

Summary:

The main issues are the effect on the character and appearance of the locality and highway safety.

Character and appearance.

The fence is in unduly close proximity to the footway, has no significant intervening shrubs or hedge to soften its appearance, is 2m in height and has a solid wood appearance. This contrasts with the unenclosed open space and is at variance with the general appearance of other similar corner locations. It is concluded that the character and appearance of the locality has been harmed.

Highway Safety.

The fence is set back from the footway and splayed at the junction with the driveway, indicating that the visibility of motorists leaving the site is not sufficiently restricted to endanger passing pedestrians or motorists.

ROCHESTER WEST

Cunningham House, St Margarets Street, Rochester, ME1 1YZ (MS):

MC12/2998 – refused (5 April 2013) – delegated

Conversion of garage to apartment with balcony and associated parking.

Allowed with conditions (8 April 2014)

Summary:

The main issue is the effect of the proposal on the residential character and amenities of the area, with particular regard to on-street parking.

Parking:

The net loss of one parking space on the site and the additional need from one extra dwelling could have the potential to create parking demand for two further spaces on-street. The Council's Interim Residential Parking Standards indicate that garages of less than 7m x 3m in dimension will be excluded from any provision and in this case, each garage measures less than this size, questioning the usability and practicality. It is difficult to establish a mathematical shortfall of parking spaces given the circumstances. No conflict could be found with the Medway Local Plan policies nor the National Planning Policy Framework.

Other Matters:

The proposed apartment, access & two parking spaces would be directly adjacent to the side boundary of 6 Kings Row leading to some movement and activity close to the side boundary of this property's rear garden. However, the living conditions could be adequately safeguarded with appropriate boundary treatment as secured by condition.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and Drg Nos 12/1207/Block Plan;12/1207/Parking Plan and 12/1207/01 Rev A.
3. All materials to be used in the construction of the external surfaces of the dwelling hereby permitted shall match those of the existing building.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no windows/doors, other than that expressly authorised by this permission, shall be constructed on the north elevation facing 6 Kings Row.
5. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the position, design, materials and type of boundary treatment to be erected along the boundary with 6 Kings Row. The boundary treatment shall be completed before the dwelling is occupied. Development shall be carried out in accordance with the approved details.

6. The dwelling shall not be occupied until space has been laid out, surfaced and drained in accordance with drawing No 12/1207/01 Rev A for two cars to be parked. The spaces shall be used solely for the benefit of car parking and for no other purpose and permanently retained as such thereafter.

STROOD NORTH

16-18 London Road, Strood, Rochester, ME2 3HT (SF):

MC13/1798 – refused (16 September 2013) – delegated

Change of use from retail to residential to form two dwellings.

Allowed with conditions (8 April 2014).

Summary:

The main issues are:

1. Whether the proposal would result in the unacceptable loss of a retail facility.
2. The effect of the proposal on the living conditions of future occupiers regarding noise, air quality and size of accommodation.

Loss of Retail:

The property has not been used for retail purposes for a significant amount of time as evidenced by the ad-hoc storage within the former retail area and the large windows either side of the central entrance being obscured by net curtains of some age. This gives the appearance of long-term vacancy and contributes little to the vitality of the immediate street scene.

Living Conditions:

Although the area is busy, the installation of new windows to the front elevation would achieve better noise attenuation within the property as a whole. The development would not generate any airbourne emissions and would benefit from the installation of a clean air ventilation system.

Overall space for the smaller bedroom at No16 falls below the Medway Housing Design Standards (MHDS) for a 3-bed, 4 person property. However, there is flexibility in relation to buildings of historic merit and it has been noted that appropriate living space and bedroom space is provided. A 2-bed, 3 person property falls marginally below the MHDS with the smaller room being used as a home study. In all other respects, the living spaces would all be provided with adequate privacy, daylight and sunlight for occupiers of both future properties.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and Drg Nos TCS/1, TCS/2, TCS/3, TCS/4, TCS/5, TCS/6 and TCS/7.
3. No development shall take place until a detailed noise survey has been submitted to and approved in writing by the Local Planning Authority. The survey shall include at least 24 consecutive 1 hour noise readings of L(A)eq,

L(A)10 and L(A)Max levels at the elevation to London Road. Where the 16 hour L(A)eq is greater than 55dB during the day and 45dB at night, a scheme of mitigation including details of glazing and ventilation shall also be submitted to and approved in writing by the Local Planning Authority. Where the internal noise level within the front ground floor rooms to Nos 16 and 18 are greater than 35dB(A) with the windows open, details of a mechanical ventilation system for these rooms shall also be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details prior to the first occupation of any part of the development and shall thereafter be maintained.

4. No development shall take place until an air quality scheme, which demonstrates how poor air quality from London Road can be mitigated by the installation of a clean air ventilation system to ensure that air quality within the front ground floor rooms to Nos 16 and 18 meets relevant standards for Nitrogen Dioxide of 200 µg/m³ 1 hourly average and or 40 µg/m³ annual average, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall included details of the design and installation of the clean air ventilation system and, if necessary, air purification equipment. It shall also include details showing how noise and vibration will be controlled. The development shall be undertaken in accordance with the approved details prior to the first occupation of any part of the development and shall thereafter be maintained.

14 London Road, Strood, Rochester, ME2 3HT (SF):

MC13/0721 – refused (24 June 2013) – delegated

Change of use from retail (Class A1) to residential dwelling.

Allowed subject to conditions (29 April 2013).

Summary:

The main issue is whether the proposal would result in the unacceptable loss of a retail facility having regard to development plan policy.

The former retail space was being used for ad-hoc storage in relation to the use of the remainder of the premises and it appears that it has been some while since it had been used for any such purpose. The fairly long-term vacancy contributes little to the vitality of the immediate street scene.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drg Nos 1-4 (inclusive).
3. No development shall take place until a detailed noise survey has been submitted to and approved in writing by the Local Planning Authority. The survey shall include at least 24 consecutive 1 hour noise readings of L(A)eq, L(A)10 and L(A)Max levels at the elevation to London Road. Where the 16 hour L(A)eq is greater than 55db during the day and 45db at night, a scheme of mitigation including details of glazing and ventilation to the ground floor

windows within the front elevation shall also be submitted to and approved in writing by the Local Planning Authority. Where the internal noise level within the ground floor rooms are greater than 35db(A) with the windows open, details of a mechanical ventilation system for these rooms shall also be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details prior to the first occupation of any part of the development and shall thereafter be maintained.

4. No development shall take place until an air quality scheme, which demonstrates how poor air quality from London Road can be mitigated by the installation of a clean air ventilation system to ensure that air quality within the ground floor rooms meets relevant standards for Nitrogen Dioxide of 200>g/m³ 1 hourly average and or 40 >g/m³ annual average, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the design and installation of the clean air ventilation system and, if necessary, air purification equipment. It shall also include details showing how noise and vibration created by the ductwork serving the clean air ventilation system will be controlled. The development shall be undertaken in accordance with the approved details prior to the first occupation of any part of the development and shall thereafter be maintained.

STROOD SOUTH

97 Elaine Avenue, Strood, Rochester, Kent, ME2 2YP (CS):

MC/13/1029 – refused (11 July 2013) – Committee

Demolition of 97 Elaine Avenue and the erection of 4 new detached dwellings.

Dismissed (3 June 2014).

Summary:

The main issues are the effect of the proposal on the character and appearance of the area and the effect on the living conditions of nearby occupiers and future occupiers of the proposed development with particular regard to privacy and disturbance.

Character and appearance.

To achieve sustainable development, it is common practice to demolish and remove one or more of the frontage dwellings and open up the backland with a new access road, to form a cul-de-sac style development. The proposed shared surface access would integrate well with Elaine Avenue provided Plot 1 would not be enclosed by a substantial boundary fence and wall. It is concluded that the scheme would enhance rather than harm the character and appearance of the area.

Living conditions.

There would be unacceptable levels of overlooking and therefore loss of privacy to the future occupiers of the development. The window in bedroom 4 of Plot 2 would overlook the rear garden of Plot 1, which has a limited sized garden and a distance of only 11m from rear boundary to recessed wall of Plot 2 dwelling creating

unacceptable overlooking and loss of privacy. The window in bedroom 1 of Plot 3 would overlook the garden of Plot 2.

Disturbance caused to existing residents of Elaine Avenue is not considered sufficiently harmful to warrant refusal.

97 Elaine Avenue, Strood, Rochester, Kent, ME2 2YP (CS):

MC/13/2679 – refused (9 January 2014) – Committee

Demolition of 97 Elaine Avenue and the erection of 4 new detached dwellings.

Allowed and planning permission granted subject to condition (3 June 2014).

Summary:

The main issues are the effect of the proposal on the character and appearance of the area and the effect on the living conditions of nearby occupiers and future occupiers of the proposed development with particular regard to privacy and disturbance.

Character and appearance.

To achieve sustainable development, it is common practice to demolish and remove one or more of the frontage dwellings and open up the backland with a new access road, to form a cul-de-sac style development. The proposed shared surface access would integrate well with Elaine Avenue provided Plot 1 would not be enclosed by a substantial boundary fence and wall. It is concluded that the scheme would enhance rather than harm the character and appearance of the area.

Living conditions.

A bedroom window in Plot 3 would overlook the garden of Plot 2, which would be significantly lessened by the combination of the window being offset from the Plot 2 garden and that Plot 2 has the largest garden of the four proposed dwellings.

Disturbance caused to existing residents of Elaine Avenue is not considered sufficiently harmful to warrant refusal.

Conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
PL275/04 Rev. B; PL/275/06 Rev. A & 4010/O.G/01 received 24 October 2013; PL/275/02 Rev. B received 31 October 2013, and PL/275/01 Rev. D and revised Drawing PL/275/03 Rev. D received 2 December 2013.
3. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. No development shall take place, including any works of demolition, until a Method of Construction Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period.

5. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details.
6. The dwellings shall not be occupied until the areas shown on drawing No. PL/275/01 Rev. D for parking purposes have been provided and those areas shall not thereafter be used for any purpose other than the parking of vehicles.
7. Access to the development from Elaine Avenue shall be formed by a dropped kerb crossover of the existing footway.
8. No development shall take place until full details of the hard and soft landscape works for the publicly accessible areas have been submitted to and approved in writing by the Local Planning Authority. The landscape works shall be implemented in accordance with the approved details prior to the first occupation of any dwelling and shall thereafter be retained.
9. None of the dwellings hereby approved shall be occupied until underground ducts have been installed by the developer to enable telephone, electricity and communal television services to be connected to any premises within the site without recourse to the erection of distribution poles and overhead lines. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no distribution pole or overhead line shall be erected within the area.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the roof of the chalet bungalow on Plot 2.
11. Before the commencement of development the developer shall mark out on site the proposed levels for the road, car parking spaces and the slab levels for the dwellings. Those elements of the scheme shall not be constructed until the levels have been submitted to and approved in writing by the Local Planning Authority including any such variations as may be considered necessary.

Appeal Cost Decision Summaries

Buttercrook Wharf, Vicarage Lane, Hoo St Werburgh, Rochester, Kent, ME3 9LQ, Peninsula (WS):

ENF/12/0473 – Enforcement Notice dated 4 July 2014

Operational Development: (i) the depositing of waste & other materials to raise land levels across the Site; (ii) the construction of a commercial building on the Site, shown in the approximate position cross hatched blue on the Plan, with supporting infrastructure including car parking area and paths, drainage system, lighting gas tanks and gas system; (iii) the erection of boundary fencing measuring over two metres in height on the Site; (iv) the stationing of 2 shipping containers on the Site; and (v) the construction of a roadway to the rear of the commercial building: and Material Change of Use: (vi) the change of use of a building, shown in the approximate position cross hatched blue on the Plan, to use for class B2 industrial operations.

Allowed in part and planning permission granted subject to conditions. (2 June 2014)

Costs Decision

An application for awards of costs for Saga Fashions Ltd is refused.

An application for partial awards of costs for Medway Council is allowed.

Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

There remained considerable differences between the parties at the outset of the Inquiry, including the cladding colour for the new building and the likelihood of a significant effect on the European designated sites. The Council could not have satisfactorily met its duties without initiating enforcement action and the requirement to demolish the unauthorised building was entirely appropriate. Therefore, it follows that an award of costs, either full or partial is not justified.

The development commenced prior to the determination of its application for the discharge of pre-commencement conditions. The appellant's explanation of why it was unaware of the refusal of that application is not a satisfactory basis for continuing to rely on the 2011 permission. Therefore, continuing to maintain the new building was not in breach of planning control was unreasonable which resulted in wasted expense for the Council to refute this contention and prepare to defend it at appeal. The conditions for a partial award of costs are met.

It was ordered that Saga Fashions Ltd shall pay to Medway Council, the costs of the appeal proceedings limited to those costs incurred in preparing to refute the claim that the new commercial building erected was the implementation of a valid planning permission.

Report on Appeal Costs

<u>Appeals prior to 2011/12</u>					
Ref.	Site	Proposal	Decision type	Costs	Comment
MC/05/0263	Trechmanns Wharf Cuxton (Cuxton & Halling Ward)	Re-use of land as wharf : siting of prefab building, 2 cranes, lighting and new access road to Rochester Road	Delegated	For	Legal pursuing costs
ENF/12/0006	28A East St, Chatham (Chatham Central Ward)	Demolition of garage premises + construction of a 3 bedroomed mid terrace house		Against	Legal negotiating costs
COMP/ 07/0012	Thameside Terminal Cliffe (Strood Rural)	Construction of roadway, buildings, change of use of land by subdivision to 9 plots for storage, transport and haulage and Portacabin businesses – all with no planning permission	Enforcement	For	Legal pursuing costs from Panther Platform Rentals and Britannia Assets (UK) Ltd

<u>Appeals 2011/12</u>					
Ref.	Site	Proposal	Decision type	Costs	Comment
ENF/11/0094	113 Imperial Rd Gillingham (Gillingham South Ward)	Conversion to 2 x 2 bed flats with no planning permission	Enforcement	For (partial)	Legal applied for High Court costs order - received March 2014. Pursuing payment

Appeals 2011/12

Ref.	Site	Proposal	Decision type	Costs	Comment
MC/10/1737	Forge Cottage, 214 Bush Rd, Cuxton (Cuxton & Halling Ward)	Outline for 3 bed detached dwelling	Delegated	For (partial)	Costs of <u>£90.42 paid in full 30/04/2012</u>
COMP/09/0154	Medway Manor Hotel 14-16 New Rd Rochester (River Ward)	Erection of wooden outbuilding on site without planning permission	Enforcement	For (partial)	Costs of <u>£217.91 paid in full 20/01/2012</u>

Appeals 2012/13

Ref.	Site	Proposal	Decision type	Costs	Comment
ENF/11/0282	2 Livingstone Circus Gillingham (Watling Ward)	Change of use of ground floor to mixed use resi and A1 retail use without permission	Enforcement	For (partial)	Costs of <u>£243.36 paid in full 20/11/2013</u>
ENF/10/0141	Riverview Manor Rochester (Rochester West Ward)	Planning breach : mixed use of resi, recovery, repair and storage of vehicles and storage of catering van and container	Enforcement	For	<u>£500 received 23/04/2014.</u> <u>£200 received 01/07/2014</u> Pursuing payment of final instalment of £172.04
MC/13/0280	Plot 1, Merryboys Stables, Cliffe Woods (Strood Rural Ward)	Construction of shed to side of dwelling (resubmission of MC/12/0818)	Delegated	For	Costs of <u>£276 paid in full 30/12/2013</u>

Appeals 2014/2015

Ref.	Site	Proposal	Decision type	Costs	Comment
MC/13/2031	48 Hoath Lane, Rainham (Wigmore Fish Bar)	Construction of 4 dwellings	Committee over turn of officer recommendation	Against (partial)	Costs limited to defending reasons 1 and 3 of decision. <u>£1,946.50 paid</u> to cover 50% costs.
ENF/12/0473	Buttercrook Wharf, Vicarage Lane, Hoo	Construction of a commercial building with landscaping, parking and internal infrastructure without the benefit of planning permission	Enforcement	For (partial)	Costs incurred limited to preparation to refute the claim that the new commercial building erected was the implementation of a valid planning permission <u>Costs of £1,517.50 paid in full 27/08/2014</u>