

PLANNING COMMITTEE

4 MARCH 2015

REPORT ON APPEAL DECISIONS

OCTOBER – DECEMBER 2014

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

Author: Dave Harris, Head of Planning

Summary

This report informs Members of appeal decisions. The summary of appeal decisions is listed by ward in Appendix A.

A total of 10 appeal decisions were received during October to December 2014, of which 1 was allowed and 9 were dismissed.

A summary of appeal cost decision summaries is set out in Appendix B and overall information on appeal costs is set out in Appendix C.

1. Budget and Policy Framework

1.1 This is a matter for the Planning Committee.

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.

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. In the case of appeals that are heard by way of Public Inquiry or Informal Hearing 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 into 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. Recommendation

- 8.1 The Committee is asked to note the contents of the report.

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Background papers

Appeal decisions received from The Planning Inspectorate for the period October – December 2014.

APPEAL DECISION SUMMARIES

GILLINGHAM NORTH

1 Rosebery Road, Gillingham, ME7 1QQ (AG):

MC/14/0326 – Refused (10 July 2014) – Delegated

Construction of a 2 bedroomed dwelling

Dismissed (08 December 2014)

Summary:

The main issues are:

- The effect of the proposed development on the character and appearance of the street scene and;
- The effect of the proposed development on living conditions, with specific regard to the potential impact on neighbours in terms of loss of light and privacy and in terms of internal and external amenity space for future occupiers

Character and appearance

The proposed dwelling would have a ridge height lower than 1 Rosebery Road. The design details means that the proposed elevations would be out of keeping of No1, and also with those of the prevalent Victorian/Edwardian era dwellings. The varying design elements, such as incongruous ridge and eave heights, narrower overall width and depth and absence of significant openings in the rear elevations would result in a building that looks at odds with the character and appearance of buildings within the street scene and area. It would be materially harmful to the character and appearance of the street scene

Living Conditions

The proposal would not result in a materially harmful loss of daylight for neighbouring properties. The visual privacy would be secured by the deliberate omission of significant windows or other openings in the rear elevation. Together with the distance of approximately 13 metres, the proposed dwelling would not result in a materially harmful loss of privacy for the occupants of the adjacent properties.

Both parties agree that the proposed dwelling would fail to meet the internal standards laid out in the Medway Housing Design Standards (2011). The inability to meet the minimum floor standards and limited external amenity space means that the living conditions of future occupiers could not be adequately secured.

Whilst loss of light and privacy for adjacent properties is not an issue, the internal living conditions and affect on character and appearance is unacceptable.

GILLINGHAM SOUTH

Land on the north side of Cross Street and rear of 77-87 James Street, Gillingham, Kent (AG):

MC/14/0326 – refused (16 April 2014) – delegated

Construction of two 2-storey blocks comprising of four 1-bedroomed flats with associated bin storage and parking

Dismissed (02 October 2014)

Summary:

The main issues are the effect on the proposed development on the living conditions of future occupiers of Flat 3 and future occupiers of the south and north blocks in respect of privacy; the effect on the character and appearance of the area and whether there would be adequate parking provision having regard to parking in the area and on highway safety.

Living conditions

The northern block of the proposed development would be close to the rear of 120 and 122 Gardiner Street, the first floors of these having cleared glazed bedroom windows facing the site. This would lead to an unacceptable lack of privacy harmful to future occupiers of Flat 3 of the northern block. The privacy for other flats is sufficient.

Character and appearance

The rear elevation of the northern block would be in very close proximity to the south flank wall of 120 Gardiner Street. This would result in the buildings appearing very confined and tight to each other, producing a form of development that would be disruptive and not closely related to the existing pattern in this location. The proposed development would cause harm to the character and appearance of the area.

Parking provision

The proposed development would provide two parking spaces. Parking spaces were available in residents parking and pay-and-display bays in the surrounding area. The site is within 300m of a mainline railway station and has bus stops with regular services in the immediate area. The amount of parking would be acceptable in terms of the proposed development on parking and highway safety within the area.

Other matters

In respect of safety of the occupiers of Flats 3 and 4 of the northern block, the Kent Fire & Rescue Service indicated access to the rear of the site is unsuitable, requiring a sprinkler system to be fitted. This could be dealt with by conditions.

The council's concerns of security could be resolved by way of conditions regarding lighting, security and screening measures.

PENINSULA

Coombe Lodge, Coombe Farm Lane, St Mary Hoo, Rochester, ME3 8RL (MS):

MC/14/1176 – Refused (10 July 2014) – Delegated

Construction of a hay barn

Dismissed (01 December 2014)

Summary:

The main issue is the effect of the proposed development on the character and appearance of the countryside and the North Kent Marshes Special Landscape Area.

The Council considers the hay barn would be an excessive capacity for the holding. The appellant indicated the hay barn would also be used for equipment storage. A container previously used for storage was broken into, however there's no evidence that the hay barn would be any more secure than said container.

The barn would be two metres taller than the adjoining stables. Due to its height and overall mass and bulk it would form a prominent feature within the landscape, which is mainly flat. The use of a condition to use tree screening would not be reasonable as trees take time to grow and there's no guarantee the screening would mitigate the significant impact on this part of the SLA.

The proposal would be detrimental to the character and appearance of the countryside and North Kent Marshes SLA

Land adjacent to 2 Harrison Drive and 5 Eden Road, High Halstow, Rochester, ME3 8ST (AW):

MC/14/1353 – Refused (22 August 2014) – Delegated

Application for approval of reserved matters (access, landscaping, layout and scale) pursuant to condition 1 of outline permission MC/14/0412 for construction of two 2-storey blocks comprising of four 1-bedroomed flats with associated parking

Dismissed (15 December 2014)

Summary:

The main issue is whether the proposed flats would provide acceptable living conditions for future occupiers in regard to internal and external space.

The Medway Housing Design Standards (Interim) (2011) require one-bedroom flats to have a minimum gross internal floor space of 50 square metres. Two of the proposed flats would be below this minimum and would be unacceptably cramped particularly if occupied by two people.

First floor occupiers would not have access to external space; they would have access to front gardens, however these would be used as the refuse storage area and would have a significant lack of privacy. The proposed flats would be an over-intensive of the site and would not provide acceptable internal and external living space for future occupiers.

RIVER

FLAT 3, 46 NEW ROAD, ROCHESTER, ME1 1DR (TS):

MC/14/1560 – Refused (24 July 2014) – Delegated

Construction of 4 replacement vertical sliding windows to front/side at first floor level

Dismissed (09 December 2014)

Summary:

The main issue is whether the proposal would preserve or enhance the character and appearance of the conservation area

The proposed replacement window frames, glazing bars and meeting rails would be uncharacteristically wide and heavy in appearance and would be at harmful odds with the appearance of the semi detached houses. The vertical and horizontal rails of the PVCu windows would appear to butt against each other with a noticeable seam. These would appear overly dominant and unacceptably detract from the symmetry of the semi-detached pair of houses. The proposed windows would be detrimental to the character and appearance of the conservation area.

ROCHESTER SOUTH & HORSTED

52 King George Road, Weeds Wood, Chatham, Kent, ME5 0TT (IS):

MC/14/1724 – refused (12 August 2014) – delegated

Construction of an Annexe in rear garden (demolition of outbuilding 2)

Dismissed (04 November 2014)

Summary:

The main issue is the effect of the proposal on the living conditions of the occupiers of nearby residential properties in Harptree Drive

The proposed development would form a dominant structure in close proximity to adjacent properties. The proposed building would adversely affect the outlook to occupiers of these properties and would harm their living conditions as a result. The proposed development would not be appropriate to the character of the area in terms of siting and would not protect the amenities enjoyed by nearby properties.

STROOD NORTH

THE MEDICAL CENTRE, GUN LANE, STROOD, ROCHESTER, ME2 4UW (DH original, LP appeal)

ENF/13/0205 – Enforcement notice dated 14 March 2014-12-08

Without the benefit of planning permission the material change of use of the Property to a mixed use for a medical centre and a pharmacy

Allowed and enforcement notice quashed (28 November 2014)

Summary:

The appeal on Ground (c):

The issue under this ground is whether there has been a material change of use of the building requiring planning permission.

The authorised use of the premises is Class D1(a), namely a use “for the provision of any medical or health services”. According to legislation if the lawful use is within a particular Use Class, no permission will be needed for a change of use, in whole or part, for another use falling within the same class. A particular use of land may have its own Use Class but that doesn’t prevent it being treated as within a different Class if it is “included in and ordinarily incidental to it.”

The services provided and products sold all fall within, or at least have a strong connection/justification to, Class D1(a). There is nothing to suggest that the Pharmacy is operating in any way contrary to its Use Class. These services, products and operation can in any event be seen as incidental or ancillary to the permitted use, not a separate one.

There has been no material change of use requiring planning permission. There has therefore been no breach of planning control and thus the other grounds of this appeal do not need to be considered. The notice is quashed.

30 Woodview Rise, Strood, Rochester, ME2 3RP (MSP):

MC/14/2020 – Refused (04 September 2014) – Delegated

Construction of dormers to front and rear to facilitate loft conversion together with a larger replacement window to flank wall

Dismissed (01 December 2014)

Summary:

The main issues are:

- The effect of the proposal on the character and appearance of the area and;
- Whether the proposal would provide satisfactory living conditions for current and future occupiers of the property.

Character and appearance

In relation to the proposed front dormer the excessive size, occupying the greater part of the front roof slope, together with its flat roof design, would make it bulky and over dominant for the modest size of the bungalow.

The existing front dormer at No36 Woodview Rise was granted permission in 1984, but policy considerations have changed since that time. Seeing this built reinforces the same issues of visual harm identified in this appeal. The design would not respect the scale and appearance of the building or visual amenity of the surrounding area

Living conditions

According to the Medway Housing Design Standards the roof space for a habitable room should be 2.4 metres in height, whereas the bedroom is 2.2 metres. This is a minor discrepancy in height and would not adversely affect living conditions to sufficiently justify a refusal. There is no fundamental conflict with the MHDS.

The living conditions are satisfactory however the front dormer would adversely affect the character and appearance of the area.

STROOD RURAL

38 Iden Road, Wainscott, Rochester, Kent, ME2 4PH (MSP):

MC/14/1424 – refused (18 August 2014) – delegated

Construction of a single storey side/rear extension with roof light together with the insertion of a dormer window to rear and raising of ridge

Dismissed (04 November 2014)

Summary:

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

The significant projection of the dormer above the ridgeline would make it appear visually awkward in relation to the main roof and result in a poor relationship with the adjoining roof at no 36. This would give rise to an incongruous and bulky appearance, causing visual harm. The proposed dormer extension would adversely affect the character and appearance of the street scene.

Pear Tree Cottage, Noke Street, Wainscott, Rochester, ME3 8BJ (AG):

MC/14/1330 – Refused (17 July 2014) – Committee

Construction of a single storey front extension including integral garage and porch

Dismissed (23 December 2014)

Summary:

The main issue is the effect on the character and appearance of the surrounding countryside.

The proposed extension would project significantly to the front of the dwelling and, with the previous approved extension, would increase visual depth of about 150 percent. This would have the effect of altering the building from the original very modest structure to a more substantial structure. It would significantly increase both the floor space and visual bulk of the building and would add additional built form that would serve to urbanise the area. This would harm the character and appearance of the countryside.

Appeal Cost Decision Summaries

THE MEDICAL CENTRE, GUN LANE, STROOD, ROCHESTER, ME2 4UW (DH original, LP appeal)

ENF/13/0205 – Enforcement notice dated 14 March 2014

Without the benefit of planning permission the material change of use of the Property to a mixed use for a medical centre and a pharmacy

Allowed and enforcement notice quashed (28 November 2014)

Costs decision

An application for awards of partial costs for Medway Council is refused

As the Planning Practice Guidance continues to advise, 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.

The late submission of evidence can lead to delay and/or the need for an adjournment to enable the opposing party to address it. The additional material in this instance consisted of a few sheets giving details principally of the items supplied by the pharmacy from June-August 2014. There was no real objection to it being presented and I allowed its late submission because it was an important part of the Appellant's case. It was broadly consistent with his anecdotal evidence and did not cause the Council to seek an adjournment for example, to investigate the matter any further. Arguably it could and should have been presented earlier but the figures appeared to have been produced for the purpose of the hearing where the only earlier record (for May 2014) was in much shorter form. The Council's consultant would have needed to address it whether it was submitted with the main statement or later so the Council cannot be said to have incurred any significant additional costs in considering it shortly before the hearing. An award of costs would not therefore be justified.

Land on the north side of Cross Street and rear of 77-87 James Street, Gillingham, Kent (AG):

MC/14/0326 – refused (16 April 2014) – delegated

Construction of two 2-storey blocks comprising of four 1-bedroomed flats with associated bin storage and parking

Dismissed (02 October 2014)

Costs decision

An application for the award of costs against Medway Council is allowed

The proposed development would not adversely affect the safety and security of future occupiers nor affect the provision of parking within the area. The applicant points to a transcript of an email dated 03 March 2014 that indicates the Council's concerns over parking and security had been resolved. The Officer Report refers to the length of access and passage past the bins, cycle store and gardens, but does not explain why these would be a particular problem. Suitable conditions in relation to access could have been imposed. The Council has not adequately substantiated its second and third reasons for refusal and has acted unreasonably in failing to consider whether the matter could be dealt with by conditions

The Council argues the scheme would be detrimental to highway safety and amenities of future residents. The Officer's report does not explain any concerns in relation to highway safety nor any information in relation to what it considers a high existing demand for on street parking spaces. It does not refer to having considered any reduction in parking standards as set out in Medway Interim Residential Parking Standards 2010. The Council's appeal statement provided Census 2011 information in relation to car and van availability, however the links between this and the amount of proposed parking provision are not evident or sufficiently explained. The Council has not adequately substantiated its fourth reason for refusal.

APPENDIX C

Report on Appeal Costs

Appeals prior to 2011/12					
Ref.	Site	Proposal	Decision type	Costs	Comment
MC/05/0263	Trenchmanns 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	Dividend paid by administrators. <u>£4,034.66</u> received
ENF/12/0006	28A East St, Chatham (Chatham Central Ward)	Demolition of garage premises + construction of a 3 bedroomed mid terrace house		Against	<u>£25,500 paid</u> as final settlement (2 instalments January and May 2014)
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. High Court Judgement obtained

Appeals 2011/12					
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	Costs of <u>£872.04 paid in full over 3 instalments (final instalment received 09/09/2014)</u>
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>
MC/14/0326	Land north side of Cross St (r/o 77-87 James St), Gillingham	Construction of 2 storey blocks comprising of 4 x 1 bed flats	Delegated	Against	