

PLANNING COMMITTEE

5 JULY 2017

REPORT ON APPEAL DECISIONS

APRIL 2016 - MARCH 2017

Report from: Richard Hicks, Director of Regeneration, Culture,
Environment and Transformation

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Summary

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

A total of 56 appeal decisions were received during April 2016 to March 2017, of which 18 were allowed, 33 were dismissed and 4 Enforcement Notices were upheld and 1 was allowed.

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. The timescale for lodging an appeal varies depending on whether the application relates to a householder matter, non householder matter or whether the proposal has also been the subject of an Enforcement Notice.

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, an appeal can be lodged in relation to that. An appeal cannot be lodged 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 Advice and analysis

3.1 This report is submitted for information and enables members to monitor appeal decisions.

4. Consultation

4.1 Not applicable.

5. Financial and legal implications

5.1 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. Powers have now been introduced for Inspectors to award costs if they feel either party has acted unreasonably irrespective of whether either party has made an application for costs.

5.2 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.

5.3 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.

6. Risk Management

6.1 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.

7. Recommendations

7.1 The Committee consider and note this report which is submitted to assist the Committee in monitoring appeal decisions.

Appendices

- A) Appeal decisions list
- B) Appeal costs
- C) Report on appeal costs

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Background papers

Appeal decisions received from The Planning Inspectorate for the period April 2016 to March 2017.

APPEAL DECISION SUMMARIES

Appeals decided between 01/04/2016 and 31/03/2017

Chatham Central

10 Central Park Gardens, Chatham, ME4 6UT (TS)

MC/15/4181 - Refused (2 February 2016) - Delegated

Excavation works to facilitate the formation of a vehicular crossover and hardstanding area to front

Dismissed (9 August 2016)

Summary

The main issue:

- The effect of the proposed parking arrangement on highway safety in Central Park Gardens.

In this part of Central Park Gardens the highway is narrow with footpaths either side. Cars were parked partly on the footpaths to enable single-file vehicular access to be maintained along the highway. Whilst there is no parking restriction in place it appeared that there is a high demand for on-street parking in the area. The frontages to properties to this part of Central Park Gardens are smaller than those further along this street.

This on-street parking would reduce a driver's visibility of both pedestrians and vehicular traffic travelling along the highway when manoeuvring into and out of this space. As a result it is unlikely that a vehicle would be able to park parallel to the highway within the frontage of the property with any degree of consistency.

The proposed development would not achieve a safe and accessible off-street parking space, and as such, would be harmful to highway safety in Central Park Gardens.

18 Manor Road, Chatham, ME4 6AG (HG)

MC/16/0170 - Refused (17 March 2016) - Delegated

Change of use from religious building with a two bedroomed flat into a total of 4 flats comprising 2x two-bedroomed and 2x one-bedroom flats with cycle and bin storage - resubmission of MC/15/1184

Dismissed (25 August 2016)

Summary

The main issues:

- The availability of community facilities in the area.
- The biodiversity value of the North Kent Marshes Special Protection Area.
- The living conditions of future occupiers with regard to: the provision of external space; outlook; the size of the accommodation in the two bedroom, two storey flat; and the adequacy of waste and recycling storage and collection facilities.

NPPF paragraphs 7 and 8 require the social, economic and environmental roles of sustainability to be considered together.

The net gain of three flats would make a modest contribution to the supply of housing in the area and, therefore, to the social role of sustainability. This consideration weighs in favour of the proposal. The proposal would not be detrimental to the living conditions of future occupiers with regard to the size of the accommodation or the provision of waste and recycling storage, although the absence of harm does not amount to a positive point in favour of the proposal.

The development would cause harm with regard to the outlook of, and provision of external space for, future occupiers, the loss of a community facility and its effect on the SPA. In these respects, the proposal would have significant negative effects on the social and environmental roles of sustainability. There is nothing to suggest that the proposal would make a material contribution to the economic role. Overall, the proposal would not be sustainable and does not benefit from the presumption in favour of sustainable development.

Cuxton & Halling

Elmhaven Marina, Rochester Road, Halling, Rochester, ME2 1AQ (DC)

MC/15/3088 - Appeal against non-determination

Improvement to highway access onto the A228 from parking area, together with replacement boundary fencing to provide security with installation of CCTV and construction of single storey marina building to provide reception/security office with store/workroom

Dismissed (18 April 2016)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area.
- The effect of the proposal on highway safety in the vicinity of the site.

The Marina needs further car parking which needs to be secure. The proposed building and frontage fence would be acceptable, subject to concerns regarding the extent of the planting to be removed to achieve adequate visibility from the widened access. The fencing at right angles to the road, however, would be visually intrusive. It has not been shown that a safe access with adequate sight lines can be achieved. Overall the potential harm to highway safety and the character and appearance of the area outweighs the benefits of providing secure parking for boat owners. This harm could not be overcome by the imposition of conditions.

20 The Glebe, Cuxton, Rochester, ME2 1LW (MSP)

MC/16/1823 - Refused (23 September 2016) - Delegated

Construction of a first floor side extension with roof lights and conservatory to rear

Allowed (22 February 2017)

Summary

The main issues:

- The effect on the character and appearance of the area.
- The effect on the living conditions of existing or future occupants.
- The impact upon potential loss of adjoining trees.

Whilst the proposed extension would not appear subservient to the main dwelling, the roof would be carried over with the same pitch, the tile hanging would be extended and there would be matching materials. It would appear as an extension of the terrace. It would not be prominent in the wider street scene, as it would be viewed against the backdrop of the bank of trees. There would therefore be no harm to the character and appearance of the area.

The conservatory would have a modest depth, would be set in from either side of the extended property and would be largely enclosed within the rear garden area. There would still be more than adequate amenity space for the occupants of the property.

There is a concern that once the vegetation on the bank regenerates, it would provide a significant tree screen in close proximity to the appeal property. There would therefore be a loss of daylight and sunlight as a result, nuisance from tree debris and in turn pressure to remove trees in the future.

The levels of daylight and sunlight to the property once the tree screen has regenerated would be satisfactory. In terms of nuisance from leaf fall, this would be no different from the current situation. With regard to potential pressure for future loss of trees, no trees are required to be removed as a direct result of the development and foundations would be beyond root protection areas. The pressure to remove trees seems speculative at present. The woodland is protected by a Tree Preservation Order, and if the eventual regeneration of the trees proves to be a problem in the longer term, this issue would be considered at that time. The proposal complies with Policies BNE2, BNE41 and BNE43 of the Local Plan in that the amenities of future occupants would be secured and trees providing a valuable contribution to local character would be retained.

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 drawing no 1603/04/A.
3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
4. The proposed development shall be carried out strictly in accordance with the recommendations set out in the arboricultural report prepared by SylvanArb dated 27

July 2016. In particular, all recommended tree protection works in that report shall be in place prior to the commencement of any development hereby permitted.

Gillingham North

Compass House, Medway Road, Gillingham, KENT ME7 1NY (DC)

MC/15/0486 - Refused (8 June 2015) - Delegated

Retrospective application for the change of use from existing residential care home (C2) to student accommodation (Sui generis) together with construction of two 2 storey infill extensions to provide 54 student rooms; conversion of two pairs of existing semi detached bungalows to provide 2 two bed roomed and 2 three bed roomed bungalows for student accommodation; associated cycle and bin storage

Allowed, Planning Permission granted with conditions (13 June 2016)

ENF/14/0409 - Enforcement Notice dated 20 August 2015

Without planning permission:

The change of use of the property from sheltered residential accommodation (C2) to student accommodation (sui generis), and
The construction of 2 x two storey infill extensions to the Property.

The grounds for the enforcement appeal did not need to be considered as the appeal against the refusal of planning permission succeeded and planning permission was granted (13 June 2016).

Summary

The main issues:

- The application failed to provide a satisfactory level of accommodation for the occupiers of the development in terms of internal floorspace and in terms of satisfactory arrangements for the storage and collection of refuse. However, the Council accept that, had the development otherwise been considered acceptable, a condition would have been imposed with regard to arrangements concerning refuse.
- Therefore the first main issue arising is whether the development provides satisfactory accommodation for its occupiers in terms of internal floorspace.
- When taking enforcement action, the Council also found the external alterations to the building, including two infill extensions and the cladding to the building, unsatisfactory, and so the second main issue is the effect of the development on the appearance of the building and the surrounding area.

The development provides satisfactory accommodation for its occupiers in terms of internal floorspace and the external alterations to the building do not have a harmful impact on the appearance of the building or of the surrounding area. The grant of planning permission would be consistent with the NPPF and with the Local Plan. The Council have recommended the imposition of three conditions. The standard condition suggested as Condition 1 is not, however, required, as the use has already commenced. Condition 2 shall be imposed to ensure that the accommodation continues to be of a satisfactory standard for its occupants. A condition regarding refuse will also be imposed, in the interests of visual amenity and to ensure a satisfactory provision for refuse and recycling: however, a condition

will also need to be imposed which allows for the possibility of no approval emanating from the Council. The wording may seem unnecessarily draconian but needs to be there as a “long stop”.

Conditions:

1. The development hereby permitted shall be undertaken in accordance with the following approved plans: drawing numbers: 2012/15/P11 received on 13 February 2015; 2012/15/P04, 2012/15/P10 received on 24 March 2015; and 2012/15/SK01 Rev C, 2012/15/SK02 Rev C & 2012/15/SK03 Rev C received on 14 April 2015.
2. The use hereby permitted shall cease within six months of the date of failure to meet any of the following criteria:
 - (i) Within two months of the date of this decision, details of the refuse and collection arrangements for the buildings, including the bungalows, including provision for the storage of recyclable materials and a timetable for implementation, shall be submitted in writing to the Local Planning Authority.
 - (ii) Within ten months of the date of this decision the details shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the details or fails 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 pursuant to (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall have been implemented in accordance with the approved timetable.

Costs Decision – Refused (See Appendix B)

Jeffery Street Car Park, Jeffery Street, Gillingham (CB)

MC/15/1186 - Refused (2 July 2015) - Committee

Construction of a four storey building to provide 68 student rooms, 8 common rooms and associated support facilities, together with cycle and bin storage

Dismissed (2 July 2015)

Summary

The main issues:

- The effect on the character and appearance of the locality.
- The effect on the living condition of the occupiers of the adjacent residential and commercial premises, with regard to overlooking, daylight and outlook.
- Whether a car free development would be appropriate.

The site comprises an unattractive void space between substantial buildings to either side. Rather than overwhelming the terraced properties opposite, and being visually overbearing, the development would reduce the dominance of the larger neighbouring blocks and provide a more attractive and sympathetic setting. The active frontage of the new residential use would complement those of the houses opposite. The position of the proposed building would also limit the prominence of the unsightly flank of the structure to the east, and would result in an improvement to the quality of the built environment. The character and

appearance of the area would be enhanced. The proposal would accord with Local Plan Policy BNE1 and the general aims of the SPD would be satisfied.

The new building would be sufficiently distanced from neighbouring properties to prevent any undue loss of privacy from overlooking, loss of daylight or outlook. The living conditions of the occupiers of the adjacent buildings would not be harmed.

The scheme would be a car free development. On street parking is available in adjacent roads, but this requires a resident's permit, and is subject to significant pressure. In order to seek to deter future occupiers from using the car, a condition is suggested that would intend to preclude them from obtaining parking permits. However, this would fail the tests for the Use of Planning Conditions set out in the PPG, with regard to matters such as being reasonable and enforceable, and the use of a condition requiring a planning obligation is also inappropriate. As there would be no suitable means of preventing new residents obtaining a parking permit, the development may well result in significant additional on street parking pressure, which would unacceptably add to the potential for vehicular conflict, congestion and additional pollution. There would, in consequence, be conflict with the core planning principle of the NPPF that planning should always seek to secure a good standard of amenity for existing and future occupants, and the proposed car free development would not therefore be appropriate.

Rear of 45 Church Street, Gillingham, ME7 1SR (PI)

MC/16/0825 - Refused (28 April 2016) - Delegated

Construction of a 2-bedroomed detached dwelling with associated parking

Dismissed (10 September 2016)

Summary

The main issues:

- The effect on (a) the character and appearance of the area and (b) the living conditions of existing occupiers, particularly privacy.
- Whether the new dwelling would (a) provide acceptable living conditions for future occupiers, with particular regard to privacy and internal space standards; and (b) be likely to have a significant effect on the nearby Special Protection Area (SPA).

Overall, the character is of rear garden areas that offer space and setting to the existing dwellings. Due to site constraints, the proposed dwelling would have a narrow front elevation and a hipped roof facing the road, which would not reflect the wider frontages of the nearby terraces in Margate Close or the gable roof of No. 45. In addition a two storey new dwelling would intrude into the area. The proposal would therefore be harmful to the character and appearance of the area.

The new dwelling would have a rear facing first floor, clear glazed window serving a bedroom. Overall, due to its size, position and proximity to the existing dwelling, it would have views of the rear garden of No. 45 and be visible from this property. The proposal would therefore have a harmful effect on living conditions of existing occupiers. This relationship would also have impacts for future occupiers of the new dwelling, which would be overlooked by first floor windows of Nos. 45 and 43, and adds to concerns about their living conditions.

The appellant has indicated he would agree to contributions towards the mitigation of any harmful impacts from recreational disturbance by residents making leisure trips to the SPA, but there is no mechanism put forward to ensure this.

Gillingham South

34 Shakespeare Road, Gillingham, ME7 5QN (PD)

MC/16/1004 – Refused (21 June 2016) - Delegated

Construction of a part two/part single storey rear extension

Allowed (29 September 2016)

Summary

The main issue:

- The effect of the proposed extension on the character and appearance of No. 34 Shakespeare Road and its surroundings.

The area immediately to the rear of No. 34 is tunnelled between the rear extensions to Nos. 32 and 36. Any moderate harm arising from the proposed flat roof element would be outweighed by the benefit of the proposal in providing usable extended accommodation and by the overall design of the scheme tying together the variety of extended forms at Nos. 32, 34 and 36. On balance, there would be an overall improvement to the appearance of the surrounding area.

The appeal is allowed and planning permission is granted.

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 at 1:1250 scale received by the local planning authority on 2 March 2016; Site block plan at 1:500 scale received by the local planning authority on 17 March 2016; and revised drawings stamp dated 26 May 2016.
3. The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
4. The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the local planning authority

173 Nelson Road, Gillingham, ME7 4NB (TS)

MC/15/2709 - Refused (9 November 2015) - Delegated

Construction of a vehicular crossover to front

Dismissed (5 April 2016)

Summary

The main issue:

- Whether the proposal would preserve or enhance the character or appearance of the Gillingham Park Conservation Area.

The property falls within the Gillingham Park Conservation Area and the Design Guidance sets out that the small front gardens with low boundary walls and gateposts in front of the properties make an important contribution to the area. The group of terraces are all set back from the highway behind modest front gardens and the majority have retained either all or part of the original low boundary walls and gateposts, so collectively these properties make a positive contribution to the historic character and appearance of the Conservation Area. The proposed crossover would result in the loss of the front boundary wall and railings, which would erode this character.

Nelson Road is a busy road and although off-street parking would benefit the appellant, the wider harm to the Conservation Area would clearly outweigh this benefit and would not preserve nor enhance the Conservation Area.

7 Canterbury Street, Gillingham, ME7 5TP (TS)

MC/16/3152 - Refused (13 September 2016) - Delegated

Variation of condition 3 on planning permission MC/15/0381 to change the hours of operation to 11:00am - 03:30am on Fridays and Saturdays

(Appeal A) Dismissed (30 January 2017) - See MC/16/3153 for details.

MC/16/3153 - Refused (15 September 2016) - Delegated

Variation of condition 4 on planning permission MC/15/0381 for use of shisha within existing smoking shelter to rear by members of the public

(Appeal B) Allowed (30 January 2017)

Summary

The main issue (both appeals):

- Whether the disputed conditions are reasonable and necessary in order to safeguard the living conditions of surrounding residents with particular reference to noise and disturbance

Appeal A

The property currently operates as a restaurant/takeaway. The use ceases at 01:00 hours on Fridays and Saturdays and the appellant seeks to open until 03:30 hours on Fridays and Saturdays.

Local residents state that there are existing problems with noise and disturbance during the early hours of the morning as people disperse from the night club opposite and a number of other restaurants/takeaways in the immediate locality, which currently open until 03:00 hours or later. As a consequence of the proposed extended opening hours, people would be less likely to disperse from the area and the additional customers attracted to the restaurant/takeaway would be likely to add to the noise and disturbance currently experienced by local residents. Therefore, the proposed extended opening hours would be likely to unacceptably harm the living conditions of surrounding residents and would fail to comply with Policy BNE2 of the Local Plan and the NPPF. Condition 3 is reasonable and necessary in order to safeguard the living conditions of residents in the locality.

Appeal B

The smoking shelter is screened by walls around it, and together with the roof, this would limit the extent of any noise emanating from its use. There is no evidence to indicate that the previous use of the smoking shelter had a significant adverse effect on the living conditions of the surrounding residents. Therefore, disputed condition 4 is not reasonable or necessary to safeguard the living conditions of the surrounding residents and removing it would not conflict with Local Plan Policy BNE2.

The appeal is allowed and planning permission is granted for the change of use from A3 to A3/A5 with extended trading hours in accordance with MC/16/3153, without compliance with condition number 4 previously imposed on planning permission MC/15/0381, but subject to the subsisting conditions and the following new conditions:

1. The smoking shelter permitted shall only operate between the hours of 11:00 to 23:00 Mondays to Sundays inclusive.
2. No public address system or amplified music system, which is audible at the site boundary shall be used in connection with the smoking shelter hereby permitted to the rear of the premises.

Lordswood & Capstone

7 Wey Close, Lordswood, Chatham, ME5 8JW (AW)

MC/15/2241 - Refused (29 January 2016) - Delegated

Construction of two pairs of 4-bedroomed semi-detached houses with associated parking and new access road (demolition of existing dwelling) (resubmission of MC/15/1121)

Dismissed (5 July 2016)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area.
- The effect of the proposal on the living conditions of the occupiers of 8 Wey Close and 16 Poacher's Close with particular regard to privacy, outlook and sunlight.

As a result of the positioning of the proposed dwellings and parking spaces and the regrading of the land, many of the trees on the site, including a visually important Eucalyptus, would be removed. In addition, the substantial level of hard standing would allow for little soft landscaping. The positioning of the proposed dwellings within the appeal site would also fail to respect the characteristic rear building line of other dwellings in the area. Additionally, the proximity of the proposed dwellings to each other and to the southern and north-western boundaries of the site would appear cramped. The proposal would therefore substantially reduce the spatial qualities of the area and would appear considerably at odds with the prevailing and characteristic pattern of surrounding development.

Whilst the density of the development may reflect that of some other plots locally, and the proposed dwellings would face the new access road, similar to other dwellings in the area, this does not mean that the relationship of the proposed dwellings to their surroundings would be satisfactory. Furthermore, any new planting and landscaping would take time to mature, and would not be likely to overcome the harm to the spatial qualities of the area. It is concluded that the proposal would result in significant and demonstrable harm to the character and appearance of the area.

The positioning of the proposed dwellings would give rise to the opportunity for future occupiers to overlook the rear windows and rear garden of 8 Wey Close and the conservatory and main garden of 16 Poachers Close, giving rise to an unacceptable loss of privacy.

It is unlikely that the proposal would result in an overbearing form of development for the occupiers of 8 Wey Close and 16 Poachers Close and as a result there would be no significant harm to their outlook.

Given the minimal area of garden that would be affected, combined with the relatively short duration of time it would be affected for, it is not considered that any loss of sunlight would cause material harm to the living conditions of the occupiers of 16 Poachers Close.

20 Albury Close, Lordswood, Chatham, ME5 8UW (PI)

MC/16/3304 – Refused (3 October 2016) - Delegated

Construction of 2 bedroom dwelling to form end of terrace with associated parking

Dismissed (16 March 2017)

Summary

The main issues:

- The effect of the proposal on driver and pedestrian safety.
- The effect of the proposed development on the North Kent Marshes Special Protection Area (SPA).

The proposed parking provision would not be sufficient to meet parking standards, but the development has good links to sustainable transport and day to day facilities, and therefore the parking requirements are justified.

The parking area for No. 20 would be small, and would lead to additional parking elsewhere, intensifying the level of partial obstruction on the pavement, and increasing difficulties for pedestrians using the Close. It would also decrease visibility for cars reversing onto the highway. Such parking and manoeuvring would be likely to cause inconvenience for other road users. The proposed development would therefore cause harm to driver and pedestrian safety, in conflict with Policies BNE2 and T13 of the Local Plan.

Although not a reason for refusal, the proposal would require mitigation for the effect on the SPA in respect of the effect of new residential development on recreational disturbance to over-wintering birds. The appeal site is some distance from the SPA and the appellant disputes the need to make a contribution. However, a significant effect is likely either alone or in-combination with other proposals, and as there is no mechanism put forward to secure a contribution, there is no certainty that a scheme would be put in place to provide adequate measures to avoid or mitigate potential adverse effects on the SPA, which is sufficient reason to dismiss the appeal.

Even if there was not a five year supply of housing land, the contribution the proposal would make towards addressing any undersupply does not outweigh the harm that the scheme would cause to driver and pedestrian safety, and the SPA, and the development is not therefore sustainable.

Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent, ME7 3JJ (GG)

MC/14/2395 - Refused (27 January 2016) - Committee

Outline application with some matters reserved (appearance, landscaping, layout, scale) for construction of up to 450 market and affordable dwellings with associated access, estate roads and residential open space

Allowed (6 March 2017)

Summary

The main issue:

- Whether or not the proposed development amounts to sustainable development, having regard to local and national planning policies for the supply of housing and the countryside, considering:
 - (a) whether or not the proposal accords with local and national planning policy and the implications of this;
 - (b) the implications of housing land supply for the proposed development;
 - (c) the effect of the proposed development on the character and appearance of the area, which is within an ALLI; and,
 - (d) the assessment of other matters, including other benefits and disbenefits.

Planning policy

Saved local plan policies BNE25, BNE34 and S4 are relevant in the consideration of the scheme. However, as it is agreed that the Council does not have a five year land supply, and given the advice in the NPPF, Policies BNE25 and BNE34 are out of date and should only be afforded limited weight. Policy S4 is also not significant. It must therefore be considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.

Housing land supply

Overall the Secretary of State agreed with the Inspector's conclusion that the shortfall in five year housing land supply is so great and the pressure on sites is so significant, that it is inevitable greenfield land will have to be developed.

Character and appearance of the countryside, designated as part of the Capstone and Horsted Valleys ALLI

The Secretary of State agreed with the Inspector and considered that the proposed development would harm the character and appearance of the immediate area and fail to accord with the provisions of policies BNE25 and BNE34. He also agreed that the harm would not represent a critical harm to the function of the Capstone and Horsted Valleys ALLI taken as a whole. Furthermore, given that policy BNE34 allows for development in an ALLI if social and economic benefits outweigh the local priority to conserve the area's landscape, such benefits must be considered.

Benefits of the scheme

In terms of sustainability, there would be economic gains to the local economy from housing delivery, including affordable housing, and in the value of construction works. Housing would be accessibly located, in close proximity to recreational facilities and local transport, which would make economic sense in terms of reducing the need for private car travel. It is agreed that these benefits significantly outweigh the disadvantages, in economic terms, of losing the site from agricultural use.

In relation to the social role, the proposed dwellings would provide much needed homes, which would improve peoples' quality of life. This is alongside benefits for existing residents in terms of play space and sustainable transport provision. Although there are concerns that existing residents may experience some detrimental impact on their amenity and not feel their views have been listened to, on balance the social benefits weigh heavily in favour of the proposal.

The overall positive balance for the economic and social strands of sustainability from the development contrast with the environmental role where there is clear harm to this area of locally protected countryside. However, the development would not lead to coalescence between Lordswood and Hempstead or critical harm to the ALLI's function. The Secretary of State therefore concluded that the sustainability of the scheme, along with the fact that the relevant policies for the supply of housing land in Medway are out of date, outweigh the landscape harm and other harm, and that the adverse impacts of the scheme do not significantly and demonstrably outweigh its benefits when assessed against the NPPF policies taken as a whole.

Planning obligations

The signed s.106 Unilateral Undertaking, other than in respect of the specific items referred to for the waste and recycling contribution, complies with CIL Regulations and the NPPF tests.

Conditions:

1. Details of the 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 except that authorised by condition 4 below 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 not later than 18 months from the date of this permission. The development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved.
3. No development shall take place until a scheme of phasing for the dwellings and highways and drainage infrastructure and associated open space / green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme of phasing.
4. The development of Phase One as agreed by condition 3 above shall begin not later than 12 months from the date of the approval of reserved matters applications relating to that phase.
5. All reserved matters and details required to be submitted pursuant to condition 1 shall be in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. EDP1995/97a received 24/09/2015 and the Design and Access Statement (Revised 12/08 2014). A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and the indicative Masterplan documents.
6. No dwelling or ancillary building construction shall take place until details 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.
7. No more than 450 dwellings shall be constructed on the site.

Trees and Landscaping and Ecology

8. The plans and particulars required to be submitted in accordance with the condition 1 shall ensure that no less than 2.96 ha of the site is set aside as woodland, 0.531 ha as open space and play space and where the development abuts the adjoining ancient woodland a clear minimum of 15m landscape buffer area/zone shall be maintained.
9. The development shall not commence until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees to be retained and removed, any facilitation pruning required and the proposed measures of protection, undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction-Recommendations' has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of areas of hard surfacing within the root protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

10. A Landscape and Ecology Management Plan (LEMP), including long term design objectives, management responsibilities and maintenance schedules with timetable(s) for works for all landscape areas, other than domestic gardens, shall be submitted to the local planning authority for approval in writing prior to the occupation of the development. The LEMP shall be carried out as approved in accordance with the approved timetable(s).
11. No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C_EDP1997_07).

The WMP shall include the following:

Review of existing constraints and opportunities;
Management objectives and associated practical measures;
Details of initial enhancements and long term maintenance;
Extent and location/area of management works on scaled maps and plans at a scale which shall have first been agreed by the local planning authority in writing;
Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
Details for monitoring and remedial measures; and
Persons responsible for implementing the works.
The measures set out in the WMP shall be implemented in accordance with the approved details and timetable(s).

12. The development shall not commence until details of all fencing, walling and other boundary treatments, to include hedgehog holes have been submitted to and approved in writing by the local planning authority. The landscaping areas and buffer zones shall be implemented in full in accordance with the approved details before the first occupation of any of the dwelling as hereby approved, or in accordance with a programme to be agreed in advance in writing by the local planning authority. All boundary treatments and buffer zones to be installed in or adjacent the ancient woodland shall be carried out in accordance with the approved details.
13. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons for the phase to which it relates following the occupation of the first dwelling on that phase or the completion of that phase of development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of that phase of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
14. No works shall take place (including ground works and vegetation clearance) until an updated species survey has been carried out to inform production of an Ecological Design Strategy (EDS) addressing all species mitigation for all species recorded within the site has been submitted to and approved in writing by the local planning authority.
The EDS shall include the following:

Purpose and conservation objectives for the proposed works;
Review of site potential and constraints;
Detailed method statements to achieve stated objectives for each species;
Extent and location/area of proposed mitigation for all species on appropriate scale maps and plans;

The location of bat and bird boxes and/or bricks and their specifications;
Type and source of materials to be used (including whether or not they are native species and local provenance);
Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
Persons responsible for implementing the works;
Details of initial aftercare and long term maintenance;
Details for monitoring and remedial measures; and,
Details for disposal of any wastes arising from works.
The EDS shall be implemented in accordance with the approved details and retained thereafter.

15. No part of the development hereby granted (including ground works and vegetation clearance) shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:
Details of the areas where ancient woodland soil and coppiced stools are to be translocated and method statement for translocation;
Risk assessment of potentially damaging construction activities;
Identification of biodiversity protection zones;
Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
The location and timing of sensitive works to avoid harm to biodiversity features;
The times during construction when specialist ecologists need to be present on site to oversee works;
Responsible persons and lines of communication;
The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
Use of protective fences, exclusion barriers and warning signs; and,
Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.
The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority
16. No external lighting fixtures or fittings shall be attached to any building or structure hereby approved and no free standing lighting equipment shall be erected on the site, other than those shown on the plans approved for condition 17 below or as may be agreed on a temporary basis under condition 15 during the construction period.
17. No dwelling shall be occupied until a Lighting Strategy for Biodiversity, including a timetable for its implementation has been submitted to and approved in writing by the local planning authority. The strategy shall:
identify those areas/features on site that are particularly sensitive for bats, dormice and otters and that are vulnerable to light disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

Highways

18. The access to the site shall be from North Dane Way Drive as show in drawing 186-SK-006 Rev A and the emergency vehicular access shall be from Ham Lane.
19. Development shall not begin until details of the proposed emergency access have been submitted and approved in writing by the local planning authority. The approved emergency access shall be made available prior to the first occupation of any dwelling and thereafter retained for the purpose intended.
20. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction; and,
 - a scheme for recycling/disposing of waste resulting from construction works.
21. No development hereby permitted shall commence until such time as the improvement works to the junction of North Dane Way and Albermarle Road and the link access road to the site as shown in the drawing 1661-SK-001 Revised A within appendix H of the Transport Assessment Report have been completed in accordance with details which shall first have been approved by the local planning authority in writing.
22. No dwellings on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the cycle and footway(s) to surface course level.
23. No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
24. No dwelling hereby approved shall be occupied until a travel plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority.
25. Details submitted pursuant to condition 1 shall include a shared footway/cycleway on the north side of North Dane Way to link the development site with the Lords Wood Leisure Centre with associated improvements and street lighting.

Archaeology

26. No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

Flood Risk and Drainage

27. The first application for the approval of reserved matters on the site shall be accompanied by a sustainable surface drainage strategy for the entire application site. No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for the phase within which the dwelling is situated.
28. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in DEFRA's non-statutory technical standards for the design, maintenance and operation of sustainable drainage to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
29. No dwelling in any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

Noise

30. No dwelling shall be constructed until an acoustic appraisal specifying attenuation measures (where necessary) has been submitted for approval in writing by the local planning authority. No dwelling shall be occupied until the approved attenuation measures have first been installed in accordance with the approved details. The approved attenuation measures shall be maintained and retained thereafter.

Air Quality

31. The development shall not be commenced until an Air Quality report has been submitted to the local planning authority for its written approval. The report shall contain and address the following:
 - An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.

An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions giving rise to that poor air quality. The assessment should quantify the measures or offsetting schemes to be included in the development which will reduce the air pollution of the development. Any scheme of mitigation set out in the subsequently approved report shall include a timetable for implementation. The development shall be implemented and managed in accordance with the approved scheme.

Contamination

32. If during the course of development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

Luton & Wayfield

4 Burma Way, Wayfield, Chatham, ME5 0JJ (RN)

MC/16/1563 - Refused (21 June 2016) - Delegated

Construction of a part two storey side/part two storey rear extension - demolition of existing detached outbuildings to side

Allowed (6 December 2016)

Summary

The main issue:

- The effect of the proposed development on the character and appearance of the area.

The proposed extension would be flush with the front elevation of the existing forward projection, widening that projection with additional, symmetrical windows being inserted. The roof profile would be altered to a flat-topped hip, which would result in the extension being marginally subservient to the ridge height of the main house. The extension would alter the symmetry of the front projection with that of the attached property. However, this would not be significant given the reasonable separation between the forward projection and the generally varied character of houses in the area.

The extension would also be proportionate to, and integrate satisfactorily with, the host property and would appear as part of that property. It is concluded that the proposed development would not harm the character and appearance of the area.

The appeal is allowed and planning permission is granted.

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: 101; 102; 103; EX103A; EX104; EX105; EX106; EX107; EX108; EX109; PR110A; PR111A; PR112A; PR113A; PR114A; and PR115A.
3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the existing building.

Peninsula

Land fronting 39 Fourwents Road, Hoo St Werburgh, Rochester, ME3 9JY (MSP)

MC/15/1144 - Refused (25 June 2015) - Delegated

Change of use of amenity land to residential, together with the construction of a hardstanding area and vehicular access

Dismissed (22 April 2016)

Summary

The main issues:

- The effect of the proposed development on the character and appearance of the area.
- Pedestrian safety.

The appeal site comprises an area of open space, which contributes to public and private views and provides some visual relief from the surrounding buildings. A number of nearby front gardens have been hard surfaced and used for parking, which reduces the amount of green space in the vicinity and places a greater value on the areas that remain.

The submissions refer to the use of grass mesh surfacing, which would retain some greenness, but would still have an unwelcome engineered appearance and the grass would be subject to wear as a result of regular car parking. Moreover, any green appearance and the openness would be lost at times when cars are parked on it. Consequently, the proposal would have a harmful effect on the character and appearance of the area.

The proposed parking area is close to a footpath which runs to one side of the site, and there is a concern this would pose a risk to pedestrian safety. However, vehicles using the parking area would be likely to be moving at low speeds, there would be no impediment to the visibility of drivers or pedestrians, and drivers would be likely to be familiar with the arrangements. Overall, the proposal would not be detrimental to pedestrian safety.

The Birches, Ratcliffe Highway, St Mary Hoo, Rochester, ME3 8RN (CB)

MC/15/3706 - Refused (21 December 2015) - Delegated

Construction of a 2-bedroomed detached chalet bungalow

Dismissed (10 June 2016)

Summary

The main issue:

- Whether the proposed dwelling is appropriate in principle in such a location in light of national policy concerning new housing in the countryside and sustainable development.

The site is in the countryside within a designated Special Landscape Area and development will only be permitted if it maintains and enhances the character of the countryside and offers a realistic chance of access by a range of transport modes.

The appeal site is poorly located and isolated, and therefore walking, cycling or public transport are unrealistic alternatives to car based travel to and from the site.

The existing single storey timber shed/barn occupies a small proportion of the appeal site. It is limited in height and screened by existing boundary treatments. It is not unsightly or unduly prominent. In contrast, the proposed dwelling would be two storeys in height and significantly larger than the barn in terms of footprint, bulk and mass. The introduction of the dwelling would significantly diminish the openness of the site and completely change the character of the land.

There is no evidence of any identified local need or a significant contribution to the enhancement or maintenance of the rural community. The dwelling is not for a rural worker and would not re-use a redundant building or lead to an enhancement to the immediate setting. Consequently, the proposal would not amount to sustainable development.

Land rear of 23 Chapel Road, Isle Of Grain, Rochester, ME3 0BQ (CB)

MC/16/1903 - Refused (28 July 2016) - Committee

Construction of 4x three bedroom detached dwellings with associated parking

Dismissed (21 March 2017)

Summary

The main issues:

- The effect of the proposal on the living conditions of the future occupiers and No. 23 Chapel Road in respect of the quality of outdoor space to be provided and retained, and on the living conditions of the occupiers of adjacent properties in respect of outlook.
- Whether the proposed parking provision would be acceptable with regard to the effect on the existing residents of Doggets Row.
- The effect of the proposed development on the North Kent Marshes Special Protection Area (SPA).

The proposed development would cause considerable harm to the living conditions of the future occupiers of Plots 3 and 4 and the occupiers of No. 23 Chapel Road in respect of the quality of outdoor space to be provided and retained. It would also cause harm to the living conditions of the occupiers of adjacent properties in respect of outlook. It would be in conflict with Policies BNE1 and BNE2 of the Local Plan and the NPPF.

Although there would be some manoeuvring that would occur as a result of the nature of the proposed parking provision, taking account of the number of cars and likely vehicles movements resulting from the scheme, and the good visibility, this would not be so significant to result in material harm to the occupiers on Doggetts Row. There would be no conflict with policy BNE2 of the Local Plan.

The proposal would require mitigation for the effect on the SPA of recreational disturbance to over-wintering birds. A contribution would be required in the form of a Unilateral Undertaking. There is no certainty that a scheme would be put in place that would provide adequate measures to avoid or mitigate potential adverse effects on the SPA, but this has not been pursued due to the significance of other concerns.

The considerable harm to the living conditions of existing and future occupiers leads to the conclusion that the proposal is not sustainable development. The impacts significantly and demonstrably outweigh the benefits.

Princes Park

4 Holder Close, Lordswood, Chatham, ME5 8LW (TS)

MC/15/3168 - Refused (3 November 2015) - Delegated

Construction of a first floor side/rear extension with roof lights over existing garage, kitchen and utility room (Resubmission of MC/15/1901)

Allowed (4 April 2016)

Summary

The main issue:

- The effect of the development on the character and appearance of the existing dwelling and street scene.

The proposed extension would be set back, which would reduce the visual prominence of the extension in the street scene. The hipped roof design at the front would not appear markedly out of character given the mix of surrounding hipped and gable roof forms. From the rear, the proposal would appear as an appropriate and subservient extension. There is no harm to the character and the appearance of the existing dwelling or the street scene as a result of the hip and gable roof design of the extension or the extent of its projection.

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: OS Plan B&W, P.01, P.02, WD.01 Revision A, WD.02, WD.03 Revision A, WD.04 Revision A, WD.05.
3. The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

37 Brendon Avenue, Walderslade, Chatham, ME5 8JG (PD)

MC/16/1937 - Refused (4 August 2016) - Delegated

Construction of a first floor extension to side

Allowed (5 December 2016)

Summary

The main issue:

- The effect of the development on the character and appearance of the area.

The proposed extension would be clearly visible in the street scene. However, it would not be unduly prominent when seen against the backdrop of No. 37 and surrounding housing, and in the context of other extensions and alterations in the area. Many extensions in the area are single-storey, but there are also examples of two-storey extensions, and therefore, it would be generally in keeping with the established character and built-form of the area.

The first floor extension would be set in from the side boundary and would have a barn-hipped roof, which would help reduce its bulk and therefore its effect in the street scene, which would not be significantly prominent or obtrusive. Whilst the first floor extension would reduce the degree of openness at this point in the road, the extent of this would be limited by the size of the extension and the backdrop in which it would be viewed, and would not have a significant detrimental effect on the character of the area.

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: ODA/1139/01 and ODA/1139/02-A.
3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the existing building.

Ulster, 174 Princes Avenue, Walderslade, Chatham, ME5 8AL (MH)

MC/16/1603 - Refused (28 June 2016) - Delegated

Construction of a pair of semi-detached dwellings to rear with access onto Scotby Avenue

Dismissed (27 January 2017)

Summary

The main issues:

- The effect on the character and appearance of the area.
- The impact on residential amenity.

The scheme would be conspicuous and out of keeping because of the bulk of the side elevations, which would contrast with and dominate the open street scene in Scotby Avenue. They would seem isolated and discordant seen from nearby properties but also from either direction along the road. The proposed development would therefore fail to conform with the

character and appearance objectives of policies BNE1 and H4 of the Local Plan and the NPPF.

The 3 storey bulk of the rear of the dwellings would appear to tower above the rear gardens of the host dwelling and neighbouring houses because of the steep slope. It would be difficult to avoid a sense of being overlooked. The impact on residential amenity would conflict with the aims of Local Plan policies BNE2 and H9, and the NPPF.

Rainham Central

112 Mierscourt Road, Rainham, Gillingham, ME8 8JB, Rainham Central, (AG)

MC/14/1319 – Refused (20 January 2016) - Committee

Retrospective application for the change of use from amenity land to garden area to facilitate vehicular crossover and access to existing parking area at front of property.

Allowed (25 July 2016)

Summary

The main issue:

- The effect of the development on the character and appearance of the area

The driveway is unobtrusive in the street scene and the surface material blends in with the road and footway. It covers only a small part of the amenity land and is confined to one end of it. The development does not materially affect the open character and appearance of the area. Public access to the remaining grassed area is retained and the visual impact of the development is limited. The development does not materially harm the character and appearance of the area.

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

MC/15/1983 - Refused (23 July 2015) - Delegated

Construction of a detached bungalow with associated parking (demolition of existing garage)

Dismissed (1 July 2016)

Summary

The main issues:

- Whether the proposal would provide acceptable living conditions for future occupiers, particularly privacy.

The proposal has changed the level of windows to high level and conifers have been planted on the boundary, and the use of an evergreen hedge has been suggested, but should the planting become diseased or die, then the living conditions of the occupants would be reliant on a new hedge or tree growing and establishing.

It is clear that in order to accommodate a dwelling on the site the design has had to be contrived, which suggests that a dwelling cannot be comfortably positioned on the constrained site and would not provide acceptable living conditions for future occupiers.

Land Rear of 129 & 131 Marshall Road, Rainham, Gillingham, ME8 0AL(PI)

MC/16/0711 - Refused (30 June 2016) - Delegated

Construction of a 1x two bedroom and 1 x three bedroom detached bungalows with associated access and parking provisions - Demolition of garage to front

Dismissed (22 December 2016)

Summary

The main issues:

- The character and appearance of the surrounding area.
- The living conditions of adjoining occupiers.
- Protected and non-protected trees.

The proposal for two detached single-storey bungalows in the rear garden of No 129 and No 131 would fail to maintain the distinctive street frontage pattern of existing development in the area, and would be intrusive and incongruous, and therefore harmful to the character and appearance of the area.

A new access would result in increased vehicular and pedestrian movements by future occupiers between the existing properties, in close proximity to their windows and back gardens, and would impinge on both sets of adjacent occupiers to an unacceptable degree.

The amenity value of the trees on and around the site is considerable and contributes to the verdant character of the rear gardens. For this reason they are worthy of retaining. However, the trees are likely to be under increased pressure from future occupiers to be removed to eliminate shading and improve light, and therefore the proposal would be harmful to trees.

Rainham North

2 Bushmeadow Road, Rainham, Gillingham, ME8 7NY (TS)

MC/16/1614 – Refused (13 June 2016) - Delegated

Construction of a single storey side extension - resubmission MC/15/3354

Dismissed (10 October 2016)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area.

The appeal property has a generous frontage and a well-defined building line that positively contribute to the character and appearance of the area. The proposal comprises three distinct elements; a utility room, a bedroom/bathroom and a replacement garage. The design and scale of each element would be incoherent and unbalanced, with inconsistent roof forms of varying heights, which would result in a poor relationship with one another and with the uncomplicated appearance of the host dwelling. Furthermore, the bedroom/bathroom element would step noticeably forward of the prevailing building line. This would

considerably increase its prominence in the streetscape and would reduce the spatial qualities along this part of the road, and would result in significant harm to the character and appearance of the streetscape and area.

105 Station Road, Rainham, Gillingham, ME8 7SE (MS)

MC/15/3999 - Refused (11 January 2016) - Delegated

Change of use from vets (Class D1) to retail (Class A1)

Dismissed (1 July 2016)

Summary

The main issue:

- The effect on the viability and vitality of Rainham town centre.

The appeal property occupies an edge of centre location. To comply with local and national planning policy, a sequential test must be passed to demonstrate there are no other suitable retail units within Rainham's core retail area. There is no detailed information in respect of the nature of the proposed business in order to make an informed assessment of the reasons it needs to be in this particular location. With the uncertainty of the type of business proposed and the possibility that, as a retail use, it could change in the future, there is no certainty that the proposed change of use would not draw trade away from the core retail area. On this basis, it would result in harm to the vitality and viability of Rainham town centre, exacerbated by the vulnerable nature of the town centre. There is also no certainty that there are no other suitable retail units available within Rainham's core retail area for the proposed business.

Rainham South

371-375 Maidstone Road, Rainham, Gillingham, ME8 0HX (DC)

MC/15/2939 - Refused (17 December 2015) - Committee

Outline application with all matters reserved for the construction of a first floor extension with dormer windows to form three 1-bedroomed flats including rear landing, balcony, stairway and parking

Allowed (14 September 2016)

Summary

The main issue:

- The effect of the proposed servicing arrangements on the vitality and viability of the shops on the ground floor of the building.

371-375 Maidstone Road comprises three shops within a flat roofed single storey building with a yard area to the rear that serves the shops. Whilst the proposal would retain the shops, inadequate servicing facilities could compromise their vitality and viability and this could, in due course, result in their loss, contrary to Policy R10 of the Local Plan.

The layout has been altered from a previous scheme that was the subject of an earlier appeal decision. The current indicative layout would provide significantly more space in the yard for manoeuvring of vehicles and servicing the shops to that previously proposed. In particular, cars parked in the spaces to be provided would be able to access and egress the site in a forward gear without complicated turning manoeuvres. There would be sufficient parking to meet the needs of the flats. The proposed development would not alter the amount of parking on the forecourt to the shops and could be reserved for their visitors and staff. It is considered that a layout similar to the illustrative plans would ensure the viability and vitality of the shops.

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 takes place 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 not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The details of layout to be provided under condition 1 shall include provision within the rear yard for the parking of 3 vehicles in connection with the proposed flats, and a suitable vehicular turning space. These facilities shall be made available prior to the first occupation of any new dwelling, and thereafter shall be kept available for their stated purposes at all times.
5. The existing parking area at the front of the building shall be reserved for the use of the retail units on the site and their customers. None of the new dwellings shall be occupied until a scheme to control the use of this area for these purposes has been brought into operation in accordance with details to be submitted to the local planning authority and approved in writing, and the measures thus approved shall be retained thereafter.
6. No dwelling shall be occupied until space has been laid out within the site for 3 bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
7. Prior to the first occupation of any of the flats hereby permitted, details of the refuse storage arrangements, including provision for the storage of recyclable materials, shall be submitted to and approved in writing by the local planning authority. No flat shall be occupied until the approved refuse storage arrangements are in place and that space shall thereafter be kept available for the storage of refuse.

Costs Decision - Refused (See Appendix B)

Land North of Moor Street, Rainham, Kent, ME8 8QF (TA)

MC/14/3784 - Appeal against non-determination (29 April 2015) - Committee

Outline application with some matters reserved (Appearance, Landscaping, Layout and Scale) for residential development of up to 200 dwellings (including a minimum of 25% affordable housing), planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from Otterham Quay Lane and associated ancillary works

Dismissed (2 August 2016)

Summary

The main issue:

- If the proposal passes the tests of paragraph 133 of the Framework (in cases where any harm to the significance of a designated heritage asset is judged to be substantial) or paragraph 134 (where any harm is less than substantial), then any additional harm to the landscape, the loss of best and most versatile agricultural land, and traffic impacts, need to be considered.

There are three designated heritage assets: the Moor Street Conservation Area, and the Grade II listed West Moor Farm House and Westmoor Cottage. The viewpoints into the conservation area, and of the listed buildings, fall within the settings of the heritage assets.

There are currently important open views across the appeal site and into the settlement. Given the important contribution to significance made by the link to the surrounding open land, and the ready identification of Moor Street as a separate settlement, distinct from the built up area of Rainham, the impact of the development of the site for housing on the setting of the conservation area would cause a considerable degree of harm, and it would detract from the significance of the conservation area as a designated heritage asset.

The open views of the listed buildings and their relationship with the surrounding land make their agricultural origins clear. The development of the site for housing would close off these views completely, and this experience of them. This would have a harmful effect on the setting of the listed buildings, and, as a consequence, their significance.

In order to assess the heritage impacts of the proposal against the provisions of the Framework, it needed to be assessed whether the harm caused to significance would be substantial, or less than substantial. It was concluded that whilst there are considerable harmful impacts on the settings of the conservation area and the listed buildings, there would be places where the settlement would still be appreciated as a separate entity with open space around it, and the listed buildings themselves would survive intact. On this basis, the harm would be less than substantial.

Paragraph 134 of the Framework says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In an overall context, the market and affordable housing that the proposal would bring forward, would aid with the Council's overall under-supply of housing land, and this attracted considerable weight in its favour. The scheme would also deliver economic benefits and ecological enhancements, which also weighed in favour of the proposals.

However, whilst it was found it to be less than substantial, great weight was attached to the harm that would be caused to the settings, and thereby the significance, of the designated heritage assets affected. On balance, though the public benefits of the proposal were substantial, they were largely generic, and were considered insufficient to justify the harm to the significance of the designated heritage assets that would be caused.

River

The Former Royal Marine Public House, 7 River Street, Brompton, Gillingham, ME7 5RJ (PI)

MC/15/3987 – Appeal against non-determination (9 March 2016) - Committee

Change of use from former public house (use class A4) to house of multiple occupation providing 2 single rooms and 7 double rooms

Dismissed (4 July 2016)

Summary

The main issues:

- The effect of the proposal on the North Kent Marshes Special Protection Area.
- The effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance.

The proposal seeks consent for the conversion of a detached, former public house into an HMO.

Given the location of the property within 6km of the SPA, it is likely that future occupiers would take advantage of the recreational opportunities within the SPA. This would cause disturbance to the SPA. Therefore a financial contribution is necessary. There is no suitable mechanism put forward to secure this, and therefore it could not be assured that the proposal would put in place adequate measures to mitigate potential significant adverse effects on the SPA.

It is considered that the previous use as a public house would have resulted in a greater level of activity and resulting noise and disturbance than if it were used to house 15 people, as proposed. This is due to the substantial number of customers it would have accommodated as a public house, the more frequent comings and goings of customers and any noise associated with music. With the apparent availability of nearby parking spaces, and location of the property close to amenities and a bus stop, together with the lower likelihood of future occupiers owning a car, it would be unlikely that the proposal would generate a significant level of additional traffic in the area that would harm the living conditions of the occupiers of neighbouring properties through competition for parking spaces. The proposal would not therefore result in any significant harm to the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance or competition for parking spaces. Nevertheless, this would not outweigh the harm identified to the SPA.

Rochester East

Land to the rear of 72 City Way (fronting Howard Avenue), Rochester, ME1 2AE (DC)

MC/15/3014 - Refused (25 November 2015) - Delegated

Construction of a new dwelling with associated parking and landscaping

Dismissed (7 October 2016)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area.
- Whether the proposal would be likely to have a significant effect on the nearby Special Protection Area (SPA).

City Way is characterised by housing with deep gardens. Due to the constraints of the plot and its tapered shape, the new dwelling would be narrow and deep and positioned close to the plot boundaries. This would be in contrast to majority of dwellings in the immediate locality. Therefore whilst the design of the proposed dwelling could be well executed with provision of a garden and parking, this would not alter the constraints of the site and consequent proximity of the dwelling to the plot boundaries. Overall, the proposal would harm the character and appearance of the area, and would be in conflict with policies BNE1 and H4 of the Local Plan and the NPPF.

The site is located within 6km of the North Kent Marshes SPA. In the absence of a completed legal agreement necessary to secure the implementation of mitigation measures, it could not be assured that there would be adequate measures to avoid or mitigate potential adverse effects from recreational use of the SPA by future residents. Therefore the proposal would be in conflict with Policy BNE35 of the Local Plan and the NPPF.

Land adjacent to 2 Hawser Road, Rochester, ME1 3AA (MP)

MC/15/3961 - Refused (5 January 2016) - Delegated

Change of use from amenity land to garden area, with the erection of metal railings

Allowed (11 August 2016)

Summary

The main issue:

- The effect of the proposed change of use of this open amenity land to garden land and enclosure by metal railings on the character and appearance of the surrounding area.

The proposal would incorporate a steep bank to the rear of the houses on Maidstone Road, along with the area of open space alongside the boundary with 2 Hawser Road, into the garden of 2 Hawser Road. It would be enclosed by 0.95m high metal railings. The tree on the site is proposed to be retained and no additional development is proposed.

The proposed low metal railings would retain views over the site and, given the variety of forms of enclosure in the area, would not be out of character and would reflect the visual appearance of the surrounding area. The proposal would comply with Policy BNE1 of the Local Plan and the NPPF.

Conditions:

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing numbers ESD4, ESD5a (Site Location Plans), ESD5b (Block Plan) and ESD6 (fencing detail).

Rochester South & Horsted

Aquarius, 8 Watson Avenue, Horsted, Chatham, ME5 9SH (DC)

MC/16/2045 - Refused (28 July 2016) - Committee

Construction of a single storey side extension and construction of an additional storey to create a first floor for use as a care suite together with roof alterations and installation of an external staircase - Resubmission MC/15/2072

Dismissed (20 December 2016)

Summary

The main issues:

- The effect on the character and appearance of the locality, the living conditions of future occupiers, with regard to outdoor garden space and the living conditions of neighbouring occupiers, with regard to the increased pressure for on-street parking and indiscriminate parking in the immediate area.

The appeal site includes a previously-extended detached bungalow, which is used as a care home.

The proposal would significantly increase the size of the appeal property so that it would appear out of scale with the other largely single storey properties in the locality and would appear overdeveloped. Due to its general height and length, it would appear visually dominant and overbearing when viewed from Thorndale Close and from the area around the junction with Watson Avenue. It would therefore diminish the spacious character and appearance of the locality and would result in unacceptable harm to the character and appearance of the area, which would fail to accord with Policy BNE1 of the Local Plan and the NPPF.

The small enclosed courtyard proposed for use by existing and future residents and staff would be a cramped and oppressive space, and would fail to provide satisfactory access to outdoor space, and therefore would fail to provide satisfactory living conditions for future occupiers, contrary to Local Plan Policies BNE2 and CF5. Overall, this adds to the concern about the overdeveloped nature of the proposal.

The impact of on-street parking was fully explored at the most recent appeal, where it was concluded that the additional parking demand that would result from the scheme would be unlikely to have a material impact on the demand for and availability of on-street parking in the area. It was also concluded that indiscriminate parking across pavements is a matter that can be dealt with under other legislation. There was no evidence of a material change in circumstances since the last appeal decision, and therefore the same conclusion was reached.

Costs Decision - Allowed (See Appendix B)

97 City Way, Rochester, ME1 2BB (PI)

MC/16/2039 - Refused (12 July 2016) - Delegated

Construction of two bedroom dwelling with accommodation in the roof space

Dismissed (30 March 2017)

Summary

The main issues:

- The character and appearance of the area.
- The living conditions of future and existing occupiers in relation to external private amenity space.
- Whether the proposed development makes adequate provision for over-wintering birds at the North Kent Marshes Special Protection Area (SPA).

The sub-division of the plot would create two significantly smaller plots compared to those in the surrounding locality. The introduction of a dwelling within the garden of the existing bungalow would be out of keeping with the surrounding pattern of development. Furthermore, the footprints of the existing and proposed dwellings, together with the creation of driveways within each plot, would create two cramped developments. This would be a significant contrast to the scale and layout of other properties in the surrounding area. In addition, the loss of the side garden would remove a space that positively contributes to the street scene. The proposal would be harmful to the character and appearance of the area, contrary to Policies H4 and BNE1 of the Local Plan and the NPPF.

The proposed development would not provide adequate outdoor amenity space. The length of the gardens is extremely limited. The proposal would be harmful to the living conditions of future and existing occupiers in relation to external private amenity space, contrary to Policy BNE2 of the Local Plan and the NPPF.

The proposal falls within the identified zone of influence of the SPA. It is likely that future occupiers of the new dwelling would make use of the SPA for recreation purposes, and it is therefore necessary to provide mitigation. In this case a tariff contribution provided through a Unilateral Undertaking has been completed and would provide adequate mitigation for likely harm to over-wintering birds in the SPA. Therefore, the proposed development would comply with Policy BNE35 of the Local Plan and the NPPF.

The benefits of providing an additional home within the urban area and using an area of developed land in a sustainable location are given some weight. Highway safety and parking are not an issue. However, these matters are not sufficient to outweigh the harm.

15 Haig Avenue, Rochester, ME1 2RZ (DC)

MC/15/4049 – Refused (11 March 2016) - Delegated

Construction of detached 2no bedroomed dwelling with associated parking and provision of replacement parking to No. 15 Haig Avenue (resubmission of MC/15/2840)

Dismissed (30 January 2017)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the locality.
- The living conditions of the occupants of 13 Haig Avenue with particular regard to visual prominence.
- The living conditions of future occupants with regard to privacy and amenity.

The proposal would involve the redevelopment of garden land. The proposed dwelling would broadly reflect the established building line, eaves and ridge level of neighbouring properties and would respect surrounding dwellings in terms of scale, mass and proportion. There would remain sufficient distance between the proposed dwelling and No. 15 to maintain the character of the area. The proposal would therefore comply with Local Plan Policy BNE1 and H4.

The proposed first floor windows facing towards the rear garden of No. 13 could be obscure glazed and therefore the proposal would not give rise to a loss of privacy. There would be sufficient separation to ensure that the proposed dwelling would not have an overbearing impact on the outlook of the occupants of No. 13 from inside. However, the open aspect that the occupants of No. 13 currently enjoy within their garden would be replaced by a two storey house in close proximity to the boundary, which would have an obtrusive and overbearing presence when viewed from the garden of No. 13, harming the living conditions of the occupants of No. 13, and contrary to Policy BNE2.

The proposed garden would not be overlooked to such an extent that it would fail to provide a satisfactory amenity space for future occupants. The proposal would provide satisfactory living conditions for future occupants and would comply with Policy BNE2 in this regard.

The site is within 6km of the North Kent Marshes Special Protection Area and the proposal is likely to have an effect from recreational disturbance on the over-wintering bird interest. In order to mitigate the effect of such disturbance the Council seeks a financial contribution, but no undertaking has been submitted. There is therefore insufficient information to ensure the proposal would provide adequate mitigation in respect of the SPA.

Rochester West

10 Love Lane, Rochester, ME1 1TN (RN)

MC/15/2987 - Refused (1 December 2015) - Delegated

Application under Article 4 for the replacement of sash windows to front with like for like white aluminium units

Dismissed (5 April 2016)

Summary

The main issue:

- The effect on the character and appearance of the property and whether it would preserve or enhance the character or appearance of the Historic Rochester Conservation Area.

The proposed aluminium replacement windows would not be satisfactory and would cause harm to the traditional character and appearance of the appeal property, and the loss of the original timber windows would erode the overall historic character and appearance of Love Lane, and would neither preserve nor enhance the character or appearance of the Historic Rochester Conservation Area.

60 Sidney Road, Borstal, Rochester, ME1 3HG (PD)

MC/16/1321 - Refused (25 May 2016) - Delegated

Construction of a two storey front extension incorporating garage on ground floor and first floor rear extension - demolition of existing single storey front projection

Allowed (19 September 2016)

Summary

The main issue:

- The effect of the proposed development on the living conditions of neighbouring occupiers, with specific regard to outlook and daylight.

The rear first floor extension would be built on top of an existing single storey rear extension. The appeal property is located on a lower ground level than No. 58, and has a lower eaves, ridge and roof height than those at No. 58, but does extend further back to the rear. There is a raised platform area to the rear of No. 58, which means that part of the garden is already at a high level than the original ground level.

Concerns over the potential for loss of light and outlook have been addressed by reducing the pitch on the extension so that it would sit lower than the main roof at No. 60. Whilst there would be some loss of light and outlook from the rear windows on No. 58, this would mainly be a loss of direct sunlight at the mid-to-late part of the day. There was no evidence put forward to demonstrate that the proposal would result in a loss of daylight. In the absence of such evidence, and given the amelioration set out in the proposed design, the proposal would not result in a materially harmful loss of outlook or daylight for the occupiers of No. 58 in terms of windows or in the rear garden.

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: KL/01, KL02, KL/03, KL/04, KL/05, KL/05, KL/06, KL/07, KL/08, KL/09 and KL/10.
3. The materials to be used in the construction of the external surfaces of the extensions hereby permitted shall match those of the existing building.

Former St Matthews Playing Field, Borstal Street, Borstal, Rochester, ME1 3HJ, Rochester West, (AW)

MC/15/0958 - Refused (2 July 2015) - Committee

Construction of 9 two bedroom and 9 three bedroom houses with associated access and parking and formation of community open space (Resubmission of MC/14/2862)

Allowed (5 April 2016)

Summary

The main issues:

- The effect of the development on the character and appearance of the area.
- The effect of the development on the highway network in the vicinity of the site.

The proposed semi-detached and terraced houses have been designed to reflect the character of surrounding properties in scale and form. The site would be clearly separated from the nearby fields by the public footpath and the replanted hedgerow, which would provide a sufficient green buffer between the proposed development and the open fields beyond that would reflect the site's location on the edge of a built up area.

Although there would be a small net reduction in quantity of open space at the site, there would be gains in both quality and access from the proposed open space, such that the proposal would accord with Local Plan Policy L3.

For these reasons, the proposal would not cause harm to the character and appearance of the area, and would accord with Local Plan Policies H4 and BNE1, and with the NPPF.

There would be a slight shortfall in parking spaces but this could be accommodated either within the site or on-street within the wider area, plus nearby amenities and public transport provision offer alternatives to the private car. Subject to conditions, the proposed level of off-street car parking would be adequate, and the development would not lead to an increase in traffic congestion in the vicinity such as to demonstrate a significant adverse cumulative impact. The development would accord with Local Plan Policies T1 and T2 and the NPPF.

There would be no unacceptable loss of outlook for neighbouring properties to the east, and sufficient separation between properties opposite the proposed dwellings on plots 1-6 would avoid undue overlooking.

The appellant has provided a signed and executed unilateral undertaking, and with the exception of the provision for funding for feature lighting at Great Lines Heritage Park, the contributions would comply with the NPPF and CIL Regulations.

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: KJH14/01, 02 Rev A, 03 Rev B, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, and 14.

3. No property shall be occupied 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 property it relates to is occupied and shall thereafter be retained.
4. No development above slab level shall take place until details of all materials to be used externally have been submitted to and approved in writing by the local planning authority and the 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 2015 (or any Order amending, revoking or re-enacting the Order with or without modification) no development shall be carried out within Class A and of Part 1 of Schedule 2 to that Order unless planning permission has been granted on an application relating thereto.
6. No development above slab level shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping (hard and soft). All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or completion of the development whichever is the earlier. Any trees or plants which within five years of planting are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
7. Notwithstanding the details submitted in support of the planning application no development shall commence until there has been submitted to and approved in writing by the local planning authority: a finalised tree retention and removal plan with numbered and colour coded trees identified for retention and removal overlaid onto the proposed site layout plan; a tree constraints plan showing root protection areas and any other relevant constraints plotted around each of the trees to be retained overlaid onto the proposed site layout plan; an arboricultural impact assessment for all trees identified for retention that evaluates the direct and indirect effects of the proposed design, including access, adequate working space and provision for storage of materials, and where necessary recommended mitigation measures; a tree protection plan on a scale drawing, informed by descriptive text where necessary showing trees for retention and illustrating the tree and landscape protection measures; and arboricultural method statements for the implementation of any aspect of development that is in the root protection area or has potential to result in loss of or damage to a tree to be retained, incorporating relevant information from other specialists as required, and with particular attention given to preparatory works for new landscaping including works to clear and enhance the aesthetic appearance of the bank southeast of the public open space. All works shall be carried out in accordance with the approved details.
8. Prior to the installation of any external lighting on the site details of such lighting including its height, position, external appearance, any shielding, light intensity, colour, spillage (such as light contour or lux level plans showing the existing and proposed levels) and hours of use together with a report to demonstrate its effect on the landscaping of the site (including an overlay of the proposed lighting onto the site landscaping plans) and ecology and of how this effect has been minimised shall be submitted to and approved in writing by the local planning authority. Only the external lighting approved pursuant to this condition shall be used on the site and it shall only be used within the hours approved pursuant to this condition.

9. Development other than that carried out as part of an approved scheme of remediation shall not commence until conditions 10 to 13 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority until condition 13 has been complied with in relation to that contamination.
10. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The scheme shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved by the local planning authority prior to the commencement of development. The report of the findings must include: a survey of the extent, scale and nature of the contamination; an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments, and service lines and pipes; an appraisal of remedial options, and proposal of the preferred options. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11.'
11. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment must be submitted to and approved in writing by the local planning authority prior to commencement of the development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
12. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented) unless otherwise agreed in writing by the local planning authority. The local planning authority must be given not less than two weeks written notification prior to commencement of the remediation scheme works. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority prior to the bringing into use of the development.
13. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 10, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 11, which is subject to the approval in writing of the local planning authority. Following completion of the measures identified in the approved remediation scheme a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 11 are complete and identifying any requirements for longer term monitoring of pollutant

linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval of the local planning authority in accordance with condition 12.

14. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
15. The dwellings shall not be occupied until the areas shown on the submitted layout as vehicle parking spaces have been provided, surfaced, drained and marked out in accordance with details to be submitted to and approved by the local planning authority. Thereafter they shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the parking spaces.
16. No development shall commence until a Construction Environmental Management Plan (CEMP) is submitted to and approved in writing by the local planning authority. The CEMP shall include amongst other matters: details of construction working; measures to control noise affecting nearby residents; wheel cleaning/chassis cleaning facilities; dust control measures; pollution incident control; lighting; effect on wildlife and habitat and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved CEMP.
17. No development shall commence until the developer has advised the local planning authority (in consultation with Southern Water) of the measures which will be undertaken to divert the public foul sewers. The sewers shall be diverted in accordance with these agreed measures.
18. Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by the local planning authority in consultation with Southern Water. The development shall be carried out in accordance with the approved details.
19. Notwithstanding the details submitted in support of the planning application, no development shall commence until there has been submitted to and approved in writing by the local planning authority: details of means of access for maintenance into the bank south east of the public open space and the hedgerow on the southwest boundary, adjacent to the public foot path; details of proposals to renovate or replace the hedgerow on the southwest boundary, adjacent to the public footpath; details of landscape works to clear and enhance the appearance of the bank, southeast of the public open space. The works shall be carried out in accordance with the approved details.
20. No development shall commence on site until a detailed migration strategy and management plan is submitted and approved in writing by the local planning authority. The translocation must be completed prior to works starting on the development site. The migration strategy and management plan must include the following: reptile population estimate survey (if the receptor site); details of enhancements for the receptor site; translocation methodology; timings of the proposed works.

21. Prior to the felling of tree number T1 shown on plan number KJH14/03 Rev B, a bat survey shall be carried out and the results of the surveys including details of any mitigation shall be submitted to and approved in writing by the local planning authority. The recommendations and mitigation detailed in the approved report shall be implemented prior to the felling of the tree.
22. Any works to remove vegetation that is suitable for breeding birds must be carried out outside of the bird breeding season (March – August). In the event that this is not possible an ecologist must examine the site prior to works starting and if any nesting birds are recorded all works must cease until all the young have fledged.
23. An ecologist shall be present on site when the scrub is cleared. In the event that a badger sett is identified, all works shall cease in that area until details of the necessary mitigation is submitted to and approved in writing by the local planning authority.
24. No development above slab level shall take place until full details of the ecological enhancements to be incorporated into the proposed development site, including the public open space, has been submitted to and approved in writing by the local planning authority. The ecological enhancements shall be undertaken prior to first occupation of the development in accordance with the approved details.
25. Prior to occupation of any of the dwellings hereby permitted, Hill Road shall be widened and the affected street lighting column replaced and relocated in order to provide two parking bays parallel to the carriageway, in accordance with drawing KJH14/13.

Costs Decision – Allowed (See Appendix B)

116A Maidstone Road, Rochester, ME1 3DT (RN)

MC/16/2494 - Refused (10 November 2016) - Delegated

Construction of a first floor extension to facilitate conversion of existing bungalow to two storey house

Dismissed (4 January 2017)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area.
- The effects on the living conditions of the occupants of 2 Grange Way.

The addition of the first floor would follow many of the conventions of the adjoining properties. It would therefore be congruent with the local character and would comply with Policy BNE1 of the Local Plan.

The proposal would result in the removal of sunlight for the first half of the day from about half the rear garden of No. 2 Grange Way, which is already in shadow for the latter half of the day. This would be a significantly harmful impact. In addition, the north wing of the proposal would extend about halfway along the length of the rear garden of No. 2, starting from a position close to the house. This would be oppressive to the outlook of No. 2. In conjunction, these effects would have an unacceptable effect on the living conditions of No. 2 and be contrary to Policy BNE2 of the Local Plan.

Strood North

Frindsbury Car Wash, Frindsbury Road, Wainscott, Rochester, ME2 4JR (MP)

MC/15/2221 - Approved (20 January 2016) - Committee

Variation of condition 5 of planning permission MC/15/1016 (retrospective change of use from car sales (sui generis) to a mixed use for car sales, hand car wash and retail tyre sales) to change the hours of operation to 0800 to 1800 Monday to Friday, 09:00 to 18:00 on Saturday and no trading on Sundays and Public Holidays.

Allowed (17 May 2016)

Summary

The main issue:

- The effect of the proposed additional hours of operation on the living conditions of neighbouring residential occupiers with particular regard to noise.

Condition 5 of MC/1016 controlled the hours of operation of the use. An application was made to vary the permitted hours of operation. Although a planning permission was granted, the varied condition (No 4 of that permission) did not allow the hours of operation sought and an appeal was lodged.

The Noise Report found that the primary source of background noise in the area is traffic on Frindsbury Road and that noise from the appeal activity derives mainly from the use of pressure washers and vacuum cleaners.

Traffic and, therefore noise, levels on Frindsbury Road can be expected to vary at different times of the day and days of the week. However, the assessment in the Noise Report was based on noise levels measured on a Sunday morning when it would be reasonable to expect traffic to be light compared with other times when the car wash would be in operation.

If the car wash is operated in compliance with the agreed condition, the additional operating hours sought by the appellant would not have a harmful effect on the living conditions of neighbouring residential occupiers with regard to noise.

Delete condition 4 and substitute with condition:

4. The use hereby permitted shall only take place between the following hours: 0800 to 1800 on Mondays to Saturdays and 1000 to 1700 on Sundays. The use is not permitted at any time on Public Holidays.

13 Lynors Avenue, Strood, Rochester, ME2 3NQ (AG)

MC/16/4106 – Refused (1 December 2016) - Delegated

Construction of a single storey side/rear extension - demolition of existing outbuilding

Allowed (22 February 2017)

Summary

The main issue:

- The effect on the character and appearance of the host property and area.

Whilst the proposal is not ideal from a design point of view with an increase in the height of the roof to one side above the existing eaves level, it is not considered critical in this instance, as it would otherwise mean the ceiling would be lower than that of the existing dwelling, and with a slight set back on the front elevation and with the main hipped roof continuing to be prominent, the extensions would still appear subservient to the original building, and would not harm its appearance. In addition, the proposed extension would not be out of place in the street scene, and would comply with Policy BNE1 of the Local Plan.

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: 3 plans all numbered Drawing 01 Revision A dated 3 October 2016, but showing details of block plan, existing plans and elevations and proposed plans and elevations respectively.
3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Strood Rural

4A Elm Avenue, Chattenden, Rochester, ME3 8LY (AG)

MC/15/2442 - Refused (10 September 2015) - Delegated

Raising of roof height to facilitate conversion of existing bungalow to chalet bungalow with habitable living accommodation in the roofspace together with rooflights to sides; construction of single storey side extension to both sides and porch to front (demolition of existing garage/resubmission of MC/15/0571)

Dismissed (4 April 2016)

Summary

The main issue:

- The effect of the development on the living conditions of the occupiers of 4 Elm Avenue.

The proposal includes the construction of a first floor to the property and it is designed to be taller on the side facing No.4, increasing from a flat roofed single storey to more or less two storeys with a pitched roof. As No. 4 is about 7.5m away from the site the increased height and bulk would dominate the rear of this property. It would also affect the communal garden with increased overshadowing, particularly to the area at the rear of No. 4.

Overall there would be an unacceptable impact on the living conditions of the occupiers of No.4.

Land west of Hoo St Werburgh, Rochester, Kent (CA)

MC/14/3405 - Refused (2 April 2015) - Committee

Outline application with some matters reserved (appearance, landscaping, layout and scale) for the construction of up to 475 dwellings including affordable housing, commercial floorspace (Use Classes A1/A3/A5, up to 200sqm), sports pavilion (Use Class D2, up to 200sqm), associated public open space, multi-functional green infrastructure, outdoor sports facilities, access, parking, infrastructure, landscaping, attenuation and earthworks

Dismissed (6 September 2016)

Summary

The main issues:

- Whether the site is in a location which is or can be made sustainable
- The effect of the proposal on the character and appearance of the locality
- The balance between adverse impacts of development and its benefits.
- In a sense, these three issues are all elements of the overriding question, which is whether the proposal represents sustainable development.

Whilst the development is not in a totally unsustainable location, the lack of on-site and nearby off-site employment, the extent of the site in conjunction with the absence of bus services through it, and the poor pedestrian connectivity with immediately adjoining parts of Hoo, all combine to produce a location which would not be made adequately sustainable. The consequent high dependency on car travel would result in significant harm.

The site does not have any special landscape qualities or features and is valued in the same way as any other ordinary piece of countryside. Nevertheless, the proposal clearly results in the loss of greenfield land, and compromises its function as providing a separation of Hoo and Chattenden, and therefore there would be a degree of harm to character and appearance of the area, in conflict with Local Plan Policies, BNE1, BNE25 and S4.

The proposed scheme would provide various and substantial economic and social benefits, which would be fairly imminent; this in itself would be substantially beneficial as there is currently no five year housing land supply. However, any harm arising from the development would be permanent, though taken on its own this would not outweigh the benefits of the development. Nevertheless, this combined with the failure of the site to be a sustainable location and the resultant high dependency on car travel, would be a significant enduring harm. The combination of harms would outweigh the advantages of bringing forward housing now. In consequence, the proposal cannot be said to be a sustainable development and therefore the presumption in favour of sustainable development does not apply. There are insufficient material considerations to warrant a decision other than in accordance with the development plan and so the appeal is dismissed.

132 Cooling Road, Strood, Rochester, ME2 4RT (PI)

MC/15/3751 - Refused (10 March 2016) - Committee

Construction of a 2-bedroomed chalet bungalow

Allowed (18 October 2016)

Summary

The main issues:

- Whether the proposed access would be suitable.
- The effect of the proposal on the character and appearance of the area.
- The effect of the proposal on the living conditions of nearby occupiers.

The proposal would not be backland development as it would have its own road frontage onto Princes Walk, which whilst not an ideal access, currently serves a number of existing properties and the additional traffic generated by one more dwelling would not be significant. Therefore the proposed access would be suitable and would comply with Policy H9 of the Local Plan.

The retained garden of No. 132 and that of the new property would be reasonable sizes. The chalet bungalow would not appear cramped on its plot and the width of the plot would be similar to other properties along the lane. The loss of the garden space would not affect the overall character of the area. For these reasons the proposal would not cause significant harm to the character and appearance of the area and would comply with Policy BNE1 of the Local Plan.

The proposal would not be cramped, overbearing, dominant or enclosing when seen from nearby properties, or lead to a loss of privacy, and therefore would not cause significant harm to the living conditions of nearby occupiers and would comply with Policy BNE2 of the Local Plan.

The site lies within 6 km of the North Kent Marshes SPA/Ramsar sites and a signed and dated unilateral undertaking has been submitted offering relevant contributions.

Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
Existing – Proposed Floor Plans and Elevations DP/2400/ES-1 Proposed Block Plan DP/2400/ES-2
Proposed Floor Plans and Elevations DP/2400/ES-3 Existing and Proposed Elevations DP/2400/ES-5 Existing and Proposed Elevations DP/2400/ES-6
Arboricultural report by GRS Arboricultural Consultant dated 14/12/15 Tree Protection Plan DP/2400/ES/2
3. No development above slab level shall take place until details (and samples if required) of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority.
4. The development shall then be carried out in accordance with the approved details.

5. The bathroom and landing windows on the first floor of the proposed bungalow to both the east and west elevations shall be fitted with obscure glass and apart from any top-light, any windows that have a cill height of less than 1.7 metres above internal finished floor level shall be non-opening. This work shall be carried out and completed before the dwelling is first occupied and shall be retained at all times thereafter.
6. Prior to first occupation of the dwelling hereby permitted visibility splays shall be provided each side of the access in accordance with details to be submitted to and approved in writing by the local planning authority. The splays shall thereafter be kept free of any obstruction above 0.6 m high.
7. Prior to first occupation of the dwelling hereby permitted the west facing window of No 132 Cooling Road shall be relocated and the private garden extended eastwards in accordance with details to be submitted to and approved in writing by the local planning authority.
8. No development shall take place until full details of fencing, walling and/or other boundary treatments, including the design of foundations for the boundary treatment, have been submitted to and approved in writing by the local planning authority. Such boundary treatment shall then be erected as approved prior to first occupation of the dwelling hereby permitted and retained at all times thereafter.
9. The following measures shall be put in place to protect retained trees. A "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs a) and b) below shall have effect until the expiration of 5 years from the date of first occupation of the dwelling hereby permitted.
10. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any pruning approved shall be carried out in accordance with British Standard 3998 (Tree Work).
11. 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.
12. 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 consent of the local planning authority.
13. No development above slab level shall take place until full details of all hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. All such works as may be approved shall then be fully implemented in the first planting season following completion of the development hereby permitted and completed strictly in accordance with the approved details. Any plants or species which within a period of 5 years from the time of planting die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority.

14. No development shall take place until a construction environmental management plan that describes measures to control the noise, dust, and lighting impacts arising from the construction phase of the development has been submitted to and approved in writing by the local planning authority. All construction works shall then be undertaken in accordance with the approved plan.
15. Notwithstanding the submitted plans, the proposed front parking area shall not be brought into use until it has been formed from permeable surfacing materials in accordance with details to be submitted to and approved in writing by the local planning authority. The surfacing so provided shall be completed in accordance with the approved details prior to first occupation of the dwelling hereby permitted and shall be maintained as such thereafter.
16. The dwelling hereby permitted shall not be first occupied until the area shown on the submitted layout for vehicle parking has been provided. The parking area shall then be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to these parking spaces.
17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting that Order) no building, structure or alteration permitted by Class A, B or C of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage of the dwelling hereby permitted without the prior approval in writing of the local planning authority.

Strood South

Corner of Roman Way and Cuxton Road (rear of Unit 10) Ballard Business Park, Cuxton Road, Rochester, Kent (AB)

MC/15/3767 - Refused (22 December 2015) - Delegated

Advertisement consent for installation of a non-illuminated hoarding

Dismissed (24 June 2016)

Summary

The main issue:

- The effect of the advert on the character and appearance of the area.

Although the area is mainly commercial, the advert is in an elevated position and is visible from three different perspectives from the roundabout, and this together with the poor quality materials, has a harmful effect on the character and appearance of the area.

16 Lilac Road, Strood, Rochester, ME2 2LE (TF)

MC/16/0693 - Refused (26 April 2016) - Delegated

Application for a Lawful Development Certificate (Proposed) for the construction of a part two storey/part first floor rear extension

Dismissed (21 December 2016)

Summary

The main issue:

- Whether the Council's decision to refuse to grant a LDC was well-founded.

The reason for refusal is failure to comply with conditions at Class A.1(h)(i) and Class A.1 (i) of Part 1 of Schedule 2 of the GPDO. At appeal, it was agreed that these conditions are not met. The development does not satisfy Class A and therefore does not benefit from permitted development rights. The development requires planning permission.

36 Cuxton Road, Strood, Rochester, ME2 2DA (SK)

MC/15/1094 - Refused (4 June 2015) - Delegated

Construction of a dormer window to rear and installation of roof lights to front to facilitate the conversion of existing dwelling to two 2-bedroomed flats

Dismissed (19 April 2016)

Summary

The main issues:

- The effect on the character of the area of the sub-division of the property into two flats.
- The effect of the proposal on highway safety, with particular regard to the arrangements for car and cycle parking.
- Whether the proposed flats would offer acceptable living conditions of future occupiers with particular regard to the provision of internal living space.

It is considered that the predominant character of the area comprises single household occupation. The introduction of additional flatted development arising from the appeal proposal would be at odds with this form of occupation to the detriment of the character of the area.

The appeal site is located on a busy one-way road where on-street parking would risk significant highway safety problems. Furthermore, it was not satisfactorily demonstrated that the cycle parking necessary to justify a departure from the vehicle parking standards would be achievable.

The proposal would provide satisfactory living conditions for future occupiers with regard to internal living space. However, the concerns about character and highway safety are supported by relevant development policies and outweigh the modest benefit of the creation of an additional residential unit.

Walderslade

1 Victoria Road, Walderslade, Chatham, ME5 9EL (TS)

MC/15/3084 - Refused (27 October 2015) - Delegated

Construction of a first floor rear/side extension (Resubmission of MC/15/1315)

Allowed (4 April 2016)

Summary

The main issue:

- The effect of the development on the character and appearance of the existing property and the surrounding area.

Taking into account the variety of roof forms surrounding the site, and differing arrangement of fenestration, the proposal would not harm the character or the appearance of the original building or the surrounding area. Therefore there is no conflict with policy BNE1 of the Local Plan. In terms of overlooking there is no harm to the living conditions of the occupiers of neighbouring properties generally and the dwelling as extended provides parking in excess of the parking standards.

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, block plan, M81.2, M81.10.
3. The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

32 Gorse Avenue, Weeds Wood, Chatham, ME5 0UG (CB)

MC/16/3269 - Refused (21 September 2016) - Committee

Construction of three bed house with associated parking - demolition of outbuilding and conservatory

Dismissed (16 March 2017)

Summary

The main issues:

- The effect of the proposed development on the North Kent Marshes Special Protection Area (SPA).
- The effect of the proposed development on the living conditions of the occupiers of No. 30 Gorse Avenue in respect of privacy.

The proposal would require mitigation for the effect on the SPA in respect of the effect of new residential development on recreational disturbance to over-wintering birds. A direct payment to the Council has been proposed but there would be no sufficient legal guarantee that this would be used for its intended purpose. There is therefore no certainty that a

scheme would be put in place to provide adequate measures to avoid or mitigate potential adverse effects on the SPA, and this is sufficient reason to dismiss the appeal.

The position of the window that would face towards the side of No. 30 would not result in a material loss of privacy for the occupiers. The design of the window to the rear elevation of the proposed dwelling would ensure that there would be no overlooking towards the garden of No. 13 Rosemary Close. The proposal would not cause harm to the living conditions of neighbouring occupiers, and would not be in conflict with Policy BNE2 of the Local Plan.

Land at 78 King George Road, Weeds Wood, Chatham, ME5 0TT (CB)

MC/16/0996 - Refused (2 June 2016) - Committee

Construction of detached 3/4 bedroom chalet bungalow with integral garage and associated external works - resubmission of MC/15/3843

Dismissed (13 February 2017)

Summary

The main issues:

- The effect on the character and appearance of the locality.
- The living conditions of the occupants of 78 King George Road with particular regard to outlook.
- The living conditions of future occupants with regard to amenity space.

Whilst the proposed dwelling would be compatible with the appearance of the existing dwellings within King George Road, due to its size and proximity to the boundary with Brake Avenue it would be a prominent and incongruous addition to the street scene, and would harm the character and appearance of the surrounding area, contrary to policies H4 and BNE4 of the Local Plan.

The proposal would not unacceptably harm the outlook of the occupants of No. 78 King George Road, and the remaining garden would be of a sufficient size to provide an acceptable standard of amenity for the occupants. The proposal would provide an acceptable level of privacy and amenity space for future occupants.

The site lies within 6km of the North Kent Marshes Special Protection Areas (SPAs)/Ramsar Sites and the proposal is likely to have a significant effect from recreational disturbance on the over-wintering bird interest. A unilateral undertaking has been submitted agreeing to pay a tariff to mitigate the effect of disturbance, but as the proposal is unacceptable for other reasons, this has not been considered.

Watling

84 Montrose Avenue, Darland, Chatham, ME5 7HX (DC)

MC/15/1477 - Refused (30 June 2015) - Delegated

Construction of one 3 bedroom detached house, with associated parking to the front (demolition of attached single garage).

Dismissed (19 April 2016)

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area
- Whether the proposed development would offer satisfactory living conditions for future occupiers, with particular regard to the provision of internal living space.

The site currently forms part of the garden to the side of a two storey, end of terrace dwelling and is considered to contribute positively to the character and appearance of the area. The new building would be an intrusive and unsympathetic feature in the street scene and would be harmful to the character and appearance of the area.

There is nothing to indicate that the dwelling as a whole would provide unsatisfactory living conditions for future occupants with regard to internal living space.

However, the adverse impact of the proposal in terms of its impact on the character and appearance of the area outweighs the benefits of the creation of a single additional dwelling.

1 Embassy Close, Darland, Gillingham, ME7 3EN (PD)

MC/16/2725 - Refused (16 August 2016) - Delegated

Construction of a single storey side/rear extension

Allowed (28 December 2016)

Summary

The main issue:

- The effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to daylight.

The main concern relates to the relationship between the rear part of the extension and the patio doors in the rear elevation of No. 2.

A 45 degree test in plan and elevation was undertaken. The proposed rear extension fails the test in plan form but meets it in elevation. It is only if both elements of the test are failed that a significant reduction of light is likely, which is not the case here. Furthermore, there would be no two-storey element to the proposal, and no other larger structure beyond the proposed extension that would block daylight. There is also no extension to the rear of No. 3, so no 'tunnel effect' would result. The proposed extension would cause some perceptible reduction in the level of daylight received at the patio doors of No. 2, but this would not be substantial and would not significantly harm living conditions.

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 plan: drawing 16.06.03.
3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the existing building.

Costs Decision – Allowed (See Appendix B)

ENFORCEMENT APPEALS DECISION SUMMARY

ENF/14/0409

Compass House (Formerly Shalder House), Medway Road, Gillingham

ENF/14/0409 – Notice served 20 August 2015

Without planning permission the change of use from 26 sheltered accommodation units to 54 student units & construction of 2 infill extensions.

Dismissed (13 June 2016)

Summary

The grounds do not need to be considered as the section 78 appeal succeeds and planning permission is granted for the development.

ENF/14/0394

Siloam Roundel, Mierscourt Road, Rainham, Gillingham, ME8 8PJ

ENF/12/0320 – Notices served 20 August 2015

Running a vehicle sales business from site

Dismissed (13 May 2016)

Enforcement notice upheld and planning permission refused.

Summary

The main issues:

- Whether the car sales with associated cleaning, parking and storage of vehicles use (the car use) within the area attacked by the Notice harms the objectives of national and local planning policies that seek to protect the countryside.
- The effect of the car use within the area attacked by the Notice on the living conditions of nearby residential occupiers.

Whilst the car use is a commercial activity and therefore has some economic benefits the use could operate equally well within an urban environment. In terms of a social role, it has not been demonstrated that the use serves the community needs or supports its health, social and cultural well-being. Furthermore, the car use reduces the open nature of this part of the site and erodes the rural character of the area and is an inappropriate and uncharacteristic land use in this rural area. As such, the car use is not a sustainable form of development. This is contrary to both local and national planning policies which seek to protect the countryside.

The intensification of the use as a result of the use of area D has increased movement and activity at the site. This has resulted in a greater amount of noise and disturbance to local

residents such as to significantly harm their living conditions. This is contrary to Local Plan Policy BNE2 and one of the core planning principles of the NPPF.

ENF/12/0320

215 Hawthorn Road, Strood, Rochester, ME2 2HT

ENF/12/0320 – Notices served 11 September 2015

Without planning permission the excavation of front garden to provide a hardstanding area together with the construction of retaining walls

Dismissed (24 May 2016)

Enforcement notice upheld.

Summary

The reason for the issue of the Notice is that the development has a detrimental effect on the appearance of the appeal property and also on the character of the area. The purpose of the Notice is therefore to remedy the breach of planning control that has occurred by restoring the land to its condition before the breach took place. This can only be achieved by the complete removal of the development. This requirement does not exceed what is necessary to remedy the breach of planning control and the appeals are therefore dismissed.

ENF/15/0238

6 Bowman Close, Lordswood, Chatham, ME5 8LD

Enf/15/0238 – Notice Served 9 December 2015

Without planning permission the change of use of property from residential to a mixed use of residential and dog grooming business

Dismissed (7 June 2016)

Summary

The appeal is based on the argument that, whilst a dog grooming business does take place at the site, it is not of a scale to have brought about a material change of use.

In assessing whether or not a change of use is material, it is helpful to consider the effect of the use on people living nearby. In this case, Bowman Close is a very quiet cul-de-sac, and the use is carried out in a shed in the back garden, with customers parking at the front of the property and walking down the side passage to the shed. There is enough evidence to conclude that, on the balance of probability, the scale and impact of the business has resulted in the material change of use alleged. As the use does not enjoy the benefit of an express permission or benefit from permitted development rights, the appeal fails and the Notice is upheld.

ENF/10/0610

The Railway Hand Car Wash, 2 Railway Street, Gillingham

ENF/10/0610 – Notice Served 28 January 2016

Without the benefit of planning permission the unauthorised use of the land for hand car wash purposes.

Allowed (5 October 2016)

Summary

The main issues are:

- The main issue in the determination of this appeal in respect of the change of use is the effect of the development on ground water conditions.
- The main issue in the appeal in respect of the canopy is the effect of the development on the character and appearance of the site and surrounding area.

There has been no drainage scheme agreed for the use in order to mitigate the pollution risk. However, it is realistic to expect it to be practicable to implement measures that would address the risks to ground water and avoid run off mobilising any contamination in the ground. Whilst such measures would not entirely satisfy Policy BNE23 they would provide an appropriate balance between protecting ground water and facilitating the effective use of an otherwise unobjectionable purpose and comprise a sensible interpretation of development plan policy. The conditions attached to the original permission granted on appeal would address the identified harm and satisfy Planning Policy Guidance. The requirement for an approved scheme would provide precision and ensure that the identified harm is remedied. The appeal should therefore succeed in respect of the change of use and planning permission should be granted subject to conditions.

A canopy structure covers the car washing area. As the change of use is unobjectionable (subject to satisfying conditions), and the canopy does not cause undue harm to the character and appearance of the commercial area in which it sits, the appeal should succeed in respect of the canopy and planning permission should be granted.

Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (g) does not therefore need to be considered.

Conditions:

1. The use hereby permitted shall cease and all equipment and materials brought onto the land for the purpose of such use, including the canopy structure, shall be removed within one month 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 a scheme setting out the measures to be implemented to ensure that the impact on ground water conditions of surface or other water draining from the site is no greater than that of the previous authorised use shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approved the scheme or fail to give a decision with the prescribed

- period, an appeal shall have been made to, and accepted as validly made 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 scheme shall have been approved by the Secretary of State;
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
2. The measures included in the approved scheme shall be retained in working order for so long as the use hereby permitted continues on the site.

APPEAL COST DECISION SUMMARIES

Gillingham North

MC/15/0486

Compass House, Medway Road, Gillingham, Kent, ME7 1NY

Costs Decision - Refused

Summary

The claim relates primarily to the enforcement notice but is also made against the Council's decision to refuse planning permission in that it is claimed the reason for refusal is based around refuse storage, which is a matter that can be dealt with by way of a planning condition.

It is clear from the reason for refusal that as well as refuse storage, there was also a concern with the level of accommodation for the occupiers of the development. Had this not been the case then refuse arrangements could have been covered by condition: however, in circumstances where the development was otherwise unacceptable to the Council, this was clearly not an appropriate way forward.

As to the quality of the accommodation offered to occupiers of the development, the Inspector reached a different view from that of the Council, but that does not in itself mean that the Council's stance was unreasonable.

In relation to enforcement action, the Council's view that the use, which was already in place, did not provide satisfactory accommodation, was likely to lead to the conclusion that it was expedient to take enforcement action. Awaiting the outcome of a section 78 appeal would have delayed matters unnecessarily.

In considering these and all other matters raised, unreasonable behaviour on the part of the Council that has caused the appellants to incur unnecessary or wasted expense has not been identified.

Rainham South

MC/15/2939

371-375 Maidstone Road, Rainham, Gillingham, ME8 0HX

Costs Decision - Refused

Summary

It is alleged that the Council has prevented or delayed development by refusal of a planning application that should be permitted, and they have not produced evidence to substantiate the reason for refusal.

The reason for refusal relates to the effect of proposed development on the vitality and viability of the existing retail units on the site, caused by the layout of the proposed parking and manoeuvring area to the rear of the development. This is a legitimate concern that reflects the reasons for the previous appeal decision. Whilst the Inspector came to a different conclusion to the Council, they have done sufficient to explain why they determined to refuse the application, and it was not unreasonable for them to conclude that the layout of the proposed parking and manoeuvring could affect the vitality and viability of the retail units.

Unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated, and an award of costs is refused.

Rochester South & Horsted

MC/16/2045

Aquarius, 8 Watson Avenue, Horsted, Chatham, ME5 9SH

Costs Decision - Allowed

Costs Order

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, it is hereby ordered that Medway Council shall pay Mrs Usha Chottai the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in the defence of the issues relating to the third reason for refusal only.

Summary

In respect of the Council's decision about the effect the proposal would have on the character and appearance of the locality and the living conditions of future residents with regard to outdoor garden space, the Inspector concurred with the Council's view, and the Council was found to have acted reasonably in this regard.

It was suggested that the Council raised a new issue in its second reason for refusal that had not been considered in previous applications and appeals at the site. However, the previous schemes differed from this appeal proposal. In raising this issue, in relation to this appeal, it was considered that the Council acted reasonably and properly applied development plan policy.

The Council objected to the appeal development on the basis of its impact on on-street parking. In persisting to object to the appeal development on this issue, in the absence of a substantive change in circumstances, it was considered that the Council acted unreasonably. Although this matter would not have avoided the need for an appeal, in defending the third reason for refusal, the appellant incurred unnecessary costs and an award of costs, limited to the defence of the issues relating to the third reason for refusal, is therefore justified.

In this appeal, Members of the Council took an alternative view to that of its officers. The Council's reasons for refusal were based on planning considerations and in this regard, the Council acted reasonably.

Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and an award of costs, limited to the defence of the issues relating to the third reason for refusal, is justified.

ROCHESTER WEST

MC/15/0958

Former St Matthews Playing Field, Borstal Street, Borstal, Rochester, ME1 3HJ

Costs Decision - Allowed

Costs Order

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers on that behalf, it is hereby ordered that Medway Council shall pay to King and Johnstone Homes Ltd the costs of the appeal proceedings.

Summary

It was contended that the Council's sole reason for refusal, which refers to overdevelopment, was unsubstantiated.

In relation to design, Policy H5 was not referred to in the decision notice, and no evidence was provided to demonstrate that the scheme would be unacceptable in its relationship with surrounding uses and varying ground levels. Furthermore, no specific criteria were cited with reference to any other Local Plan policy to justify the refusal of permission.

With regard to highways, no evidence was provided to underpin the general concerns raised. As such, this aspect of the reason for refusal was not substantiated.

It was also pointed out that the Council in refusing the application did not refer to the site's location within an ALLI, but then highlighted the designation in its appeal statement. The Council did not clearly articulate how the scheme would cause harm to this designated landscape, and was therefore unreasonable in introducing this specific concern at the appeal stage, with the result that time and effort was expended by the application in responding to the matter.

Finally, it was asserted that the Council neglected to mention its position with regard to a five year supply of deliverable housing sites. However, this was not raised as an issue at the planning application stage and thus it was not unreasonable to omit detailed evidence on housing land supply.

Overall, the reason for refusal was not substantiated, leading the applicant to incur unnecessary or wasted expense in submitting an appeal. A costs award was therefore justified.

WATLING

MC/16/2725

1 Embassy Close, Darland, Gillingham, ME7 3EN

Costs Decision – Allowed

Costs Order

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, it is hereby ordered that Medway Council shall pay to Mr and Mrs P Dudley, the costs of the appeal proceedings.

Summary

The application for costs essentially relied on behaviour by the Council in considering the planning application. In itself, the reason for refusal set out in the decision notice was complete, precise, specific and relevant to the application. In these respects, the Council did not act unreasonably.

The Council was also not unreasonable in assessing the development using the '45 degree test'. However, as a result of misapplying the test, the Council failed to fully substantiate its sole reason for refusal with objective analysis. No further specific consideration or contextual justification in relation to daylight was set out in the Council's report to substantiate its decision. In these circumstances, while it was considered that the applicants may not have been put to large amounts of additional expense in countering the Council's position on this single matter at the appeal, some unnecessary costs would have been incurred in making the appeal. For these reasons, unreasonable behaviour resulting in unnecessary and wasted expense in the appeal has been demonstrated and an award of costs is justified.

ENF/14/0409

Compass House (Formerly Shalder House), Medway Road, Gillingham

Costs Decisions - Refused

Summary

The claim relates primarily to the enforcement notice but is also made against the Council's decision to refuse planning permission in that it is claimed the reason for refusal is based around refuse storage, which is a matter that can be dealt with by way of a planning condition.

It is clear from the reason for refusal that as well as refuse storage, there was also a concern with the level of accommodation for the occupiers of the development. Had this not been the case then refuse arrangements could have been covered by condition: however, in circumstances where the development was otherwise unacceptable to the Council, this was clearly not an appropriate way forward.

As to the quality of the accommodation offered to occupiers of the development, the Inspector reached a different view from that of the Council, but that does not in itself mean that the Council's stance was unreasonable.

In relation to enforcement action, the Council's view that the use, which was already in place, did not provide satisfactory accommodation, was likely to lead to the conclusion that it was expedient to take enforcement action. Awaiting the outcome of a section 78 appeal would have delayed matters unnecessarily.

In considering these and all other matters raised, unreasonable behaviour on the part of the Council that has caused the appellants to incur unnecessary or wasted expense has not been identified.

APPENDIX C

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	<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. Company in liquidation. Cannot pursue payment.

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

Appeals 2011/12

Ref.	Site	Proposal	Decision type	Costs	Comment
	(Gillingham South Ward)				received March 2014. Charging order applied for but refused by court June 2015.
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</u> 30/04/2012
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</u> 20/01/2012

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</u> 20/11/2013
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>Costs of £872.04 paid in full</u> over 3 instalments (final instalment received 09/09/2014)
MC/13/0280	Plot 1, Merryboys Stables, Cliffe Woods	Construction of shed to side of dwelling (resubmission of	Delegated	For	Costs of <u>£276 paid in full</u> 30/12/2013

	(Strood Rural Ward)	MC/12/0818)			
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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 and r/o 77- 87 James Street Gillingham	2 storey blocks comprising 4 x 1 bed flats	Delegated	Against	£2,300.75 (not yet paid)

Appeals 2015/2016

Ref.	Site	Proposal	Decision type	Costs	Comment
MC/15/0958	Former St Matthews Playing Field, Borstal	18 dwellings with associated access + parking + formation of community open space	Committee over turn of officer recommendation	Against	Waiting for applicant to submit costs

Appeals 2016/2017

Ref.	Site	Proposal	Decision type	Costs	Comment
MC/15/0486	Compass House, Medway Road, Gillingham	Retrospective application for change of use from 26 sheltered accommodation units to 54 student units + construction of 2 infill extensions	Delegated	Against	
MC/15/2939	371-375 Maidstone Road, Rainham	Outline application for the construction of first floor extension with dormer windows to form three 1-bedroomed flats	Committee	Against	
MC/16/2045	Aquarius, 8 Watson Avenue, Horsted	Construction of single storey side extension + additional storey to create first floor for use as care suite + roof alterations + installation of external staircase	Committee	For	
MC/15/0958	Former St Matthews Playing Field, Borstal	18 dwellings with associated access + parking + formation of community open space	Committee over turn of officer recommendation	Against	Waiting for applicant to submit costs

MC/16/2725	1 Embassy Close, Darland, Gillingham	Construction of single storey side/rear extension	Delegated	For	
ENF/14/0409	Compass House, Medway Road, Gillingham	Without planning permission the change of use from 26 sheltered accommodation units to 54 student units + construction of 2 infill extensions	Delegated	Against	