

PLANNING COMMITTEE

27 SEPTEMBER 2017

REPORT ON APPEAL DECISIONS

1 APRIL TO 30 JUNE 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 7 appeal decisions were received between 1 April to 30 June 2017, of which 1 was allowed and 6 were dismissed. No Enforcement Notice decisions were received.

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 then an appeal can be lodged in relation to that. An appeal cannot be lodged though in relation to a breach of condition notice on

the basis primarily that if the individual did not like the condition then they could have appealed against that at the time it was originally imposed.

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

2.5 In accordance with the decision made at the Planning Committee on Wednesday 5 July 2017, appendix A of this report will not summarise all appeal decisions but only either those which have been allowed on appeal or where Members made a contrary decision to the officers recommendation.

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.

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Appendices

- A) Summary of appeal decisions as per paragraph 2.5
- B) Appeal costs
- C) Report on appeal costs

Background papers

Appeal decisions received from the Planning Inspectorate for the period 1 April 2017 to 30 June 2017.

APPEAL DECISION SUMMARY

Appeals decided between 01/04/2017 and 30/06/2017

MC/16/1574

Turkey Hall Farm, Malmaynes Hall Road, Stoke ME3 9SG - Penninsula Ward

Refusal – 15 July 2016 - Delegated

Change of use of land for the stationing and storage of 16 rural worker caravans and provision of associated hardstanding, drainage and landscaping

Allowed with Conditions – 19 June 2017

Summary

The main issues:

- The living conditions of the occupiers of the neighbouring properties
- The living conditions of the future occupants (satisfactory standards of accommodation)
- The impact on the local SPAs and Ramsar sites.

The inspector concluded that there would be little time for socialising of the workers given the long hours that they would work on the farm. He states that there is no evidence that the workers would congregate and gather outside the mobile units causing unacceptable noise and disturbance. He also states that the noise assessment outlines that noise levels are already above those considered to be moderate annoyance in accordance with the World Health Organisation (WHO). The report indicates that these relatively high background noise levels are largely as a result of the site's position adjacent to a main road and the farm complex.

In relation to the living conditions of the future occupiers, the inspector concluded that there are no space standards for seasonal worker accommodation and the Council accepted this fact. An amenity block could lead to greater potential for workers to gather outside of the units and the inspector could not see any reasonable justification for the need for an amenity block. The inspector concludes that the proposed development would not adversely harm the living conditions of the future occupants and a satisfactory standard of accommodation would be provided by the proposed mobile homes.

During the hearing the appellant submitted the UU in response to a consultation response from Natural England on the appeal scheme during the initial planning application process but this had not been requested by the Council nor formed part of the Council's appeal case. The Inspector was not satisfied that the proposed contribution is necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with the Framework and the CIL Regulations 122 and 123. He therefore attached little weight to this UU in reaching his decision.

APPEAL COST DECISION SUMMARIES

MC/16/1574

Turkey Hall Farm, Malmaynes Hall Road, Stoke ME3 9SG

Costs Decision – Refused

Prior to the noise assessment submitted shortly before the hearing, the Council was entitled to form its own views about the impacts of the development having regard to all the evidence and other matters raised. Accordingly, the inspector did not consider that unreasonable judgement had been applied and was satisfied that the Council's written and oral evidence substantiated its decision at the time. The inspector did not agree that the Council acted unreasonably in this case.

It was therefore concluded that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process had not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs was not viewed to be justified.

APPENDIX C

REPORT ON APPEALS COSTS

<u>Appeals 2015/2016</u>					
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	£10,676 + VAT costs paid August 2016

<u>Appeals 2016/2017</u>					
Ref.	Site	Proposal	Decision type	Costs	Comment
MC/15/3751	132 Cooling Road, Strood	Construction of a 2 bedroomed chalet bungalow	Committee over turn of officer recommendation	Against	£4,457.60 + VAT paid December 2016
MC/16/2045	8 Watson Avenue, Horsted, Chatham	Single storey side extension + additional storey for care suite	Committee over turn of officer recommendation	Against	Partial award of costs on 1 of 3 reasons for refusal (parking). £600 paid June 2017
MC/16/2725	1 Embassy Close, Gillingham	Single storey side/rear extension	Delegated	Against	£700 + VAT paid January 2017