

PLANNING COMMITTEE

20 DECEMBER 2017

REPORT ON APPEAL DECISIONS

1 JULY TO 30 SEPTEMBER 2017

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

Author: Dave Harris, Head of Planning

Summary

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

A total of 7 appeal decisions were received between 1 July to 30 September 2017, of which 2 were allowed and 4 were dismissed. 1 was withdrawn, which related to Lodge Hill. Two Enforcement Notice decisions were received both of which upheld the Councils decision to take Enforcement action..

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
- B) Appeal costs
- C) Report on appeal costs

Background papers

Appeal decisions received from the Planning Inspectorate for the period 1 July 2017 to 30 September 2017.

APPEAL DECISION SUMMARY

Appeals decided between 01/07/2017 and 30/09/2017

MC/15/2332

Medway Bridge Marina, Manor Lane, Borstal, Rochester ME1 3HS – Rochester West Ward

Refusal – 30 June 2016 – Committee Overturn

Outline planning application for residential development comprising 36 residential flats (32x 2 bed flats and 4 numbered x 3 bed flats) with all matters reserved for future consideration, except access (Resubmission of MC/14/3680)

Allowed with Conditions – 29 June 2017

Summary

Members resolved to refuse planning permission on the following grounds:

“The proposed development, if permitted, would result in an over-development of the site. The illustrative drawings provided show a bulky development which is prominent and out of character with its general surroundings. The Local Planning Authority is therefore not satisfied that the site is capable of accommodating 36 residential units. If permitted, the proposal would result in a significant overbearing and unsympathetic development that has an adverse impact on the adjoining low lying land and river-scape, which is exacerbated by the openness of the surrounding area and river environment. The development would therefore be contrary to Paragraphs 56, 61, 64 and 65 of the National Planning Policy Framework and saved policies H4 and BNE1 of the Medway Local Plan 2003”.

The Planning Inspector considered the main issue to be ‘the effect of the proposal on the character and appearance of the area’.

The Inspector considered that overall, the illustrative information demonstrated that the buildings could be arranged to sit comfortably in the street and river scape. The buildings would sit against the backdrop of housing to the south on higher land. In addition the presence of existing trees would serve to lessen the visual impact of new buildings when viewed from a distance. Furthermore, whilst it would be a reserved matter, landscaping proposals could be used to integrate the scheme into the area.

MC/16/4423

208b Maidstone Road, Rochester, Kent ME1 3LP – Rochester West Ward

Refusal – 15 December 2016 – Committee

Change of use from retail (Class A1) to sandwich bar (Class A3)

Allowed with conditions – 29 June 2017

Summary

The appeal is allowed with conditions including restrictions to opening hours and delivery hours.

The site is located within the Maidstone Road Neighbourhood Centre and the main issue is the effect of the proposal on the living conditions of neighbouring occupiers, particularly in relation to vehicular movements and parking. The Inspector recognised that Maidstone Road is a busy thoroughfare and that there are a number of comings and goings from existing uses. He stated that the introduction of an A3 use would attract additional traffic movements. He states that the Council's adopted parking standards require 15 spaces for staff and customers but considers that the lawful A1 use would attract a similar number of vehicular movements and although this is unlikely to be during the latter part of the evening this is also likely to be when the barber shop is closed.

He states that he does not consider the additional vehicular movements would be harmful to the living conditions of neighbouring occupiers and the rigid application of the parking standards is not appropriate in this case. A condition controlling opening hours and deliveries would aid in reducing any noise and disturbance.

The Inspector concludes that the proposal complies with the development plan and allows the appeal.

APPEAL COST DECISION SUMMARIES

ENF/14/0418

Harewood, Matts Hill Road, Hartlip

Costs Decision – Allowed

The development which was the subject of the enforcement notice and appeal is clearly not in accordance with the development plan, or the NPPF or Planning Policy for Traveller Sites. As the personal circumstances of Mr John Peckham (deceased) no longer carried any weight in the determination of the appeal following his death and there were no other matters raised which could reasonably be considered to be material considerations, or supporting evidence advanced, which would be sufficient to outweigh the conflict with policy, the appeal had no reasonable prospect of succeeding.

The administrators of the estate of John Peckham therefore acted unreasonably in pursuing the appeal following his death, resulting in unnecessary or wasted expense by the Council in the conduct of the appeal. A full award of costs is justified.

APPENDIX C

REPORT ON APPEALS COSTS

<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

<u>Appeals 2017/2018</u>					
Ref.	Site	Proposal	Decision type	Costs	Comment
ENF/14/0418	Land adj to Gamerci, known as Harewood, Matts Hill Road, Hartlip	Without planning permission the change of use of the land to residential for the stationing of 3 touring caravans, erection of a day room, shed, storage of vehicles, erection of timber kennels, erection of fencing and creating of hardstanding	Appeal made by John Peckham (deceased) against an enforcement notice	For	27/09/2017 claim for £7,257.43 sent by email and post to applicant's representative. No response – referred to legal