

PLANNING COMMITTEE

14 MARCH 2018

REPORT ON APPEAL DECISIONS 1 OCTOBER TO 31 DECEMBER 2017

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Environment & Transformation and Deputy Chief
Executive

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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 13 appeal decisions were received between 1 October and 31 December 2017, of which 6 were allowed, 6 were dismissed and 1 was withdrawn, which related to Lodge Hill. Three Enforcement Notice decisions were received, 1 of which was allowed and 2 dismissed.

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

1. Budget and Policy Framework

1.1 This is a matter for the Planning Committee.

2. Background

2.1 When a planning application is refused, the applicant has the right to appeal. 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 October 2017 to 31 December 2017.

APPEAL DECISION SUMMARY

Appeals decided between 01/10/2017 and 31/12/2017

MC/17/0551

4 Second Avenue, Luton, Chatham ME4 5AU – Luton & Wayfield Ward

Refusal – 13 April 2017 – Delegated

Retrospective application for the rebuilding of the W.C. and the addition of an extension providing an ancillary office, both located to the rear of the existing building and the raising of part of the roof of the main building

Allowed with conditions – 17 October 2017

Summary

The appeal is allowed subject to conditions including details to limit light spillage from the north eastern side of the raised section of the building.

The main issue is the effect of the retrospective development on the living conditions of adjoining occupiers. The Inspector recognised that the increased height of the roof is more visible in the outlook of adjoining residents. However in view of the separation of the appeal building to the internal living accommodation of nearby houses and their rear gardens he did not consider that the relatively modest increase in height is significant in their outlook. In addition he could not conclude that the additional height would appear unduly prominent or be so dominant as to have an overbearing impact upon the outlook and enjoyment of the living environment of adjoining occupiers, or that the effect upon daylight reaching neighbouring properties would be significant.

The Inspector recognised that the rear extension is visible to some adjoining residents, however given the limited height of this addition and its position within the appeal site he concluded it would not be prominent or dominant in the outlook of neighbouring occupiers.

Overall he concluded that the development would not harm the living conditions of adjoining occupiers and would not conflict with Policies BNE1 and BNE2 of the Local Plan or paragraphs 17 and 56 of the National Planning Policy Framework. The appeal is therefore allowed subject to a condition to secure details to prevent undue harm from light pollution due to the glazed sides of the roof extension.

MC/16/4508

60 Linden Road, Gillingham, ME7 2PH – Gillingham South

Refusal – 5 May 2017 - Committee

Change of use of property from residential to HMO

Summary

Members resolved to refuse planning permission on the following grounds:

“The application property is a mid-terraced dwelling in a residential area and is of a size suitable for occupation by a single family unit. The occupation by over six independent occupiers, with very poor and inadequate communal facilities (lack of sitting room, lounge room, TV room) as well as one room being within the basement area and being the primary room for an occupier, would result in a poor standard of accommodation for the future occupiers. The proposal would also have increased and unacceptable impact on the amenities of the occupiers of adjacent properties by virtue of increased comings and goings and primary rooms at first floor level adjacent to bedrooms. The proposal is contrary to policies H7 and BNE2 of the Medway Local Plan 2003.”

The Planning Inspector considered the main issue to be ‘Whether the proposal provides acceptable living conditions for existing and future residents in terms of the provision of internal living space, outlook and light and the effect on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.’

The Inspector considered that with regards to future occupiers that the Council have licensed this HMO. Whilst this was assessed under the Housing regulations, it indicates that a reasonable standard of accommodation has been reached.

Regarding the basement room the high level window provides light and ventilation and, although offering no outlook, would nonetheless be acceptable to accommodate a bedroom within the HMO. The lack of a communal living room, whilst desirable, would be insufficient to conclude that the proposal offered inadequate living conditions for its occupiers and found no conflict with the aims of Local Plan Policies H7 and BNE2.

With regards to impact on neighbours the Inspector considered that the next door property at No 62 has been divided into flats and that there has been no evidence of complaints regarding noise from the individual rooms on the first floor at No 60 causing undue disturbance to the occupiers of adjoining rooms in the neighbouring properties. The Inspector did not believe that the level of comings and goings of occupiers of the HMO would be sufficient as to result in a materially harmful impact upon the living conditions of neighbouring occupiers to conflict with the aim of LP Policy BNE2 to protect the living conditions enjoyed by nearby and adjacent properties.

Members should be aware that after discussing this case with Counsel and the Chairman, it has been agreed to challenge this decision through a Judicial Review

MC/17/2152

40 Holcombe Road, Chatham, Kent, ME4 5RX – Chatham Central

Refusal – 19 June 2017 – Delegated

Single storey rear extension and steps down to garden.

Allowed with conditions – 29 June 2017

Summary

The appeal is allowed with conditions including shall not begin later than 3 years, carried out in accordance with approved plans and external surfaces shall match the existing building

The sole main issue is the effect of the proposal's flat roof on the character and appearance of the area. Although sited at the rear of the property, it would be in clear public view across an open car park serving properties in Charter Street. From that position it can be seen that properties in Southill Road which also back on to the car park have rear projections, some of which, originally with pitched roofs, now have flat roofs. It can also be seen that neighbouring properties at 42 and 44 Holcombe Road have a succession of rear projections, the tallest, nearest to the main body of the houses, with pitched roofs, the lower projections, deeper into the rear gardens, with flat roofs. In the appeal premises its self is a flat-roofed garden room abutting the rear boundary onto the car park.

The inspector concludes that, the proposal would do no harm to the character and appearance of the area. It would comply with policy BNE1 of the Medway Local Plan adopted in May 2003.

MC/17/1915

17 Apollo Way, St Marys Island, Chatham ME4 3AP – River Ward

Refusal – 28 May 2017 – Delegated

Rear dormer and replacement velux roof lights to front roof

Allowed with conditions – 27 December 2017

Summary

The appeal is allowed with conditions including shall not begin later than 3 years, carried out in accordance with approved plans and external surfaces shall match the existing building

The main issue in this appeal is the effect of the proposed development on the character and appearance of the host property and surrounding area.

Concerns were raised by us that the proposed rear dormer extension was of a scale that would appear out of character with the host property and the surrounding area. However the inspector considered that as the proposed dormer extension would be located away from the eaves, ridge and respective sides of the roof, leaving much of the existing rear roof slope unaltered, it would respect the proportions of the existing roof, and would not appear unduly dominant

MC/17/0649

46 Wyles Road, Chatham, Kent, ME4 6LD – Rochester South and Horsted

Refusal – 25 May 2017 – Delegated

First floor rear extension and roof alteration to form new bedroom including replacement flat roof to pitched and raising of existing property ridge

Allowed with conditions – 10 October 2017

Summary

The appeal is allowed with conditions including shall not begin later than 3 years, carried out in accordance with approved plans and external surfaces shall match the existing building

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

Concerns were raised by officers due to its scale, contrived design and siting, would not be sympathetic to the main dwelling but would instead detract from it. The extension would have a detrimental impact on the appearance of the existing dwelling and street scene contrary to Policy BNE1 of the Medway Local Plan 2003 and the design objectives set out in chapter seven of the National Planning Policy Framework.

However the inspector considered that although the raising of the ridge height in line with the neighbouring property would be at odds with the difference in level of the eaves within the streetscene; this anomaly would be disguised by the presence of the chimney and as a result the overall appearance and balance of the pair would not be harmed.

The “table top” roof would add significant bulk to the rear of the house; however in the context of the sizeable projections at the rear of neighbouring houses it would not detract from the character of the area.

Accordingly it was considered by the inspector that the proposal would not unacceptably detract from the character and appearance of the house or the street scene. The proposal would not conflict with Policy BNE1 of the Medway Local Plan 2003 (LP) which indicates that development should be appropriate in relation to the character, appearance and functioning of the built environment.

MC/17/0686

1A Main Road, Chattenden, Rochester ME3 8LW – Strood Rural

Refusal – 28 April 2017 - Delegated

Retrospective application for construction of a detached garage with pitched roof to rear

Allowed with Conditions – 27 October 2017

Summary

The main issues:

- The effect of the proposal on the character and appearance of the area
- The effect on the living conditions of the occupiers of No.9 Tudor Grove, as regards to outlook and light.

Character and Appearance

No 1A Main Road is a narrow dwelling that occupies the full width of its plot. It forms part of a mixed row of houses on the north side of Main Road to the east of Chattenden Lane. The garage is behind the main road frontage development, but it is close to the development in depth at Old George Court. From Main Road, the flank wall of the garage continues the line of the side wall of the house. However, the garage is at a lower level and it is seen against the backdrop of the Tudor Grove houses.

The garage is larger than the outbuildings located in gardens to the west (and that permitted at Nullisec) but it is less bulky than the buildings to the east. The Inspector considered that in this transitional location it does not appear out of place.

On this issue, the Inspector concluded that the garage building does not detract from the character and appearance of the area.

Living Conditions

The detached dwelling at No 9 Tudor Grove is built at a lower level than the appeal property. No 9 has glazed doors in its rear wall which provide an outlook towards its rear garden from the ground floor living rooms. The rear wall of No 9 is angled slightly towards the rear boundary of the appeal site and the gabled north wall of garage is clearly in view from within the house. However, there is a wide aspect from the rear windows towards its back garden with views of open countryside above the fence to the north east. The garage is higher than the boundary fence; however it is set back from the boundary and is some distance from the house. Taking account of the wide outlook at the rear of the house, the Inspector considered that the garage is not an unacceptably intrusive or over-dominant building.

On this issue, the Inspector concluded that whilst the garage changes the view at the rear of No 9 Tudor Grove it does not unacceptably detract from the living conditions of the occupiers of that property as regards outlook or light.

ENF/16/0101

Land to rear of 21 and 23 Asquith Road, Rainham Kent

Appeal decision – Enforcement notice quashed

The appeal was against an enforcement notice requiring the removal of a steel shipping container, building materials and fencing from the above site.

The inspector concluded that there was sufficient physical and functional separation to suggest that a smaller planning unit had been formed and therefore disagreed with the Council's decision to include the whole site in the enforcement notice. Despite officer's concerns that if the entire site was not included in the notice then the offender could simply move the items subject to the enforcement notice outside the red line the enforcement notice was quashed by the Planning Inspector on the grounds that the notice did not specify with sufficient clarity the alleged breach of planning control.

APPENDIX B

APPEAL COST DECISION SUMMARIES

There were no appeal cost decisions during the quarter

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