

## **PLANNING COMMITTEE**

**9 MAY 2018**

### **REPORT ON APPEAL DECISIONS**

**1 JANUARY TO 31 MARCH 2018**

Report from: Richard Hicks, Director of Regeneration, Culture, Environment and Transformation & 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 11 appeal decisions were received between 1 January to 31 March 2018, of which 5 were allowed and 6 were dismissed and 1 was withdrawn. One Enforcement Notice decision was received which upheld the Council's 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.

### **Lead officer contact**

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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 January to 31 March 2018.

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/01/2018 and 31/03/2018**

**MC/17/1153**

**Plots 1 & 2 (Formerly 85) Bredhurst Road, Wigmore, Gillingham ME8 OQT – Hempstead and Wigmore Ward**

Refusal – 9 June 2017 – Delegated Decision

Variation of condition 2, 6 and 7 to allow a minor material amendment to planning permission MC/16/0867 to enable the provision of additional car parking to the front garden of Plot 1 (2 car parking spaces); provision of a vehicular crossover and installation of a surface water drainage system.

Allowed with Conditions – 20 February 2018

**Summary**

The main issues were whether the conditions were necessary in the interests of sustainable planning policy objectives in relation to parking and drainage and on the appearance of the development in the street scene.

Planning permission was granted for the replacement of a former bungalow at the site with a pair of semi-detached houses with the provision of a double garage at the end of the back garden to serve plot 1. The scheme has been implemented and the houses occupied. The appellant sought permission for the development without complying with conditions attached to the permission to enable retention of two additional parking spaces in the front garden to plot 1, the widening of an existing vehicular access to serve these additional spaces and the installation of a surface water drainage system.

The Council considered that the provision of the two additional front garden spaces combined with the rear garage parking would result in an over provision of on site parking contrary to sustainable planning objectives. The occupiers of plot 1 however requested parking to the front of their property for ease of access to their front door. The additional parking spaces had been provided at the time of the inspectors visit and in use although the related vehicle crossover still needed to be widened and a crossover provided for the garage at the rear of the site.

The Planning inspector concluded that provision of the two additional parking spaces would not result in a significant increase in cars parked at the site or in the number of car journeys undertaken by the occupiers of plot 1. Removal of condition 6 was also sought to enable retention of this system as an alternative form of sustainable

drainage to that envisaged by the condition. The Council raised no objection to this part of the proposal and the planning inspector agreed.

Finally, the planning inspector considered that the larger expanse of hardstanding for the additional parking spaces would not be harmful to the appearance of the property, site or the street scene.

## **MC/17/1630**

### **153 – 155 High Street, Chatham ME4 4BA– River Ward**

Refusal – 5 July 2017 – Committee Overturn

Demolition of part of the ground floor rear section to the existing shop and construction of a three storey rear extension and change of use from storage to residential use to create four 1 bedroomed and one 2 bedroomed flats together with the construction of a detached three storey apartment building to the rear of the site incorporating three 1 bedroomed flats and a new access to the side of the shop, communal garden between the rear of the shop and the new build apartment together with the provision of bin storage, cycle storage and associated works)

Allowed with conditions – 26 February 2018

## **Summary**

Members overturned the officer recommendation and resolved to refuse planning permission on the following grounds:

“The proposal represents an overdevelopment of the site which would provide an unacceptably poor level of amenity for the prospective occupiers of the proposed flats to the rear by virtue of the poor level of outlook due to the Pentagon to the rear and high structures in commercial use to either side and by virtue of the noise and disturbance created by the proximity of the proposed rear flats to the Pentagon and in particular the car park and service areas, where there are likely to be deliveries and traffic movements at unsocial hours. The proposal is therefore contrary to the provisions of Policies H4 and BNE2 of the Medway Local Plan 2003 and paragraph 17 of the NPPF 2012.”

The Planning Inspector considered the main issue to be the effect of the proposed development on the living conditions of the future occupants with regard to outlook and noise and disturbance.

Whilst the Inspector accepts that there would be some impact from the surrounding commercial buildings, he states that given the proposed design and layout of the proposed development and the separation distance between the properties, he does not consider that the high external walls of the surrounding commercial buildings would cause significant harm to the outlook for the future occupiers of the proposed flats, nor dominate the views to cause an overbearing effect and an unacceptable sense of enclosure in the proposed flats and the shared amenity area.

In relation to noise, the Inspector stated that both externally and internally, the noise levels at the proposed flats would fall within the NPSE No Observable Effect Level and any significant adverse effect under the terms of the PPG that would require appropriate mitigation measures. Given the design, scale and layout of the apartment block at the rear of the site, the relationship with the adjacent shopping centre and the planning history of the site, the Inspector considered that based on the evidence provided and observations on his site visit, that the noise and disturbance associated with the adjacent shopping centre and surrounding commercial uses would not give rise to significant adverse effects on health and quality of life of the future occupiers subject to appropriate noise mitigation scheme and measures being applied.

## **MC/16/4857**

**146 Hempstead Road, Hempstead, Gillingham ME7 3QE**– Hempstead and Wigmore Ward

Refusal – 15 February 2017 – Committee Overturn

Variation of Conditions 3, 4, 5 and 6 on planning permission MC/14/2786 to allow a takeaway use

Allowed with conditions – 12 February 2018

## **Summary**

The planning conditions that were subject of the appeal limit the commercial use of the site, the associated hours of opening and parking provision to a restaurant with a home delivery service. The appellant has applied to vary these conditions to enable provision of a take away service for customers in addition to the consented uses. The reason for refusal at committee was as follows:

The proposed take away by virtue of the additional comings and goings of traffic and the frequency, where most are either likely to park to the front of the premises immediately opposite residential properties or increase the number of vehicle movements into and out of the rear car park which is not only adjacent to residential properties but which has a constrained access, will result in unacceptable harm and disturbance to the amenities of residents in the immediate vicinity of the site. The proposal is therefore contrary to the provisions of Policy BNE2 of the Medway Local Plan 2003.

The inspector considered the appeal and come to the following conclusions:

“The provision of a take away service would be likely to result in some increase in vehicular activity during evening hours to the side and rear but this would be unlikely to have a significant adverse effect on the living conditions of nearby residents through noise or disturbance given the availability of parking and the existing activity associated with the site. The access to the side of the premises does not appear to be unduly constrained; any manoeuvring of vehicles to allow another to pass would not affect residential amenity given the separation to the nearest dwellings. As such, any additional use of the rear car park is unlikely to be

of such intensity to significantly impact on the living conditions of local residents in adjacent dwellings.

The site fronts Hempstead Road where there is already a level of noise and activity from through traffic, buses and customers to the food shop and public house also located within this local centre. Against this background level of activity, the movement of customers entering and leaving the site to utilise the proposed take away service would be unlikely to result in a material increase in disturbance for the occupiers of the nearest dwellings, particularly if the hours of operation of the take away service are limited to the current opening hours at the restaurant. The proposal would thereby be in accordance with the provisions of Policy BNE2 of the Medway Local Plan (2003) which amongst other matters seeks to protect the amenities enjoyed by the occupiers of nearby properties. The proposal would also be in compliance with paragraph 17 of the National Planning Policy Framework that supports economic development whilst seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.” The appeal was allowed and the inspector amended the conditions.

- 1) The hours of operation of the restaurant use, take away and hot food delivery use shall not be outside the hours of 10:30h to 23:00h on Mondays to Saturdays and 10:30h to 22:00h on Sundays and Public Holidays.
- 2) Ten car parking spaces shall be kept available at all times for parking in association with the restaurant use, take away and hot food delivery use herein approved and home delivery vehicles shall utilise these spaces when collecting or waiting for home delivery requests.
- 3) The use of the property shall be restricted to restaurant use, take away and hot food delivery service only together with ancillary overnight staff accommodation for up to two staff members only at first floor level and for no other purpose.
- 4) The take away and hot food delivery service shall not operate separately from the restaurant use herein approved.
- 5) The flue extractor system installed as part of the permission granted under reference MC/06/0691 shall be retained in working order.

The appellant applied for costs but the inspector dismissed this appeal stating. “Whilst it will be seen from my decision that I disagree with Council Members that, the scheme should be refused planning permission, the reason for refusal on the decision notice is clear and precise in relation to the considered harm to living conditions of residents living nearby. Moreover, the Council has produced a reasoned statement to substantiate the reason for refusal with reference to a relevant local plan policy. Although I have reached a different judgement on the planning merits of the case, this does not mean that the Council acted unreasonably in taking its decision.”

**MC/17/1792**

**38 Meadowdown Close, Hempstead, Gillingham ME7 3SU**– Hempstead and Wigmore Ward

Refusal – 17 July 2017 – Delegated Decision

Construction of a double garage to front

Allowed – 23 January 2018

### **Summary**

The appeal property is a two storey detached dwelling at No. 38 Meadowdown Close (No. 38) with a detached garage at the front immediately adjacent to the neighbouring property's garage at No. 36. The property is located on a mature well-established residential cul-de-sac, typically characterised by detached and semi-detached dwellings set back from the road. Whilst there is some variation in the house styles, a number of the dwellings along the eastern side of the road are elevated above the level of the road and have shared detached double garages at the front built close to the highway that generally appear as clearly subordinate to the main house.

Whilst the proposed garage would be located in a prominent position in front of the property, the scale, form and siting of the proposed garage would not be out of keeping with the built form of some of the existing garages in the area built close to the highway. The single storey form and flat roof design of the proposed garage set back from the front boundary together with the use of matching materials would ensure the proposal would sit relatively unobtrusively against the two storey form of the main property. This would allow the proposal to achieve an appropriate degree of subordination to the main property and limit any significant adverse impacts on the street scene.

Consequently, the officer considered that the proposed development would have a significant harmful effect on the character and appearance of the area and therefore in conflict with policy BNE1 of the Medway Local Plan 2003.

The inspector considered that the overall scale, design and siting of the proposed garage would not significantly detract from the street scene and would be in keeping with the character and appearance of the area. It would comply with policy BNE1 of the Medway Local Plan adopted in May 2003.

*The Head of Planning has reviewed the Inspectors report and concluded that, in his opinion, the officer and Planning Manager were correct in refusing the application and that it would result in significant harm to the street, however although the appeal decision is poor it is not challengeable in law.*



**MC/17/2353**

**62 Chalfont Drive, Rainham, Gillingham ME8 9DN** – Rainham Central Ward

Refusal – 31 July 2017 – Delegated Decision

Installation of a dormer to front roof slope

Allowed with Conditions – 29 January 2018

### **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 officer raised concerns that the proposed dormer would appear out of character with the host property and the surrounding area. However the inspector considered there to be sufficient diversity in roof design and form to ensure that the introduction of this proposal would not undermine the character and appearance of the appeal property or the street scene.

The Inspector therefore concluded that the proposal would be acceptable in relation to the character and appearance of the appeal property and the street scene, and would accord with the aims of LP Policy BNE1.

## **APPENDIX B**

### **APPEAL COST DECISION SUMMARIES**

There have been no applications for costs during the period 1 January to 31 March 2018.

## 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