



## **PLANNING COMMITTEE**

**21 NOVEMBER 2018**

### **REPORT ON APPEAL DECISIONS**

**1 APRIL TO 30 SEPTEMBER 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 27 appeal decisions were received between 1 April to 30 September 2018, of which 8 were allowed and 17 were dismissed. There were 2 split decisions in relation to enforcement appeals.

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. Occasionally the Secretary of State will direct that he will consider the Inspectors report and recommendation and make the decision on the appeal himself.
- 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 April to 30 September 2018.

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/04/2018 and 30/09/2018**

**MC/17/2919**

**116A Maidstone Road, Rochester, Kent ME1 3DT– Rochester West Ward**

Refusal – 23 October 2017 – Delegated Decision

Construction of first floor extension to facilitate conversion of existing bungalow to two storey house together with canopy to front.

Allowed with Conditions – 20 April 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 property had been subject to two previous applications but refused with one application dismissed on appeal. The previous application had been refused on concerns regarding outlook, the applicant had reduced the height slightly however it was not considered enough to overcome the concerns outlined by both the planning authority and planning inspector.

The inspector for this application concluded whilst that the rearmost part of the new extension, was unchanged from the previous scheme and would bring about some loss of outlook from the rear-facing bedroom windows of no. 2 towards the cemetery on the opposite side of Maidstone Road, as the part of the new extension had been reduced, this would not provide a sufficient reason to dismiss the appeal.

Therefore the decision was made on balance and in this insistence decided the harm was not sufficient to warrant refusal of the application.

**MC/17/3295**

**Co-Op Supermarket, Walderslade Road, Walderslade, Chatham – Walderslade Ward**

Refusal – 14 December 2017 – Delegated Decision

Retrospective advertisement consent for installation of an internally-illuminated totem

Allowed with Conditions – 25 June 2018

## **Summary**

The officer raised concerns due to the prominent location of the totem advertisement in the service yard and isolated from the main commercial area, and that the proposed advertisement would result in an alien feature that would detract from the visual amenities of the streetscene contrary to paragraph 67 of the NPPF and Policy BNE10 of the Medway Local Plan 2003.

The inspector concluded that as the totem pole would not be illuminated that the visual detraction would be limited and therefore does not materially harm the visual amenity of the area.

## **MC/16/5177**

**Flanders Farm, Ratcliffe Highway, Hoo St Werburgh, Rochester** – Peninsular Ward

Refusal – 16 March 2017 – Committee Overturn

Removal of condition 17 of MC/14/3063 – To retain buildings, hardstanding and access

Allowed with Conditions – 4 April 2018

## **Summary**

The Inspector considered that the imposition of the original condition was in itself unreasonable, in that it was a substantial building of permanent construction needed for the development it served. In addition, he agreed with the applicant, that the building and the machinery within it required significant investment and that it was unreasonable for the Council to require its removal if the building in the future, was no longer required to serve the purpose for which it had been approved – i.e as part of the fruit processing and packing business. He considered that the condition failed to meet any of the 6 tests required for a condition to be reasonably imposed and therefore to refuse to allow the condition to be removed was also unreasonable.

## **MC/16/5062**

**18 High Street, Halling, Rochester ME2 1BX** – Cuxton and Halling Ward

Refusal – 13 April 2017 – Committee Overturn

Part single, part two-storey side extensions, two storey rear extension and the raising of the roof height to facilitate the formation of dormers to front to enable conversion of property into five self-contained flats whilst retaining the retail unit A1 use class to ground floor - Demolition of existing dormer and car-port to side and conservatory to rear

Allowed with Conditions – 20 April 2018

## **Summary**

The appeal was allowed and planning permission granted for the conversion of existing shop with flat over into enlarged shop area with five single bedroom flats over. The main issue is the effect of the proposal on the character and appearance of the area.

The planning inspector concluded that the proposal would not be harmful to the character and appearance of the area. There would therefore be no conflict with saved Policy BNE1 of the Medway Local Plan 2003 and the then paragraph 56 of the National Planning Policy Framework 2012. These require(d) that development should be of a good design contributing positively to making places better for people and the design of development should be appropriate in relation to the character, appearance and functioning of the built and natural environment.

In summary given the variety of building heights along the High Street the increase would not appear unduly noticeable or incongruous. In addition, the rear extensions would be lower than the main frontage building, with consistent window proportions and alignments, and therefore would form subservient additions. Furthermore, the mass of the roof, although increased presents a simpler form than that of the existing building which, together with its minimal detailing, would allow it to blend into the street scene, where buildings of various heights and designs are found. While the extensions would extend further to the rear than the existing building, this would only be by a limited amount. In addition there would still be an appreciable gap between the end elevation of the building and its rear boundary. Consequently, the open character and appearance to the back of the row of buildings would not be unacceptably eroded.

The planning inspector was satisfied that the relatively simple design and detailing of the proposal means that it would sit comfortably within the High Street. Accordingly, although within a prominent location it would not be materially incongruent or obtrusive within the street scene or from views from the pedestrian footbridge. Instead it would create an improved backdrop to the war memorial and surrounding open space. The width of the building would increase to virtually fill the plot. However, the resultant building would not be of such an extent that would be discordant, given the variety in the size of structures within the area. Furthermore, he acknowledged a number of houses within the vicinity of the appeal site that had front dormer roof extensions. In this aspect therefore the proposal would not be unique or unacceptable.

**MC/17/3221**

**Dux Court Barn, Dux Court Road, Hoo St Werburgh, Rochester – Peninsula Ward**

Refusal – 20 December 2017 – Delegated

Construction of a part two storey/part single extension with juliette balcony and roof light to side together with the insertion of window at first floor level to side

Allowed with Conditions – 26 June 2018

## **Summary**

This property is a former agricultural barn that was converted to residential use following the grant of planning permission in June 2004 (ref: MC/04/0653). It is situated beyond the settlement of Hoo St Werburgh in a countryside location and forming part of an Area of Local Landscape Importance. The appeal site is part of Dux Court Farm, which includes the subject barn and an oasthouse that has also been converted to residential use, together with the original large farmhouse building. The conversion of the original barn to a four bedroom house has, of necessity, led to some impact upon its simple structure, including the introduction of large areas of glazing to the front elevation and a single storey side extension with catslide roof.

The current scheme proposes the erection of a part single and part two storey extension to the southeast of the property. The ridge height of the small gable projection would match that of the main building and would extend outwards by only 2.5m. No new bedrooms or living areas are to be created, the extension merely improving the quality of the existing bathroom and kitchen to meet modern day expectations.

Gable extensions are a common feature of agricultural barns and farm buildings throughout the country and therefore there is no objection to the addition of such a feature in this instance, which would conserve the character and appearance of the original barn consistent with its conversion to residential use. The proposed Juliet balcony would not have any material impact upon the overall appearance of the building, particularly given that the front elevation is largely glazed in a typically residential format.

The building is set some 27m from Dux Court Road, from which it is screened by mature trees and hedges. The Inspector was satisfied that the extension would not adversely affect the character of this important rural lane and would not be in conflict with the requirements of Policy BNE47 of the Local Plan.

The Inspector found that the development as proposed would harmonise with and not be harmful to the character and appearance of the host building or that of the surrounding area and that it would accord with both national policy in the Framework and the policies of the Development.

## **ENF/15/0155**

### **Timber Barn, West Street, Cliffe, Rochester ME3 7TQ – Cliffe and Cliffe Woods**

Without planning permission the erection of a steel container, the erection of a detached bungalow and the change of use of agricultural land to residential curtilage

Spilt decision – 15 May 2018

## **Summary**

The appeal on Ground A succeeded in part, in relation to planning permission being granted with conditions for the bungalow.

The rest of the notice was upheld and corrected in relation to the change of use of agricultural land to residential and siting of a steel shipping container.

## **ENF/16/9377**

### **14 Mackintosh Close, High Halstow, Rochester ME3 8EQ – High Halstow**

Without planning permission the construction of a scaffold and netting structure to the rear of the property.

Spilt decision – 9 April 2018

## **Summary**

The appeal on Ground G succeeded in part, in relation to the period for compliance being unreasonably short. The period of compliance has been extend from one month to three months.

The rest of the notice was upheld.

## **MC/17/2951**

### **3 Nore Close, Darland, Gillingham ME7 3DG – Watling Ward**

Refusal – 18 January 2018 – Committee Overturn

Construction of part two storey front/side/part single storey front/side and single storey rear extensions together with formation of a gable end with dormer to rear and roof light to rear to facilitate additional habitable living accommodation within the roof space and construction of driveway to front

Allowed with conditions – 3 July 2018

## **Summary**

The property is a two-storey, semi-detached dwelling positioned off a small cul-de-sac. Twinned with No. 2, the pair are situated considerably forward of Nos 4 and 5 which are set back from the road's hammer-head.

A detached single-width garage to the side of the property would be demolished to make way for a proposed two-storey side extension. The first floor would be



recessed, behind a canopy roof over a shallow, single-storey front extension. The proposal would involve the creation of a gable-end, changing the existing characteristic hipped roof, with the side extension pitching into the new roof's flank wall. A single-storey rear extension to a depth of just less than 3m is also proposed.

Nos 8 and 9, at the head of the cul-de-sac, have both been significantly extended as have several dwellings along Leyton Avenue, off which Nore Close is accessed, with examples of two-storey side additions. The Inspector considered that, as a comparison the current proposal would show subordination to the host dwelling, and its design would not be unacceptable in context. The resultant gable end would be particularly at odds with No 2 but the Inspector considered this would be permissible under householder permitted development rights, which the council has not disputed.

The Council cited Policy BNE1 as its reason for refusal, which allows for extensions if they are satisfactory in terms of, amongst other things, proportion, scale and mass and are consistent with local character. The Inspector considered the front addition, rear extension, dormer window and rooflight to be satisfactory design relative to their context and therefore the proposal satisfies the criteria. Further, given the relative siting and orientation to No 4, the Inspector felt the neighbouring property's setting would not be unduly affected by the proposal.

The Inspector concluded that the proposal would not be harmful to character and appearance of the host dwelling nor its surrounding area and there would be no material conflict with the objectives of Policy BNE1.

#### **MC/17/4414**

**12 Horsted Way, Horsted, Rochester ME1 2XY – Rochester South & Horsted Ward**

Refusal – 12 March 2018 – Delegated

Retrospective application for a boundary wall to the front, and part application for an extension of the existing vehicle crossing and construction of a gate to front

Allowed with conditions – 24 August 2018

#### **Summary**

12 Horsted Way comprises a detached chalet-style dwelling located on a busy main road within a mixed residential area. The Inspector noted during his visit to the site that the front wall had been constructed to a height of approximately 1.33m, with 2m high brick piers at intervals and on either side of the entrance to the main road. These latter two brick piers are intended to support metal gates of a similar height. He considered the wall to be erected to a high quality of design and materials.

The Inspector also noted the wide variety of boundary treatments along Horsted Way and further afield in Maidstone Road, including an almost identical example at 24 Horsted Way. Given the diverse boundary treatments observed the Inspector concluded that the new wall is appropriate to its setting and to the host dwelling and accords with Policy BNE1 of the Local Plan.

**ENF/16/0130**

**Matts Hill Farm, Matts Hill Lane, Rainham ME9 7UY – Rainham South Ward**

Non Compliance with an extant enforcement notice issued 10 September 2010.  
Without the benefit of planning permission the change of use of silage clamp to B8 storage and distribution, laying of hard surfacing and increasing the height of existing earth bunds

Allowed – 29 August 2018

### **Summary**

Matts Hill Farm is situated within the Countryside of the Kent Downs Area of Outstanding Natural Beauty, to the south of the Medway Services on the M2 motorway.

In 2010 the Council issued several enforcement notices in relation to the non-agricultural activities on the site. Several appeals against the enforcement notices were determined in November 2011. Some of the appeals were allowed and permissions were granted for the use of certain units for workshop/storage purposes. Some of the enforcement notices were upheld, albeit with corrections and/or variations.

The three enforcement appeals relating to this appeal (A, B & C) relate to an area on the southwest side of the silage clamp together with the bunds which extend around the silage clamps and alongside the site access. The current Section 78 appeal (appeal D) relates to a more extensive area, encompassing additional land intended for landscaping which extends along the site access and frontage of Matts Hill Farm and Matts Hill Land.

The main issues in these appeals is whether the change of use of the land and the associated operational development would be an appropriate form of development in this location and the effect of the development upon the character and appearance of the site and the visual qualities of the landscape within the AONB.

The Inspector concluded that the appellants have demonstrated that the adverse impact of the development on the AONB and SLA could be successfully mitigated. The ecological benefits arising from the landscaping proposals are further positive factors in favour of the development. On balance, the Inspector concluded the development would conserve and enhance the natural beauty of the landscape of the AONB and benefit wildlife and biodiversity.

A number of planning conditions have been imposed requiring the carrying out of the landscaping, a landscape management plan, limitations on the height and nature of the storage are also necessary to safeguard the character and landscape of the AONB. A planning condition prohibiting any external lighting is also required for the same reason.

## **APPENDIX B**

### **APPEAL COST DECISION SUMMARIES**

There has been an application for costs awarded against Medway Council in relation to MC/16/5177 - Flanders Farm.

As stated in the appeal summary above, the Inspector concluded that the original condition as imposed failed to meet any of the 6 tests necessary relating to imposition of conditions. As a result, the decision not to allow the condition to be removed was unreasonable and he awarded full costs in relation to the appeal to be awarded against the Council

## APPENDIX C

### REPORT ON APPEALS COSTS

<u>Appeals 2017/2018</u>					
Ref.	Site	Proposal	Decision type	Costs	Comment
<b>ENF/14/0418</b>	<b>Land adj to Gamerci, known as Harewood , Matts Hill Road, Hartlip</b>	<b>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</b>	<b>Appeal made by John Peckham (deceased) against an enforcement notice</b>	<b>For</b>	<b>Appeal costs claimed £7,257.43 in letter dated 27/09/2017. No response yet received. Legal taking action.</b>
<b>MC/14/3063 and MC/15/5177</b>	<b>Flanders Farm, Ratcliffe Highway, Hoo</b>	<b>Removal of condition 17 to retain buildings, hardstanding and access</b>	<b>Committee overturn</b>	<b>Against</b>	<b>The appellants initially submitted a bill for £76k which they were able to break down. Notwithstanding that officers negotiated a reduction to £35k</b>

Appeals 2018/2019

Ref.	Site	Proposal	Decision type	Costs	Comment
<b>ENF/10/0624</b>	<b>Orchard Stables Meresborough Road Rainham</b>	<b>Without planning permission the change of use of the land to residential including the stationing of 2 mobile homes, erection of a brick built day room, laying of hardsurfacing, erection of close board fencing &amp; gates and the creation of a new access</b>		<b>For</b>	<b>06/08/2018 decision - full costs awarded.  Cheque for £17,300. received 09/10/2018</b>