

PLANNING COMMITTEE

20 MARCH 2019

REPORT ON APPEAL DECISIONS 1 OCTOBER TO 31 DECEMBER 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 28 appeal decisions were received between 1 October to 31 December 2018, of which 6 were allowed and 22 were dismissed. There were no split decisions or 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.
- 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.
- 6.2 The quality of decisions is reviewed by Government and the threshold for designation on applications for both major and non-major development is 10% of an authority's total number of decision. Where an authority is designated as underperforming, applicants have the option of submitting their applications directly to the Planning Inspectorate.

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

Dave Harris, Head of Planning
Telephone: 01634 331575
Email: dave.harris@medway.gov.uk.

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 to 31 December 2018.

APPEAL DECISION SUMMARY

Appeals decided between 01/10/2018 and 31/12/2018

MC/16/3742

Land South of View Road, Cliffe Woods, Rochester – Strood Rural Ward

Refusal – 10 November 2017 – Committee Overturn

Outline application with some matters reserved for the construction of 50 retirement homes comprising a mix of 2/3 storey apartments and single storey bungalows with ancillary meeting room, gymnasium, office, parking and garaging with new vehicular access to View Road.

Allowed with Conditions – 27 December 2018

Summary

The appeal site is located outside the built confines for the village of Cliffe Woods and in an area designated as countryside. The site comprises an open agricultural field covering about 1.2 hectares on the south-east side of View Road. The main concern related to the scale of the development relative to the services and facilities within the area being unsustainable. There was also concern with regard to the site being adjacent to Chattenden Woods and Lodge Hill Site of Special Scientific Interest (SSSI) and the impact of the proposed development on the ecological interests of the SSSI.

The Inspector concluded that the appeal site is reasonably sustainably located adjacent to the village and built-up area of the confines for the village and would not be remote from the services and facilities in the village and nearby settlements of Strood, Rochester and Chatham. The Inspector found little evidence to support the Council's argument that the lack of on-site parking would make the development unsustainable. In addition, the Inspector also concluded that the ecological interests of the SSSI would be satisfactorily mitigated by the No Pet Policy Planning Obligation in the Unilateral Undertaking (UU). The Inspector was also satisfied that the proposed contributions set out in the UU fairly and reasonable related in scale and kind to the proposed development and attached significant weight to them in reaching the decision to allow the appeal. The Inspector also found little evidence that the No Pets Policy would result in significant harm to the well being of future occupiers.

The Inspector also considered the Council's arguments regarding the disconnection of the area of agricultural land between Town Road and the appeal site from the larger agricultural holding to the south. The Inspector found little substantive evidence to support this claim on how this area, including the orchard to the west, would become disconnected from either the rest of the farm nor its importance to the operation and functioning of the larger agricultural holding.

Overall, the Inspector concluded the adverse impacts arising from this development did not significantly and demonstrably outweigh the scheme's benefits. An application for the award of costs against the Council was made but the Inspector deemed the award of costs was not justified and the application was refused.

MC/17/2603

100 Lower Rainham Road, Rainham, Gillingham – Gillingham North Ward

Refusal – 17 April 2018 – Committee Decision

Construction of granny annexe for ancillary residential use

Allowed with Conditions – 21 December 2018

Summary

The proposed granny annexe would be built at a parcel of land that falls outside of the walled garden immediately to the rear of 100 Lower Rainham Road. The proposal for an annex was refused on the basis that the proposal by virtue of the self-contained nature, its location, separateness and independent accessibility, does not appear associated with, or indicate a reliance on the main dwelling and therefore represents a new self-contained dwellinghouse located in the countryside. As a new dwelling the proposal fails to meet the terms of paragraphs 11 and 127 of the NPPF and Policy BNE25 of the Medway Local Plan 2003.

Further refusal reasons were then based on the proposal being determined as a new dwelling relating to design, occupier amenity, parking and bird mitigation.

The Inspector concluded that the application site forms one planning unit as approved under a LDC for a double garage in 2002. The proposal would share a postal address, utilities and services. It would not have its own separate outdoor space or parking provision and would share the same access as the dwelling.

It was the Inspectors opinion that all of the above points towards the ancillary nature of the proposal and that conditions could be used to restrict the use of the proposal to an ancillary annex.

Based on this acceptance of the principle the Inspector considered that the refusal reasons relating to the character and appearance of the countryside, internal amenity space for future occupiers, parking provision and impact upon the Special Protection Area were not a consideration.

MC/17/2727

The Beacon Court Tavern, 1 Copenhagen Road, Gillingham – Gillingham South Ward

Refusal – 26 October 2017 – Committee Overturn

Construction of 3 one-bedroom flats and 6 two-bedroom flats, amenity areas, parking for 9 vehicles and a new vehicular access to Trafalgar Street

Allowed with Conditions – 19 October 2018

Summary

The appeal site is located in the urban area of Gillingham in an area of mixed character. Different styles, building materials and fenestration patterns are seen in the area. The appeal site occupies a prominent corner plot and contains a former public house which wraps around the corner with a landmark decorative curved façade. The building has been extended over time in a piecemeal fashion and varies in height, rising to 3 stories high at the junction of Trafalgar Street and Copenhagen Road and down to single storey at the rear.

The proposed development was refused by reason of its scale and height in close proximity to the neighbouring properties at number 1 Trafalgar Street and number 5 Copenhagen Road would have a detrimental impact on the visual amenities of the locality and the occupiers of the adjacent properties. The development would be harmful to the appearance of the street scene and the living conditions of the occupiers of number 1 Trafalgar Street and number 5 Copenhagen Road contrary to Policies BNE1 and BNE2 of the Medway Local Plan 2003. The proposal constitutes overdevelopment of the site and therefore does not make adequate provision for parking for the proposed residents which would in turn result in exacerbating existing parking problems for residents in surrounding roads contrary to Policies BNE1, BNE2 and T13 of the Medway Local Plan 2003.

The Inspector concluded that the appearance of the appeal development was acceptable, would compare favourably with other houses on Copenhagen Road and that the change in height on Trafalgar street was consistent with the existing arrangement and not harmful to the character and appearance of the area. He considered the scheme would not be out of keeping given the mixed character of the area, particularly considering the benefits of removal of the rear extensions and provision of an attractive frontage and that the development would not conflict with Policies BNE1 and BNE2 of the Medway Local Plan 2003.

The Inspector also considered that the appeal development would be acceptable in respect of its effect on the living conditions of No. 1 and No. 5 and would not conflict with Policies BNE1 and BNE2 of the Medway Local Plan 2003. He considered that the footprint of the appeal building would move further away from No. 1 than the existing building and would not affect the outlook or appear overbearing from this property. He considered that the outlook from the windows at No. 5 would be improved. The appellant has offered to move windows away from the boundary with No. 5 to reduce overlooking and this will be addressed by condition and will make the scheme more acceptable.

The Inspector further considered that given the location of the development close to public transport and services that a reduced amount of car parking is acceptable for the scheme and that it satisfies the standards when read as a whole. The appeal

scheme would not materially harm the living conditions of nearby residents as a result of the level of parking provision proposed and would not conflict with Policies BNE1, BNE2 and T13 of the Medway Local Plan 2003.

MC/17/4221

70 (and part 68) Toronto Road, Gillingham – Gillingham South Ward

Refusal – 31 January 2018 – Delegated

Conversion of existing ground floor rear store/part shop into two self contained flats

Allowed with Conditions – 25 October 2018

Summary

The appeal premises are at the end of a terrace on Toronto Road and relate to the floorspace to the rear of the convenience shop that lies behind the return wall of the building along Canadian Avenue. The proposal involves the conversion of floorspace behind, currently used mainly for storage and also part retail purposes. The existing blank frontage would be relieved by way of a conversion into two proposed ground floor flats and the installation of windows to light the living space. The shop unit would remain.

The application was refused by virtue of poor levels of outlook and inadequate sun light to habitable rooms, and was considered to result in a development with poor living conditions for future occupiers. Accordingly the application was considered contrary to the adopted development plan, particularly policy BNE2 of the Medway Local Plan 2003.

The inspector however concluded that the proposal would provide for a satisfactory standard of living conditions for the flats' future occupiers, and there would be no material conflict with Local Plan Policy BNE2 nor relevant advice within paragraph 127(f) of the Framework.

MC/18/0805

Rose Cottage, 326 Hempstead Road, Hempstead – Hempstead and Wigmore Ward

Refusal – 10 May 2018 – Committee Overturn

Demolition of existing bungalow to facilitate the construction of a replacement detached 6 bedroomed bungalow incorporating home office room with associated parking (to rear) and erection of detached 6 bedroomed house to front with garage/store.

Allowed with Conditions – 5 December 2018

Summary

The site comprises a small single storey bungalow set in the rear part of a large L-shaped plot. There is a high fence to the site frontage with a vehicular access close to the southern boundary with 328 Hempstead Road. A walnut tree in a mid position in the plot adjacent to the boundary with no. 328 is protected by a TPO. To the rear of the site are houses in Lamplighter Close that are closer to the existing bungalow than the frontage houses in Hempstead Road.

The planning inspector concluded that the changes to the bungalow through the appeal proposal would not result in a material change in its relationship with the character of the surrounding area and any disturbance from the use of parking spaces would be no greater than is common from front garden parking along Hempstead Road. The proposed access would be closer to the adjacent property at 328 Hempstead Road than the present access, but given the very low potential number of additional vehicle movements, it is most unlikely that the change would result in any significant disturbance for adjoining occupiers. There would be adequate separation distances between other new windows and neighbouring dwellings such that there would not be any material loss of privacy. It would be possible to include a planning condition to control the hours of building works to minimise disturbance to local residents.

The appeal was allowed and planning permission granted for the proposed house and replacement rear chalet bungalow subject to conditions which cover a standard time commencement; Construction management plan submission materials privacy windows; car parking and turning areas, refuse storage, retention of existing trees; tree protection; building services route, removal of permitted development rights for extensions to roof and outbuildings and securing use as a dwelling (Class C3 only).

MC/18/1241

24 Russett Farm, Rainham, Gillingham – Rainham North Ward

Refusal – 29.06.18 - Delegated

Retrospective application for construction of a single storey summer room to the rear.

Allowed – 19 October 2018

Summary

24 Russett Farm (No 24) is located on a small development of well-proportioned terraced residential properties, presenting a consistency of high quality design. It is in a prominent location at the entrance to the estate accessed off Pump Lane and is surrounded by agricultural land, which gives the area an intrinsically rural character.

Whilst the council raised concerns that by permitting this rear extension it would significantly alter the character of the estate, the inspector whilst noting these concerns concluded that the extension does not detract from the architectural quality of the existing property or the wider development. The Inspector concluded that the

development does not harm the character and appearance of its surrounding area and is not contrary to Policy BNE1 of the Medway Local Plan 2003, which sets out general principles including respecting the visual amenity of the surrounding area.

APPENDIX B

APPEAL COST DECISION SUMMARIES

In the previous quarter an application for costs awarded against Medway Council in relation to MC/16/5177 - Flanders Farm. Appeal costs of £35,000 were paid on 29.11.2018.

An application for costs awarded against Medway Council in relation to MC/18/0805 – Rose Cottage. Currently waiting for notification of amount of costs being claimed.

APPENDIX C

REPORT ON APPEALS COSTS

<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	Appeal costs claimed £7,257.43 in letter dated 27/09/2017. No response yet received. Legal taking action.
MC/14/3063 and MC/15/5177	Flanders Farm, Ratcliffe Highway, Hoo	Removal of condition 17 to retain buildings, hardstanding and access	Committee overturn	Against	Appeal costs paid £35,000 29/11/2018

Appeals 2018/2019

Ref.	Site	Proposal	Decision type	Costs	Comment
ENF/10/0624	Orchard Stables Meresborough Road Rainham	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 & gates and the creation of a new access		for	06/08/2018 decision - full costs awarded. Cheque for £17,300. received 09/10/2018 88 (full costs requested)
MC/18/0805	Rose Cottage 326 Hempstead Road Hempstead	Demolition of existing bungalow to facilitate construction of 6 bed bungalow + detached 6 bed house	Committee overturn	Against	Waiting to receive amount of costs being claimed