



## **PLANNING COMMITTEE**

**26 JUNE 2019**

### **REPORT ON APPEAL DECISIONS**

**1 JANUARY TO 31 MARCH 2019**

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 13 appeal decisions were received between 1 January to 31 March 2019, of which 7 were allowed and 5 were dismissed. There was one split decision and four related 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.
- 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**

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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 2019.

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/01/2019 and 31/03/2019**

**MC/17/1601**

**Land rear of 23 Chapel Road, Isle of Grain – Peninsula Ward**

Refused – 18 July 2017 – Delegated

Construction of one detached bungalow and three detached houses with off street parking and associated landscaping – resubmission of MC/16/1903

Allowed with Conditions – 8 January 2019

**Summary**

A planning appeal at the site was dismissed for a similar development in March 2017. This planning application sought to address the issues identified by the previous Inspector. The main issues are the effect of the development on the neighbouring residential properties, with particular regard to outlook and whether or not the garden area of plot 4 would be of a sufficient size to provide acceptable living conditions for future occupiers.

The closest proposed building to the neighbouring property (No. 21) would be a single storey building. Due to the low height of this building and its siting away from the respective boundaries, the Inspector considered it would not result in an overbearing effect or loss of outlook to either No. 21 or its garden.

The building line of the 3 other proposed buildings would leave a clear gap of approximately 5 metres between each building. Whilst the development would be visible from the surrounding residential properties and their gardens, the Inspector felt there would be no unacceptable loss of outlook for residents.

The building on plot 4 would have a rear garden around 5m deep. It would also have a side garden area enclosed by the road, this would be contiguous with the rear garden and enclosed by a fence to the front and would not be unduly exposed to the road.

The Inspector therefore considered the reduction in scale means that the previous reason for refusal has been addressed and the garden associated with plot 4 now proposed would be of a sufficient size to provide acceptable living conditions for its future occupiers.

## **MC/17/3133**

### **17 Cedar Grove, Hempstead – Hempstead and Wigmore Ward**

Refusal – 6 November 2017 – Delegated

Retrospective application for engineering works to facilitate construction of a terrace area together with fencing to rear – resubmission of MC/17/2238

Allowed with Conditions – 18 February 2019

### **Summary**

Appeal A was made against the refusal to grant planning permission and Appeal B was made against an enforcement notice (ENF/17/0079) issued against ‘the raising of land levels and the erection of a boundary fence to the rear of the property’.

Although the description of the development in Appeal A and the alleged breach of planning control in Appeal B are different, the operations referred to are the same. As Appeal A is allowed subject to conditions and planning permission has been granted for the matters alleged in the enforcement notice, no further action will be taken in respect of Appeal B.

The main issue in deciding whether planning permission should be granted for the development concerns its effect on the Hempstead Valley Drive street scene. The Inspector considered the slope of the rear garden made it awkward for family activities and understood that the retaining wall showed signs of failing because it was not strong enough to hold back the garden. The appellant had cut back the slope to create a level area and replaced the retaining wall with a stronger row of gabion cages. For security and privacy reasons, the appellant erected a second fence within the garden, which extended to a greater height than the original fence. It was the height of the second fence in particular which led to the application being refused. The application proposed to carry out planting in the strip of land between the two fences and the Council indicated that the colour of the second fence should be altered to blend much better with the overall appearance of the street scene.

The Inspector considered that if the planting and the colouring were carried out then less than substantial harm would occur to the street scene. Therefore the appeal was allowed with the conditions set out above.

## **MC/17/4217**

### **7 Fennel Close, Rochester – Rochester West Ward**

Refusal – 1 February 2018 - Delegated

Application for Lawful Development Certificate (proposed) for erection of a detached garden room and store to rear

Allowed – 16 January 2019

## **Summary**

The application site is sloping. The proposed building sits at the rear of the site where the ground level is highest. The application drawings show the maximum height of the proposed building as 2.5 metres when measured from the highest ground level next to the proposed building. Its height exceeds 2.5 metres when measured from the ground level nearer the house due to the sloping incline of the plot.

The criteria under Class E states that the height to the eaves of 'any' part of the building should not exceed 2.5m with 2m of the boundary. On that basis, the LDC was refused as the maximum height of the eaves on any part of the building (irrespective of total height) would exceed 2.5 metres. As the proposed building would have an eaves height that would exceed 2.5m when measured from the ground level near the house due to the sloping incline of the plot, the Council refused the application.

The Inspector considered that the height should be measured from the ground level at the highest part of the surface of the ground level next to the building. The Inspector concluded that the Council did not take into account the Technical Guidance's advice and that the decision that the proposed development was unlawful was not well-founded.

## **MC/18/0086**

**18 View Road, Cliffe Woods** – Strood Rural Ward  
Refused – 20 February 2018 – Delegated

Neighbourhood consultation application for the construction of a rear extension with flat roof

Allowed – 15 March 2019

## **Summary**

The rear garden of the appeal property is level with the dwellinghouse for almost 4 metres, which provides a patio area. It is then raised by approximately half a metre and continues at that level to the rear boundary. The main issues were whether the proposal would satisfy the requirements of the GPDO with regard to being permitted development and if so, the effect of the proposal on the neighbouring occupiers with regard to daylight, sunlight and outlook.

The Council considered the development would have an unacceptable impact on the amenity of the neighbouring occupiers in terms of daylight, sunlight and outlook. It also felt that due to the raised ground level the rear garden would require a significant amount of engineering work and as such the level of excavation was considered to be development that is not permitted and would therefore require planning permission.

The Inspector found no evidence to suggest that the earth within the rear garden supports any of the surrounding structures and so the appellant would be entitled to carry out certain works such as landscaping, construction of a rockery or the installation of a fish pond, all of which would require earth to be removed. Therefore the general removal of earth could be carried out without prior planning or engineering knowledge.

The Inspector was satisfied that the level of earth to be removed could not be characterised as falling within the remit of an engineering operation but akin to those works involved in the preparation of foundations for the extension. Accordingly, the application is for development that would be permitted under Schedule 2, Part 1, Paragraph A.4 of the GPDO.

The rear building line of the neighbouring property is set slightly staggered to that of the appeal site. The Inspector considered that a large proportion of the proposed extension would be hidden from view by the existing fence when standing on the patio of the neighbouring property. The Inspector therefore felt the proposed extension would not be unduly high, overbearing, or detrimentally affect the outlook of the occupiers of the neighbouring property when at ground level. As the extension would be single storey it was not considered to have a harmful impact on the outlook of the occupiers of the neighbouring property.

## **MC/18/0714**

### **1 William Road, Cuxton – Cuxton and Halling Ward**

Refused – 15 May 2018 – Delegated

An application for Lawful Development Certificate (proposed) for the change of use from residential garage to commercial bakery

Allowed – 19 February 2019

### **Summary**

Planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second (or in planning terms, provided that a business does not result in a material change of use of a property so that it is no longer a single dwelling house).

The Council considered that the applicant had not fully demonstrated that the proposed use would not be at an intensity that would result in a material change in use of the residential dwelling.

However, the Inspector felt that the use described would not be significant enough to change the house and garage from a single dwelling use to a mixed use as a dwelling and a business. The activities proposed to be carried out in the garage would be no different to those undertaken in a typical domestic kitchen and are unlikely to result in abnormal noise or smells. The scale of the activities, at the level indicated in the application, is unlikely to lead to notable increases in traffic or to

disturb neighbours.

The Inspector did conclude that If the business grows in the future, it is possible that planning permission will be required, but felt that the appellant is entitled to a lawful development certificate for the use as described in the application.

### **ENF/17/0079**

#### **17 Cedar Grove, Hempstead – Hempstead and Wigmore Ward**

Without the benefit of planning permission the raising of land levels and the erection of a boundary fence to the rear of the property.

Enforcement Notice issued on 31 January 2018

#### **Summary**

Appeal considered as part of the appeal for MC/17/3133 as detailed above.

### **ENF/17/0261**

#### **Land on the south-western side of Roman Way (opposite the junction with Norman Close), Strood – Strood South Ward**

Enforcement Notice issued on 19 March 2018

Without planning permission engineering operations to create changes in land levels, laying of hardsurfacing, creation of an earth bund and erection of gates and fences in excess of 2m in height.

#### **Summary**

Appealed on grounds (a), (b), (f) and (g).

Appeal allowed on ground (a) – ‘Planning Permission should be granted’ as inspector stated that effect on visual amenity in minimal when taking into account consent for B1, B2 and B8 uses on site. The siting of the shipping containers was refused.

With regards to ground (b) the appeal failed as the inspector agreed that the breach had occurred as a matter of fact. On basis that appeal allowed on ground (a) it was considered that grounds (f) and (g) were no longer relevant.

It should be noted that despite receiving permission, conditions have been placed on the consent relating to risk assessment requirements, remediation schemes and contamination as well as a further condition giving 3 months for a scheme of hard and soft landscaping to be submitted.



**ENF/17/0309**

**59 Twydall Lane, Twydall, Gillingham ME8 6JE – Twydall Ward**

Enforcement Notice issued 23 May 2018

Without planning permission the erection of part single, part two storey rear extension and side extension at first floor level windows at first floor level to side, roof light to front and demolition of conservatory to the rear (development not built in accordance with approved plans of MC/16/4202.

### **Summary**

The proposal was refused due to the height and angle of pitch requiring the use of flat (table top) roof, the first floor side and two storey rear extension appear bulky, dominant and of a contrived design when viewed from the street scene, but particularly when viewed from the rear gardens of the application property itself and surrounding neighbouring properties. The proposal is considered detrimental to the appearance of the existing property and the visual amenity of the locality contrary to Paragraph 56 of the NPPF (2012) and Policy BNE1 of the Local Plan.

The appeal against the enforcement notice was allowed on grounds (a) and (b) and the notice was quashed.

The inspector came to the conclusion that the difference ridge height and pitch of the roof from what was approved was not of a marked extent and is comparable with neighbouring properties. The extent of roof overhang does not appear as a discordant feature. The grey cladding which has been used at first floor level does not look out of place in the context of the range of materials used locally. The flat area of just under 2 metres wide at the top of the roof of the rear extension appears as a clumsy element in the design but is only visible from the rear of the property. The development is bulkier than approved but would not result in harm to the character and appearance of the building or that of the area.

## **APPENDIX B**

### **APPEAL COST DECISION SUMMARIES**

There were no applications for costs during the quarter 1 January 2019 to 31 March 2019.

## 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	09/01/2019 : £3,562.50 costs paid