

PLANNING COMMITTEE
21 AUGUST 2019
REPORT ON APPEAL DECISIONS
1 APRIL TO 30 JUNE 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 12 appeal decisions were received between 1 April to 30 June 2019, of which 5 were allowed and 7 were dismissed. 3 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

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 April to 30 June 2019.

APPEAL DECISION SUMMARY

Appeals decided between 01/04/2019 and 30/06/2019

MC/18/0893

Land between 18-20 Alamein Avenue, Wayfield – Luton and Wayfield Ward

Refusal – 21 May 2018 – Delegated

Construction of 4 semi detached 3 bedroomed dwellings

Allowed with Conditions – 8 April 2019

Summary

The site slopes steeply away from the highway. To the rear of the site the area is identified as part of the Horsted Valley Area of Local Landscape Importance and is protected under a 'Woodland' Tree Preservation Order (TPO), which extends across part of the site.

The main issues are the effect of the proposal on the character and appearance of the area, having particular regard to the effect on protected trees and habitats and living conditions of future and neighbouring occupiers.

There has been some dispute as to how many of the trees within the site fall within the TPO but the Tree Survey identifies that six ash trees would be removed to facilitate the proposal.

The Inspector considered that due to the location of the TPO's they do not form part of the verdant backdrop established by the Horsted Valley Area of Local Landscape Importance and felt the removal of the trees would not, visually, result in harm to the character or appearance of the area. The appellant has prepared a Woodland Mitigating Planting Scheme, which would soften the visual impact of the proposal and retain a soft border to the adjacent woodland. A buffer at the rear of each garden would also be included and planted with a woodland edge and shrubs, which would contribute to the soft landscaping of the scheme.

The Inspector also felt that the topography of the site would ensure that the habitable rooms received light over and through the existing trees and on the basis of evidence submitted was satisfied that adequate amenity space would be provided.

The Inspector concluded that the development is acceptable in relation to the main issues and accepted the conditions suggested by the Council. In addition, the Inspector included a standard plans condition requiring the development to be carried out in accordance with the approved plans for certainty. A condition is also necessary to approve details relating to construction matters and earthworks in the interests of residential amenity and highway safety.

The Inspector also considered it necessary to remove permitted development rights with regards to extensions or additional structures in the rear gardens.

MC/18/2767

16 Hoo Common, Chattenden – Strood Rural Ward

Refusal – 27 December 2018 – Delegated

Construction of part single storey part two storey side extension together with single storey extension to front

Allowed with Conditions – 24 June 2019

Summary

The property is located in a residential area with no prevailing architectural style and the neighbourhood is characterized by dwellings of various size, appearance and detailing. There are also differences in the widths of gaps between houses and 2-storey side extensions have already been constructed to other properties within the locality.

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

The Inspector considered that the dimensions, continuation of the main ridge line and use of matching materials would ensure that the development would visually connect with the existing property, without dominating it. It would also add to the considerable variety of built form within the street scene and the visual interest of the area.

Whilst the gap to the neighbouring dwelling at first floor level would be reduced, a setback of some 0.75 metres is shown to be retained. The Inspector concluded that this would prevent the creation of a harmful terracing effect. This would ensure that the new arrangement would integrate into the neighbourhood without causing undue detriment.

MC/18/3165

61 Lingley Drive, Wainscott – Strood Rural Ward

Refusal – 21 January 2019 – Committee Overturn

Formation of a hip to gable with dormer to rear and construction of a single storey extension to rear

Allowed with Conditions 25 April 2019

Summary

The property comprises a semi-detached house located on the northern side of Lingley Drive. It has a long and narrow rear garden and has previously been

extended with a two storey rear extension, which has a shallow pitched roof and extends the full width of the property.

Officers supported the proposal but the application was referred to the Planning Committee for a decision due to the number of representations received expressing views contrary to those of officers. Members were concerned there would be visual harm because of the number of extensions and mix of architectural styles and that the dormer would be too dominant.

The Council appears to raise no issue with the formation of the hip to gable in the main roof. At the rear, the proposed dormer would be large but would be inset from either side of the existing roof, it would be below ridge height and would be below ridge height and would not extend beyond the rear main wall of the original property. As such the Inspector considered it would not be unusual in that respect and noted other examples of similar such dormers in the immediate vicinity and would therefore not be out of character with the area.

ENF/16/0443

204 Hawthorn Road, Strood – Strood South Ward

Without the benefit of planning permission the construction of a rear extension.

Enforcement Notice issued on 4 July 2018

Summary

ENF/14/0472

22 Maryland Court, Parkwood – Rainham South Ward

Enforcement Notice issued on 10 August 2018

Unauthorised outbuilding to the rear

Summary

APPENDIX B

APPEAL COST DECISION SUMMARIES

There were no applications for costs during the quarter 1 April 2019 to 30 June 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