

PLANNING COMMITTEE

13 NOVEMBER 2019

REPORT ON APPEAL DECISIONS

1 JULY TO 30 SEPTEMBER 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 for those allowed or where decisions were made by the Committee contrary to officer recommendation is listed by ward in Appendix A.

A total of 19 appeal decisions were received between 1 July to 30 September 2019, of which 6 were allowed and 13 were dismissed. There were no appeals in relation to enforcement.

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. For the 24 months to the end of March 2018, the number of decisions overturned at appeal for major applications is 3.3% and 1.0% for non-major applications. 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.

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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 July to 30 September 2019.

APPEAL DECISION SUMMARY

Appeals decided between 01/07/2019 and 30/09/2019

MC/18/1818

Plot 1 Anthony's Way, Medway City Estate, Frindsbury – Strood Rural Ward

Refusal – 26 June 2019 - Committee

Construction of retail development, trade counter units and a drive-thru restaurant together with associated access, servicing and infrastructure works, car parking and landscaping

Allowed with costs – 20 September 2019

Summary

The site is located off Anthony's Way and provides access to the Medway City Estate. Anthony's Way connects to the A289 which is a dual two-lane highway that connects to the Medway Tunnel to the east and wider road network to the north.

The main issue is the effect of the development on the safe and efficient operation of the highway network in the vicinity of the appeal site.

Reflective of its employment location Anthony's Way is most heavily trafficked during the AM and PM peak. A number of initiatives to improve the flow of traffic in this area have already been undertaken by the Council, which included the installation of traffic signals at the westbound entrance to the tunnel in 2016. The monitoring of these signals has demonstrated benefits to the flow of traffic. The Inspector considered that existing and potential initiatives have the ability to have a beneficial impact on addressing the existing highways congestion to the benefit of the free flow of traffic in the area.

The proposed development would upgrade the existing access at Terance Butler Avenue to a traffic signal-controlled junction. The existing highway would be widened as well as a traffic control signal to Enterprise Close. A signal-controlled pedestrian crossing would also be introduced. The Inspector considered the addition of a signalised junction and other highways improvements would assist in managing the flow of traffic in this area and this was evidenced in the detailed modelling work undertaken by the appellant.

The Council expressed concerns regarding the assumptions and evidence used to support the assessment of the impacts of the proposed development on the highway network. However, the Inspector felt there was little evidence to support the concerns expressed. Taking into account the existing highways situation, the evidence demonstrated that although journey times would increase, this would not be to the detriment of the capacity and functioning of the highway network. As a result the Inspector concluded that the proposal would not cause material harm to the safe and efficient operation of the highway network.

Using measures to encourage sustainable transport including a bike loan scheme, cycling initiatives and car sharing and the potential benefits of an Estate wide travel plan the Inspector concluded that the proposal would not be detrimental to the capacity or functioning of the public highway. The Inspector also felt that the signed Unilateral Undertaking to provide a payment of £75,000 towards the cost of a Medway City Estate Travel plan passed the statutory tests set out in Reg 122 of CIL and was necessary to make the development acceptable in planning terms.

With regards to the food and non-food retail uses proposed the Inspector felt that given the prominent location of the site and established employment area, it would be reasonable to assume that a significant proportion of trips maybe linked trips and therefore not new journeys on the highway network.

In relation to highways safety the Inspector considered that the introduction of a signalised junction and a signal-controlled pedestrian crossing together with extending the pedestrian footway would improve the existing situation. Therefore the Inspector could not agree that the proposal would lead to an increased risk of accidents taking place.

The Inspector imposed a number of conditions in the interest of precision, clarity and enforceability and to ensure the impact of the proposal on the free and safe flow of traffic on the public highway is acceptable.

Taking the above into consideration, the Inspector concluded that the development would not be detrimental to the capacity or function of the public highway and that the proposal would not significantly add to the risk of road traffic accidents.

MC/18/2653

Land Adjoining 8 Ivy Street, Rainham – Rainham North Ward

Refusal – 30 November 2018 – Delegated

Construction of a detached 3 bedroom dwelling with associated parking

Allowed with Conditions – 5 July 2019

Summary

The site comprises curtilage land to the side of the host property on the east ribbon of Ivy Street. The surrounding properties differ in height, materials and other detailing. Most of the buildings are positioned immediately adjacent to the public footpath but 2-4 Ivy Street is set back and has forecourt parking similar to that proposed at number 8.

It was considered that the proposed parking to the front of the new dwelling would result in a car dominated form of development. The Inspector felt that the formation of the forecourt parking would not be markedly at odds within the current context and would add further variation to the street scene that would not detract from the visual quality of the dwelling or the locality. Therefore the Inspector concluded that the proposal would not result in harm to the character and appearance of the area.

The Council contended that the proposed 2 off-street parking spaces would not be of adequate size and that the vehicles would overhang the highway. The Inspector was satisfied that the measurements provided by the appellant addressed these concerns. However these spaces would be provided at the expense of parking for the existing 3 bedroom house. Although policy states that a 3 bedroom property should have 2 off-street parking spaces this can be applied flexibly when a site is considered to be within a sustainable location. As this site is located close to the rail station, bus stops and town centre it is considered to be acceptable.

The Inspector found no clear evidence of local parking stress or that the loss of a parking space would have an unacceptable impact on highway safety.

Local residents expressed concerns over the impact of the proposal, including loss of light and privacy, impact on wildlife, lack of local infrastructure and damage to property. The Inspector concluded that as some of these concerns can be addressed via the imposition of conditions these concerns would not justify the dismissal of the appeal.

MC/18/2868

4 Stillwater Mews, St Marys Island, Chatham – River Ward

Refusal – 19 December 2018 – Delegated

Conversion of existing attached garage into a bedroom keeping the original garage door with storage area behind; retrospective paving to rear garden and steps/paving to front entrance

Allowed with Conditions 4 July 2019

Summary

The site is a 2-storey, terraced property located on the northern side of Stillwater Mews. The proposal would result in the loss of the garage parking space and the creation of a third bedroom. The main issue is the availability of parking space and the effect on highway safety.

The Inspector acknowledged that the Council's parking standard states that 3-bedroom properties should have 2 off-street parking spaces but that other material considerations can be taken into account. The standard exclude garages under 7m by 3m and it would appear that the width of the existing garage is deficient in this respect. Therefore both in practice and when judged against the standard a loss of off-street parking would not actually occur.

The dwelling is served by a quiet road with no parking restrictions in place. If a vehicle was to slightly overhang the front boundary the Inspector considered that there would be adequate space within the communal area for vehicles to easily access the other dwellings. It is also possible for additional vehicles to park in relatively close proximity to the appeal site and there is no evidence that on street parking is particularly difficult and that the proposal would result in harm to highway safety.

The paving of the rear garden does not require planning permission and therefore has no bearing on the appeal assessment.

The Inspector concluded that it is necessary to ensure that the parking area to the front of the dwelling is provided prior to the occupation of the development and is kept available for parking thereafter.

MC/18/3007

20 Pattens Lane, Rochester – Rochester South & Horsted Ward

Refusal – 23 January 2019 – Committee Overturn

Change of use from dwelling house to residential children's home

Allowed with Conditions 3 July 2019

Summary

The site is a 2-storey, semi-detached property with frontage parking area for several vehicles and a rear garden. It is located on the southwest side of Pattens Lane.

The main issues are the effect of the proposal on the living conditions of neighbouring occupiers and whether the proposed internal layout would allow for a satisfactory standard of accommodation for the future occupiers.

The proposed change of use would allow the use of the property as a care home for up to a maximum of 5 children (aged 8 to 16), with 2 carers on site at any one time when the children are present. As the property is currently a 7 bed dwelling, the levels of occupation would be similar to that of a large family home and would be unlikely to generate significantly more traffic.

Similarly, noise generated within the house and garden from the occupiers would be unlikely to be significantly different from that created by its use as a single dwelling, possibly with five or six children. Therefore the Inspector did not consider that the proposal would be likely to have an adverse impact on nearby residents with regard to noise and disturbance.

The Inspector recognised that the facility would be for children with behavioural difficulties but, subject to appropriate management practices, the Inspector found no evidence to suggest they are likely to be noisier or more badly behaved than children who live in traditional family dwellings.

The management of the home would be required to operate within the minimum national standards for Children's homes and would be subject to Ofsted regulation and inspections. The Inspector considered that these practices and safeguards would provide for adequate living conditions and concluded that the proposal would not result in harm to the living conditions of future occupiers in respect to the layout of the internal rooms.

The Inspector felt it is not a foregone conclusion that the use of the site as a children's care home would inevitably result in an increase in crime. Comments provided by Kent Police appear to be based on officers having attended the property

in relation to a previous use and is therefore not comparable to the appeal proposal and objections regarding the potential for an increased number of incidents at the site are unfounded.

The Inspector also felt concerns over the proximity of the site to a school and increased pressure on local services were not supported by any substantive information that would justify the dismissal of the appeal.

The Inspector concluded that permission should be granted for a limited period of 2 years to allow the Council to monitor the use should any adverse effects arise.

MC/18/3483

193 Princes Avenue, Walderslade – Princes Park Ward

Refusal – 4 February 2019 – Delegated

Retrospective application for construction of a detached garden building to rear

Allowed with Conditions 29 August 2019

Summary

The rear garden of 193 Princes Avenue slopes up steeply from the back of the house and the garden room is therefore located on higher ground. It is a single storey with a shallow dual pitched roof and has been partly constructed on stilted supports due to the significant changes in levels. A balcony is attached to the front of the building and is accessed via an external staircase to the side of the building.

The main issues are the effect of the building on the character and appearance of the area and on the living conditions of the neighbouring occupants with particular reference to privacy and on protected trees.

Due to its siting on rising ground, glimpses of the garden room are obtainable at certain points between the buildings along Princes Avenue and Downland Walk. The building can also be seen from the other side of the valley in Scotby Avenue. The building is nonetheless viewed in conjunction with the high retaining wall beyond it and the fences and residential properties that sit above it, which are far more prominent. Given its context, the Inspector considered the building is not an unduly dominant feature in the street scene or wider area.

Due to the significant difference in land levels, the tiered nature of the garden and the presence of boundary treatment and outbuildings the Inspector considered the views into the private garden area of No. 191 from the balcony of No. 193 are limited. Given the significant intervening distance between the balcony and the first floor window of No. 191, together with the oblique angle, the Inspector was also satisfied that no loss of privacy would occur and that the living conditions of the occupants of No. 191 Princes Avenue would not be materially harmed.

The garden room is accessed via a small external staircase set in from the side boundary of the site with 15 Downland Walk. These views are screened by a holly tree and the glass doors on the flank elevation of the garden room are obscurely glazed. The application drawings detail a high opaque privacy screen will be

provided on the side of the balcony to the boundary with No. 15. The Inspector therefore concluded that the proposal would not lead to any significant loss of privacy to the occupants of No. 15.

There are a number of trees along the boundary with 15 Downland Walk which are protected by an area Tree Preservation Order. The closest of these to the garden building is a common holly. Given the RPA radius of this tree the Inspector determined that the construction of the garden room is unlikely to adversely affect the health of the tree.

The Whitebeam included in the tree survey has been removed following damage during incremental weather conditions and the appellant is willing to replace this tree. This is a matter to be resolved between the parties.

The Inspector also considered the provision of a new 2m fence along the boundary with 15 Downland Walk is a matter to be resolved between the parties.

As there is no substantive evidence in relation to unacceptable levels of light or noise disturbance, the Inspector attached little weight to this matter.

MC/19/0061

Unit 1A London Medway Commercial Park, James Swallow Way, Hoo St Werburgh – Peninsula Ward

Split Decision – 7 March 2019 - Delegated

Advertisement consent for installation of two internally-illuminated fascia signs; two internally-illuminated free-standing directional signs and one non-illuminated post-mounted directional sign

Allowed with Conditions 29 August 2019

Summary

The Council issued a split decision in respect of this application. Whilst the directional signs were granted consent, the two internally illuminated building mounted signs were refused.

The site comprises a large warehouse building within London Medway Commercial Park and the proposal relates to signage on the south west and north west elevations of the building. The main issue is the effect of the proposal on the amenity of the area.

The Visual Impact Assessment (VIA) accompanying the application provides an assessment of the level of visual effects arising from the illuminated signage on residential properties, uses of public rights of way and highway users. The VIA demonstrates that the appeal site lies within the surroundings of a number of prominent light sources that are associated with the Power Stations, Commercial Parks and Industrial Estate. The Inspector is satisfied that the proposed illuminated signage would not result in any significant change in the night time views and would not result in a material loss of visual amenity of the area.

The Council also raise concern that by granting advertisement consent, it would be difficult to resist applications for similarly illuminated fascia signs on both existing and future buildings, which would cumulatively harm the visual amenity of the surrounding area. The Inspector considered that any such applications would be considered on their own merits in relation to amenity and public safety.

As advertisements should be subject to control only in the interests of amenity and public safety, the Inspector concluded that the illuminated building mounted signage would not harm amenity and were not considered to represent a distraction to vehicle drivers.

APPENDIX B

APPEAL COST DECISION SUMMARIES

There were two applications for costs during the quarter 1 July 2019 to 30 September 2019.

Ref.	Site	Proposal	Decision type	Costs	Comment
MC/18/3016	Coombe Lodge, Coombe Farm Lane, St Mary Hoo	Construction of a 2 bedroom holiday let and demolition of existing stable	Delegated	Partial against	Costs covering work on PROW issue
MC/18/1818	Plot 1 Anthony's Way, Medway City Estate	Retail development and drive through restaurant	Committee	Against	

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

<u>Appeals 2018/2019</u>					
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		for	06/08/2018 decision - full costs awarded. Cheque for £17,300. received 09/10/2018 88 (full costs requested)

		hardsurfacing, erection of close board fencing & gates and the creation of a new access			
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

Appeals 2019/2020

Ref.	Site	Proposal	Decision type	Costs	Comment
MC/18/2739	260 Wilson Avenue, Rochester	Construction of extension to rear, dormer window to side (demolition of part existing rear extension, conservatory and garage)	Delegated	Against	25/07/2019 : £12,938 costs paid High Court judgement on JR
MC/18/2739	260 Wilson Avenue, Rochester	Construction of extension to rear, dormer window to side (demolition of part existing rear extension, conservatory and garage)	Delegated	Against	24/09/2019 : £1,871 costs paid Court order