

## **PLANNING COMMITTEE**

**11 NOVEMBER 2020**

### **REPORT ON APPEAL DECISIONS 1 JULY 2020 TO 30 SEPTEMBER 2020**

Report from: Richard Hicks, Director of Place and 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 15 appeal decisions were received between 1 July and 30 September 2020, including 1 relating to enforcement. 5 were allowed, 1 of which was a Committee overturn and 1 for enforcement, and 10 were dismissed.

A summary of appeal decisions is set out in Appendix A.  
A report of appeal costs is set out in Appendix B.

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. Risk management

4.1 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.

4.2 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 decisions being allowed on appeal. The most up-to-date Government data, which is for the period April 2017 to March 2019, shows the number of decisions overturned at appeal for major applications is 0.8% and 1.3% for non-major applications. Where an authority is designated as underperforming, applicants have the option of submitting their applications directly to the Planning Inspectorate.

### 5. Consultation

5.1 Not applicable.

### 6. Financial and legal implications

6.1 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.

6.2 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.

- 6.3 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.

## 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) Report on appeal costs

### Background papers

Appeal decisions received from the Planning Inspectorate for the period 1 July to 30 September 2020.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/07/2020 and 30/09/2020**

**MC/19/2535**

**120 Maidstone Road, Chatham – Chatham Central Ward**

Refusal – 10 February 2020 – Committee Overturn

Construction of a four bedroomed detached dwelling with associated parking – demolition of existing detached garage to rear

Allowed with conditions – 11 August 2020

**Summary**

The main issues are the effect of the development on the character and appearance of the area; trees subject to a TPO; and the integrity of the North Kent Marshes SPA.

The Maidstone Road Conservation Area (CA) is characterised by a group of large Victorian and Edwardian dwellings, many which have been converted into flats, offices or homes for the elderly. The townscape is generally large detached or semi-detached houses generously spaced and set well back from Maidstone Road. The appeal site would sub-divide the rear garden of No. 120 and the proposed dwelling would front onto King Edward Road, which is located outside the CA boundary. The site is not visible from Maidstone Road due to the significant changes in land level.

King Edward Road comprises a terrace of two storey residential dwellings and the appeal site marks the transition between the distinctive character of the CA on Maidstone Road and the more modest scale of development on King Edward Road.

The development proposed would construct a detached, three storey (two-storey from rear) 4 bedroom dwelling accessed from King Edward Road. Two off-road parking spaces would be provided. The Council has concerns that the development would represent overdevelopment of the area.

Given the context of recently approved development fronting King Edward Road, which are similar in design, scale and layout of the proposed development, the Inspector considered the proposed development would not appear as a dominant or incongruous addition to the streetscene. It's siting, scale and massing would be appropriate to the plot and given that it would be set back from the highway it would maintain a reasonable separation distance from the dwellings on the opposite side of King Edward Road.

As a result the Inspector determined the proposed single dwelling would not appear as overdevelopment when combined with other recent development and would not have a detrimental effect on the character and appearance of the surrounding area.

The proposed development would retain tree T1 covered by a TPO, however the Council is concerned that given its close proximity to the appeal site, it is likely that T1 would be lost as a result of the proposed development.

The appellant has submitted a tree survey report with regards the effects of the development on the protected trees on the site. The report states that there would be no incursions into the root protection area of T1 as a result of the proposed development. On the basis of the professionally produced report the Inspector was satisfied that the tree T1 would be safeguarded and afforded the necessary protection and that there would be no likelihood that it would be lost as a result of the development.

The appeal site lies within 6km of the North Kent Marshes Special Protection Area/Ramsar sites. The Inspector is satisfied that the SAMMS Mitigation Contribution Agreement is sufficient to enable relevant mitigation pursuant to the Council's strategy for development which could affect this SPA.

Interested parties raised concerns with regards the effect of the development proposed on car parking pressure in the area, overlooking and loss of privacy of neighbouring gardens and disturbance during construction.

During his site visit, the Inspector did not find the area to be under stress from on street parking and, as the development proposed would provide adequate parking provision, found no evidence to indicate that the development would make the existing situation any worse.

Due to the separation distance from the proposed dwelling and neighbouring gardens, which is in excess of 20 metres, the Inspector concluded there would be no adverse effects due to overlooking and loss of privacy. Further a condition would be imposed requiring obscure glazing to windows to the side elevations of the dwelling, which would mitigate any harmful overlooking.

Disturbance during the construction period would be controlled by a condition requiring a Construction Management Plan.

The Council has proposed a number of conditions which the Inspector assessed and amended as felt necessary. Condition 3 is to ensure that the appearance of the proposed dwelling does not have an adverse effect on the visual appearance of the area. Condition 4 is in the interest of protecting the living conditions of the occupiers of the neighbouring properties. Conditions 5 and 6 are to ensure that the Council is able to control any development in the interests of visual and neighbouring amenity. Condition 7 is in the interest of minimising any disruption to the local residents during the construction phase. Condition 8 is in the interest of ensuring that adequate parking is provided and Condition 9 is in the interests of sustainability. Condition 10 is in the interest of protecting a retained tree subject of a Tree Preservation Order.

## **MC/19/2543**

**25 St Johns Road, Gillingham – Gillingham South Ward**

Refusal – 18 November 2019 – Delegated

Removal of condition 3 on planning permission MC/19/1501 relating to the removal of permitted development rights for change of use from dwelling house (Class C3) to a small house of multiple occupancy (Class C4)

Allowed with conditions – 17 September 2020

### **Summary**

The main issue is whether condition 3 is reasonable and necessary having regard to the character of the area, the living conditions of neighbouring residents in respect of noise and disturbance and highway safety.

The plans approved under MC/19/1501 show the property to have three en-suite bedrooms and the extension subject of that permission is shown to provide a kitchen. Condition 3 prevents the change of use from a dwelling house to an HMO.

The Inspector does not consider a condition restricting the use of the whole property is sufficiently related to the permitted kitchen extension. There is no substantive evidence to suggest the provision of the kitchen extension could lead to such a change of use. As such the Inspector concluded that condition 3 is unnecessary.

Notwithstanding this, even if the dwelling were used as an HMO, the Inspector did not consider six people living as an HMO would be materially different from six people that could live together as a single household. The dwelling is set within a dense urban and primarily busy residential area and therefore were a single property to be used as a 3 double bedroom HMO, the impact on the living conditions of the neighbours would be broadly comparable to that of a Class C3 Use dwelling house.

In respect to concerns regarding the impact on highway safety and parking, the Inspector observed during her visit to the site that parking restrictions are in place and that quite a few parking spaces were available close to the appeal site. Given the close proximity of public transport and other shops and facilities to the appeal site the Inspector concluded that occupants of the property would not need to be reliant on cars. It is also not unreasonable to consider the volume of traffic generated by six people living as an HMO to be comparable to that generated by six people living as a single household.

An application for costs was made against the Council, which was refused.

## **MC/19/2552**

**14 Duncan Road – Gillingham South Ward**

Refusal – 21 November 2019 – Delegated

Removal of condition 4 on planning permission MC/18/2676 relating to the removal of permitted development rights for change of use from dwelling house (Class C3) to a small house of multiple occupancy (Class C4)

Appeal allowed with costs – 2 July 2020

## **Summary**

The planning permission granted for the part single storey part first floor rear extension and loft conversion, including rear dormer, along with construction of a part single storey part two storey side extension includes a condition removing permitted development (PD) rights in respect of its use under Class C4 (HMO) or its use independently from the rest of the house. The main issue is whether the removal of PD rights, in respect of Class C4, is reasonable and necessary to protect the character of the area; safeguard the living conditions of local residents; and ensure the safety of the users of the highway.

The appeal site is located in Duncan Road, close to its junction with Trafalgar Street, Gillingham Road and Nelson Road. The street is characterised by its fairly eclectic mix of uses and properties, although it remains mainly residential with two storey terraced housing.

The appellant stated that there are no HMO's within 50m of the site. The Inspector found no clear evidence of how other properties along Duncan Road are occupied or how a small HMO would negatively impact the character of the area. During his site visit the Inspector noted that the street, mainly due to its mixture of uses, does seem to be relatively busy with a reasonable amount of pedestrian and car traffic and therefore it is unclear how a small HMO would significantly change or harm the character of the area.

The appeal property is part of an existing terrace and is adjoined by properties on both sides which appear to be in residential use. On the opposite side of the road there appears to be shops with residential above. The Inspector acknowledged that the use of the appeal property as an HMO could potentially lead to six unrelated individuals occupying the property. However, the property could be occupied by a family of six, including other children leading independent lives. Therefore the Inspector could not agree that its use as an HMO would necessarily result in a significant increase in noise and disturbance over and above that likely to be generated by a family of six. The Inspector also considered that the use of other properties within the vicinity of the appeal site, including a bus stop, is likely to have a higher impact on the levels of disturbance to nearby property than an HMO with six residents.

There are parking restrictions in place along Duncan Road which signals that on-street car parking is an issue in this area. The appeal site is unable to provide off-street car parking but the Inspector concluded that future occupants of the property, if it were allowed to be used as an HMO, could apply for on-street car parking permits in a similar way to occupants of the property while in its current use. The Inspector also considered the site's accessibility in terms of services and public

transport and concluded that the property would not necessarily lead to an unacceptable level of car use.

Evidence has been supplied by the appellant to demonstrate although 10 highway incidents have occurred within or immediately adjacent to Duncan Road in the last 5 years, these have occurred in close proximity to junctions with other roads. Therefore, there is no evidence to suggest that increased manoeuvring in Duncan Road would decrease highway safety. The Inspector concluded that the removal of Condition 4 would not result in significant harm to highway safety or significantly impact the road network.

The appellant applied for full costs relating to the work carried out in relation to the appeal. The Inspector noted that the Council failed to provide substantive evidence to confirm how, through the removal of condition 4, the character of the area would be affected. The Council also failed to provide convincing evidence to demonstrate why it considers HMOs to be of particular concern in the area in order to justify the exceptional circumstances needed to restrict PD rights.

The Inspector found that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

## **MC/20/0187**

### **2 Copperpenny Drive, Hempstead – Hempstead and Wigmore Ward**

Refusal – 20 March 2020 – Delegated

Construction of a single storey extension to side to link house to garage

Allowed with conditions – 11 August 2020

### **Summary**

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

The appeal site is a detached 4-bedroom dwelling set on a spacious plot at the end of a cul-de-sac and is surrounded by other detached dwellings. To the side is a detached double garage and large gardens to the front, side and rear of the dwelling. The development proposed would construct a single storey link, using similar materials between the dwelling and the garage to provide additional living space and space for home working.

Following a site visit, the Inspector considered the siting of the proposed single storey extension would utilise an area which is currently under-utilised and would be obscured from views from the wider area due to its location at the end of the cul-de-sac. Whilst there are no other similar extensions in the immediate vicinity, due to the proposed single storey height and use of matching materials, the Inspector concluded it would not appear as an incongruous addition to the street scene and there would be no harmful effect on the appearance of the surrounding area.



The Inspector determined that the concerns of an interested party with regards the drainage and surface water from the proposed extensions roof could be dealt with by an appropriately worded condition.

## **ENF/18/0087**

### **54 Vidgeon Avenue, Hoo St Werburgh – Peninsula Ward**

Enforcement Notice issued 29 August 2019

Without the benefit of planning permission construction of a boundary wall exceeding 1m in height adjacent to a highway

Allowed – 17 September 2020

### **Summary**

A planning application seeking permission for the wall as built was refused and the subsequent appeal was dismissed. The main issue for the enforcement notice is the effect of the wall on the character and appearance of the area.

The appeal site lies in a prominent location on a corner plot at the junction OF Pankhurst Road and Vidgeon Avenue. It is predominantly residential and properties in the immediate vicinity are bungalows. The site is in an elevated position and the wall has been built on its side boundary, fronting onto Vidgeon Avenue, with a return that encloses the side garden.

The wall is finished with white painted render and as a result is noticeable in the area as there are no similar walls in the vicinity. The Inspector agreed with the previous Inspector's conclusion that the wall is harmful to the character and appearance of the area.

The appellants are now proposing that the lower part of the wall could be clad in timber, with the upper section covered in artificial foliage. At the time of the Inspector's site visit the wall had already been partially covered with artificial foliage and the Inspector felt this, along with the timber cladding, would have the effect of breaking up and screening the large rendered surface.

The Inspector is satisfied that, subject to a condition to secure the provision of the coverings to the wall, this would be sufficient to overcome the harm. The condition is to require the appellant to comply with a strict timetable for dealing with the provision of the coverings.

Within 1 month of the date of this decision a scheme for the provision of cladding to the wall with wood and artificial foliage shall have been submitted for the written approval of the LPA. If within 11 months of the date of this decision the LPA refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have to be made to the Secretary of State.

The enforcement notice will be quashed but should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

An application for costs made by Medway Council against the appellant was refused.

## APPENDIX B

### REPORT ON APPEALS COSTS

<b><u>Appeals 2017/2018</u></b>					
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

<b><u>Appeals 2018/2019</u></b>					
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		for	06/08/2018 decision - full costs awarded.  Cheque for £17,300.

		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			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

### 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 <b>High Court judgement on JR</b>
MC/18/2739	260 Wilson Avenue, Rochester	Construction of extension to rear, dormer window to side (demolition of part existing rear extension,	Delegated	Against	24/09/2019 : £1,871 costs paid <b>Court order</b>

		conservatory and garage)			
MC/18/3016	Coombe Lodge, Coombe Farm Lane, St Mary Hoo	Demolition of stable + 2 bed holiday let	Delegated	Partial against	Costs covering work on PROW issue
MC/18/1818	Plot 1, Medway City Estate	Retail development + drive through restaurant	Committee	Against	January 2020 costs paid £48,625.02 + VAT

### **Appeals 2020/2021**

Ref.	Site	Proposal	Decision type	Costs	Comment
ENF/15/0260	Rear of 48 – 52 Napier Road, Gillingham	Enforcement notice re 6 self contained flats without planning permission	Enforcement notice upheld for flats A, B and C but not for flats D, E and F 46 Napier Rd	Partial for	Applicant demonstrated unreasonable behaviour resulting in unnecessary and wasted expense re the adjournment of the 11/09/2019 inquiry. Costs being pursued.
ENF/15/0244	Land at 20 – 22 Hillside Avenue, Strood	Enforcement notice re 10 self contained flats without planning permission	Enforcement notice upheld but deadlines extended	Partial for	Inspector found unreasonable behaviour resulting in unnecessary or wasted expense. Costs being pursued.
MC/19/2552	14 Duncan Road, Gillingham	Part retrospective construction of part single storey rear extension	Allowed	Against	Council refused removal of condition 4 without providing

		and loft conversion without complying with a condition attached to MC/18/2676			evidence to demonstrate the character of the area would be affected and why it considers HMOs to be of particular concern in the area. Costs paid £1,250
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