

## **PLANNING COMMITTEE**

**3 FEBRUARY 2021**

### **REPORT ON APPEAL DECISIONS 1 OCTOBER 2020 TO 31 DECEMBER 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 October and 31 December 2020, including 1 relating to enforcement. 2 were allowed, which were delegated decisions, and 13 were dismissed.

One decision was overturned by Committee and refused, which has subsequently been dismissed at appeal.

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 1.2% 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 October to 31 December 2020.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/10/2020 and 30/12/2020**

**MC/20/0327**

**7 Shepherds Gate, Hempstead – Hempstead and Wigmore Ward**

Refusal – 16 April 2020 – Delegated

Construction of a first floor extension to side together with conversion of garage

Allowed with conditions – 11 August 2020

**Summary**

The main issues are the effect of the proposed development on the character and appearance of the area.

Shepherds Gate is characterised by dwellings with open front gardens. The properties are of varied widths and are mainly detached and semi-detached. In many cases single storey garages separate detached and/or pairs of properties resulting in gaps in these locations at first floor. Number 7 Shepherds Gate is unusual in that it has a large garage to the side and it is on a corner plot. As such the existing single store garage does not provide separation between adjacent buildings.

The proposed extension would be set back from the building's main frontage with a lower ridge line and would not increase the overall width. The Inspector therefore considered the extension would appear subservient and proportionate to the existing dwelling. The Inspector has also taken into account the fact that the proposal would not reduce the separation between adjacent dwellings, the lack of uniform width of dwellings nearby and the specific characteristics of the host dwelling on a corner plot. In this context the proposed width would not be harmful to the character and appearance of the property of the surrounding area.

The Inspector has attached the standard implementation condition and a condition to define the plans with which the scheme should accord. A condition requiring the scheme to be built in materials to match the existing building would be necessary to preserve the character and appearance of the area.

**MC/20/1141**

**Orchard Bungalow, Buck Hole Farm Road, High Halstow – Peninsula Ward**

Refusal – 30 June 2020 – Delegated

Neighbourhood consultation application for the construction of a single storey extension to rear

Allowed – 24 November 2020

## **Summary**

The main issue is whether the proposed development is located on residential land in order to satisfy the provisions of the GDPO or not.

Orchard Bungalow is a detached residential dwelling that is set off Buck Hole Farm Road. The Council determined that the appeal site includes land that is not deemed to be residential land and hence cannot be subject to householder permitted development rights. The proposed extension would extend beyond the rear wall of the host dwelling by 6 metres and have a maximum height from the natural ground level of 4 metres. The height of the development at eaves level, measured from ground level, would be 2.40 metres.

A Lawful Development Certificate for residential use for the appeal site was issued in 2020, which included land shown within the 'redline' on the drawing (MC/10/3601). The Appellant submitted evidence that two parcels of land indicated on the same drawing were transferred to a neighbour in 2018. As such, while the drawing does not align with the submitted appeal block plan or site location plan, the Appellant contends that the appeal site is nonetheless residential land. The Inspector found that, while the evidence is less than ideal, the submitted 'Land Registry' extract clearly shows the extent of the residential land, which includes the appeal site. The Inspector's opinion is reinforced as the Council have confirmed that the land is likely to have been in residential use for at least 14 years.

The Inspector concluded that the proposal for a prior approval for a single storey rear extension is located on residential land and satisfied the provisions of the GDPO.

## **MC/18/3461**

### **Coronation Bungalow, Cooling Street, Cliffe – Strood Rural Ward**

Refusal – 26 March 2019 – Committee Overturn

Construction of 4 two bedroom dwelling houses with associated landscaping and parking (Demolition of existing pair of semi detached bungalows)

Appeal dismissed – 11 November 2020

## **Summary**

The main issues are the effect of the proposed development on the character and appearance of the site and surrounding area and whether the appeal site is located in a sustainable location, having regard to access to services and facilities.

The appeal site is part of a linear settlement aligned along Cooling Street. The neighbouring property to one side of the site is a bungalow, to the other side is a two-storey house.

The existing pair of semi-detached bungalows would be replaced by two pairs of semi-detached houses. The first floor rooms within the new houses would be accommodated within the roof, with dormers to the front and rear. The proposed dwellings would be the tallest buildings in the immediate vicinity, with ridgelines above that of the neighbouring two-storey house and would be prominent features in the street scene.

The two pairs of houses would occupy a greater proportion of the width of the plot than the existing bungalows and appear much taller, with large and bulky roofs. The houses would appear cramped on the plot with limited separation between the two pairs.

The development proposed would also require the subdivision and significant reduction in length of the rear gardens to the cottages to accommodate car parking at the rear of the site. This would contribute to the cramped appearance overall of the appeal proposal.

The Inspector found that the appeal site is not in a sustainable location as there are no shops or facilities to cater to the day-to-day needs of residents. The nearest services are located at Cliffe and Cliffe Wood, which is likely to result in an increase in car movements as the occupiers of the proposed houses would be dependent on private cars for access to day-to-day services and facilities.

The Inspector concluded there would be harm from the scale of the development resulting in an uncharacteristically cramped and bulky appearance in the street scene. The Inspector also considered the appeal site is not located in a sustainable location.

## 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		For	06/08/2018 decision - full costs awarded.  Cheque for £17,300.

		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			received 09/10/2018
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
	Land east of Mierscourt Road, Rainham	Outline application for 50 dwellings – resubmission	Dismissed	For	Unilateral Undertaking not acceptable and unreasonable behaviour as described in PPG. Costs being pursued.