

PLANNING COMMITTEE

28 APRIL 2021

REPORT ON APPEAL DECISIONS 1 JANUARY 2021 TO 31 MARCH 2021

Report from: Richard Hicks, Director of Place and Deputy Chief Executive
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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 12 appeal decisions were received between 1 January and 31 March 2021, including 1 relating to enforcement. 9 appeals were dismissed. 2 were allowed and 1 was part allowed - All of which were delegated decisions

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. In a limited number of cases appeals are determined by the Secretary of State after considering an Inspectors report.
- 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, an Informal Hearing or by exchange of 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 or an aggrieved party 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.

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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 January to 31 March 2021.

Gov.uk statistical data sets Table P152 and Table P154

APPEAL DECISION SUMMARY

Appeals decided between 01/01/2021 and 31/03/2021

MC/20/0269

Land to the rear of 15 Coulman Street, Gillingham – Watling Ward

Refusal – 9 April 2020 – Delegated

Construction of a 2-bedroom detached bungalow with associated parking

Allowed with conditions – 6 January 2021

Summary

The main issues are the effect of the proposal on the character and appearance of the area; the living conditions of the occupants of No. 15A/B in relation to overbearing appearance; and the adequacy of the living conditions for the future occupiers of the proposed property with regard to outlook and privacy.

The appeal site is an irregularly shaped area of land and occupies the area between a short terrace of houses in Coulman street and garages and terraced houses in Albany Road. Vehicular access to the site is via a short track between houses and an industrial unit.

Although the proposed bungalow would be at odds with the surrounding 2 storey dwellings, it would not be visible from the street. In this context it would not dominate or look out of place adjacent to the access track on the approach to the footpath that passes between the rear gardens of the terraces fronting Albany and Barnsole Roads. The domestic elevation with some limited landscaping in front would represent an improvement to the appearance of the area and a domestic use of the site would be more in keeping with the adjacent residential streets than its existing use for storage.

The Inspector concluded that the proposed development would contrast with the surrounding street scene, make good use of a constrained backland site whilst not appearing cramped within this densely developed urban area. Therefore, would not be harmful to the character and appearance of the area.

The proposal would be close to 15A/B Coulman Street, a property divided into flats. These flats have restricted private amenity space and already experience a significant sense of enclosure. The hipped roof of the bungalow would be seen above the boundary fence enclosing the northern boundary but the front element of the bungalow would be set in further from this shared boundary. The Inspector was therefore satisfied that the proposal would not appear overbearing or dominant from these flats. The Council was satisfied that there would be no unacceptable loss of sunlight or daylight arising from the proposal.

The modest sense of enclosure would not appear to be untypical of the outlook from other dwellings in this tightly developed area. Some overlooking of gardens is inevitable and it would therefore be for potential future occupants to decide whether or not the arrangement would provide them with a level of privacy they would find acceptable. The proposal would meet the requirements of the Nationally Described Space Standard.

There is no reason to believe that future occupants would experience undue noise and disturbance from passing pedestrians or the comings and goings of neighbours.

The Inspector considered the conditions the Council suggested in the event that the appeal was allowed and concluded that a materials condition is needed to protect the character and appearance of the area. A construction management plan is justified to protect the living conditions of nearby occupiers before any works begin on the site. The Inspector also imposed a condition to assess any risks posed by contamination, which must also be undertaken before any works begin.

A condition to secure the provision of the vehicle parking space is also considered necessary to prevent additional demand for on-street parking together with an electric vehicle charging point. Agreement to boundary treatments and adequate soft landscaping and implementing these prior to occupation is also necessary.

MC/20/1614

Land rear of 3A – 13 Mount Pleasant, Luton, Chatham – Gillingham South Ward

Refusal – 8 September 2020 – Delegated

Advertisement consent for installation of an internally-illuminated hoarding

Allowed with conditions – 1 March 2021

Summary

The main issues are the effect of the proposed advertisement on amenity and public safety.

Chatham Hill is a busy main road (A2), sloping down towards a complex junction and sets of traffic lights. The traffic flow is interrupted at the junction and queues can form. An embankment on the northern frontage of the main road rises up towards the railway and a terrace of houses at Mount Pleasant, leaving an area of overgrown land on which an advertisement panel stands.

Advertisement consent has been granted subject to conditions. This appeal has been submitted against two of the conditions that were imposed.

The advertisement has been approved for a period of five years, following which a new proposal could be submitted. The Inspector felt that to retain the element of Condition 1, which requires the physical removal of the advertising structure at the

end of the consent period, would impose an unnecessary and excessive burden and should be removed.

Condition 9 imposes a requirement for the display to change no more than once every 15 seconds but it is argued that this time interval could be reduced to once every 10 seconds. The Inspector formed the opinion that the proposed shorter time interval would not undermine highway safety or visual amenity. Therefore it would also be acceptable for a shorter time interval to be set out in Condition 9.

The advertisement consent remains subject to the other conditions that were imposed by the Local Planning Authority.

ENF/19/0088

88 Nelson Road, Gillingham – Gillingham South Ward

Notice issued – 19 May 2020

Without planning permission the conversion of building into 5 self contained flats

Appeal succeeds in part – 8 March 2021

Summary

The appeal property is a mid-terrace, two storey property, with a hard standing at the front and a garden at the rear. The building has been converted into five flats. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The appellant needs to show, on the balance of probabilities, that the use of each of the five flats as self-contained residential accommodation began more than four years before the notice was issued (19 May 2016) and continued, without material interruption, for a period of four years thereafter.

The residential use of Flats 1 and 2 began on 1 April 2014, the use of Flat 3 began on 2 April 2014 and the use of Flat 6 began on 3 April 2014. However, it has not been demonstrated, on the basis of probabilities, that the use was continuous over any four year period before the relevant date. The appeal on ground (d) therefore fails in respect of Flats 1, 2, 3 and 6. There is no Flat 5.

The residential use of Flat 4 began on 2 April 2014. There is an inconsistency between the tenancy receipts and Council tax records but the Inspector felt that if there was a break in the residential occupation it was weeks rather than months and found that this to be *de minimis*. Therefore, the Inspector concluded the property has been continuously occupied and the appeal on ground (d) succeeds in respect of Flat 4.

The ground (g) appeal relates to Flats 1, 2, 3 and 6, having regard to the findings on ground (d) appeal. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short and the appellant requests that the six month period to cease the use and the seven month period to carry out the building works be extended to a year.

The Inspector concluded that ordinarily, six and seven months would be a reasonable period to comply with the terms of the notice but the recognizes that these are not ordinary times. In the circumstances, the Inspector found nine months would be a more reasonable period reflecting the new obligations on landlords and allow time for the appellant to make arrangements with builders to carry out the works.

The appeal succeeds in part but otherwise the appeal fails and the enforcement notice, as varied, is upheld as set out in the formal decision.

APPENDIX B

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		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 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,	Delegated	Against	24/09/2019 : £1,871 costs paid Court order

		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
MC/19/0171	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.