

## **SPECIAL PLANNING COMMITTEE**

**2 SEPTEMBER 2021**

### **REPORT ON APPEAL DECISIONS 1 APRIL 2021 TO 30 JUNE 2021**

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 14 appeal decisions were received between 1 April and 30 June 2021. 9 appeals were dismissed. 5 were allowed, one with costs. 1 was a delegated decision, 4 related to committee decisions, 3 of which were decisions overturned by committee.

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 October 2017 to September 2019, shows the number of decisions overturned at appeal for major applications is 1.6% and 1.1% 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.

### 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 April to 30 June 2021.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/04/2021 and 30/06/2021**

**MC/20/0028**

**Land South of Multi Storey Car Park, Hempstead Valley Shopping Centre –  
Hempstead and Wigmore Ward**

Refusal – 8 August 2020 – Committee Overturn

Construction of a drive-thru restaurant, reconfiguration of car park and closure of multi-storey car park exit ramp

Allowed with partial costs – 25 May 2021

**Summary**

The main issues in this appeal are the effect of the proposed development on the character and appearance of the area, highway safety and the free flow of traffic and the effect on the amenities of the area with potential littering and disturbance.

The appeal site is located in an existing area of surface car parking, close to a multi-storey car park attached to the M&S store that is part of the wider Hempstead Valley Shopping Centre.

The design of the proposed building is simple in appearance and form and would not be prominent in the wider area. The site is at a lower level than Hempstead Valley Drive and the landscaping on a bank above the development site would largely be retained with some new planning proposed. These features would adequately screen the proposed building, which would effectively mean the proposed building would be no more prominent in the wider area than other existing buildings seen from Hempstead Valley Drive. The building would be seen against a backdrop of the tall multi-storey car park, which is in itself a dominant building when looking towards this part of the shopping centre.

The Inspector concluded that the design and scale of the building proposed would be compatible with the established character of this part of Hempstead Valley Shopping Centre and would therefore not be harmful to the character and appearance.

A circular service lane would be used by patrons using the drive-thru facility, with entry and exit to the road that also provides access to the multi-storey car park. The appellants' Transport Statement demonstrated to the Inspector that the service lane would be of sufficient size to accommodate vehicles waiting for drive-thru service. Based on the evidence and the fact that the Highways Authority did not raise any objection to the application the Inspector is satisfied traffic would not be queuing off the appeal site in a manner that may impact upon other users of the shopping centre or the wider highway network. The Inspector therefore concluded that the proposed development would not be harmful to highway safety or to the free flow of traffic.

Hempstead Valley Shopping Centre already contains a number of facilities where taking food to eat off the premises is possible. The Inspector cannot say with any certainty one way or the other if the proposed facility would cause littering or not, thus is not persuaded that the proposal would lead to a material increase in littering in the wider area.

The Inspector concluded the distance of the proposal from the closest residential properties and the existing commercial environment means that there would not be an appreciable impact upon the living conditions of residents and would not be harmful to amenity.

The appeal is allowed subject to conditions suggested by the Council.

An application for costs was submitted and the Inspector concluded that a partial award of costs is justified based on unreasonable behaviour in terms of not being able to supply sufficient evidence to support the refusal reasons relating to highways and littering resulting in unnecessary expense in the appeal process.

## **MC/20/0216**

### **The Prince of Wales, 90 Cecil Road, Rochester – Rochester East Ward**

Refusal – 24 July 2020 – Committee Overturn

Construction of a detached 4 bedroom 3 storey dwelling on land that was formerly a beer garden with associated parking

Allowed with conditions – 1 March 2021

## **Summary**

The main issues are the effect of the development on the character and appearance of the area and the living conditions of the occupants of 90 Cecil Road with regard to outlook.

The site comprises the former beer garden of the Prince of Wales PH, which has subsequently been converted to an HMO. The site is vacant and did not form part of the application to convert the PH. The area is characterised by compact terrace streets and the presence of parked cars along the street leads to a dense urban character.

The overall footprint of the dwelling would be comparable to others within the area. Parking spaces would be provided to the side of the proposed dwelling. The increased width of the dwelling, compared to the neighbouring terraces, does not result in an overdevelopment having regard to the overall size of the plot and there remains a good level of spacing between the proposed dwelling and the boundary of 90 Cecil Road. The proposed dwelling would be sited on the boundary of 80 Cecil Road, however as a result of the existing side garden of this property, a degree of

separation would remain. Therefore, Inspector concludes that the proposal would not have a harmful effect on the character and appearance of the area.

The proposed dwelling would be located close to the boundary of the neighbouring HMO with the ground floor windows within the side elevation, nearest the appeal site, serving a bedroom and communal kitchen. The site is currently open to the side with those windows having an outlook across the appeal site. However, should vehicles be parked along the side of the HMO the outlook would already be partially restricted and the proposed development would result in a similar relationship in terms of the parking of vehicles in this area.

As a result of the proposed dwelling being located to the side of the HMO, the overall height would reduce the outlook from these windows. However, the separation provided by the proposed parking area would ensure that the impact upon the outlook would be limited.

The condition suggested by the Council requiring details of boundary treatments to be agreed prior to occupation would enable control over the height and type of fencing to be erected. Therefore, the Inspector concludes that any effect of the proposed development on these windows does not cause unacceptable harm to the living conditions of the occupiers.

Given the proximity to other dwellings, the Inspector has imposed a condition requiring the submission of a Construction Method Statement to protect the living conditions of the occupiers of such properties. The Inspector has also imposed a condition requiring obscure glazing to the side elevations of the proposed dwelling to protect the amenity of neighbouring properties.

In order to ensure an appropriate level of on-site parking provision, the Inspector has imposed a condition requiring the parking area to be provided prior to occupation of the dwelling and retained for the life of the development.

## **MC/20/1112**

### **69 Hawthorn Road, Strood – Strood South Ward**

Refusal – 9 July 2020 – Delegated

Construction of a 2 bedroom detached dwelling with associated parking

Allowed with conditions – 30 April 2021

### **Summary**

The main issues are the effects of the proposed development on the area's character and appearance and whether the development would maintain adequate living conditions at the existing property, No 69 Hawthorn Road, in terms of private outdoor amenity space.

The appeal property, No 69 Hawthorn Road, occupies a corner plot at the junction with Maple Road. The proposed new dwelling would be sited to the side of the existing house, facing Maple Road. Three parking spaces would be provided, to serve the two dwellings, with access from Hawthorn Road.

The new dwelling would project slightly forward of the existing building line formed by Nos 6-12 Maple Road. The uniformity of the building lines is not one of the estate's more pleasing features and the Inspector felt that where more variation has been incorporated into the layout in other parts of the estate, the quality of the townscape is markedly richer and more distinctive for it. The Inspector also felt that the addition of a new dwelling at the appeal site, would bring a welcome element of interest and variety to an otherwise dreary and monotonous street scene.

The gap that would be left between the new dwelling and the existing No 69 would be one metre, which would be narrower than most, but it would not be unduly noticeable. Most of the corner plots throughout the estate have been treated as rear gardens and fenced for privacy. In the appeal proposals, the majority of the site's frontage to both Hawthorn Road and Maple Road would become part of the new dwelling's front garden, which would adequately preserve the openness and spaciousness of the corner area.

In Inspector concluded that the proposed development respected the scale, spaces and visual amenity of the surrounding area and therefore cause no harm to the character or appearance of the site or the surrounding area.

The existing property would lose a large part of its existing garden and the remaining area would comprise mainly a patio, decking and a shed. However, this retained garden would be south-facing, with a largely open aspect but would be relatively private and would be adequate for the needs of most occupiers.

The Inspector concluded the proposed development would cause no harm to the area's character and appearance and would provide satisfactory living conditions for existing and future occupiers at the site.

## **MC/20/2022**

### **101-103 Shakespeare Road, Gillingham – Gillingham South Ward**

Refusal – 2 November 2020 – Committee

Removal of planning condition (6) of MC/18/1484, enabling use of dwelling (Use Class C3) as a six-bedroomed shared dwelling (Use Class C4, small HMO)

Allowed with conditions – 21 May 2021

## **Summary**

The main issue is the effect of the proposed development on the living conditions of adjoining occupants.

Shakespeare Road is a predominately residential road. Properties in the vicinity of the appeal site primarily open directly onto the narrow footpath (both front doors and windows), with parked cars along the road and is a tight urban environment. The area is primarily in single household occupation and the Inspector accepts that the character and pattern of use of an HMO may be different to a single household property. However, what is relevant in this appeal is whether in terms of the density of occupations is whether occupants may have individual lifestyles that result in comings and goings at different times of day and night.

The appeal property, which is currently under construction, is wider than most other properties in the road and there is a gap to one adjoining house. The Inspector considered the comings and goings from a dwelling in this situation as used by an HMO and as used by a household would have little material difference in terms of disturbance to neighbours as residents would enter and leave the house directly onto the footway, where there is already activity from many houses as well as vehicles close by. Similarly, the use of the rear garden by residents of the property would not lead to a materially different impact within this tight urban area compared to the way in which any household could use that garden.

Residents have raised concerns regarding the impact on parking provision in the area. The Inspector found little objective evidence on the matter of levels of parking demand and provision but did see during the site visit there are parking controls in the area and that there is considerable parking along the road. Thus, on this basis, the Inspector considered the proposal would not lead to any material disruption to existing occupants by virtue of demand for car parking or to highway safety.

The Inspector acknowledged there have been a number of appeal decisions on whether properties should be an HMO but determined this appeal should be determined on its own merits and concluded that the proposed development would be appropriate to the area and not harm the living conditions of adjoining occupiers.

Condition 6 should read *'the shared living accommodation hereby permitted shall be managed in accordance with the Point 2 Point Management Plan, for HMO/co-living at 101-103 Shakespear Road and thereafter the property shall be occupied in accordance with these details'*.

An application for costs was refused.

## **MC/20/2338**

### **1 Cazeneuve Street, Rochester – Rochester East Ward**

Refusal – 11 December 2020 – Committee Overturn

Change of use from hairdressers (Class E(a)) to hot food takeaway (Sui Generis)

Allowed with conditions – 23 April 2021



## Summary

The main issue is the effect of the proposal on the living conditions of neighbouring occupants, with regard to odour, noise and disturbance.

The premises forms part of the ground floor of a 3-storey building. The building has two retail premises on the ground floor with flats above. The block is located in the centre of a courtyard with part grassed and part paved communal grounds to the front and rear. The appeal premises is currently vacant and the other retail premises are operated as a small convenience store.

While the change of use of the former hairdressers to a takeaway would result in some change to the pattern of activities, particularly in the evening, it would not result in an increase in commercial operations within the courtyard. Controls can also be placed on the hours of operation of the premises and ancillary operations such as collection and delivery, through the use of conditions. Subject to such controls, the Inspector did not consider the change in the pattern of activity, including vehicle movements, would be unduly disturbing to neighbouring occupants.

The refuse compound to the rear of the premises is suitable for the disposal, storage and collection of refuse arising from the proposed use. There is no reason why concern about vermin would be exacerbated if waste is stored properly.

Given the proximity of residential flats it would be necessary for the proposed plans to include details of how cooking smells would be controlled. This could be achieved through an internal extraction and filter system, which may require an external outlet, either as a balanced flue or fluepipe. There is an opportunity to site an external flue on the flank elevation of the premises, which is a blank brick wall with no windows above it, in which there is already an air-conditioning plant. The Inspector is therefore satisfied this matter can be properly controlled through the imposition of a condition.

Subject to conditional controls over the hours of opening, ancillary operations including collection and delivery and fume extraction, the Inspector concludes the living conditions of neighbouring occupants would not be unduly harmed by reason of odour, noise or disturbance.

Due to the appeal premises being within 400m of a primary school and taking into consideration Medway's guidance note in relation to hot food takeaways and tackling the issue of obesity, it would be appropriate to impose a restriction on opening hours between 1500 – 1700 during weekdays.

Interest parties raised concerns that the proposed use would increase the risk of antisocial behaviour. The Inspector considered no evidence have been provided to show that the use would give rise to such a risk.

## APPENDIX B

### REPORT ON APPEALS COSTS

#### 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, conservatory and garage)	Delegated	Against	24/09/2019 : £1,871 costs paid <b>Court order</b>
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
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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 and loft conversion without complying with a condition attached to MC/18/2676	Allowed	Against	Council refused removal of condition 4 without providing 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	Outline application for 50 dwellings – resubmission	Dismissed	For	Unilateral Undertaking not acceptable

	Road, Rainham				and unreasonable behaviour as described in PPG. Costs being pursued.
MC/20/0028	Hempstead Valley Shopping Centre	Erection of a drive through restaurant, reconfiguration of car park and closure of multi storey car park exit ramp	Allowed	Partial against	Committee overturn. Unreasonable behaviour resulted in unnecessary or wasted expense due to insufficient evidence to support refusal Agreed costs £4,210 + VAT