

PLANNING COMMITTEE

12 JANUARY 2022

REPORT ON APPEAL DECISIONS 1 JULY 2021 TO 30 SEPTEMBER 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 4 appeal decisions were received between 1 July and 30 September 2021. 3 appeals were dismissed. 1 was allowed, which was a delegated decision.

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 January 2018 to December 2019, shows the number of decisions overturned at appeal for major applications is 0.8% 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.

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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 2021.

Gov.uk statistical data sets Table P152 and Table P154

APPEAL DECISION SUMMARY

Appeals decided between 01/07/2021 and 30/09/2021

MC/20/1739

49 Laburnum Road, Strood – Strood South Ward

Refusal – 14 September 2020 – Delegated Decision

Retrospective application for raising of ground level to front for the construction of a vehicle hard standing and vehicle crossover

Allowed – 19 July 2021

Summary

The main issue in this appeal is the effect of the raising of ground level to the front for the construction of a vehicle hardstanding on highway safety.

The appeal property is a semi-detached property on the south side of Laburnum Road, within a predominantly residential area. Reflecting the hillside location, the semi-detached pair of properties are set at a lower level than the highway. Parking is generally on street on both sides of the road, as a result the width of the highway is reduced so that there is width for only one car to pass at a time. There are a number of examples on the south side of the road where off-street parking has been introduced.

Notwithstanding the presence of parked cars, the Inspector considered visibility, accessing and egressing the parking space to be good in both directions, reflecting the straight nature of the road in the vicinity of the appeal site. The Inspector also felt that vehicle speeds are generally likely to be low due to the width of the road. Furthermore, pedestrians are likely to be aware of the prospect of cars entering or leaving off-street parking bays given the existence of a number of such parking bays and the good visibility along the road.

As the Council have not provided information to indicate that highway safety is an issue and that the Appellant has advised that the Crashmap data indicates only one slight incident over a 21 year period, the Inspector concluded that accessing the parking bay does not present a danger to highway safety.

As the parking space has already been constructed with a drainage channel across the front of the bay, bordering the street, the Inspector does not consider there is any justification for the imposition of a condition in relation to the management of surface water.

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 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
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 received £8,749.
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. £1,250 paid.