

## **PLANNING COMMITTEE**

**6 APRIL 2022**

### **REPORT ON APPEAL DECISIONS 1 OCTOBER 2021 TO 31 DECEMBER 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 26 appeal decisions were received between 1 October and 31 December 2021. 11 of these appeals were allowed, which included 5 Committee decisions which overturned the officer recommendation. 15 appeals were dismissed, including one relating to enforcement.

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 2018 to March 2020, 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.

### Lead officer contact

Dave Harris, Head of Planning  
Telephone: 01634 331575  
Email: [dave.harris@medway.gov.uk](mailto:dave.harris@medway.gov.uk).

### 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 2021.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/10/2021 and 31/12/2021**

**MC/20/0804**

**21 Berengrave Lane, Rainham – Rainham North Ward**

Refusal – 24 July 2020 – Committee Overturn

Part retrospective application for the construction of two storey side extension together with part two storey part single storey rear extension and installation of dormers to front and rear to facilitate the change of use of existing care home (use class C2) to provide 8 flats with private amenity space, vehicle parking and landscaping

Allowed – 18 October 2021

**Summary**

The main issues are the effect of the proposed development on the character and appearance of the host building and the local area and on the living conditions of the occupiers of 27 Berengrave Lane with particular regard to privacy.

The appeal property is a large detached building, set back from the road behind a garden, driveway and car park. It stands within a large plot in a predominantly residential area wherein buildings vary in style, size and age.

The completed building would be noticeably bulkier, taller and larger than previously approved. When seen from the road, the additional built form at roof level and other alterations do not appear overly large or bulky nor do they upset the overall scale and balance of the building. At the rear, a new 'box-like' dormer is proposed, which is a sizeable flat roof addition and significantly adds to the mass of the building at a high level, as does the other rear dormer. However, these dormers are largely away from public view at the back of the building.

The Inspector concluded that the scale and appearance of the building would significantly change but the cumulative effect of the proposed alterations would not result in a markedly awkward design. The proposal would not appear 'top heavy' or result in a building that would be incompatible in its varied residential context. As such the proposed development would be in keeping with the character and appearance of the host building and the local area.

The 2 roof lights placed onto the north-facing roof slope to serve flat 8 would lead to a greater level of overlooking of the back garden of 27 Berengrave Lane. A condition imposed to secure the use of obscure glazing in these windows and a requirement that the roof lights remain fixed shut would overcome this problem. The Inspector agreed a reasonable distance separates No 27 and the windows that serve

flat 8 and felt that overlooking of this type is a common characteristic between residential buildings within built up areas. However, the views possible from the north-facing roof lights towards No 27 would be both direct and from a high level position that would lead to a loss of privacy for the occupiers of this nearby property. The Inspector concluded that the condition on the type of glazing and the tight angle of view would combine to largely prevent views towards No 27 from the rear-facing window in the additional rear dormer. As such the proposal would not materially reduce the living conditions of the occupiers of No 27.

The Inspector was not convinced that the resultant living accommodation would feel cramped to future occupiers or that the demand for car parking would significantly increase. The submitted evidence did not show the proposal would necessarily manifest itself differently than the approved scheme insofar as the potential to generate extra traffic, noise, air pollution or cause general disturbance to others.

Interested parties are critical of the appellant for showing, in their view, a 'contempt' and a 'flagrant disregard' for the planning system by expecting to gain a favourable retrospective decision. The Inspector felt the appellant is entitled to seek approval for the preferred development and that each proposal is assessed on its own merits, whether or not it is (partly) retrospective. The formal consultation stage provides a process whereby comments may be made and these are taken into account by the decision-maker.

The Inspector noted that the concern raised that the roof tiles used do not match those of the property before the works were undertaken is a matter for the Council.

The Inspector considered it necessary to impose conditions to require external materials match those of the existing building and landscaping details and that the revised roof to form part 2-storey, part first floor rear extension is in place within 2-months of this decision. Prior to occupation a condition is required for cycle and refuse storage facilities to be provided and vehicle parking is to be on site. To protect the privacy of nearby residents and future occupiers, some windows in the side elevations are to include obscure glazing, as shown on the drawings, and that the roof lights on the northern roof slope are also fixed shut. The privacy screen around the balcony of flat 7 is to be permanently retained.

## **MC/20/1025**

### **309 Lower Rainham Road, Rainham – Rainham North Ward**

Refusal – 16 October 2020 – Committee Overturn

Outline application with all matters reserved for the construction of three self-build dwellings with associated parking and amenity space – resubmission of MC/20/0624

Allowed – 6 October 2021

## Summary

The main issues are the effect of the proposed dwellings on the character and appearance of the surrounding area; whether the site is in an accessible location that would promote the use of sustainable transport modes; and whether other material considerations outweigh any harm arising.

The appeal site is located between 309 Lower Rainham Road and Sharps Green. It comprises a well-manicured lawn fringed by vegetation and has been used as a garden area for several years and is defined as in the countryside for planning policy purposes. The site is also within the Riverside Marshes Area of Local Landscape Importance. This part of Lower Rainham Road contains a mixture of open land with small pockets of development.

The Inspector considered the dwellings would appear as a natural continuation of the row of properties to the east and would not intrude into obvious countryside. For this reason the proposal would not have an adverse impact on the wider landscape character, although some openness would be lost. There would therefore be harm caused to the character and appearance of the surrounding area but the level of that harm would be limited and localised.

The appeal site is within walking distance of the country park and its café, the Three Mariners public house and limited employment, community and retail facilities. There is a bus stop outside the site but there is only an infrequent service on this route. All local shops and other facilities are more than 800m away and therefore unlikely to be accessed on foot. It is feasible to cycle to the stations at either Rainham or Gillingham. The reality is that future occupiers are likely to be car dependent for most journeys.

As part of significantly boosting the supply of housing, the Government considers it important that the needs of groups with specific housing requirements are addressed. The dwellings would be self-build and custom housebuilding plots and the Council has certain duties to provide this type of housing arising from the Self-Build and Custom Housebuilding Act 2015.

Due to the proximity of the proposal to the Medway Estuary and Marshes Special Protection Area (SPA), the extra houses would be liable to lead to recreational disturbance and have a detrimental impact on birds. To mitigate this impact the planning obligation would secure the appropriate financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. As a result of the contribution the proposal would not adversely affect the integrity of the SPA.

Although the Inspector noted the proposed development would be contrary to the development plan it was concluded the material considerations, especially the presumption in the Framework, outweigh this conflict.

Conditions should include reference to the Design Code and provision should be made for off-street parking and vehicle charging points. A construction management

plan should also be put in place. All matters are reserved so further conditions can be subsequently submitted.

## **MC/20/1115**

### **24 Pier Road, Gillingham – Gillingham North Ward**

Refusal – 22 October 2020 – Committee Overturn

Alterations and extensions of an existing, detached dwelling house to provide a 14 bedroom student/single person shared accommodation unit (House of Multiple Occupancy)

Allowed – 9 November 2021

### **Summary**

The main issue is whether or not the site is suitable for an HMO having regard to the provisions of the development plan concerning the general location and circumstances of dwellings intended for multiple occupation, and the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings in respect of noise and disturbance.

The site is located to the south side of Pier Road where buildings appear to be generally in residential use. To the north side of Pier Road, buildings vary in scale and form and include student accommodation as well as a mix of non-residential uses. The streets joining Pier Road from the south, which runs to the rear of the appeal site, are characterised by two-storey dwellings with gardens to their rear. At this point, Pier Road is a busy dual carriageway. The Inspector disagrees with the site being within a mixed use area and considers that the site itself sits within a predominantly residential area.

The existing building currently has 3 bedrooms and the judgement of the Inspector is that the property would appear generally suitable for occupation by a single household. Activity and comings and goings associated with a 14 bedroom HMO would be likely to be greater than the existing dwelling. However, the Inspector considered no compelling evidence to show how increased activity would result in excessive noise or disturbance so as to cause harm to the living conditions of neighbouring occupiers has been provided.

The site does adjoin the mixed-use area to the opposite side of Pier Road and the Inspector found traffic and noise from Pier Road were apparent when on and in the immediate vicinity of the appeal site. Against this background, the Inspector found no reason to doubt that vehicular noise associated with the proposal would be indistinguishable from other vehicular noise.

Pedestrian access to the building would be shared between two entrances. The Inspector considered the entrance from Pier Road would be the preference for a greater proportion of trips. As the position of this entrance is set away from neighbouring dwellings it would reduce the likelihood that movements would be

noticeable to nearby residents. Boundary treatment would provide separation between the garden and neighbouring properties and the use of the space would not be conspicuous or significantly out of the ordinary.

The Inspector considered there to be no substantive evidence demonstrating that the proposal would be likely to result in noise late at night, nor that any noise or antisocial behaviour could not be effectively controlled through appropriate management of the property. The Inspector therefore concluded that the effect of the HMO on neighbouring occupiers would be of limited significance and would not cause unacceptable harm to their living conditions.

The Transport Technical Note with a parking survey indicates a significant number of spaces are available. The Inspector considered any change to the reported level of overall on-street capacity would be relatively limited. In addition, the accessibility of the site to local facilities and public transport means that future occupiers would not necessarily need to rely on private vehicles. Therefore, the Inspector concluded there would be no significantly detrimental impact to highways or parking as a consequence of the development.

Boundary treatment would prevent overlooking to neighbouring properties from ground floor level windows for the development. The upper level window facing towards 71 Knight Avenue which serves a hallway and the closest upper level windows facing the rear of dwellings on Corporation Road which serve bathrooms could be obscurely glazed. Other windows would be set away from the boundary and the Inspector is satisfied that the separation would be sufficient to prevent loss of privacy. No evidence has been submitted to substantiate that the proposal would lead to increased levels of crime or anti-social behaviour.

The appellant did submit a Unilateral Undertaking under the provisions of Section 106 of the Town and Country Planning Act 1990. In light of this the Inspector found that the proposal would not adversely affect the integrity of the SPA/Ramsar sites.

The Inspector judged that these factors are sufficient weight to outweigh the technical breach of two criteria of Policy H7 of the Local Plan. Pre commencement conditions are considered necessary to agree details of how construction will be managed, the provision of surface water drainage, highway safety and flood risk, together with a condition to investigate the provision for remediation of contamination. Conditions to secure internal noise and air quality standards together with provision for electric vehicle charging are also required.

### **MC/20/2363**

#### **38 Parkwood Green Shopping Centre – Rainham South Ward**

Refusal – 30 November 2020 – Delegated

Change from a café/restaurant (Class Eb) to a hot food takeaway (Sui Generis)

Allowed – 1 October 2021



## Summary

The main issues are the effect of the proposal on the vitality and viability of a local shopping centre with reference to the prevalence of hot food takeaways and the effect on the living conditions of residents above the unit in respect of noise, vibration and odour.

Parkwood Green shopping centre comprises 26 units. Avoiding an excessive concentration of hot food takeaways is potentially part of the response to the National Planning Policy Framework policy of supporting healthy lifestyles. Although Medway has guidance in relation to hot food takeaways in relation to proximity to schools, location, vitality and viability, it is not adopted policy or SPD.

The guidance note says that takeaway uses should not normally exceed 15% of the linear meterage of the frontage. As a result of the proposal the number of takeaways in the centre would increase from 4 to 5 so the proportion of such uses would be 16%. There is no clear evidence that there would be an adverse impact on the health of local residents or that the economic fortunes of Parkwood would suffer.

The evidence from a land use survey is that 15 of the units are currently in retail use. It suggests the centre provides a good range of shops and services to serve the needs of the surrounding population. Therefore, the Inspector concluded the proposal would not adversely affect the vitality and viability of the local shopping centre.

The appellant has replaced the cooker and hood and included an extraction fan with silencer, internal ducting and discharge grille. A noise impact assessment for the kitchen extract plant concludes the noise impact is low and within acceptable limits. Consequently, it is accepted there would be no negative effects in this respect.

High level odour control has been incorporated with baffle and carbon filters. The Council considers that this is unsatisfactory and that any system should accord with guidance in Control of Odour and Noise from Commercial Kitchen Exhaust Systems by EMAQ+. Bearing in mind that a takeaway has been operating legitimately since earlier this year, the Inspector found there is nothing to suggest that smells emanating from the premises have been or would be problematic and concludes that odours would be adequately dealt with.

The Inspector concluded that a condition limiting hours of opening and delivery times should be imposed to avoid disturbance to those living in the vicinity. Furthermore, the use should not open when children are likely to be leaving the local primary school. To safeguard living conditions a condition is also necessary to ensure the existing fume extraction system is retained and operated.

**MC/20/3146**

**8 Salisbury Avenue, Rainham – Rainham Central Ward**

Refusal – 3 March 2021 – Committee Overturn

Construction of a 4-bedroom detached dwelling with associated parking

Allowed – 22 December 2021

## **Summary**

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

Lyra Close exists between 8 and 6 Salisbury Avenue and provides access to a number of detached residential properties behind, as well as access to some rear gardens and garages of properties on Salisbury Avenue. Development on Lyra Close includes a recent two storey detached house set to the rear of 4 and 6 Salisbury Avenue, which faces the appeal site.

The front elevation of the development proposed would be set closer to the edge of the road than other properties on Lyra Close, however the existence of the gravelled verge to the front of the site (which lies outside the appeal site) would provide a natural set back. The northern side elevation of the proposed house would project closer to the edge of Lyra Close than the wall of 8 Salisbury Avenue. Due to the distance between them and the presence of the verge between the site and the road, the Inspector considers the development would not appear overbearing or visually prominent when viewed from Salisbury Avenue and would not appear overly cramped or out of character with the other nearby developments.

The height of the development proposed would comprise two full storeys with a pitched roof. Despite the absence of other two storey houses on this side of Lyra Close, the Inspector felt the development proposed would be similar in its character and appearance to other properties that address Lyra Close and would not cause unacceptable visual harm.

The subdivision of the plot of number 8 Salisbury Avenue would also be unlikely to be perceivable from the surrounding area due to the presence of close boarded timber fencing on the boundary and the difference in ground levels. Given that such boundary treatments are common place in this area, the Inspector considered it likely that similar screening would continue to exist in this position.

The Inspector noted that matters related to ownership of land and works already undertaken on this land would be separate to the planning merits of the proposal and are a matter between the relevant parties.

With regard to concerns relating to the effect on the privacy of nearby properties, availability of parking and noise and disturbance from the construction process, the Inspector concluded that, while the new house would be closer to the properties opposite on Lyra Close, in light of the distances between them the development proposed would not cause unacceptable harm to the occupants of those properties. The Inspector found no evidence that the development would cause an increase in parking pressures that would be harmful to highway safety, nor that any visibility splays would be harmfully impacted.

**MC/20/3216**

**65 Norman Close, Wigmore** – Hempstead and Wigmore Ward

Refusal – 7 April 2021 – Committee Overturn

Construction of a single storey extension to front with part single part two storey extension to side and rear

Allowed – 25 November 2021

### **Summary**

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

The appeal property comprises a semi-detached house located on the western side of Norman Close, which is a cul de sac. It has an attached garage on its northern side with a small pitched roof which extends across a front porch. The character of the area is wholly residential with semi-detached properties of similar design.

The adjoining property to the north, No 66 Norman Close, has an existing single storey rear extension adjoining the common rear boundary with the appeal property. Its main living area is also separated from the appeal property by this extension and its own attached garage. The proposed two storey side extension would have minimal direct impact on the occupiers of No 66, due to the separation involved and that the main window affected would appear to be a non-habitable room in the southern flank wall of No 66. At the rear, the proposed two storey element would extend to a depth slightly beyond that of No 66's extension and would also be marginally inset from the rear common boundary. The Inspector considered that whilst the extension would be apparent, it would not overshadow the rear of No 66 nor result in any serious harm to the amenities currently enjoyed by the occupiers of that property, including any loss of daylight to living accommodation.

Although there would be scope for overlooking of the neighbour's rear garden from the proposed first floor rear window, this is already the case from existing first floor rear windows. The Inspector does not consider the proposed extension would materially worsen that situation.

The Inspector noted that the front extension would only project forward by approximately 1 metre where it would adjoin the front common boundary with No 64. That property has a large front living room window and whilst the forward projection may be apparent from inside the property of No 64, the Inspector's view is it would not be significant and would cause no harm to loss of outlook from the living room of that property.

Although the Council considers a condition is required to prevent the property changing to a small HMO in the future, the Inspector considered there is no evidence

to suggest that would be case, nor that it would result in any significant harm. Therefore, such a condition is considered unnecessary.

## **MC/21/0036**

### **87 Rock Avenue, Gillingham – Gillingham South Ward**

Refusal – 5 March 2021 – Delegated

Change of use from 6-bed house of multiple occupancy (Class C4) to 7-bed house of multiple occupancy (Sui-generis)

Allowed with costs – 29 October 2021

### **Summary**

The main issues are the effect of the proposal on the character of the area and the effect of the proposal on the living conditions of the occupiers of the neighbouring dwellings with particular regard to noise and disturbance.

The appeal site is part of a terrace with residential neighbours. The HMO on the site could potentially already be occupied by 6 unrelated individuals and the appeal proposal would increase the size of the HMO to 7 Bedrooms, multiple occupation of the site would not be new. Near the appeal site, the surrounding streets are generally characterised by residential terraces. The Council does not dispute there are 6 licensable HMO's on Rock Avenue, including the appeal property. One of the adjoining neighbours to the appeal site is referred to as a care home. Other uses in the vicinity of the site include a dental surgery and shops, but as non-residential uses are relatively few in number, the Inspector considered the area could not be reasonably described as having a predominantly mixed-use or commercial character.

The Inspector noted there is no firm information to demonstrate how increased activity, including the use of the garden, would lead to excessive noise or other disturbance. The additional bedroom proposed is to be single-occupancy. The Inspector is satisfied that a condition to restrict the total number of residents to 7 is appropriate. This being the case, the levels of traffic or activity would be unlikely to be significantly greater than may already result from the site and the Inspector can see no reason that there would be unacceptable harm to the living conditions of neighbouring occupiers.

No evidence has been provided to show how occupation of the building as a 7-bedroom HMO would result in a noticeable change in the character of the appeal site. As the character of the surrounding area is not exclusively residential and other HMOs and a care home further provide a variety in the nature of residential accommodation, the Inspector considered the proposed HMO would not fundamentally alter the established character of the street scene or area. As such the Inspector is satisfied that it would not be out of keeping or incongruous.

Due to the proximity of the proposal to the Medway Estuary and Marshes Special Protection Area (SPA). The increased occupation of the appeal site would be likely to result in additional demand for recreation locally and such activity could cause disturbance that would be detrimental to over-wintering or breeding birds. To mitigate this impact the planning obligation would secure the appropriate financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. As a result of the contribution the proposal would not adversely affect the integrity of the SPA.

The Inspector found the Council has failed to provide sufficient evidence to substantiate its reason for refusal. In basing its case on vague and generalized assertions it is considered the council has behaved unreasonably and it has delayed development, which should have been permitted. As a result, the applicant has incurred unnecessary expense in pursuing the appeal. Consequently, the Inspector concluded the application for a full award of costs is allowed.

### **MC/21/0088**

#### **142 Napier Road, Gillingham – Gillingham South Ward**

Refusal – 2 March 2021 – Delegated

Construction of a pair of 3-bedroom and 4-bedroom semi-detached dwellings with associated parking

Allowed – 29 October 2021

### **Summary**

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

Napier Road is predominantly characterised by semi-detached and terraced dwellings. Buildings vary in scale and appearance and layout is not entirely uniform as a result of some instances of accesses serving development set behind frontage buildings. The appeal relates to a parcel of land served by an access taken between 138 and 144 Napier Road. This access runs alongside 136 Napier Road and serves a recently constructed group of one detached and 8 semi-detached dwellings, as well as a larger building which has entrance doors numbered as 142 and 142a. Planning permission granted for the conversion of 142 Napier Road into a pair of semi-detached houses has expired.

The appeal proposes a pair of semi-detached dwellings on land to the side of No 142. Although the dwellings would be similar in depth to No 142 they would be significantly narrower. Nevertheless, the development would be of similar scale and appearance to other dwellings within the wider site. The Inspector observed there is already a variation between other dwellings along Napier Road and given the inconsistency in their form, scale or design the Inspector does not consider that the resulting juxtaposition would be jarring or incongruous.

As a result of the wide spaces to the front of the neighbouring buildings behind Napier Road, which accommodate parking and access, as well as surrounding long gardens, there is a reasonable spacious character around the appeal site. Separation to the sides of the other buildings served by the access between Nos 138 and 144 is much more limited. The spacing between the proposed dwellings and the side of No 142 and to the boundary with gardens on Nelson Road would be broadly comparable to that between neighbouring buildings. Given these factors, the Inspector is satisfied that the dwellings would not be cramped or cause harmful erosion to the generally spacious character of its surroundings. The Inspector was also satisfied that given the separation the proposed development would not cause an unacceptable loss of light and outlook. The Inspector concludes that the character and appearance of the area would not be harmed and that the proposal would make effective use of the site, adding visual interest and diversity to the area without resulting in overdevelopment.

Parking provision on site would be in accordance with relevant standards and there is no evidence that any additional vehicle movements associated with the development would harm highway or pedestrian safety. The Inspector also saw no reason why appropriate provision for refuse and recycling could not be accommodated within the site, with details secured by an appropriately worded condition.

The Inspector found no firm evidence that the trees removed from the site were protected or removed unlawfully nor that there would be unacceptable harm to trees, which make a positive contribution to the character of the area.

There is also no substantive evidence to suggest that there is insufficient capacity in local services and utilities to meet needs generated by the proposed development. Any disruption during development could be mitigated by a construction management plan secured by an appropriately worded condition. Any damage caused to property during construction would be a private matter between the parties involved.

Due to the proximity of the proposal to the Medway Estuary and Marshes Special Protection Area (SPA). The increased occupation of the appeal site would be likely to result in additional demand for recreation locally and such activity could cause disturbance that would be detrimental to over-wintering or breeding birds. To mitigate this impact the planning obligation would secure the appropriate financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. As a result of the contribution the proposal would not adversely affect the integrity of the SPA.

**MC/21/0586**

**Former Lord Duncan PH, 59 New Road, Chatham – River Ward**

Refusal – 26 April 2021 – Delegated

Listed Building consent for the replacement of dilapidated single storey rear addition to match; repair/replacement of external weatherboarding; replacement door to front

and rear elevations; removal and replacement of parapet wall/gutter; replacement window to ground floor; installation of railings to front boundary, together with various internal alterations to facilitate the conversion to a 10 bedroom House of Multiple Occupation (HMO) – resubmission of MC/20/1599

Allowed – 29 November 2021

## **Summary**

The Lord Duncan public house stands on the northern side of the A2 at the edge of the New Road Chatham conservation area. The area around the former pub has changed dramatically, across the busy main road is a terrace of handsome Georgian houses, mostly still in residential use. On the Northern side the former pub building is isolated amongst modern commercial uses. To the east is a car park used by BT vans and some building materials storage, that wraps around behind the building with offices behind that further downhill. To the west is a sorting office with a large yard in front filled with post office vans. The access road to this runs down the side of the former pub.

In the early 1970s the pub fell into disuse and was subsequently listed in 1974, it has never been used since and has steadily deteriorated. Following Council intervention in 2013, the owner began a programme of restoration works, although beyond some roof repairs and new weatherboard timbers it is difficult to see what they were. When the owner died in 2019, it was the first time anyone had seen inside the pub since before it was listed. Council officers obtained access to view the internal fixtures and fittings.

The building was purchased at auction unseen by the appellants, who say they found it had been stripped of all the internal finishes. They submitted an application to convert it into an HMO and it was during this process that the Council saw the interior of the building and issued the Listed Building Enforcement Notice. The planning and listed building applications were withdrawn and re-submitted, eventually being dismissed and are also subject to this appeal. The reason for refusal concerned the suitability of the property for conversion due particularly to the subdivision of the ground floor and loss of the original layout. The listed building consent was refused due to the proposed unsympathetic restoration of the interior which would harm the significance of the listed building.

The appellant argues the building was originally a smart town house and only later became a pub, so they are restoring it to its original use and plan form. There is no evidence either way but it was definitely a pub in 1824 when it is listed in a directory of businesses from that date. It has been a pub for nearly all (if not all) of its existence. The interior, as shown in photographs taken 2019, was clearly dilapidated but still held a number of features of interest, including the bar area and the various cupboards and interior decoration associated with it. It is evident, however, that the original plan layout would not have been as it was in 2019. The appellant suggests 'restoring' the original four room plan form is a positive benefit. The Inspector found evidence for any 'original' plan form to be sketchy.

There are two pub buildings on the other side of the road, one is now a pizza place and the other an Indian restaurant. It appears there is no demand for a public house in the area and the Inspector suggests the conversion of the pub to a residential use of some sort is inevitable and is the only way to find a viable way forward for the building, which requires extensive repairs to ensure its future.

The Inspector considers the public house use and the bar area that survived to 2019 were a part of the historic significance of the building but that their loss and the harm to significance is outweighed by the public good of securing the future of the building. The Inspector therefore found no other planning objections to the principle of the 10 room HMO proposed. The only remaining issue is how much of the interior should be restored using traditional materials.

Having determined that the pub is a lost cause the Inspector considered the subdivision of the ground floor into separate rooms inevitable together with the loss of the bar, shelving units, decorative timber arch, pub seating and the banquette and curved bench seating.

It is accepted that, apart from the brick front wall of the building, the walls and ceilings would all originally have been lath and plaster. Although a mix of materials and finishes have been introduced and were probably in place at the time of listing, as lath and plaster clearly predominated throughout the building, the least onerous solution is for all the ceilings and walls (apart from the front wall) to be replaced using lath and plaster. Where new walls are being created for bathrooms or on the first floor to sub-divide, they do not need to be lath and plaster. There was considerable wooden panelling around a number of walls and the plans show panelling to be recreated more or less where required by the Council.

The building suffers from a number of structural issues that require more than a cosmetic intervention. The appellant proposed to demolish the bay windows on the front of the building and rebuild due to decayed brickwork in the basement. The Inspector concluded there was no obvious signs of imminent collapse and a less drastic intervention should be considered and dealt with by way of condition.

The proposed solution for the sagging roof valley support beam is to add new 100mm square posts within the internal walls to allow cross beams to support both ends of the new main beam. The two supports in the middle of the building would replace two existing smaller posts and this would be replicated on the first and ground floors to take the load of the new second floor cross beams. The Inspector considered this acceptable as the essential structure would remain the same and there is clearly a need to reinforce the roof beam.

The appellant plans to line the inside of the external walls with 9mm plyboard beneath the lath and plaster finish. Given the state of the building, the Inspector felt that adding the plyboard would not be intrusive or damaging. The extra stability would be beneficial and the breathability of the walls would not be compromised and the plyboard would all be hidden by the new finishes. The Inspector is keen not to be seen to 'reward' the egregious destruction of the inside of the building, but that is dealt with by the replacement of the lath and plaster finishes and a number of the lost internal decorative elements that are required by the LBEN.



Conditions are required to ensure any gas boilers meet air quality standards and to require cycle and refuse storage.

On the listed building consent a condition requiring submission of details of internal and external materials and finishes is necessary. A condition should also be attached to make clear what should happen in each room.

Appeal A: It is directed that the listed building enforcement notice be corrected by adding into all requirements containing the phrase 'walls highlighted pink' after the word 'pink' the phrase '(except for walls on the front façade of the building which shall be lime hair plaster applied directly onto the brickwork)'; by deleting requirements (vii) and (viii) from room 2; and by deleting '8 months' from the period for compliance and replacing it with '18 months'. Subject to these corrections, the appeal is dismissed and the listed building enforcement notice is upheld.

Appeal B: Planning permission is granted for a change of use into a 10 No unit HMO.

Appeal C: Listed Building consent is granted for change of use into a 10 No unit HMO.

### **MC/21/0585**

**Former Lord Duncan PH, 59 New Road, Chatham – River Ward**

Refusal – 26 April 2021 – Delegated

Replacement of dilapidated single storey rear addition to match; internal alterations to facilitate change of use from former Public House to a 10 bedroom House of Multiple Occupation (HMO), installation of boundary railings to front – resubmission of MC/20/1598

Allowed – 29 November 2021

### **Summary**

See report above for MC/21/0586

### **MC/21/1314**

**9 The Rise, Hempstead – Hempstead and Wigmore Ward**

Refusal – 1 July 2021 – Delegated

Construction of a detached double garage to the front – resubmission of MC/21/0454

Allowed – 29 November 2021

## Summary

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

The appeal property comprises a large detached house located on the north west side of The Rise and at a higher level than the road itself. It has an integral double garage which is not used for parking purposes but there is space for the parking of two vehicles in front, there is an additional hardstanding area which is also used for parking on the south west side of the front garden area. Adjoining that on the boundary with the adjacent property No 7 The Rise, is a large oak tree which is protected by a Tree Preservation Order (TPO). The surrounding area is wholly residential in character with detached houses of differing designs and materials.

The proposal is to erect a detached double garage over the front hardstanding area. It would have a pitched roof with hedge planting on the roadside elevation together with tree planting in front. A similar proposal was previously refused by the Council, with the difference being that the current proposal would be 1m closer to the property. As there would be no changes to the previously proposed height and siting, the Council considers it has not addressed the previous issues and remains concerned that the garage would be overly dominant and obtrusive.

There are numerous examples in the immediate area of garages in front gardens, which are all in prominent positions and some have little screening. There are also properties with large forward projections including directly opposite the appeal site. The overall character therefore is one with an irregular building line and the Inspector considers the appeal proposal would therefore not be out of character in that respect.

When approaching from the west, it would not be apparent due to the prominent vegetation in the front garden of No 7 The Rise. From the other direction it would be clearly visible but it would be seen against the backdrop of No 7 in distant views. In addition, there is vegetation in the adjoining area including the adjacent TPO and a large laurel hedge on the boundary with No 7. The plans also indicate the planting of a new laurel hedge on the roadside elevation of the garage and that two new trees would be planted on the bank in front. In time these will help to soften any visual impact.

The garage would be in close proximity to the protected oak tree and there is a concern about potential adverse impact on the root system. However, an arboricultural report explains how careful construction involving sleeved piles within the root protection area, could protect those roots.

Conditions are necessary to prevent the garage being used for a trade or business and to require the garage to be built strictly in accordance with the arboricultural report. A condition is also required to ensure agreement as to the species of trees proposed and that the required replacement planting is acceptable to the Council.

## 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
------	------	----------	---------------	-------	---------

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. £2,000 received
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. Referred to Legal.
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	Outline application for	Dismissed	For	Unilateral Undertaking

	Mierscourt Road, Rainham	50 dwellings – resubmission			not acceptable 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 on design and impact on highways but no objection to scheme from Highways Authority. Off site littering: no such objection raised in another recent approval for a takeaway therefore inconsistent. Agreed costs £1,250 and paid.
MC/19/0036	87 Rock Avenue, Gillingham	Change of use from 6 bed HMO to 7 bed HMO	Allowed	Against	Insufficient evidence to substantiate reason for refusal. Costs paid to applicant £500 and to

					consultant £750 + VAT
MC/19/1566	Land off Pump Lane	1,250 dwellings, school, extra care facility, care home	Dismissed	Partial for	Costs incurred in producing impact appraisal addendums, during adjournment, for additional sitting day and making costs application. Costs being negotiated.