

PLANNING COMMITTEE

24 AUGUST 2022

REPORT ON APPEAL DECISIONS 1 APRIL 2022 TO 30 JUNE 2022

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 8 appeal decisions were received between 1 April 2022 and 30 June 2022. 3 of these appeals were allowed, which included 2 Committee decisions which overturned the officer recommendation. 5 appeals were dismissed, including two relating to enforcement. 2 appeals were withdrawn and 1 was turned away.

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 2018 to September 2020, shows the number of decisions overturned at appeal for major applications is 0.7% 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 April 2022 to 30 June 2022.

Gov.uk statistical data sets Table P152 and Table P154

APPEAL DECISION SUMMARY

Appeals decided between 01/04/2022 and 31/06/2022

MC/20/3204

Avenue Tennis Club, Glebe Road, Gillingham – Watling Ward

Refusal – 06 April 2021 – Committee Overturn

Construction of four 3-bedroom and three 4-bedroom houses with associated parking, access road and open landscape area

Allowed – 25 May 2022

Summary

The main issues are the effect of the proposed developments upon the character and appearance of the area, the SPA and protected species

The appeal site includes former grass courts, a clubhouse, sheds, enclosures, a landscaped area, mature boundary vegetation and two sections of neighbouring rear gardens. Its surrounds include gardens of varying depths associated with a variety of detached, semi-detached and terraced dwellings. The mostly open verdant character and mature vegetation means the site makes an overall positive contribution to the character and appearance of the area. The development would harmfully diminish verdancy and openness and would be visible from the access and may surrounding properties.

The proposed western dwellings would align with the neighbouring back land terrace and existing suite buildings, with dwellings to the east along a parallel alignment. They have been designed having regard to the surrounding composition and mixed character of dwellings, site levels, footprint, height and scale and would not be out of keeping with dwellings in the area.

The new plots are of a generous width, which combined with garden depths, would ensure the appeal development would not appear either cramped or overdeveloped. The retention of most existing trees and hedgerows would ensure a good level of screening to the east and west. The Inspector concluded that overall the harmful effect of the proposal upon the character and appearance of the area would be limited, insofar as the development aspires to create overall high quality beautiful places that are visually attractive and sympathetic to the surrounding landscape.

The Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS) sets out mitigation measures funded by financial contributions. The Inspector is satisfied that subject to payments being secured against the appeal scheme, the measures would overcome any likely significant effects on the special protection area.

The preliminary Ecological Appraisal identified Viviparous Lizards and Slow Worms are likely to be present on two small parts of the site which would be affected by the development. The Inspector concluded that the effects of the development upon reptiles could be mitigated by condition of a clear, staged, mitigation strategy, including provision of reptile fencing, habitat creation, destructive searching and the translocation of any reptiles found. The harmful effects to nesting birds can also be avoided through suitable worded planning conditions to control the timing of works or pre-removal surveys, as appropriate to the time of year.

The Inspector is aware of the police investigation into the submission of fraudulent representations but found the principal matters raised in them to be reflective of the matters raised in the appellant's submission. Therefore, this has been disregarded.

No evidence has been submitted to substantiate suggestions that attempts have been made to have the vacant tennis club listed as an Asset of Community Value. As it has been replaced by a facility nearby, the Inspector did not object to its loss.

Based on evidence provided, the Inspector is of the view that there is sufficient space to provide a safe access, circulation and egress by larger vehicles to the proposed development site. This and compliance with Highway provisions and the construction management plan can be secured by suitably worded conditions.

During a visit to the site, the Inspector found that whilst there was high levels of on-street parking in the area, there was still some vehicle parking opportunities available, as well as unoccupied spaces on private driveways. The free parking areas and the dropped kerbs allowed the limited traffic flow to safely pass at a steady speed.

It has been suggested that the pavillion/clubhouse building and the courts should be regarded as a Non-Designated Heritage Asset. The Inspector found nothing of substance to suggest the building is worthy of statutory listing.

In respect of matters such as outdoor space provision, daylight, overshadowing, outlook, privacy, overlooking, light pollution and noise and disturbance, the Inspector considered the nature of the development, orientation of dwellings and distances are such that neither would result in harmful living conditions to neighbouring occupiers. The Inspector also found no reason why this development would increase the likelihood for crime or anti-social behaviour or be detrimental to well-being.

The Inspector noted the Council's shortfall in relation to housing supply is significant and the economic benefits during construction of the development and once occupied attracts moderate weight in favour of the development. The Inspector recognised the proposed development would conflict with the Council's development plan but concluded there are material considerations that indicate the decision to uphold the appeal should be made other than in accordance with the development plan.

MC/21/1534

Avenue Tennis Club, Glebe Road, Gillingham – Watling Ward

Refusal – 23 August 2021 – Committee Overturn

Proposed reduced scheme consisting of three 3-bedroom and three 4-bedroom dwellings with two detached garages and associated parking, access road and open landscape area (resubmission of MC/20/3204)

Allowed – 25 May 2022

Summary

The appeal relates to the same site as MC/21/3204. The Council's reasons for refusing the application, the appellant's grounds of appeal and the circumstances surrounding each proposal all raise similar issues. Whilst the Inspector considered each appeal on its own merits, to avoid duplication, the appeals have been dealt with together. Therefore see summary for MC/21/3204 above.

An application for an award of costs is refused.

MC/21/0790

215 King George Road, Weeds Wood, Chatham – Walderslade Ward

Refusal – 11 June 2021 – Delegated

Construction of a two storey extension to side and a single storey extension to rear – Demolition of existing conservatory and store room

Allowed – 9 June 2022

Summary

The main issue is the effect of the proposal on the character and appearance of the local area, with reference to tree works.

The appeal property is an end of terrace two storey house located at the end of a close on King George Road. The side of the house faces onto Norton Grove. There is limited space between the side boundary of the appeal property with the highway, where street trees are located. The implementation of the proposal would require the removal of a street tree directly adjacent to the appeal property.

The appellant has proposed a condition that the loss of a beech tree required for the implementation of the proposal be mitigated by a condition to require the planting of 2 replacement street trees nearby.

The Inspector acknowledged the replacement trees will be younger and, at first, smaller than the tree that would be removed. However, as the trees already existing

are of a variety of species and sizes, the Inspector concluded this would not be so significant to the extent that this would be detrimental to the local street scene as they will grow over time and would not, therefore, cause any harm to the character and appearance of the local area.

The removal of the existing tree adjacent to the appeal site could, therefore, be satisfactorily mitigated through the planting of the replacement trees. The Inspector added a condition requiring tree protection during development and the planting of 2 new street trees.

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
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 Mierscourt Road, Rainham	Outline application for 50 dwellings – resubmission	Dismissed	For	Unilateral Undertaking 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.

Appeals 2021/2022

Ref.	Site	Proposal	Decision type	Costs	Comment