

## **PLANNING COMMITTEE**

**14 DECEMBER 2022**

### **REPORT ON APPEAL DECISIONS 1 JULY 2022 TO 30 SEPTEMBER 2022**

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 24 appeal decisions were received between 1 July 2022 and 30 September 2022. Six of these appeals were allowed, which included one Committee decision which overturned the Officer recommendation and one relating to enforcement. 18 appeals were dismissed.

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 a 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 2019 to March 2021, shows the number of decisions overturned at appeal for major applications is 0.8% and 0.6% 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. Recommendation

7.1 The Committee is asked to 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 July 2022 to 30 September 2022.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/07/2022 and 30/09/2022**

**MC/19/0624**

**The Chestnuts, Matts Hill Road, Rainham – Rainham South Ward**

Refusal – 03 May 2019 – Delegated

Retrospective application for change of use of land for gypsy site and stationing of caravans for residential use with associated hard standing, entrance gate, fencing, utility block and cess pool.

Allowed – 28 July 2022

**Summary**

Appeals A & B are against an enforcement notice issued on 10 June 2019 under reference ENF/18/0318.

Appeal C is against the refusal of the retrospective planning application.

The Planning Inspector directed that the enforcement notice be corrected by the deletion of the text under 'the matters that appear to the local planning authority constitute the breach of planning control' and its substitution with the following: 'without planning permission, the breach of conditions 1 and 2 of planning permission ref. MC/13/3164, dated 19 June 2014, relating to a temporary permission which expired on 31 December 2018 for change of use for caravan site for residential purposes, stationing of one mobile home, one touring caravan, one small portacabin with associated hardstanding and cess pool'.

Subject to this correction the appeals A & B are allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made.

In allowing the previous appeal in 2010, the Inspector considered the main issues to be the effect on the character and appearance of the surrounding area, which falls within the Kent Downs Area of Outstanding natural Beauty (AONB) and also the North Downs Special landscape Area (SLA). The Inspector felt it also necessary to consider the need and provision of gypsy & traveller sites within the Medway area.

Matts Hill Road is a winding, tree-lined, rural lane along which are several residential properties of varying size, age and design, mainly set back from the lane. The appeal site is a small triangular shaped piece of land with a mobile home positioned to its rear. The site is fenced and screened by unbroken mature laurel hedgerow, with the access point having been walled and gated. When the gates are shut there can only be very limited views into the site.

Local Plan policy H13 sets out criteria as to the suitability of land for occupation by gypsies and travellers, which requires that the site can be physically contained and adequately screened from surrounding land. The Inspector considered that due to the scale and limited extent of the appeal site, it has little impact on the countryside location and its wider character and that the small scale nature of the development allows for its integration into the surrounds. The Inspector is aware of one other gypsy/traveller site, known as Scarlett's Meadow, within the area of Matts Hill Road but considered this does not suggest an over-concentration or dominance of sites.

The site is not so accessible to essential local services, facilities and public transport links as to reasonably satisfy policy requirements and such development cannot be said to contribute to and enhance the natural environment. However, the Inspector concluded that the traditional gypsy lifestyle can contribute to reduced work journeys due to their travelling lifestyle and overall there is little encroachment into the countryside.

The Inspector also afforded considerable weight to the clear immediate need for gypsy and traveller sites to be allocated within Medway and that the clear and persistent failure of policy strongly supports the appellants' case. The appellants have two young children and the Inspector also considered that having a settled base would be in the best interests of the children.

The Inspector could see no reason why the development should cause damage to the nearby ancient woodland nor why it would bring about contamination to land and groundwater.

Having considered the need for the conditions put forward by the Council, having regard to the site's planning history and his findings, the Inspector concluded there is no need to condition that the use by subject to either personal or time limitation conditions. However, in the interests of the appearance of the site, the Inspector considered it is necessary to limited the number of caravans on the site to no more than a total of two, allowing for one static/mobile home and one tourer. It is also necessary to prevent commercial activities on the land and the stationing/storage of vehicles over 3.5 tonnes.

## **ENF/18/0318**

### **The Chestnuts, Matts Hill Road, Rainham – Rainham South Ward**

Enforcement Notice served – 10 June 2019

Without the benefit of planning permission the material change of use of the land to a residential caravan site by the stationing of 2 mobile homes and 1 touring caravan for residential purposes and the carrying out of operational development to facilitate that use, comprising the erection of a utility block, brick pillars, entrance gate, fencing the laying of hardstanding and installation of a cess pool

Allowed – 28 July 2022

See summary above for MC/19/0624

**MC/21/0511**

**54 Grange Road, Gillingham – Gillingham North Ward**

Refusal – 19 April 2021 – Delegated

Change of use from class C3 dwelling house to class C4 HMO with a single storey extension to rear.

Allowed – 19 August 2022

### **Summary**

The main issues are the effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to noise or other disturbance, the living conditions of future occupants with particular regard to bedroom sizes and the integrity of the Medway Ramsar and SPA.

The appeal site is a mid-terrace dwelling with neighbouring properties appearing to be in residential use and the surrounding streets are characterized by residential terraces. The internal layout of the appeal property has been adapted to favour an HMO use.

The Inspector acknowledged that HMOs are occupied by adults who are more likely to have individual daily schedules but found no firm information to demonstrate how any increased occupation, including any use of the garden, when compared to the use of this property by a family or by up to 5 individuals living together, would lead to excessive noise or other disturbance. It is also noted that the additional room would take the form of a rear extension which would not be adjacent to party walls with neighbours. The communal living area to the front of the ground floor acts as more of a thoroughfare through to the kitchen in the basement. As such it seems unlikely to be heavily used and thus generate excessive noise or other forms of disturbance. In fact, there may be less noise than might be associated with family occupation. As such the Inspector concluded that the proposal would not cause unacceptable harm to the living conditions of neighbouring occupiers.

The officer report acknowledges that the bedrooms meet the Nationally Described Space Standards for single bedrooms. However, some of the rooms are shown on the submitted drawings as having double beds and would fall below the space standards for double rooms. The Inspector considered that the very nature of the proposal would limit the total number of occupants to 6 people and thus would inherently limit the occupation of each bedroom to one person. As such the bedroom sizes would not harm the living conditions of occupants.

The Inspector concluded that the mitigation measures secured by the requisite contributions via a Unilateral Undertaking would be effective to adequately overcome any adverse recreational effects of the proposal and would not adversely affect the integrity of the Medway Ramsar and SPA.

**MC/21/1891**

**82 Jeffery Street, Gillingham – Gillingham North Ward**

Refusal – 25 October 2021 – Delegated

Demolition of existing buildings and construction of a pair of 2 bedroomed detached bungalows and one 2.5 storey block of flats comprising three 2-bedroom flats and nine 1-bedroomed flats with associated amenity space, refuse, cycle storage and associated car parking

Allowed – 14 September 2022

### **Summary**

The main issues are the effect of the proposed development on the living conditions of neighbouring occupiers on Victoria Street with regard to privacy and whether the development would make appropriate provision for infrastructure needs, with particular regard to the effect of the development on Medway Ramsar and SPA.

The appeal site is located on the edge of Gillingham's town centre and surrounded by two and three-storey terraced houses on Jeffrey Street, King Street and Victoria Street.

The site is used as a timber merchants and planning permission was granted in 2017 for the demolition of the existing buildings and construction of a pair of 2 bedroomed detached bungalows and one two storey block of flats. The proposed development differs only in respect of changes to the roof form to allow for the provision of two further one-bedroom residential units within the roofspace and dormer windows to the roof.

There is a difference of opinion between the appellant and the Council as to the number of properties utilising the shared amenity space. The Inspector found it would be reasonable to assume that a number of properties at Nos 17-27 Victoria Street have access to the shared amenity space and that the space would be overlooked at lower ground, ground and first floor windows in other flats. While both east-facing dormer windows would face the shared amenity space, they would be located some 9.5 metres from the site boundary. The Inspector concluded that given existing overlooking by other flats, the extent of vegetation and the distance of the proposed dormer windows from the amenity space, the dormer windows would not cause harm to the privacy of neighbouring occupiers and that consequently the proposed development would not have a harmful effect on the living conditions of neighbouring occupiers on Victoria Street, with regard to privacy.

The Inspector concluded that the proposed development would make appropriate provision for infrastructure needs arising from the development, with particular regard to mitigating the effect of the development on the North Kent Marshes SPA/Ramsar sites via the provision of a financial contribution.

## **MC/21/2495**

### **1A Horsted Avenue, Chatham – Rochester South & Horsted Ward**

Refusal – 22 October 2021 – Delegated

Installation of 1200mm high fence incorporating trellis 600mm to the front/side, 1500mm steel access gate together with a detached bike shed to the side.

Allowed – 29 July 2022

#### **Summary**

The main issue in this appeal is the effect of the proposal on the street scene.

The appeal property relates to a first floor flat, within an end of terrace house, converted into two flats, on the corner of Horsted Avenue with Randall Road, within a predominantly residential area. There is an existing 1m fence running around the front garden.

Horsted Avenue and the surrounding roads have a wide variety of frontage treatments. Solid and taller walls and fences are particularly evident where gardens to end of terrace properties side onto one of the roads. The part of the fence proposed as close boarded fencing would not be significantly higher than the existing fence and the use of trellis fencing above the 1200mm fence would assist in reducing the solid mass of the proposal. The Inspector did not consider that the proposed boundary treatment would look harsh or would result in a hardening impact on the street scene.

The Inspector also concluded that the proposed bike shed would be of modest proportions and with a maximum height of 1600mm it would be largely screened by the proposed fence. It would not therefore be a dominant feature within the street scene.

## **MC/21/2643**

### **42 New Road, Chatham – Chatham Central Ward**

Refusal – 26 October 2021 – Delegated

Change of use from a 6 person, 6 bedroom HMO (use class C4) to a 7 person, 7 bedroom HMO (sui generis)

Allowed – 11 July 2022

#### **Summary**

The main issue is the impact of the proposal upon the living conditions of a future occupier of the proposed new accommodation.



The appeal property is a four storey Georgian house typical of those that characterise the New Road, Chatham Conservation Area. Several rooms within the property occupy the bay windowed rooms fronting onto New Road. To the upper level there are what appear to be two original rooms within a mansard type roof served by partial dormer windows. These two rooms are reached through the existing central house stair and are located opposite to one another across a small landing area. The proposal seeks to utilise one of these rooms as another room of occupation. Within this room would be included a small en-suite facility that would allow a future resident to have sanitary facilities immediately accessible to them without the need to leave their private space.

The Inspector found the room is of a reasonably good proportion and in good repair. The occupant would also have access to use the shared living, dining and kitchen facilities to the ground floor, thereby increasing the opportunity for interaction and a change of scenery.

The Inspector concluded that the internal space dimensions would be in excess of those set out in the Nationally Described Space Standards and the conditions of the accommodation would be generally of a good quality.

There is parking available to the rear of the property and the Inspector found no conflict between the needs of parking and the facilities provided locally if it is to be supported by a Parking Management Plan.

The Inspector noted that there are no changes externally to the building that would impact upon the character and appearance of the conservation area and therefore found no harm to the historic environment through this proposal.

An application for full award of costs is refused as the Inspector concluded the Council have acted reasonably and well within their remit as an assessing authority.

## 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 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