

## **PLANNING COMMITTEE**

**19 APRIL 2023**

### **REPORT ON APPEAL DECISIONS 1 JULY 2022 TO 31 MARCH 2023**

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 45 appeal decisions were received between 1 July 2022 and 31 March 2023. Twelve of these appeals were allowed, which included three Committee decisions which overturned the Officer recommendation, one with an award of costs plus one relating to enforcement. One spilt appeal decision was made in relation to the non-determination of a tree application. 31 appeals were dismissed.

The Council raised an objection to an adjoining authority consultation, which was subsequently allowed at appeal. This is also included within this report for information purposes.

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 October 2019 to September 2021, shows the number of decisions overturned at appeal for major applications is 0.8% and 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. 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 31 March 2023.

Gov.uk statistical data sets Table P152 and Table P154

**APPEAL DECISION SUMMARY**

**Appeals decided between 01/07/2022 and 31/12/2023**

**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 – Committee overturn

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.

## **MC/21/1502**

### **117 Watling Street, Gillingham – Watling Ward**

Refusal – 5 August 2021 – Committee overturn

Change of use from Opticians (Class E) to hot food takeaway (Sui Generis) with alterations to front façade for increased glazing.

Allowed – 12 December 2022

## **Summary**

The main issue is the effect of the proposed development on whether or not the site is a suitable location for the development with particular reference to health impacts and vitality and viability of centres.

The appeal site sits outside but close to a defined retail core area or local centre. Policy R18(ii) of the Medway Local Plan sets out that hot food take-away uses will be

permitted outside core areas provided the presence of any similar uses in the locality, and the combine effect that any such concentration would have, would be acceptable. The Hot Food Takeaways in Medway Guidance Note 2014 (HFTGN) states that hot food takeaway uses should not normally exceed 15% of the overall linear meterage in neighbourhood or larger local centres.

The appellant states that commercial uses along Rainham Road and Watling Street cover approximately 600 linear metres and hot food takeaways, including the proposal, would not exceed 15% of this overall linear meterage. The Council have used a different method to calculate the linear meterage using a reduced frontage extending from the junction with Derby Road to the Post Office/convenience shop. This reduced frontage would result in the concentration of hot food takeaway uses exceeding the 15% threshold, at 23%.

The Inspector found no clear evidence as to how the main frontage should be calculated in this case or even that the HFTGN applies to the appeal site given it sits outside a designated centre. As the Council has not provided detailed reasoning to challenge the appellants calculation, the Inspector, was more persuaded in this case, that the commercial uses within the frontage, as a whole, should be assessed given their proximity to each other. Consequently, the Inspector found that the proposed development would not exceed 15% of hot food take away uses within the main frontage therefore retaining a diverse balance of uses.

The Inspector concluded the site would be a suitable location for the development with particular reference to health impacts and the vitality and viability of centres.

While the proposed development would generate vehicular activity and demand for parking, the Inspector found no substantive evidence to suggest this would be unacceptably harmful.

The Inspector has imposed conditions to control opening hours and manage noise from the premises and did not consider that light pollution and anti-social behaviour could be solely attributed to the appeal premises. There is other legislation in place to control these matters.

The need for a hot food takeaway has been questioned as well as competition with existing business. The Inspector noted it is not the role of the planning system to restrict competition.

The Inspector also found no evidence that a school exists within 400m of the proposed development.

**MC/21/2101**

**Lloyds Banking Group Operations Centre, Bailey Drive, Gillingham Business Centre – Watling Ward**

Refusal – 16 September 2021 – Delegated

Prior notification for a proposed change of use from offices B1(a) to dwellinghouses (Class C3) to provide 44 new residential units incorporating sixteen 1-bed and twenty-eight 2-bed units.

Allowed – 27 January 2023

## **Summary**

The main issue is whether the proposed development provides adequate natural light in all habitable rooms of the dwellinghouses.

The appeal site is occupied by a vacant large three-storey building which was previously used as an office with the land surrounding it used for associated car parking. Ambley Wood directly adjoins the boundaries to the south and west of the appeal site, which consists of trees which are dense and significant in size. The proposed residential units on the southern and western elevations of the appeal building would face this existing woodland.

The internal daylight report submitted with the application for prior approval indicated that all of the proposed habitable rooms would meet the desired average daylight factor value. However, this did not take into consideration the presence of the woodland and its proximity to the boundaries. Consequently, another assessment was undertaken by the appellant as part of the appeal to include the potential tree coverage. This indicates that all proposed habitable rooms would still meet the internal daylight targets recommended with the BRE guidelines.

During the site visit, the Inspector noted that the existing building was well separated from the southern and western boundaries and the trees within Ambley Wood. It was also noted that the existing windows on the appeal building are generous in size and currently let ample light into the building. Due to the building being unoccupied at present, the area of land to the south and west of the appeal building is somewhat overgrown and the canopies of the neighbouring trees hang over the boundaries. The appellant has stated that this could be cut back to the boundary to increase the space between the building and the trees and further improve the levels of natural light in the proposed habitable rooms. The Inspector concluded that whilst the height and dense nature of the trees may partially restrict some daylight from entering the building, this would largely be in the spring and summer months when the trees have their leaves and when daylight levels are greatest.

The Inspector noted that the council raise concerns regarding an increased pressure to remove trees from the proposed development but felt this is not a matter for consideration under the prior approvals process.

**MC/21/0355**

**Garages at Berkeley Mount, Old Road, Chatham – Chatham Central Ward**

Refusal – 5 May 2022 – Committee Overturn

Outline application with all matters reserved for the demolition of garages to facilitate the construction of a block of flats consisting of 4 one-bedroom flats with associated parking.

Allowed – 3 February 2023

### **Summary**

The main issue is whether the proposal would result in an over-development of the site.

The Inspector is satisfied that the Council has consistently throughout the application process treated the plans as indicative. It has been made clear in the Committee report that details of access, layout, landscaping, scale and appearance have been reserved for consideration at a later date and are not subject to the outline planning application.

Whilst the proposed 4 one-bedroom flats would introduce a larger structure on the appeal site, the built form would reflect the scale and extent of the block of flats on the adjacent site to the west. The Inspector is satisfied that the proposed level of accommodation could be facilitated by this site and the exact layout of the scheme would be agreed at reserved matters stage.

The Inspector considered that the proposed residential development of the site could be achieved without adversely affecting the character of the surrounding landscape, including the adjacent New Road Chatham Conservation Area (CA). Again, the specific design and appearance of the scheme would need to be addressed at the reserved matters stage.

In principle, the illustrative plans identify that the development could be located to ensure that adequate levels of privacy and outlook would be provided for future occupiers and off-street parking and a cycle store could be provided at ground level. The Inspector is not able to make a detailed assessment of residential amenity at this stage as this would be assessed at the reserved matters stage.

The Inspector concluded that the appeal site would be able to accommodate 4 one-bedroom flats and that the development could be designed and constructed in a manner that would provide acceptable standard of amenity for future occupiers and represent an efficient use of land.

### **MC/22/0100**

#### **Bell Farm House, Cooling Street, Cliffe – Strood Rural Ward**

Refusal – 17 March 2022 – Delegated

Construction of a replacement garage with attached tool store – demolition of existing double garage.

Allowed – 16 February 2023

## **Summary**

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

The appeal site is within a countryside location and comprises a substantial detached dwelling within a large garden. The house within the appeal site is set back from Cooling Street by a comparatively large front garden area. A tall and thick roadside hedgerow along the site frontage interrupts views into the site from the street to the front.

The proposed garage and tool store building would be both taller and have a larger footprint than the modest single storey garage building it would replace and would have substantially lower eaves and ridge heights than the host dwelling.

The neighbouring barn and the large outbuilding close to it, are both taller than the proposed development and are located to the rear of the houses which front on to Cooling Street. The Inspector found it would not therefore be visually prominent or out of keeping with other development within this location. There is a wide variety in the external materials, designs and sizes of the buildings within the row of properties fronting Cooling Street. The proposed development has been designed to resemble a traditional Kent barn and would therefore not be harmful to the established character or appearance of the area.

The appellant advises that the building is sought to enable the internal storage of 4 cars as well as to store tools. Such use would be incidental to the residential use of Bell Farm House. If the appellant intended to use the proposed building for purposes which are not incidental to the dwelling, then a separate planning permission would be required to authorise an alternative use.

The Inspector therefore concluded the proposed development would not harm the character and appearance of the area.

## **MC/21/3518**

### **310A High Street, Chatham – River Ward**

Refusal – 2 March 2022 – Delegated

Change of use from Class E (Retail) to Sui Generis (Hot food takeaway).

Allowed – 1 March 2023

## **Summary**

The main issue is the effect the development would have on highway safety.

The appeal site is a vacant ground floor unit located on the corner of High Street and the brook. The unit sits within a three storey building, with another commercial unit in use as a restaurant also at ground floor, and residential flats on the upper floors.

This part of the High Street is commercial in character and there are a mixture of restaurants, shops and a public house within the immediate context.

The appeal site has previously been used as a retail unit. The Inspector found it to be likely that the appeal proposal is not likely to lead to a significant intensification in the number of comings and goings across the day compared to what the site could be used for.

The peak period for customer and delivery driver visits is likely to extend more than a single hour between 17.00-18.00 hours. The Inspector therefore found it is logical that the busiest period of the day would be throughout early and late evening, which are likely to be outside of the peak periods of pedestrian activity within the town centre.

The Inspector noted four other hot food takeaway units located within close proximity to the site. The Council has not brought to the Inspector's attention any known existing highway safety issues related to these nearby takeaway uses. It is therefore unclear how the proposed use would have a more significant impact on highway safety than the existing takeaway uses which are currently in operation.

There are parking restrictions in place immediately outside the site, which prohibit parking and waiting outside the premises. The Inspector noted that similar restrictions are in place for a number of commercial units on the High Street. For this reason delivery drivers should not park at the front of the premises thereby conflicting with pedestrian movement. For this reason the Inspector concluded that the proposed development would not harm highway safety.

The Inspector has included the Council's suggested conditions to limit the opening hours and requiring a scheme for the extraction and treatment of cooking fumes in order to protect the living conditions of neighbouring residential occupiers.

## **TPA/20/1994**

### **2 Readscroft Road, Parkwood – Rainham South Ward**

Non-determination

Oak – Fell and replace

Split decision – 13 January 2023

### **Summary**

The main issues are whether the Oak tree has sufficient public amenity value to warrant the degree of protection afforded by the TPO, and if so, whether the reasons presented in support of the appeal proposal are of such weight as to outweigh the need for continued protection.

The oak tree stands in a rear garden, it is clearly seen, either fully or partially, from a wide variety of public vantage points throughout the Parkwood estate. The tree is a

large, mature specimen, with a height of around 15m and a spread of about 10-12m and is an attractive and visually pleasing example of its species.

The tree is seen in the context of a densely built-up residential area where large trees are scarce. The appeal tree provides a valuable element of greenery, maturity, shade and visual relief. It also helps to maintain some variety in the range of wildlife habitats available and makes a valuable contribution to the local environment.

During a site visit the Inspector viewed the Oak tree stands at a centre of a group of quite modestly sized rear gardens and its outer branches encroach over parts of some of the neighbouring gardens. It is indisputable that the tree will have some impact on the amount of sunlight and daylight received by some of those neighbouring properties. In the absence of any technical evidence, the Inspector found that the effect of the Oak tree on sunlight and daylight is not so severe as to result in living conditions that could be considered unacceptable.

The Inspector appreciates that falling branches could cause serious injury or substantial damage. However, as there is no structural weakness or defect detected in the tree there seems no reason to believe that the tree's propensity to drop branches is likely to be any greater than that of any other oak of a similar size and age. It is also recognised that clearing large volume of leaves, acorns and other debris requires a good deal of hard work but this is a natural part of any tree's life cycle and an inevitable consequence for those who live close to trees. The Inspector concluded that dealing with these issues do not justify the loss of the tree.

The Inspector does not dispute that moss and algae, together with Sap, is a significant problem at certain times of the year. However, these effects are likely to be capable of being kept at bay by means of regular maintenance or replacing items which are not well suited to this type of environment.

The Inspector was shown a number of cracks in the internal and external walls of the appeal property's former garage, which is now a dining room. In the absence of any structural survey or other technical investigation, the Inspector found there is no positive evidence of any causal link to the tree. Felling the tree on the grounds of suspicion alone would not be justified.

The Inspector found the tree to be in a sound and healthy condition and would appear to have a long remaining life expectancy and concluded that the tree makes an important contribution to the character, appearance and biodiversity of the Parkwood estate. Due to the fact that it would take many decades for a new tree to reach a similar stage of maturity, replacement planting would therefore not compensate for the loss.

The Inspector concluded that pruning works to lift the crown to 6m could be carried out without harm to the tree's amenity value. This is subject to conditions which controls the extent of the works and the standard to which the works must be carried out.

**MC/21/1796**

**66 Bush Road, Cuxton – Cuxton and Halling Ward**

Refusal – 13 September 2021 – Delegated

Change of use from butcher with integral post office (Class E) to a hot food takeaway (Sui Generis)

Allowed – 22 March 2023

**Summary**

The main issues are the effect of the development on the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance; highway safety; and the health and wellbeing of future customers.

The appeal site is located within a built-up and predominantly residential area and forms part of a 3-storey end of terrace property. A small number of commercial businesses occupy the ground floor of the properties within the terrace. The commercial unit which comprises the appeal site is currently vacant. The other 3 ground floor units within the parade are in use as a hot food take-away; a convenience/grocery store; and a hairdressing/barber salon.

The use of the appeal site as a hot food takeaway may result in an increase in the number of customers and delivery personnel who would visit the site during evening hours. The Inspector has been presented with no cogent evidence to suggest that this is not already the case with respect of at least some of the existing commercial units within the parade. On this basis, occupiers of the residential apartments and houses within the area would already experience a degree of noise and disturbance associated with the operation of existing commercial premises during the daytime and into the evening.

The Inspector accepts that many customers and delivery personnel would use private vehicles to get to and from the site. The starting of vehicle engines and the closing of car doors would be perceptible by occupiers of the nearby residential properties, as would the normal conversation of those who choose to wait outside whilst food is being prepared. Given the general activity levels within the area, and the proposal to close by 22:00 each day, the Inspector felt the increase in the level of noise experienced by occupiers of the neighbouring residential properties would not be unacceptably harmful.

The level of information provided by the appellant with respect of proposed odour management and ventilation is insufficient to enable the Inspector to determine that the proposals would not cause unacceptable harm in terms of noise and odours on the living conditions available to the occupiers of nearby residential properties. The Inspector concluded the imposition of appropriately worded conditions would prevent the development from causing unacceptable harm in respect of these matters. Such conditions would require the submission of a scheme for protecting the occupiers of the nearest residential property from noise resulting from the use of the operation of



machinery and equipment within the premises. They would also require the identification and implementation of suitable mitigation measures in respect of odours.

To the front of the parade is a bank of unrestricted parking spaces. There is also unrestricted on-street parking on the opposite side of Bush Road from the appeal site. The Inspector accepts there is a high level of parking stress within the area. However, the vacant premises could be brought back into use within Class E without requiring planning permission. It has not been demonstrated that demand for parking associated with the proposal would be materially different from that which would arise from the use of the premises within Class E. The Inspector cannot therefore conclude that the proposed development would lead to a demonstrable increase in harm to highway safety in the area.

The site is in a location which is within view and close walking distance of a foundation and key stage one school. It is proposed that the takeaway would be open only between the hours of 16:00 and 22:00 each day, which is outside of typical school hours. Having regard to the guidance contained with the Hot Food takeaways in Medway Guidance Note 2014, the Inspector considers it necessary to impose a condition limiting the opening hours to between 17:00 and 22:00 each day to ensure adequate protection of the health and wellbeing of children.

Concern has been raised regarding the storage of waste arising from the proposed use of the site. The Inspector considers there is sufficient space within the site for waste to be appropriately stored and managed without causing unacceptable harm.

No cogent evidence has been put forward from which to conclude that the development proposal would result in an increase in anti-social behaviours within the area.

## **MC/19/2361**

### **Patmans Wharf, Upnor Road, Upnor – Strood Rural Ward**

Refusal – 27 August 2021 – Committee

Change of use from boat storage yard to residential, construction of six 3 bed terraced houses and two 2 bed flats with associated landscaping and parking

Allowed with costs – 27 March 2023

## **Summary**

The main issue is whether the proposal would provide a suitable living environment for future occupiers with regard to noise.

During the appeal process a number of Noise Impact Assessments were submitted by both parties. An updated Statement of Common Ground was submitted during the hearing which states that a noise mitigation solution has been arrived at, which both parties agree would provide an acceptable noise climate for future residents of

the scheme. Accordingly, the Council confirmed that it no longer defends the reason for refusal stated in the decision notice.

The proposed noise mitigation scheme includes windows to living rooms and bedrooms facing the river to have a minimum acoustic performance. These spaces would also need to be provided with a suitable ventilation system to avoid the need to open windows for ventilation and to avoid overheating. In addition, tall screens would need to be provided along the quayside and separating each garden area. The Inspector concluded these measures could be controlled via suitably worded conditions.

### **MC/19/2361**

#### **Patmans Wharf, Upnor Road, Upnor – Strood Rural Ward**

Refusal – 27 August 2021 – Committee

Award of costs application

Partially allowed – 27 March 2023

#### **Summary**

Additional points raised by the applicant during the hearing include an incomplete Statement of Case by the Council, Council not sharing legal advice with the applicant with respect to the use of the jetty and late evidence being offered at the hearing.

The Council explained during the hearing that they were only able to visit the site a few days before the hearing due to work commitments. During this visit the Council observed barges being docked at the jetty which resulted in further evidence being put together prior to the opening of the hearing. The Inspector felt this reason does not justify the request to submit late evidence at the hearing.

The Inspector could see no reason why the noise mitigation scheme could not have been agreed at an earlier stage of the appeal. As such, the Inspector found the request to submit late evidence during the hearing constitutes unreasonable behaviour and as a result the applicant incurred wasted expense in attending the reconvened hearing. Therefore, a partial award of costs is justified.

### **MC/22/0440**

#### **Land off Otterham Quay Lane, Upchurch**

Raised Objection – 14 March 2022 – Adjoining Authority Consultation

Outline application for up to 74no. dwellings with public open space, landscaping and sustainable drainage system and vehicular access point.

Allowed – 17 March 2023

## Summary

The main issues are whether the proposal would provide a suitable site for housing, having regard to Swale's Settlement Strategy; its effect on the intrinsic value, landscape setting, tranquility, and beauty of the countryside and its accessibility to services and facilities. The effect of the proposal on the integrity of the features of national and European nature conservation sites at Medway Estuary and Marshes should also be considered.

The site is a large parcel of land to the north of Lower Rainford Road and west of Otterham Quay Lane, within the Important Local Countryside Gap between Upchurch and Medway. The presence of a commercial orchard within the site is characteristic of the historic pattern and use of land within the Kent countryside and is part of the agricultural land, north of Lower Rainham Road, that disconnects the built edge of Rainham from other development and the Medway Estuary further north. There are houses dispersed along the frontages of Otterham Quay Lane further north and these developments are within the Gap. Beyond the furthest western extent of the orchard, within the area of Medway, there are houses fronting the north side of Lower Rainham Road.

While the site is adjacent to housing developments at the northern edge of Rainham, this is not referred to in Swale's Settlement Strategy. The Inspector suggests the site is therefore situated within the open countryside. It was noted that the appeal scheme is indicative but would amount to a development of significant proportions and prominence in the countryside to the edge of Rainham. The proposal would therefore permanently change the rural character of this edge of the Borough. There would also inevitably be a marked change in the way in which the existing Public Right of Way and the land within the site are experienced by those using these routes.

Nevertheless, the Inspector concluded the visual effects of the proposal are likely to be similar to the impact of other developments that have extended north of Rainham. Views northwards are likely to be seen against the backdrop of rising land to the north and east. In the opposite direction, they are also likely to have a similar appearance to existing built forms in the foreground, including at Gills Terrace and south of Lower Rainham Road. The Inspector found the Landscape Visual Appraisal to be well-reasoned and accurately portray the effect of the proposal and that the settlement would not undermine the purposes of the Gap between Upchurch and Medway. However, the Inspector acknowledged the proposal would result in some harm to the beauty of the countryside, albeit this would be limited due to the site's relationship with existing built form to its north and south.

The appeal site is also located north of the centre of Rainham and its facilities and services mean that future residents of the site would be likely to gravitate there to access most of their day-to-day needs. The Inspector was mindful that the routes that future residents would be likely to take to and from Rainham on foot or by bicycle would be through residential areas with speed limits of 30mph and served by streetlighting, dedicated footways and crossing points and would not be inconvenient, unpleasant or unrealistic routes to take.

The Inspector acknowledged that some journeys would be likely made by vehicle, facilities to enable bus travel and the ability to be able to walk and cycle, together with the Car Club Scheme proposed, would mitigate any potential harm to air quality and would offer alternative sustainable modes of transport to reduce dependency on private vehicles. With this in mind, the Inspector concluded the proposal would be unlikely to lead to a harmful increase in the amount of unsustainable journeys made from the appeal site.

The northern edge of the site is located approximately 0.05km from the Medway Estuary and Marshes Special Protection Area (SPA) Ramsar site and Site of Special Scientific Interest (SSSI). Contributions made through the Strategic Access Management Monitoring Strategy (SAMMS) secured by a S106 agreement should fund mitigation works to control any predicted effects on the environment as a result of the proposed development.

The proposal would also be subject to controls over the design of the proposed drainage system and measures to reduce the impact of the construction of the development and air quality, as set out in the proposed planning conditions and S106 agreement.

Consequently, the Inspector is satisfied that the proposed development would not adversely affect the integrity of the European sites protected under the Habitats Regulations or damage the features for which the SSI has been designated.

The Inspector also acknowledged that the appeal scheme includes some considerable and significant benefits, including housing, affordable housing and benefits to the local and wider economy. Whilst the proposal would conflict with some policies and the development plan, when assessed against the policies in the Framework as a whole any adverse impacts do not justify refusal of planning permission.

## 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 2020/2022**

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. £3,106.99 received.
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. £79,500 received.
MC/21/2361	Patman's Wharf, Upnor Road	Change of use from boat storage yard to residential, construction of six 3-bed terraced houses and two 2-bed flats	Allowed	Partial against	Unreasonable behaviour resulted in wasted expense in the appeal process