

PLANNING COMMITTEE

22 NOVEMBER 2023

REPORT ON APPEAL DECISIONS 1 JULY 2023 TO

30 SEPTEMBER 2023

Portfolio Holder: Councillor Simon Curry, Portfolio Holder for Climate Change and Strategic Regeneration

Report from: Mark Breathwick, Assistant Director, Culture & Community – Regeneration Culture Environment and Transformation

Author: Dave Harris, Chief Planning Officer

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 nine appeal decisions were received between 1 July 2023 and 30 September 2023. Three of these appeals were allowed, which included one Committee decision which overturned the Officer recommendation. There were no appeals in relation enforcement. Six appeals were dismissed, which included one Committee decision which overturned the Officer recommendation to approve the application.

A summary of appeal decisions is set out in Appendix A.

A report of appeal costs is set out in Appendix B.

1. Recommendation

1.1 The Committee is asked to consider and note this report which is submitted to assist the Committee in monitoring appeal decisions.

2. Budget and policy framework

2.1 This is a matter for the Planning Committee.

3. Background

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

4. Advice and analysis

4.1 This report is submitted for information and enables members to monitor appeal decisions.

5. Risk management

5.1 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.

5.2 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 24 months to the end of March 2022, shows the number of decisions overturned at appeal for major applications is 1.6% 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.

6. Consultation

6.1 Not applicable.

7. Climate change implications

- 7.1 All planning applications for new development must have a section on Climate Change and Energy Efficiency.

8. Financial implications

- 8.1 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.
- 8.2 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.
- 8.3 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.

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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 2023 to 30 September 2023.

Gov.uk statistical data sets Table P152 and Table P154

APPEAL DECISION SUMMARY

Appeals decided between 01/07/2023 and 30/09/2023

MC/22/2747

45 Hawthorn Road, Strood – Strood South Ward

Refusal – 17 March 2023 – Delegated

Construction of a single storey wrap around extension – resubmission of MC/22/1400.

Allowed – 2 August 2023

Summary

The main issues are the effect of the proposed extension on the character and appearance of the existing dwelling and the streetscene and the effect of the extension on the living conditions of the neighbouring occupiers at Nos 43 and 47.

Hawthorn Road is within a residential area, lined with terraced and semi-detached 2-storey houses. The appeal dwelling is an end of terrace with a relatively narrow side access leading to a garage structure in the rear garden. The property has been extended at the rear by a flat roofed 2-storey extension, attached to which is a conservatory. The 2-storey extension projects by 3.78m from the original back wall, is 3.22m wide and is set off the boundary with the attached neighbour at No. 47 by 0.62m. The conservatory fills the width of the 2-storey extension and projects by a further 2.58m. There remains a substantial amount of rear garden behind the conservatory. No. 43 is also an end of terrace, with a wider sideways leading to a garage, the front of which is in line with the rear-most part of the dwelling.

The proposed single-storey extension would partly be on the footprint of the conservatory, having the same off-set from the boundary with No. 47. However, its depth from the rear of the 2-storey extension would be 3.69m, an additional 1.1m. Whereas the conservatory has a pitch roof, this extension would have a flat roof, which would be 3m high to its top surface. The extension would extend right across to the curtilage boundary with No. 43, including infilling behind the house in the space to the east of the conservatory and 2-storey extension. It would also wrap around the rear of the dwelling, filling the width of the side access, although its front elevation would be 4.67m back from the front of the house.

From within the garden the view back to the house would be principally the single storey extension across most of the width of the garden, with the 2-storey extension projecting out from the back of the original building. The Inspector is satisfied that, from the point of view of the occupiers of the appeal dwelling, and from the public domain, there would be no harmful effect on the character and appearance of the house. As far as the streetscene is concerned, the Inspector considered there would

be little to see. There would be a degree of closure of the gap between the 2 houses, but because of the setback, the effect would be small. There would also be an oblique view of the side elevation across the frontage and side access of No. 43 but the Inspector felt this did not warrant a refusal as it would be little different to a garage in size.

The Inspector found the officer's report on the results of 'a sun on ground' test was not particularly telling as it is not clear what is meant by 'the overall development', nor is there any indication of times of the year when these results would hold true, nor on which areas of the curtilages. The Inspector concluded that as the rear aspect of the neighbours on both sides faces just to the east of south, a single storey structure would have little or no effect on the indoor areas of the neighbouring houses, nor their gardens for the majority of the year.

The Inspector is satisfied that there would be little effect on the character and appearance of the existing dwelling and considers that conditions should be imposed for certainty and avoidance of doubt as to the development permitted and to ensure that the appearance of the development permitted integrates with the existing in a visually satisfactory manner.

MC/22/1339

Land off 143 Berengrave Lane, Rainham – Rainham North Ward

Refusal – 22 November 2022 – Committee Overturn

Construction of 8 residential dwellings; detached garages to plots 2,3 and 8 together with private amenity space, landscaping and associated parking.

Allowed – 9 August 2023

Summary

The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to the local landscape.

The appeal site comprises a smallish paddock of rough grassland and scattered scrub, said to have been formerly part of a horticultural nursery. These are land use types that are not noted as important contributors to the character of the Area of Local Landscape Importance (ALLI). The land is flat, featureless and visually unremarkable. On two sides, the site is enclosed by residential development in Berengrave Lane and Queencourt Close. On its third side, it is bounded by a substantial hedge, beyond which are two further small paddocks and then more house in Nuthatch Place and Lower Rainham Road. The site is publicly visible only from the turning head of Queencourt Close.

The site is undeveloped greenfield land but given that the site is not in any designated green belt the Inspector considered this would not amount to significant harm. The proposed scheme would comprise a mixture of detached and semi-detached dwellings of relatively modest size and height, reasonably well spaced on

the site, with adequate room for gardens, parking and landscaping, which would further minimise the development's overall impact. Based on this assessment, the Inspector concluded that the proposed development would not harm the character or function of the ALLI.

The appeal site lies within a 6km buffer zone around the North Kent Marshes Special Protection Area (SPA) and Ramsar Site. The appellant has made a financial contribution towards measures to mitigate the impacts of disturbance in those areas. The Inspector is satisfied that the mitigation provided would protect the relevant areas or their conservation objectives.

The Inspector appreciates the comments of local residents regarding problems with congestion, parking and air quality on local roads. However, it is considered that the additional impact arising from the proposed eight dwellings would be marginal at most.

Access is available via Queencourt Close onto Berengrave Lane, which seems to the Inspector to have reasonable visibility and therefore has no valid reason to refuse permission on the grounds of highway safety.

The rear windows of the new dwelling on Plot 8 would face towards the neighbouring properties in Berengrave Lane. The distance from that dwelling to the boundary would be around 20m and views would be partly screened by a proposed new garage. The dwelling on Plot 7 would be orientated sideways-on to the boundary and would have only oblique views. The only side window at first floor level would serve a bathroom and would be obscurely glazed. On all the other new plots, the dwellings would face away from existing properties and gardens. On this basis, the Inspector is satisfied that the development would not be likely to give rise to any unacceptable overlooking or loss of privacy.

Any increase pressure the new housing development would have on existing health services and other facilities has to be set in the context of the established need to increase the supply of houses in the district.

Any impacts in relation to wildlife, light pollution and construction processes can be adequately controlled by way of planning conditions. Therefore, the Inspector found the proposed development to cause no harm to the local landscape, or to the area's character and appearance.

MC/22/1002

153 Fairview Avenue, Wigmore – Hempstead and Wigmore Ward

Refusal – 6 July 2022 – Committee Overturn

Change of use from butcher's shop (F2) to takeaway pizza shop (Sui generis) together with the provision of a rear yard area for staff parking and deliveries - Resubmission

Allowed – 11 September 2023

Summary

The main issues are the effect of the proposal on the vitality and viability of the local centre and health of local residents and highway safety through additional parking demand.

The appeal site lies within the Fairway Avenue Local Centre and extends across the northern side of Fairview Avenue and comprises two terraces of shops with a detached commercial garage between. Another hot food takeaway currently exists within the Local Centre.

Policy R18 of the Medway Local Plan permits the presence of any similar uses in the locality providing the combined effect that any such concentration would have, would be acceptable in terms of environmental impact and highway safety. This is expanded upon in the 'Hot Food Takeaways in Medway' Guidance Note 2014. This varies according to whether the Local Centre is considered 'larger' or 'smaller'. As 'Hoath Lane – Fairview Avenue' is listed by the Guidance Note as having been one of the largest recently classified as a neighbourhood centre, the Inspector assumes the Local Centre should be treated as 'larger'.

The appellant has provided calculations which conclude that 13% of the total frontage would comprise hot food takeaways. The Inspector has no evidence to dispute this figure. The Inspector notes the comments of the Public Health Project Officer, who found the frontage would comprise 17% hot food takeaways. However, this is not supported by calculations and excludes no. 169, which is part of the frontage. For this reason, the Inspector considers the proposal would not amount to an unacceptable overconcentration of hot food takeaways.

The Inspector noted the comments of the Public Health Project Officer focuses on obesity trends. Whilst noting the importance of these issues, the Inspector considers the appeal should be assessed on its own merits. Given the absence of evidence of a policy conflict in this regard and the Inspector's findings in respect of the concentration of hot food takeaways, the Inspector found the proposals to be acceptable in terms of health implications.

The officer's report quotes an earlier Inspector's decision of 2020, which related to a similar proposal at the same address (MC/19/2316). The Inspector states 'I have found there would be no harm to health, vitality and viability and that the proposal would broadly accord with the overall strategy which seeks to avoid an over-abundance of hot food within the primary retail function of the local centre'. Given the absence of any significant change in circumstances since that time, The Inspector concludes that the proposal would not cause harm to the vitality and viability of the Local Centre nor unacceptable harm to health.

This terrace of commercial uses is served by an off-street parking area to the front, providing parking spaces for 8 vehicles for up to 20 minutes between 8am and 6pm Monday to Saturday. The traffic survey and analysis submitted by the applicant noted length of stays and monitored visitors to and from the other nearby hot food takeaway. These suggest that a takeaway would create less demand for car parking and would operate over a shorter timescale. The Inspector has no reason to believe

that associated overspill and delivery drivers could not be accommodated and is satisfied that the parking demands created by the proposal could be accommodated safely.

The Inspector considers the issues relating to extraction and operating hours can be dealt with by planning conditions and concluded that the appeal should be allowed.

MC/22/1002

153 Fairview Avenue, Wigmore – Hempstead and Wigmore Ward

Refusal – 6 July 2022 – Committee Overturn

Change of use from butcher's shop (F2) to takeaway pizza shop (Sui generis) together with the provision of a rear yard area for staff parking and deliveries - Resubmission

Costs application allowed – 11 September 2023

Summary

The applicant alleges that the Council's determination of the application was not consistent with the previous planning decisions on the site. The last application, and subsequent appeal, related solely to the matter of highway safety. An Inspector's decision prior to that, relating to a similar proposal on the same site, found the development to be acceptable in respect of the vitality of the local centre and health. The officer's committee report highlighted these important aspects of the planning history. The Inspector feels it is not apparent why matters relating to health and vitality of the centre were then raised again as a reason for refusal of the appeal scheme.

The Planning Policy Guidance (PPG) states that behavior which may give rise to a substantive award of costs against a local planning authority can include persisting in objections to a scheme which an Inspector has previously indicated to be acceptable, and not determining similar applications in a consistent manner. The Inspector considers that both these occurred in respect of the first reason for refusal and caused the applicant to incur unnecessary expense in respect of this issue at appeal.

The Inspector feels there is no substantive evidence of the reasons why the Committee chose to disagree with the appellant's substantive evidence in respect of highway safety. As such, the Council's decision appears to have been based on vague and generalized assertions about the proposal's impact, which were not substantiated. This is considered to be an example of unreasonable behavior as described by the PPG.

Accordingly, the application for costs is allowed. The applicant is invited to submit to Medway council, details of those costs with a view to reaching agreement as to the amount.

MC/21/2328 – Dismissed at appeal

Land South of Bush Road, Near Cuxton – Cuxton and Halling Ward

Refusal – 30 March 2022 – Committee Overturn

Construction of a winery building including café/restaurant and visitor centre with energy centre, car park, access road and landscaping

Summary

This decision relates to one of the biggest applications and appeals that Medway has considered in 25 years. The case was finely balanced. The officers report recommended approval but was very much balancing harm against the benefits of the scheme. At Committee, members initially deferred for a site visit and then following that determined to refuse the application. It was a split vote reflecting the different views and balancing of issues by individual members.

The appeal was dismissed based on its landscape impact in an area of outstanding natural beauty and also the impact on the adjacent conservation area. These were the reasons that the Committee refused it on based on officer guidance as to what could be defended on appeal.

Those residents in Cuxton opposed to the application (there were also quite a number in favour) felt the Council should raise further concerns regarding green belt and traffic impact and safety. The Committee had not included these as reasons for refusal on the advice provided by the Chief Planning Officer and Planning Officers. The Inspector was very clear on these points and that the Council was absolutely right not to refuse on these additional grounds as the Inspector would not have substantiated them. To do so would have potentially risked costs against the Council despite the appeal being dismissed.

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 2021/2022

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.

Appeals 2023/2024

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	Costs cover the expense incurred by the applicant in attending the reconvened hearing due to the late submission of council's evidence. Costs paid to applicant. £4,740 + VAT
ENF/19/0025	1 Dean Road, Strood	Appeal against an enforcement notice issued on 6/4/2021 requiring applicants to a. Demolish the unauthorised	Allowed and enforcement notice is squashed	Against	Council acted unreasonably in issuing enforcement notice which put applicants to unnecessary expense in making appeals

		<p>single storey dwelling</p> <p>b. Remove all debris + associated materials from the property within 2 calendar months</p>			<p>against the notice, preparing statements an evidence that specifically support their appeals and response to the reasons for issuing the notice and making the costs applications. Costs paid £16,032 + VAT</p>
MC/22/1002	153 Fairview Avenue	Change of use from butcher's shop to takeaway pizza shop	Allowed	Against	<p>The applicant incurred unnecessary or wasted expense in the appeal process. Costs requested £3,500.</p>