

Planning Committee

14 February 2024

Report on Appeal Decisions 1 October 2023 to 31 December 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 October and 31 December 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.

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 As part of the reform of the planning system, the Government are focusing on planning committee decisions, with the Planning Inspectorate being asked to start reporting to Government about cases where a successful appeal is made against a planning committee decision, and the final decision is the same as the original officer's recommendation. The overturning of a recommendation made by a professional officer should be rare and infrequent. The Government have reminded the Inspectorate that where it cannot find reasonable grounds for the committee having overturned the officer's recommendation, it should consider awarding costs to the appellant.
- 5.2 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 September 2022, shows the number of decisions overturned at appeal for major applications is 1.8% and 1.0% 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.

Lead officer contact

Dave Harris, Chief Planning Officer
Telephone: 01634 331575
Email: dave.harris@medway.gov.uk.

Appendices

- A) Summary of appeal decisions
- B) Report on appeal costs

Background papers

Appeal decisions received from the Planning Inspectorate for the period 1 October 2023 to 31 December 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/22/2160

Former carpark adjacent to 120 Essex Road, Halling –Cuxton and Halling Ward

Refusal – 2 February 2023 – Delegated

Construction of three dwelling houses with associated landscaping and parking.

Allowed – 6 November 2023

Summary

The main issues relate to the effect of the proposal on the character and appearance of Essex Road and Stake Lane and the locality; and the adequacy of the amenity for future occupiers that would be provided by the open space proposed.

The appeal site is a former car park at the eastern end of Stake Lane and the northern end of Essex Road, where the 2 streets meet at right-angles. To the north of the site is a social club and allotments, whilst to the east is the Maidstone-Strood railway line with tall trees on the boundary. The site is currently surfaced with tarmac and contains a number of small buildings and a caravan.

The site is at the transition of 2-storey houses on Essex Road that generally have limited space on the frontages, and the bungalows, with their low pitched gable roofs and more open frontages. The appeal proposal is for 1 detached house next to the end bungalow at 21 Stake Lane and a pair of semi-detached facing the flank boundary at 120 Essex Road. The officer's report acknowledges the design of these has been carefully considered to match the character of the contrasting styles found along Essex Road and Stake Lane. Consequently, the two-storey element is situated to the rear, thereby, establishing a degree of subservience within the context of the existing built form. As the corner plot is set well back there would be very limited views of the development from the immediate vicinity.

When travelling towards the site entrance along Stake Lane, the Inspector considers that the drive into the development would be only a little more intrusive than the hard standing car parking spaces of the bungalows; and it would only be when transiting the right angle bend in the streets that the extent of hard surfacing would be apparent. The submitted layout does show a planting area and paving rather than tarmac, which could be controlled to give some variation in colour. The Inspector considers the development would be relatedly unobtrusive and that the Council's criticism is an exaggeration of the degree of contrast with the surrounding development.

Since there is some considerable distance between the boundary of the site and 120 Essex Road, the Inspector felt there would not be a sense of enclosure or an overbearing presence. The Inspector concluded that the proposed development would not result in the dwellings appearing cramped and contrived and would not be detrimental to the character of the street scene and the locality.

As the appeal site is brownfield land the Inspector considers there is justification in applying some flexibility in respect of the open space proposed. The Inspector concludes that the gardens proposed are adequate to provide some outdoor living space and room for planting and adequate amenity for future occupiers.

MC/22/0254

Land to the East and West of Church Street, Cliffe – Strood Rural Ward

Refusal – 11 November 2022 – Committee Overturn

Outline application with all matters reserved except for access for a residential development of up to 250 dwellings and a mixed-use community hub together with associated infrastructure including public open space and community facilities comprising a replacement sports ground and pavilion, with accesses from Church Street, Cooling Road and Buttway Lane.

Allowed – 28 November 2023

Summary

The main issues are whether the proposed development would be in a suitable location having regard to access to services and facilities; the effect of the development on the character and appearances of the area and the countryside; the effect of the development on the provision of community facilities, specifically the APCM Sports Ground; and in light of the lack of a five-year housing land supply, the weight that should be given to the relevant Development Plan Policies.

The appeal site comprises an area of land to the east of Church Street and north of Cooling Road, land to the north of New Road and west of Church Street and an area to the west of Church Street and the south of Buttway Lane.

It is not disputed between the parties that the proposed development would result in the expansion of the existing village by around 25%, which may have implications for the existing services and facilities.

The main access between Cliffe, Cliffe Woods and the wider towns and facilities is via the B2000. This is the main link to the wider highway network and is heavily used by vehicular traffic. The proposal includes measures to improve accessibility to wider services and facilities, including the use of the shuttle bus to Strood and the station and extended bus timetabling, improvements to the highway network including further afield to the B200 and A289 junction, and byway RS84 and safety improvements. The development also includes charging points for electric vehicles for both future residents and existing residents.

Although the proposal is in outline form at this stage, an illustrative masterplan has been provided which gives an indication of the potential way in which the development could be approached. The proposal results in a large-scale increase to the village, with proposed residential areas being located largely adjacent to the existing built form. The Inspector considers the proposed development could be carefully and sensitively designed so as to positively reflect and enhance the characteristics of the existing village, without resulting in harm to its character and appearance.

The proposed development would introduce new housing and community facilities within the existing village in proximity to existing residential properties. Substantial technical evidence has been provided including a Transport Assessment and Environmental Statement, which includes various modelling methods to estimate the likely traffic generation and associated implications for the highway network. The Inspector is satisfied that there would not be excessive levels of road noise, nor issues with capacity that would result in adverse impacts to the living conditions of existing residents and their ability to use the surrounding highway network.

Concerns have been raised in relation to noise and air pollution to existing residents as a result of increased traffic levels arising from the development. Based on the technical notes on air quality and noise, taken in conjunction with the environmental statement, the Inspector is satisfied that there would not be any undue harm arising from noise or air pollution as a result of the appeal proposal. The Inspector accepts there will be some disturbance and disruption to the living conditions of future occupiers during the construction period and it was considered that can be managed through a careful construction management plan, secured by condition. However, the Inspector felt that evidence presented demonstrates that the likely level of additional traffic generated by the development would not result in undue harm or disturbance to the living conditions of nearby residents.

The proposed relocated sports ground would provide two football pitches, a cricket pitch, three tennis courts, three cricket nets and a new pavilion, housing two changing rooms. This would go over and above the existing facilities and provide a replacement of a higher standard than existing. The proposal also involves the extension of the existing 30mph speed limit further along Buttway Lane as well as the provision of a new access point into the sports ground and an additional passing bay. The National Highways team have recommended conditions and conclude that the proposed development would not have an unacceptable impact on the safety of the road network.

MC/23/0718

27 Watling Street, Gillingham –

Approved – 17 May 2023 – Delegated

Advertisement consent for the installation of an internally illuminated 48-sheet D-Poster (digital) display to the side of the building.

Allowed – 13 December 2023

Summary

The main issues are whether the disputed condition is reasonable and necessary in the interests of visual amenity and public safety.

The appeal site is located on the western flank elevation of No 27 Watling Street adjoining Chatham Fire Station. Medway Council granted express advertising consent for the replacement of an existing poster board with an upgraded wall mounted digital advertisement with a 48 sheet display. The new advertisement would display static advertisement images at a frequency of once every 10 seconds, with no special effects or video elements to be shown.

The Council applied a non-standard condition that sought to restrict the luminance of the advert to 600 candela/sqm (cd/m^2) during the day and 300 cd/m^2 at night. The Inspector considers it has not been adequately explained by the Council why the digital advertisement should be restricted to 600 cd/m^2 during the day, given that the illumination levels sought by the appellant would be within the recommended levels set out in the Professional Lighting Guide 05 (PLG). Whilst the evening level has been maximised, the daytime level would be half of the recommended luminance as set out in the PLG for the daytime and thus would be appropriate in this regard.

Based on the evidence presented, the Inspector concluded that given its context and positioning in respect to the busy thoroughfare of the A2, there is no reason why a maximum luminance level of 2500 cd/m^2 , would harm amenity outside the hours of darkness.

The site is located in a section of the A2 where there are warning signals, traffic islands and traffic lights with a speed limit of 30mph. given the prevalence of the traffic calming measures and the proximity of the Chatham Fire Station, drivers are more likely to have a heightened sense of concentration on the road and be more vigilant when approaching the site from the west.

The Inspector has no substantive evidence that the bright illumination of the advert or the fluctuation of the display every 10 seconds would distract drivers and increase the risk of collision between vehicles, cyclists, and pedestrians. Consequently, although the advertisement would be visible at the junction with the Fire Station, it would not compromise public safety.

The Inspector concluded that a new express consent be granted without the disputed condition but substituting it with the following condition 7 : 'the maximum level of luminance of the advertisement sign hereby permitted shall be no greater than 2500 cd/sqm between sunrise and sunset and shall be no greater than 300 cd/sqm during sunset and sunrise. The advert shall be equipped with a dimmer control mechanism and a photocell which shall constantly monitor ambient light conditions and adjust brightness accordingly.

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>