

Planning Committee

28 August 2024

Report on Appeal Decision 1 April 2024 to 30 June 2024

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 seven appeal decisions were received. Two of these appeals were allowed, one of which awarded full costs against the Council. There was one appeal in relation to enforcement which was part allowed. Four appeals were dismissed, two of which related to enforcement. One appeal was turned away and one was withdrawn.

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 contrary to the 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.
- 5.3 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 June

2023, shows the number of decisions overturned at appeal for major applications is 2.9% and 0.9% for non-major applications.

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 the Inspectorate having to re-consider the appeal and 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 April to 30 June 2024.

Gov.uk statistical data sets Table P152 and Table P154

APPEAL DECISION SUMMARY

Appeals decided between 1 April 2024 and 30 June 2024

MC/23/0970

Land rear of 9-15 Railway Street, Gillingham – Gillingham North Ward

Refusal – 20 June 2023 – Delegated.

Construction of a pair of semi-detached Mews Houses – demolition of existing double garage.

Allowed with costs – 2 April 2024

Summary

The main issues set out in the appeal statement are the effect of the proposed development on the character and appearance of the site and surrounding area; whether a satisfactory standard of accommodation would be provided for future occupiers, with particular regard to outlook and privacy; and the effect of the proposed development on parking provision and highway safety.

The appeal site comprises a surface level car park and domestic garage. It is accessed from Jeffery Street and is positioned to the rear of residential properties fronting Railway Street. Buildings within the surrounding area vary in scale, design and period. The Inspector considers they could not be described as uniform or coherent and that the overall scale and appearance of the proposed properties would not appear out of keeping or cramped and would have an acceptable effect on the character and appearance of the site and surrounding area.

The proposed development would be positioned relatively close to the rear of the established properties which front Railway Street. These properties contain a number of rear-facing windows, positioned towards the appeal site. The rear facing upper floor windows of the proposed dwellings would serve landing areas and bathrooms only and the windows are illustrated as being fitted with obscured glass. From that perspective the Inspector concludes there would be no unacceptable overlooking or overbearing impacts in respect of the first floor windows.

The rear-facing ground floor windows of the proposed dwellings would serve kitchen areas, opening onto the living rooms. The existing boundary walls would limit views from ground floor rooms of existing properties. Moreover, a number of rear-facing windows on the Railway Street buildings are fitted with obscured glazing. Taking these mitigating factors into consideration, the Inspector concludes there would be no unacceptable overlooking or overbearing impacts in respect of the ground floor windows.

Whilst the garden areas of the proposed dwellings may experience some overlooking from nearby residential properties, the Inspector found this would not be unacceptable in this urban location.

There is no dispute between the Council and appellant in respect of the proposed car-free nature of the development. The Inspector does not disagree with this position based on the appeal site's sustainable location near to both Gillingham railway station and town centre.

The Council's highways objection centres on the site's current use as a car park. The proposed development would result in the loss of the 8 parking spaces that are provided here. The car park is privately owned and its management is unclear. The Inspector has taken the view that the use of the car park could be restricted or lost irrespective of the proposed development.

At the time of the Inspector's site visit, it was noted that a number of on-street parking spaces were available within the surrounding area. The Inspector agrees with the appellant's Parking Survey report, which concludes that adequate parking is available in the surrounding area to accommodate any site displacement if the existing car park was lost. The Inspector also saw no substantive evidence to demonstrate that any displaced parking would result in dangerous or nuisance parking, effecting pedestrian or highway safety.

The Inspector imposed a condition relating to cycle parking and waste collection measures to ensure that such facilities are provided for the use of future occupiers.

The Inspector saw no substantive evidence to demonstrate the necessity to impose conditions in relation to noise, contaminated land, the removal of permitted development rights or restricting the change of use of the development.

Having regard to all matters raised, the Inspector found that the appeal should be allowed.

An application was made for a full award of costs against Medway Council due to the failure to adhere to deadlines; failing to produce evidence to substantiate each reason for refusal and making vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis.

The Inspector noted that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. The Inspector found that the Council has not clearly set out why the decision was not made on time, or why the applicant was not given the opportunity to formally extend the application period. Only after the determination date was this offered.

The Inspector concludes that had there been better communication with the applicant during the course of the application, it is conceivable that the matters of disagreement could have been resolved which would have enabled the appeal to be avoided altogether. In this respect, the Inspector considers the Council to have

acted unreasonably, which has directly caused the applicant to incur unnecessary or wasted expense.

The applicant is invited to submit to the Council details of those costs with a view to reaching agreement as to the amount.

ENF/19/0337

Land at Merryboys House, Merryboys Road, Cliffe Woods, Rochester – Cliffe and Cliffe Woods Ward

Enforcement Notice served – 1 February 2022 – Delegated.

Without the benefit of planning permission the erection of boundary treatment over 2m in height and the erection of 3 buildings.

Summary

The requirements of the notice are to remove the boundary treatment, including all materials and resultant debris from the land; demolish the two detached buildings, and the connecting canopy located between the two buildings; demolish the detached building; and remove all resultant debris created from demolishing the buildings.

The wider site is in mixed use for residential and equine related purposes.

In November 2018, it was found that a boundary treatment in excess of 4m, had been erected close to the boundary with a new housing development. This was followed in 2019 by the erection of two large detached buildings sitting on a concrete base and set in from the boundary.

The two single-storey height timber-clad buildings (referred to in the enforcement notice as 'C' and 'D' are used as an animal feed store and a chicken house and horse shelter; the latter in connection with the wider site's equine use.

In July 2021 a third building 'E' had been constructed close to the site's entrance from Merryboys Road. It is understood that the building is a converted shipping container and is used as a hay store for the benefit of the horses kept at the site.

An appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity. The onus is on the appellant to prove his case, with the burden of proof being on the balance of probabilities. The appellant is claiming immunity regarding Buildings C, D and E.

To demonstrate immunity from enforcement action, the appellant must show that the buildings have been in situ at least four years before the date the enforcement notice was served, which was 1 February 2022. The material date is therefore 1 February 2018. The Inspector was not satisfied that the appellant had provided sufficient evidence and therefore concluded that the appeal on ground (d) should not succeed

In relation to ground (a) that planning permission should be granted, the Inspector concluded that building E was acceptable in terms of appearance and in relation to buildings C and D that the physical linkage of the buildings and associated features were unacceptable. He also concluded that the boundary treatment is out of character due to its excessive height.

He therefore allowed the appeal insofar as it relates to the buildings (C, D and E) and planning permission is granted, subject to the following condition: within two months from the date of this decision the platform/walkway linking the two detached buildings hereby permitted (C and D), along with their balconies and external staircases, shall be demolished in its entirety, and all materials resulting from the demolition shall be removed; within two months from the date of this decision, evidence shall be submitted to the Council demonstrating that the demolition has taken place to its satisfaction.

He dismissed the appeal and upheld the Notice in relation to the boundary treatment.

The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters. Given the findings above, the Inspector only found it necessary to assess this ground in relation to the unauthorized boundary treatment installed.

The Inspector considers the requirement to remove the additional boundary treatment installed is both reasonable and necessary in the circumstances. A proposed height increase would thereby require the benefit of planning permission with drawings produced to justify any such proposal. Accordingly he found that the appeal on ground (f) did not succeed.

MC/22/1824

The Green Lion, 104 High Street, Rainham – Rainham Central Ward

Refusal – 24 November 2022 – Delegated.

Construction of a terrace of six two storey dwellings with associated parking.

Allowed – 9 May 2024

Summary

The main issues are whether nearby protected trees would have an adverse effect on living conditions for future occupiers of the proposed development with regard to sunlight in rear gardens, and the potential impact of the proposal on the retention of those protected trees, and the effect of the proposed development on highway and pedestrian safety.

The appeal site is the car park to the rear of the Green Lion public house, on the eastern side of Rainham's town centre. The public house building itself is outside the 'red line' site boundary.

There are various trees and shrubs growing within the rear gardens of housing south and west of the appeal site. Just south of the appeal site boundary are two mature lime trees, which stand around 20m tall. There is no doubt or disagreement that the two trees would cast shadows across the rear gardens of some of the proposed dwellings for at least some of the time. The garden of the southernmost house on the appeal site (plot 6) would be the most affected by overshadowing, with plots 5 and 4 affected to a lesser extent. However, the Inspector noted that even the garden of plot 6 would have considerable periods during the summer months when it would not be within the trees' shadow, especially through the afternoon into the evening. The Inspector disagreed with the Council's observation that larger areas of the gardens would be in the trees' shadow at other times of the year when the sun is lower in the sky and shadows would be longer. Having regard to all the evidence as well as the BRE guidance, the Inspector is satisfied that the trees would not lead to the proposed rear gardens being excessively overshadowed or that the trees would lead to there being inadequate sunlight within the proposed houses.

It is also relevant that the two trees are the subject of a Tree Preservation Order and that any proposal to heavily prune or remove them would require the consent of the Council. It would therefore be able to weigh up any benefits of such a proposal against its impact on the wider area, and grant or deny consent as it considered appropriate.

Taking these points together, the Inspector concludes that the nearby protected trees would not have a significant adverse effect on living conditions for future occupiers, and that the proposed development would not have a significant adverse impact on the protected trees.

The appeal site provided around 30 car parking spaces for customers of the Green Lion, as well as space for vehicles serving the pub to load and unload off the main road. The High Street passing the appeal site is a busy A-road with double yellow line waiting restrictions extending a considerable distance in both directions and is evidently facing some traffic and parking pressures. The Inspector observed that the site is in a sustainable location and therefore is suitable for a reduction in parking provision.

The Green Lion ceased trading during 2019, although the flats on the upper floors have continued to be let. There is nothing to indicate that the lawful use of the building has changed, so the pub use could, in theory, be resumed at any time, although the appellants describe this as 'infinitesimal'. An alternative use for the Green Lion pub does not form part of this appeal scheme, and as such would be a matter for another decision maker.

The survey data submitted as part of the Transport Statement show that two nearby off-street car parks (the High Street car park 300m to the east of the site, and the Cricketers car park some 250m to the west) had plenty of unoccupied spaces, an assessment borne out during the Inspector's site visit. The Inspector is satisfied that

any displaced customer car parking demand which might arise if the pub were to resume trading could be accommodated in nearby public car parks. The Inspector has also taken the view that, even if the pub were reopened, it appears that operations would represent a return to the way things were done before 2019 in respect to loading and unloading and the use of the drop hatch into the beer cellar, which did not lead to a significant increase in traffic.

The Council questions some of the trip generation figures provided in the Transport Statement, suggesting that it overstated vehicle movements into and out of the appeal site during the morning peak period while it was in use as the pub car park. The Inspector has not seen any evidence to definitively resolve the dispute. However, excluding the figures in question, the Transport Assessment does indicate that there would be a net reduction in vehicular trips compared to the position when the site served the trading Green Lion. The Inspector concludes the development would not lead to a significant increase in traffic.

The Inspector recognises that the access to the appeal site is not what would be built today if it was designed from scratch. However, during the site visit, the Inspector noted the layout offers acceptable visibility of oncoming traffic in both directions. The relatively tight turn into the access means that vehicles entering or leaving the appeal site would necessarily be travelling slowly, and while the site entry would be shared by pedestrians and vehicles, this would not be likely to lead to significant risks to pedestrian safety.

The appeal site is within the buffer zone of the Special protection Areas and Ramsars. The proposed development would lead to an increase in urbanisation and associated recreational pressures and would likely have significant adverse effects upon the protected sites and the wildlife which rely upon them. The Inspector is satisfied that Unilateral Undertaking which has subsequently been provided will secure the necessary mitigation measures to adequately overcome any adverse effects of the proposal.

The appeal site straddles the boundary of the Rainham Conservation Area, while the Green Lion itself is a Grade II listed building. No works are proposed to the listed building but the development would take place within its setting. The Council summarised the design of the proposed dwellings as well thought out and carefully designed. Overall, the Inspector agrees with the Council's assessment of these aspects and considers the scheme would make an attractive contribution to the setting of the Green Lion whether seen from within the site or from the High Street. The Inspector is satisfied that the character and appearance of the Rainham Conservation Area, and the setting of the Grade II listed building, would be preserved.

The Inspector concludes the appeal should be allowed. However, an application for an award of costs is refused as the Inspector is satisfied that the Council's decision to refuse the application did not result in unnecessary or wasted expense.

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>
MC/22/1867	Land east of Rainham Pumping Station and North of Lower Rainham Road	Construction of 2 detached residential properties with associated parking, access and landscaping works	Allowed	Against	<p>The Council's behaviour was unreasonable and the applicant was compelled to bear the expense of an appeal. Full costs awarded.</p>

Appeals 2024/2025

MC/23/0970	Land rear of 9-15 Railway Street, Gillingham	Construction of a pair of semi-detached mews Houses	Allowed	Against	The Council's behave was unreasonable and caused the applicant to incur unnecessary or wasted expense. Full costs awarded
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