

## **Planning Committee**

**12 March 2025**

### **Report on Appeal Decisions 1 October to 31 December 2024**

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 during the period. Three of these appeals were allowed, which were all delegated decisions. Six appeals were dismissed, which included one enforcement appeal.

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 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 For quality of decision-making assessment, any authority that has more than 10% of either major or non-major applications overturned at appeal over a specified two year period is at risk of designation. The assessment period for quality of decision-making continues to be 24 months as it is considered the number of relevant cases is lower than for the speed of decision-making and if measured over 12 months would represent too few cases to provide an accurate measure of performance. Members should be aware that 15 LPA's have recently been written to by Ministry of Housing, Communities & Local Government (MHCLG) due to concerns over quality of decision making.

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](mailto: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 to 31 December 2024.

Gov.uk statistical data sets Table P152 and Table P154

**Appeal Decision Summary**

**Appeals decided between 01/10/2024 and 31/12/2024**

**MC/23/2580**

**287 Castle Road, Chatham – Chatham Central & Brompton Ward**

Refusal – 16 January 2024 - Delegated

Part-retrospective planning application for the construction of a loft conversion with dormer to rear and roof lights to front to facilitate the conversion of a single dwellinghouse (Class C3) to form a 10 person large House in Multiple Occupation (HMO (Sui generis)).

Appeal decision – 22 November 2024

Appeal A is allowed and planning permission is granted in relation to application MC/23/2580.

Appeal B is allowed and planning permission is granted in relation to application MC/24/0203.

**Summary**

There are two appeals relating to this site as set out above. In Appeal A the HMO has 8 bedrooms for up to 10 people, and in Appeal B it has 7 bedrooms for up to 8 people.

During the site visit, the Inspector observed that the loft conversion with rear dormer and rooflights has been completed and the premises is in use as an HMO. The rooms shown as bedrooms with bathrooms on the plans for Appeal A appear capable of being occupied and it therefore follows that this is also the case in Appeal B. Therefore, the Inspector considered both appeals on the basis that the development has already taken place.

The main issues in both appeals are whether the appeal premises and location are suitable in principle of HMO use; whether the development provides acceptable living conditions for occupiers of the HMO; and the effect of the development on the integrity of protected European sites.

The original dwellinghouse has been enlarged through addition of a two-storey side extension, a single storey rear extension and a dormer to provide rooms in the roof. As such, the dwellinghouse comprises four ground floor habitable rooms in addition to a kitchen/diner, and six further upstairs rooms capable in principle of being habitable rooms. There is no evidence of unmet need for such large family-sized homes in the area and the Inspector concludes it is unlikely the house would be occupied by a single household. The house is already occupied by multiple

households, which demonstrates demand for that type of accommodation in this location. The Inspector considers it would be unreasonable to prevent occupation of the house by multiple households, notwithstanding the condition restricting change of use to a small HMO on the permission for the side and rear extensions. In these circumstances, the objective to provide an appropriate mix of housing types for the local community lends support to the development and outweighs the conflict with the Arches Chatham Neighbourhood Plan in these appeals.

The appeal site is in a largely residential neighbourhood comprising mostly terraced dwellings. Nonetheless, the location is unusual because it is on the end of a terrace and at a junction of three roads such that there are no dwellings directly opposite No. 287. The nearest uses to the appeal premises are a convenience store and a large area of allotments. The Inspector therefore finds the immediate vicinity of the appeal site to be predominantly mixed-use.

For the same reasons, comings and goings to the site materially affect few residents other than the occupiers of the adjoining premises at No. 285. There is no compelling evidence that this effect is detrimental to their living conditions, whether or not that property is in multiple occupation and even if No. 287 were occupied by 10 people. The Inspector concludes the appeal premises and location are suitable in principle for HMO use.

The Council is concerned some of the bedrooms do not comply with 'Technical Housing Standards – national described space standard' 2015 (NDSS). However, Planning Practice Guidance states that where a local planning authority wishes to require an internal space standard, they should only do so by reference in their Local Plan to the NDSS. No such reference has been made. Consequently, the Inspector gives the 2018 HMO Regulations greater weight than the 2015 NDSS as a guide to appropriate bedroom sizes in these appeals.

The Inspector is satisfied the bedroom sizes in both appeals are acceptable and is also satisfied that in Appeal B one of the bedrooms, and in Appeal A two of the bedrooms, could be occupied by two people. Bedroom 3 in appeal A is on the ground floor, accessed via an external side door or through the kitchen. This room also has an external door leading to the rear garden. Both external doors are semi-glazed and there is a rooflight in the ceiling, which together provide ample natural light. The Inspector observed sufficient wall space in the room to position a bed and storage, despite the doorways, and is therefore satisfied the quality of accommodation in Bedroom 3 in Appeal A is acceptable.

The layout of the en-suite bathrooms and downstairs toilet is compact. Nevertheless, the Inspector says that these facilities have sufficient internal space and they do not unduly restrict circulation space on landings or the layout of bedrooms. The Inspector finds these facilities are acceptable.

The communal kitchen is large enough to accommodate a reasonably large dining table. There is an adjoining communal lounge, with natural light borrowed from the kitchen's windows and doors through an open archway, which the Inspector observed to provide an adequate quality of accommodation. The combined area of the communal lounge and the kitchen exceeds 30m<sup>2</sup>, which is considered sufficient

to meet the needs of 10 people. There is also an external garden area for communal use. Taking all this together, the Inspector finds the provision of communal space is acceptable in both appeals.

The Inspector concludes the development in both appeals provides acceptable living conditions for occupiers of the HMO, with particular reference to bedroom size, bathroom provision and communal living space.

Both parties have agreed financial sums to be put towards a programme of strategic mitigation measures set out in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy.

## **TPA/21/1020**

### **68 Middleton Close, Parkwood – Rainham South Ward**

Split decision – 11 April 2023 - Delegated

Crown lift to 5m and crown reduction removing 3m from top of Ash (T1).

Appeal decision – 22 November 2024

### **Summary**

Approval was granted under TPA/21/1020 for a crown lift of 3m and lesser works to crown reduce the tree (works to be a maximum of 2m). The appellant confirms acceptance of a 2m crown reduction rather than the 3m crown reduction applied for but wishes to pursue the crown lift to 5m as applied for, rather than the crown lift of 3m as granted by the Council.

The main issues are the effect of the proposed crown lifting on the character and appearance of the area; and whether sufficient justification has been demonstrated for the proposed works.

The tree is a large and mature specimen and is growing in the rear garden of 68 Middleton Close. The rear garden adjoins Mierscourt Road and the tree is highly visible from public vantage points along this road. There are numerous other trees in the locality, many mature, and these, along with the appeal tree, make a positive contribution to the verdant and mature landscape of the locality and to the character and appearance of the area.

The Council's officer report indicates that the proposed crown lift to 5m (along with a 2m crown reduction) would not have a harmful effect on the health of the tree, its visual amenity or the character and appearance of the area. It is therefore unclear to the Inspector as to the reasons why this proposed specification was not carried through to the Council's decision notice and wording of works consented. The Inspector considers the wording of the works consented relating to a crown lift of 3m would broadly reflect a crown lift to 5m in any event given the existing degree of clearance between the crown and ground level.

The appellant notes that the crown hangs low over adjoining gardens and the works are required to provide some relief to neighbours when using their gardens. Furthermore, the Inspector noted that it is standard practice for a crown lift to such a height to provide sufficient clearance over a public highway.

The Inspector concludes that the above reasons are sufficient to justify the proposed crown lift to 5m and that the appeal should be allowed.



## 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 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 behaviour was unreasonable and caused the applicant to incur unnecessary or wasted expense. Full costs awarded
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