



Planning Committee

27 August 2025

Report on Appeal Decisions 1 April to 30 June 2025

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

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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 eight appeal decisions were received during the period. All the appeals related to delegated decisions. Two of these appeals were allowed and six were dismissed. There were no enforcement appeal decisions issued during this period. The percentage of appeals allowed during the period is 25%.

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 defendable 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.

The most up-to-date Government data, which is for the 24 months to the end of June 2024, shows the number of decisions overturned at appeal for major applications is 3.1% 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.

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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 April to 30 June 2025.

Gov.uk statistical data sets Table P152 and Table P154

Appendix A

Appeal Decision Summary

Appeals decided between 01/04/2025 and 30/06/2025

MC/24/1038

M2 Commuter Car Park, Maidstone Road, Rainham – Hempstead & Wigmore Ward

Refusal – 15 July 2024 - Delegated

Retrospective material change of use of land for use as gypsy traveller site

Appeal decision – 12 June 2025

Summary

The site was originally a 'Park and Ride' facility from where commuters would travel into London by coach, but it fell into disuse after the pandemic. It is in the ownership of the Council. The families moved on to the car park on 29 July 2023. On 6 October 2023, they were issued with Notice to Quit by the Council. They refused to comply, given that they had nowhere else to go, and have remained on site ever since.

The originating application was refused planning permission for four reasons:

- By virtue of the size and scale of the application site and number of plots it is not considered that suitable landscape screening could be provided to offset the harm to the visual appearance of the countryside;
- Due to the lack of supporting evidence in the form of an air quality assessment, it is not possible to assess the impact on the future occupiers with regards to air quality and if there would be any need of an Air Quality Management Area (AQMA) if the application were approved;
- Due to the lack of supporting evidence in the form of a noise assessment, it is not possible to assess the impact on the future occupiers; and
- The application fails to address the impact of the proposal on the Special Protection Areas of the Thames Estuary and Marshes.

In the lead up to the Hearing, having had regard to the Technical Note – Air Quality submitted by the appellant with the appeal, The Council withdrew the second reason for refusal relating to air quality. The Technical Note concludes that occupiers of the site would not be exposed to pollutant concentrations above the relevant objective levels, and any impact upon them in air quality terms would be negligible. On that basis, the Inspector took this matter no further.

The Council's fourth reason for refusal concerned the failure to address the potential impact of the proposal on the Thames Estuary and Marshes. Generally, these potential impacts are addressed through a financial contribution to strategic mitigation measures (SAMMS). Following discussion which took place during the

Hearing, the parties agreed that a direct payment should be made based on ten touring caravans on the site, this being the equivalent of five new dwellings. Payment was made on that basis and the Council considered the potential impact on the Special Protection Area (SPAs) to have been dealt with and the Inspector agreed.

The remaining issues to be considered are the effect of the change of use on the character and appearance of the area, and whether the site provides reasonable living conditions for the occupiers in terms of the noise environment. There is no dispute that those occupying the site meet the Government's definition of Gypsies and Travellers. The other matters to consider are the personal circumstances of the appellants, the best interest of the children involved, and the implications of a dismissed appeal.

Medway Council's Gypsy and Traveller Accommodation Assessment (GYAA) May 2024, concludes that there is a need for 56 pitches. The Inspector considers it is important to note that the Council has no sites, allocated or otherwise, that can address the needs of Gypsy and Travellers.

The site lies to the immediate north of the M2 motorway near its junction with the A278 (J4). It is separated from the junction by a paddock. There is extensive screening from trees and bushes to the south and east that border the roads and the site is only visible from the length of Maidstone Road that runs along its frontage.

The Inspector considers an assessment of the impact of the change of use must take account of the former, and authorised, use of the site. In the Inspector's view the presence of caravans and vehicles upon the site is little different to the parked cars and coaches that would have been in place as part of its former use, although the paraphernalia that has grown up around the caravans is not something that would have been in place then. However, the Inspector feels that if the occupiers had security of tenure, then there would be more incentive for the site to be better maintained.

The Council observed in the course of the Hearing, opportunities for landscaping along the frontage within the appeal site are very limited. The site is in the ownership of the Council, as is the substantial grass verge between the site access and Maidstone Road, which is not part of the appeal site. The Inspector suggests that the occupiers would need some sort of lease or licence agreement authorising that occupations, for which they would no doubt pay a fee. In that context, if the council felt that their site would benefit from some landscaped screening along the frontage, then they could undertake the required planting.

The Inspector concludes, bearing in mind the former use of the site, and the limited views available of it, and the fact that housing is very likely to come forward to the west of the site, its use as a site for Gypsies and/or Travellers would cause no undue harm in character and appearance.

The concern of the Council in relation to the living conditions of the occupiers relates to the prevailing noise climate. The principal influence on that noise climate is traffic noise from the nearby motorway and Maidstone Road. A Noise Impact Assessment

Report was submitted with the appeal and the report concludes that, unmitigated, the development site is exposed to environmental noise of a sufficient magnitude to cause a medium to high risk of adverse impact.

The report finds that internal conditions achieving the reasonable relaxation provided for in the BS8233:2014 internal design limits should be achievable with modern mobile homes compliant with BS3632:2015. Moreover, if suitable acoustic barriers can be installed, a nominal 5dB reduction in traffic noise levels could potentially be achieved where line of sight to nearby roads and traffic is obscured. With such mitigation internal conditions commensurate with the internal design limits set out in BS3632:2014 should be achievable.

In terms of external spaces, the report finds that a level of amenity commensurate with the upper guideline level of 55dB is unlikely to be achieved, with or without mitigation. However, an external area that is relatively quieter could be provided if appropriate acoustic screening is installed. The Council has suggested a condition requiring a scheme to address internal and external noise levels. The Inspector considers that such a condition, properly worded, could ensure that adequate living conditions on the site are secured.

During the site visit, the Inspector saw that the occupiers of the site are reliant on generators to provide power, have no piped water supply so rely on bottled water, and use portable toilet facilities. However, the Inspector finds no good reason why the site could not be connected to a power and water supply and have foul drainage facilities provided.

The Inspector found the site suitable as a site for Gypsies and/or Travellers, subject to a noise-based condition and on that basis sees no good reason not to make the grant of permission a permanent one. Bringing all those points together, the Inspector intends to allow the appeal.

TPA/23/1378

23 Hawbeck Road, Parkwood – Rainham South East Ward

Refusal – 24 July 2023 - Delegated

T10 – Oak - Fell

Appeal decision – 6 June 2025

Summary

The main issue is the effect on the character and appearance of the surrounding area if the oak tree was felled and whether the reasons submitted justify its removal.

The oak tree grows to the rear of No. 23, it is a youthfully mature oak with a broad, relatively balanced crown. There is nothing from what the Inspector saw on site to suggest that the tree is not of good vigour with a long-life expectancy. The crown extends over the vast majority of the small rear garden and over the roof of No. 23.

On the eastern boundary with the adjacent schools, grow a number of trees. In front of the property is a triangular green open space upon which an imposing and significant oak tree grows. A further green space with a number of trees growing on it can be found adjacent to the access to the garages that sit to the rear of Nos 23 to 29.

When approaching the property from either direction along Hawbeck Road the eye is drawn to the larger oak on the green which is imposing on the street scene. The tree is framed by trees of varying heights growing within the school grounds and views near the garage access road are broken by a group of trees on the nearby green space.

Overall, given the existence of other trees nearby, growing on what appears to be public land, the loss of the oak would have some effect on the character and appearance of the area but any harm would be moderate. The Inspector does recognise the oak has some historic significance to the previous use of the site but it is not by any means an ancient or veteran tree.

The Inspector found nothing to corroborate the view that the oak tree is a risk to the property or the foundations but has no doubt that the tree is having an unacceptable effect on the living conditions of those living at No. 23. The Inspector has considerable sympathy for the appellant who has a young family, and it is reasonable for them to expect to have a garden in which to spend time. During the site visit, the Inspector could see the tree spans across all of the garden, and whilst only a snapshot in time all of the surfaces were littered with bird droppings and debris from the tree.

Usually, that would not carry a great deal of weight but in this case, given the size of the garden there is nowhere that is not affected. Given that, the Inspector accepts the appellant, and her family, are simply unable to enjoy their own outdoor space in any unfettered way. To resolve the issues, the Inspector considers the only realistic option is the fell the tree. Therefore, 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 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. Costs paid £7,550 + VAT</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
ENF/21/0327	Land at Factory Farm, Wouldham Road, Rochester	Material change of use of land to a mixed use for importation, deposit, processing and transfer of waste, stationing of shipping containers for storage, vehicle breaking and repair, and a residential caravan site including the construction of buildings, fencing, gates and hard surfacing	Upheld subject to variation of periods for compliance	Partially for	Cost of the appeal proceeding incurred in preparing the appeal statement and attending the site visit