

## REPORT TO PLANNING COMMITTEE – 26 JANUARY 2017

### PLANNING APPEALS

1. There were 13 appeals determined between October and December 2016. Two appeals were against non-determination where the Planning Committee had deferred a decision, one appeal against a Planning Committee decision and the remainder against delegated decisions.

Five of the appeals were upheld. There were three successful appeals against Committee decision (including the two appeals for non-determination) and two successful appeals against delegated decision.

2. Members have been issued with the full decisions, but in brief the reasons were:

#### 2.1 Red Lion, Canterbury Rd (including listed building app)

Members had, following submission of the appeal against non-determination, decided that, had the application come back to Committee, it would have been approved with conditions. Costs have been awarded.

#### 2.2 New Dover Road

An application on an allocated site for 40 dwellings. Members refused this application because the proposal was out of character with the surrounding area. The Inspector concluded that the effect on the character of the surrounding area would be limited. Partial costs have been awarded, in relation to a submitted unilateral undertaking that the Council had accepted, but had not informed the Inspectorate and therefore the applicant provided experts to attend the hearing that were not required.

#### 2.3 Brookestreet

An application for an extension over a garage. The issue was the effect on the character and appearance of the host property and surrounding area. The Planning Inspector disagreed.

#### 2.4 Barnsole Road

An application for a change of use of a barn to residential dwelling refused under Class Q of the GPDO. The main issues being design and external appearance and impact on a grade II listed building. The Inspector was of the view that the proposals met the conditions of Class Q and should be permitted development.

### 3. Learning Points

The Barnsole Road application could raise issues as to whether application under the GPDO were being dealt with in accordance to the regulations. However, this application was also accompanied by a request for costs that was dismissed. The Inspector concluding that the Council was not unreasonable in refusing the application.

4. The annual target is that a maximum of 15% of appeals are upheld. The overall performance is 44% - significantly over target.

Year to date	All appeals	Number Upheld	Number Dismissed	% Upheld
2016	34	15	19	44

At a previous Committee meeting Members were advised that a review of Quarter 2 appeals would be undertaken. That report is attached.

5. Members may be interested to note that there is currently an appeal lodged against the Council's refusal to approve the Whitfield phase 1 drainage condition and that is currently scheduled as a public enquiry although no date has been set. There is also an appeal lodged against non-determination of Phase 2 Whitfield, which again is to be a public enquiry.

Dave Robinson, Planning Delivery Manager

#### Attachments

1. Breakdown of all appeal cases 2016/17
2. Officer report on Q1 2016/17 appeals

## 2016/17 APPEAL CASES

### Quarter 1

2016

Case	Address	Delegated/Committee	Dismissed/Upheld	Against officer Rec
15/01065	Bewsbury Crescent	COM	Dismissed	Yes
13/01106	Engine Shed Field	COM	Dismissed	No
15/00634	Agester lane	DEL	Upheld	
15/00895	Beech Tree Ave	DEL	Dismissed	
15/00971	College Road	DEL	Upheld	
15/00926	105 Mill Hill	DEL	Upheld	
ENF/DOV/12/109	London Rd	Enforcement	Dismissed	

### Quarter 2

2016

Case	Address	Delegated/Committee	Allowed/Dismissed	Against officer Rec
15/639	Kingsdown Rd	COM	Allowed	Yes
15/640	Kingsdown Rd	COM	Allowed	Yes
15/336	Denne Court	COM	Part Allowed	Appeal against condition
15/730	Church Path	COM	Allowed	Yes
15/795	The Beach	DEL	Dismissed	
15/981	Oast House	DEL	Dismissed	
15/1152	56 Poets Walk	DEL	Dismissed	
15/936	Outrigger	DEL	Allowed	
15/1196	Cannon Street	DEL	Dismissed	
16/0009	Nursery Lane	DEL	Allowed	
16/69	The Crescent	DEL	Dismissed	
16/196	Bailand	DEL	Dismissed	
16/434	Sandwich Rd	DEL	Dismissed	
15/01210	Farthingloe Cottage	DEL	Allowed	

**Quarter 3****2016**

Case	Address	Delegated/Committee	Allowed/Dismissed	Against officer Rec
15/293	Canterbury Rd	COM	Allowed	Non-Determination
15/292	Canterbury Rd	COM	Allowed	Non-Determination
15/525	New Dover Rd	COM	Allowed	Yes
13/776	Queen St	DEL	Dismissed	
15/1119	Court Lane	DEL	Dismissed	
15/1281	Brooke Street	DEL	Allowed	
16/48	Barnsole Road	DEL	Allowed	
16/192	Burgess Rd	DEL	Dismissed	
15/742	Archers Court Rd	DEL	Dismissed	
15/1202	Princes St	DEL	Dismissed	
16/25	Molland Lane	DEL	Dismissed	
16/270	Willow Waye	DEL	Dismissed	
16/369	Sondes Rd	DEL	Dismissed	

## **DOVER DISTRICT COUNCIL**

### **ANALYSIS OF APPEAL DECISIONS JULY–SEPTEMBER 2016**

Of the 14 appeal decisions allowed in the 2<sup>nd</sup> Quarter of 2016 (July – September), 8 were either allowed or part allowed. Given that is significantly higher than usual, I have been asked to look at the cases allowed and comment as to whether there is any suggestion of the Council being out of sync with the Planning Inspectorate in terms of its decision making, or whether there are other lessons to be learned.

The following are the cases concerned:

#### **1 & 2. Kingsdown Road, St. Margarets at Cliffe – 15/639 and 15/640 – Committee Decision**

2 appeals relating to the same scheme for the conversion of Old School house into 2 dwellings, extension of Curfew House for supported living use and 1 new dwelling.

Appeal A – Primarily in connection with lack of parking and impact on local highway network. The Inspector found that there would be no significant increase in parking demand given existing and previous use of the site, and overall provision of parking was reasonable.

Appeal B – The Inspector found that the proposals would represent an appropriate reuse of a listed building and any limited harm would be outweighed by the public benefits of bringing the building back into use

**Assessment** – Given the previous use of the site as a school and the fact that there was no change of use involved to Curfew House, it was always going to be difficult to argue that the proposal would result in harm to the surrounding area from a highways point of view. I can, therefore understand the Inspector's decision on Appeal A.

Appeal B was more technical, the argument being that because the overall scheme was refused, there was no public benefit arising to mitigate the small level of harm that had been identified to the Listed Building, and it was therefore contrary to the legislative requirements. Whilst I think that was a reasonable stance, it might also have been possible to construct an argument that in LB terms alone, the overall physical alterations in terms of removing unsightly structures at the rear, might in itself have offset the limited harm and was therefore of public benefit. Either way, although the appeal is recorded as being allowed, it is clear that the Council would have granted LBC if planning permission had been granted for the main development.

#### **3. Denne Court Farm, Woodnesborough – 15/336 – Original decision by Committee**

Appeal against 3 conditions relating to cycle storage, removal of permitted development rights and the need to keep a register of holiday lets. Original permission was in relation to 3 holiday lets, 1 detached and 1 pair of semi-detached dwellings.

The Inspector supported the conditions relating to permitted development and the register. He also supported the principle of a condition for cycle storage but felt that 18 spaces was too onerous given that 3 of the units were for holiday lets. He therefore imposed a reduced level of 10 spaces.

**Assessment** – As noted above, the principle of a condition was accepted; it was the number of spaces that was the issue. The figure of 18 is derived from KCC standards relating to one space per bedroom. Given that 3 of the units were holiday lets and one was provided with a substantial garage, I can see why the Inspector considered 18 was excessive. It

demonstrates the need to assess any particular standards to the specific proposal and site circumstances

#### **4. Church Path Deal 15/730 – Committee Decision**

Appeal relating to one detached dwelling on a corner plot, involving loss of a tree covered by a TPO.

The Inspector felt there was no harm to the character and appearance of the area and that replacement planting would provide for a more suitable and longer lasting alternative than the existing tree did. He did not consider there would be any harm arising from the lack of parking provision.

**Assessment** - Although the arguments were finely balanced in my view, the decision to refuse permission was not unreasonable given that a previous appeal had supported the retention of the tree, albeit that there had been a change in the health and appearance of the tree since that time. The argument on setting of a listed building was less clear, given that as the Inspector noted, the extent of harm was not really identified by the Council other than concern over views. The reason relating to lack of parking was unlikely to succeed given that only one dwelling was proposed and no evidence was produced to show that there would be 'severe' harm as required by the NPPF.

A point worth noting, which I have seen in other decisions, is that the reasons for refusal made no mention of conflict with Development Plan policy, and the appeal was therefore assessed against the NPPF.

#### **5. Farthingloe Cottages, Folkestone Road – 15/1210 – Delegated Decision**

Appeal relating to a two storey side extension. The Inspector felt that given its matching design and that it was enclosed within an area of hardstanding, it would not harm the character of the AONB

**Assessment** - Such cases often turn on matters of judgement, particularly where there is lack of any character appraisals to assess against. The original decision seems reasonable given that the proposal would turn a semi-detached property into a terrace of three. However, I can find no fault with the inspector's reasoning to reach an alternative view in terms of impact on the wider AONB.

#### **6. Nursery Lane, Eythorne - 16/0009 – Delegated Decision**

Appeal relating to an infill plot for one dwelling. The Inspector felt that there would be no adverse effect on the local character because of the diverse character that existed in the locality already. Although the access would be alongside a recently approved dwelling, it was being used already and he did not consider one additional two bedroom bungalow would generate significant extra movements.

**Assessment** – I am not too surprised regarding the Inspector's conclusions on character given that we had approved an infill plot immediately next door and that a previous appeal had already concluded that the character of the immediate area was diverse. Although backland development, there was already existing development to the rear from adjoining roads. The question of loss of residential amenity from extra traffic is again a question of judgement on an individual case, which can go either way.

#### **7. The Outrigger, Chapel Lane, Ashley 15/00936 – Delegated Decision**

Appeal relating to one detached dwelling. The Inspector felt that the site was surrounded by housing and within the curtilage of the host property. Although no services within Ashley, he

noted it was adjacent to other small settlements with services. He considered it was consistent with para 55 of the NPPF (sustainable development in rural areas where there are groups of smaller settlements) and therefore sustainable overall. He found no adverse effect on character and that trees TPO trees could be protected.

**Assessment** – Perhaps a case of where we have taken a rigid interpretation of what is or is not sustainable given its location within a well-established group of existing houses and proximity to services in nearby settlements. There also didn't appear to be any evidence to demonstrate that there would be adverse effect on trees which could not be dealt with by condition.

### **8. 11 The Crescent, Eythorne 16/0069 – Delegated Decision**

Appeal relating to a single storey rear extension. The Inspector felt that proximity of a boundary fence and the mass of an existing extension to the rear, would not affect outlook of the neighbour. Although he acknowledged that the 45o rule was a useful tool, each case had to demonstrate material harm if it was infringed.

**Assessment** - As with Farthlingloe cottages above, these sorts of cases turn on individual judgment. The original decision was well reasoned but did not carry sufficient weight with the Inspector.

### **Some Thoughts On Above**

Apart from perhaps a couple of instances where arguably we have taken too rigid a line and not established what the real harm would be, the principle of the cases were arguable and there is no consistent theme to suggest we are out of synch with Planning Inspectorate decision making.

The Denne Court case reinforces the need that conditions have to satisfy the six tests based on the individual case and that you can't just rely on standards.

Where refusals are based around highway reasons in particular, it is important to have evidence of harm, particularly where the Highway Authority is supporting the scheme. Generalised observations such as the Kingsdown Road and Church Path (in relation to parking) cases are likely to fall foul of the NPPF where the test is 'severe' harm.

Although not a specific issue here, and mentioned in passing in the Church Path case, is the absence of reference to conflict with Development Plan policies. This is often in relation to design/amenity type cases where there is no specific policy in the Core Strategy to refer to. Consequently there is reference to NPPF which inevitably is more generalised. I'm not sure on the background as to why such policies were not included in the Core Strategy and it may be something worth addressing (together with design guidance) in any review.

There is a danger of dealing with small numbers of cases statistically. Although over 50% of the quarter's cases were allowed, it amounted to only 8 cases, and of those the principle of one was upheld (Denne Court) and another was more of a technical refusal (LB at Kingsdown Road). Perhaps it would be useful to include previous years statistics in any quarterly report so that longer term trends can be seen.

It is questionable whether the target of a maximum of 15% of appeals being upheld is a reasonable one. An analysis of national statistics as noted below may be a preferred indicator to use.

Analysis with other Kent Authorities and at a national level suggests we are not out of synch (see tables below) and such statistics might also be useful to include in an annual report for example. I have included pre and post NPPF for comparison

.S.78 Appeal Statistics nationally			
	Major	Minor	Householder
2010/11	37% allowed	24% allowed	35% allowed
2015/16	46% allowed	25% allowed	38% allowed
April/June 2016	48% allowed	27% allowed	39% allowed
June/Sept 2016	39% allowed	26% allowed	40% allowed

Source – Planning Inspectorate Statistics – Table 5.1 – decisions by LPAs

Kent decisions April 2015–March 2016				
	S.78 cases – major & minor		Householder cases	
	No of cases	% allowed	No of cases	% allowed
Ashford	23	39	5	0
Canterbury	25	32	8	50
Dartford	18	50	6	60
<b>Dover</b>	<b>25</b>	<b>20</b>	<b>5</b>	<b>0</b>
Gravesham	16	13	4	0
Maidstone	55	24	16	13
Medway	28	21	15	27
Sevenoaks	40	23	33	24
Shepway	6	0	0	0
Swale	37	59	14	43
Thanet	17	53	3	33
Tonbridge & Malling	25	48	7	0
Tunbridge Wells	32	34	6	33

Source - Planning Inspectorate Statistics – Tables 2.5 & 2.6 – Major, minor and HH decisions

Based on S.78 cases Dover's success rate on appeal compares favourably with other Kent Councils. Numbers on HH cases seem surprisingly low and need to be compared over a number of years to be statistically valid. Notwithstanding, there seems to be a good case for reviewing the annual targets.

A further factor to be considered is the Government's intention to use appeal decisions as one indicator to determine whether an authority will be 'designated' as poor performing. For appeals, this will take effect from 2018 but will be based on an analysis of decisions taken between April 2015 and March 2017. The indicator is no more than 10% of total decisions taken during that period (Note: not number of appeals lodged) being overturned on appeal. Going forward, it does demonstrate the importance of considering the likely chances of succeeding on appeal when refusals are being considered. It will also be important to make members aware of such considerations in any future training.

Kim Bennett  
23 November 2016