

8 February 2024		ITEM: 6
Planning Committee		
Planning Appeals		
Wards and communities affected: All	Key Decision: Not Applicable	
Report of: Tracey Coleman – Chief Planning Officer		
Accountable Chief Officer: Tracey Coleman – Chief Planning Officer		
Accountable Director: Mark Bradbury – Interim Director, Place		

Executive Summary

This report provides Members with information with regard to planning appeal performance.

Please note that due to the January Committee being cancelled, this report includes summaries of appeal decisions received in December 2023 and January 2024

1.0 Recommendation(s)

1.1 To note the report.

2.0 Introduction and Background

2.1 This report advises the Committee of the number of appeals that have been lodged and the number of decisions that have been received in respect of planning appeals, together with dates of forthcoming inquiries and hearings.

3.0 Appeals Lodged:

3.1 **Application No:** 23/00303/FUL

Location: 2 Rainbow Lane, Stanford Le Hope, Thurrock, SS17 0AS

Proposal: Proposed new dwelling to south of the existing property No. 32, including associated parking and amenity space.

4.0 Appeals Decisions:

The following appeal decisions have been received:

4.1 Application No: 22/01097/FUL

Location: 45 Sanderling Close, East Tilbury, Essex, RM18 8FF

Proposal: (Retrospective) Change of use of land from landscaped setting to residential curtilage, and the reposition of a new 1.8m high boundary fence and new driveway and vehicle access.

Appeal Decision: Appeal Dismissed

4.1.1 The main issues were the effect of the development on the character and appearance of the area, and the effect of the development on highway safety.

Character and appearance

4.1.2 The Inspector found the solid high fence stood out as being discordant to views along Turnstone Close due to its projection beyond the side of the appeal property and its position further forward of the building line of properties on Turnstone Close resulting in a prominent appearance in the street scene. Accordingly, it was considered to be contrary to Policies PMD2 and CSTP22 of the Core Strategy.

Highway safety

4.1.3 The Inspector found the enclosure of the land to the side of the appeal property restricts visibility for pedestrians and vehicles using the shared surface at the junction. The Inspector also found the proximity of the new parking space to the corner would leave limited visibility and create a hazard for road users. Accordingly, it was considered to be contrary to Policies PMD2 and PMD9 of the Core Strategy in this regard.

4.1.4 The appeal was dismissed. The full appeal decision can be found online.

4.2 Application No: 22/00016/FUL

Location: 41 Southend Road, Stanford Le Hope, Essex, SS17 0PQ

Proposal: Proposed replacement dwelling house towards the rear of existing development site.

Appeal Decision: Appeal Dismissed

4.2.1 The main issues were the effect of the proposal on the character and appearance of the area; the effect of the proposal on the living conditions of the occupiers of 39 Southend Road, with particular regard to privacy; and

whether the proposal would provide adequate arrangements for car parking.

Character and appearance

- 4.2.2 Given the strong street frontage, the long rear gardens and the layout of the area the Inspector found the backland siting of the dwelling, combined with this orientation and proximity to the site boundaries to be an obtrusive and incongruous addition out of character with the prevailing development pattern of the area. Accordingly, it was considered to be contrary to Policies PMD2, CSTP22 and CSTP23 of the Core Strategy.

Living Condition

- 4.2.3 The Inspector found that windows serving habitable rooms at first floor level would overlook the rear garden of No 39 Southend Road to the detriment of the privacy and amenity of the occupiers of that property. Accordingly, it was considered to be contrary to Policy PMD1 of the Core Strategy.

Car Parking

- 4.2.4 The Inspector did not identify any harm to car parking provision as a result of the proposals.
- 4.2.4 The appeal was dismissed in relation to impact on the character of the area and neighbour amenity. The full appeal decision can be found online.

4.3 Application No: 22/01102/FUL

Location: 15 Nursery Close, South Ockendon, Thurrock, RM15 6DD

Proposal: Erection of a 1 bedroom two storey dwelling in the land adjacent to no. 15 Nursery Close, including the demolition of existing double garage and creation of associated off street parking, cycle and bin store and landscaping.

Appeal Decision: Appeal Allowed

- 4.3.1 The main issues were the effect of the development on the character and appearance of the area, and whether the proposal would provide sufficient off-street parking and, the effect upon highway safety.

Character and appearance

- 4.3.2 The Inspector noted the dwelling would appear similar to other properties in the area, albeit with a more modest plot size for the host and proposed dwelling. Whilst there would be some landscaping lost, the Inspector did not find the proposal to be harmful to the character and appearance of the area. Accordingly, it was found the proposal complied with Policies CSTP22, CSTP23 and PMD2 of the Core Strategy.

Highways

4.3.3 The Inspector considered there to be adequate levels of parking and manoeuvring space for the retained and new dwelling and that the proposal would comply with Policies PMD2, PMD8 and PMD9 if the Core Strategy.

4.3.4 The appeal was allowed. The full appeal decision can be found online.

4.4 Application No: 22/00243/CV

Location: 45 Longhouse Road, Chadwell St Mary, Grays, Essex, RM16 4RT

Proposal: Application for the removal of condition no. 4 of planning permission ref: 17/01064/FUL [Conversion of garage into a self-contained annexe with extensions to garage. A drop kerb proposed to front to accommodate new driveway] to allow for use as a separate dwelling.

Appeal Decision: Appeal Dismissed

4.4.1 The main issues were the character and appearance of the area, the living conditions of the occupiers of the host dwelling and the occupiers of the appeal building; and highway safety, with regard to the adequacy of the parking provision, and the potential for the displacement of vehicles on to the public highway.

Character and Appearance

4.4.2 The Inspector saw that subdivided gardens are not a characteristic of the area, and the provision of a separate, building would lead to noticeably small gardens for the original dwelling and new dwelling which would be a discordant form of development, which would fail to integrate with the existing patten of development. Accordingly, the proposal was contrary to Policies PMD2 and CSTP22 of the Core Strategy.

Living Conditions

4.4.3 The proximity between the building and the rear of the main dwelling were considered to result in an unacceptable relationship with regards to privacy and overlooking issues between the 2 properties. There was also concern that the access arrangements for the rear dwelling would be alongside the main property, causing a loss of amenity when the outbuilding was being accessed. Accordingly, the proposal was contrary to Policy PMD1 of the Core Strategy.

Highways Matters

4.4.4 Three parking spaces were available to the front of the site to serve the main dwelling and the building, 2 for the main house and 1 for the rear building. The Inspector found if access to the spaces remained, then the proposal was acceptable. Accordingly in relation to Policies PMD2, PMD8 and PMD9 the proposal was found to be acceptable.

4.4.5 For reasons of character and living conditions the appeal was dismissed. The full appeal decision can be found online.

4.5 Application No: 23/00451/HHA

Location: 86 Southend Road, Grays, Essex, RM17 5NW

Proposal: Demolition of existing shed and construction of two storey side extension and part first floor rear extension.

Appeal Decision: Appeal Allowed

4.5.1 The main issue was the effect of the proposal on the character and appearance of the area.

4.5.2 The Inspector noted that whilst the proposal would not directly mirror the design of the attached property the design would be subservient to the dwelling. It was also noted that the building line in the area was a little fragmented, so projection forward of the notional building line on Tennyson Avenue would not be significantly harmful and some space was retained to the site boundary. Accordingly, the proposal was not found to be harmful to the area complying with Policies PMD2 and CSTP22 of the Core Strategy.

4.5.3 The appeal was allowed. The full appeal decision can be found online.

4.6 Application No: 20/01171/FUL

Location: Stanford House, Princess Margaret Road, East Tilbury, Essex

Proposal: Conversion of ground floor ancillary retail storage units (E Use Class) to provide 1 x 2-bedroom flat and 2 x 1 bedroom flats (C3 Use Class) with associated landscaping.

Appeal Decision: Appeal Allowed

4.6.1 The main issue was whether the proposal would provide future occupiers with adequate living conditions having regard to outlook.

Outlook for occupiers

4.6.2 The Inspector identified that the rear of the building would face the rear wall of a boxing club and a storage building, both of which are single storey. The Inspector noted that an area outside the residential units would be landscaped, with grass block pavers, a landscaped communal garden with a green wall planted on the opposing storage building and 8 Birch trees would be planted.

4.6.3 The plans showed distances of 8.9m from the rear of Units 2 & 3 with each unit having an Oriel window to allow views. The relatively low height of the buildings meant, the Inspector thought, that occupiers would be able to see over the roof and there would be good outlook for these units. Whilst Unit 1 would be closer, at a pinch point at 3.5m, a planter was being provided to soften the wall. Accordingly, subject to conditions, the proposal were found

to be acceptable in terms of future living conditions complying with Policy PMD1 of the Core Strategy.

4.6.4 The appeal was allowed. The full appeal decision can be found online.

4.7 Application No: 22/00616/FUL

Location: 63 Wharf Road, Stanford Le Hope, Essex, SS17 0DZ

Proposal: Demolition of existing dwelling to form access and erection of four semi-detached chalets with parking and amenity space to rear of properties on Wharf Road.

Appeal Decision: Appeal Allowed

4.7.1 The main issues were the character and appearance of the area; the occupiers of adjoining properties; and highway safety.

Character and appearance

4.7.2 Whilst the Inspector noted the new dwellings would depart from the established street pattern, he considered this would not be unusual for infill development and considered they would form a coherent group of new buildings with reasonably large plots and good sized gardens. He found no reason to suggest there would be a long term impact on established planting at the site. Accordingly, in character terms the proposals was considered to accord with Policies CST22, CSTP23, and PMD2 of the Core Strategy.

Neighbour Amenity

4.7.3 With heights of 7m for the new properties and a depth of 13m for gardens on Wharf Road, the Inspector considered the dwellings would not appear overbearing to the occupiers of Wharf Road. He noted that there was no right in planning legislation to protect views, rather only living conditions, which he found not to be impacted upon. The rear dormers, were considered to offer only obtuse views of the nearby gardens, and it was considered these gardens were already more overlooked by the established neighbouring properties. The sounds of traffic movement to the dwellings was considered to be slight for the occupiers of Wharf Road. Accordingly in amenity terms the proposals would be considered to accord with Policy PMD1 of the Core Strategy.

Highways

4.7.4 The Inspector considered Wharf Road to be moderately busy but noted that a large amount of vehicle movements were HGVs to the Stanhope Industrial Estate. The Inspector found the access arrangements and turning arrangements within the site would be acceptable for all types of vehicles. It was considered that junction spacing between the proposed access and other junctions would be acceptable. The numerical provision of parking spaces was also found to be acceptable. Accordingly, in highways terms the proposal was considered to accord with Policies PMD2, PMD8 and PMD9 of the Core Strategy.

4.7.5 The appeal was allowed. The full appeal decision can be found online.

Further information following Planning Committee on 30 November 2023

4.7.6 It is noted that Members were aware of this appeal decision at the Committee meeting held on 30 November 2023 and that Members raised concern that the appeal was allowed.

4.7.7 Decisions of the Planning Inspectorate can be challenged in the High Court, if LPAs think that the Inspectorate has made a legal mistake. Any challenge must be made within 6 weeks of the decision.

4.7.8 As a result of Member's concerns, the matter of the allowed appeal was raised with Legal Services who have confirmed that on review of the decision they consider that there would be unlikely to be grounds for a challenge.

4.7.9 Whilst it is understandable that Members may be upset about the decision being allowed there has not been found to be any error in the making of the decision and therefore the cost and risk to the Council of making any challenge would be significant.

4.8 Application No: 22/00676/FUL

Location: 14 Raphael Avenue, Tilbury, Essex, RM18 8NA

Proposal: Change of use from Residential Dwellinghouse (C3) use, used as a 6 persons smaller House of Multiple Occupation, to an 8 persons Larger House of Multiple Occupation falling under a Sui Generis use, including the erection of a single storey rear extension.

Appeal Decision: Appeal Allowed

4.8.1 The Inspector considered the main issues in the appeal to be:

- the effects of the proposed use on the character and appearance of the area;
- the effects on neighbouring occupiers, due to noise and disturbance;
- the effects on parking and highway safety;
- whether the proposal would put the occupants at undue risk from flooding;
- and whether the development should contribute to the Council's mitigation strategy for internationally designated sites.

4.8.2 The Inspector did not consider that the change of the property from a 6 person HMO to an 8 person HMO would not result in any significant impacts upon the character and appearance of the area and that there would be no conflict with Policies CSTP22 or PMD2.

- 4.8.3 Regarding additional noise, the Inspector considered that the increase of 2 additional persons occupying the property would be unlikely to result in any unacceptable noise or disturbance that would adversely impact neighbours, or be contrary to Policy PMD1.
- 4.8.4 With respect to the parking concerns reason for refusal, the Inspector noted that there was some on-street parking during the daytimes and that this would likely be heavier during the evenings. The Inspector noted the frontage of the appeal site provides a concrete forecourt which was, 'capable of accommodating up to three smallish vehicles, or two larger ones.' The Appellant had indicated this forecourt was rarely used. The Council's case was that the frontage access was prevented by a street tree and a lack of any formal vehicle access. The Inspector stated that they appreciated that the existing forecourt parking area at the appeal site suffers from some shortcomings; in particular, there is no dropped kerb, and manoeuvring is slightly hampered by an existing tree and lighting column. However, the Inspector did not consider the appeal proposal to be dependent on this existing provision. Any problems with regard to access to the forecourt were, commented the Inspector, therefore, irrelevant to the present appeal. Furthermore, the Inspector stated there is no evidence that the defects identified are so serious as to prevent the forecourt from being used. The existence of at least two existing spaces seems to put the appeal property amongst the better served in the street, irrespective of these minor difficulties. The Inspector commented that while the proposal would likely add to this demand for on-street parking, the proposal would be unlikely to lead to significant highway harm given they considered there was space within the immediate highway network for this overspill. The Inspector concluded that there would be no unacceptable harm with regards to parking.
- 4.8.5 Regarding flood risk, the Inspector noted the lack of a Flood Risk Assessment in lieu of a Householder flood risk form, and commented that this form would have been adequate to assess the flood risk for the rear extension. In addition, the Inspector noted that a flood evacuation plan had been submitted, and concluded that, despite the location within a high risk flood zone, the proposal would meet the relevant policy requirements for this type of use and complied with Policies CSTP27 and PMD15.
- 4.8.6 Finally, with respect to the Essex Coast recreational avoidance and mitigation strategy (RAMS) the Appellant has questioned whether the terms of the strategy apply to the present proposal, where no new self-contained dwelling would be created. The Inspector considered they could not judge whether in this particular case the terms of the strategy are such as to make the requested contribution either necessary, or sufficiently related to the development. Furthermore, the Inspector stated, the RAMS does not appear to form part of the development plan, nor of any SPD and concluded there was no justification for the contribution for this proposal.

4.9 Application No: 22/01162/CLEUD

Location: Land to Rear Of 2 To 20, Hillcrest Avenue, West Thurrock, Essex

Proposal: Lawful application to regularise the storage and hobby use of the land with the erection of palisade fencing.

Appeal Decision: Appeal Dismissed

- 4.9.1 The main issue was whether the Council's decision to refuse to grant a certificate was well-founded. In line with section 171B(3) of the Town and Country Planning Act 1990 (the Act) where a material change of use of land has occurred, no enforcement action may be taken following the end of a period of ten years, beginning with the date of the breach. It follows that if the existing use of the land resulted in a material change of use, that use cannot be lawful unless that use had continued for a period of at least ten years.
- 4.9.2 The Inspector commented that although the appellant does store a large number of vehicles there is no evidence that there is any commercial activity taking place and the use does appear to be a hobby or personal pursuit, even if at quite an extreme scale. The Inspector found there was little evidence of any significant restoration going on at the time of my visit and many of the lorries appear to have been purchased and stored, with equipment and associated items within the three storage containers on the site.
- 4.9.3 By his own admission, the appellant accepted that the current use had only been continuing for a period of 8 years prior to the application being made. Consequently, the Inspector stated that if the use involved a material change from any previous use, the current use cannot be lawful because the requisite 10 year period had not elapsed. The Inspector agreed that little information is presented regarding the previous use of the land. There is no record of any planning history prior to the current use. The land is owned by a company who also own land within the industrial/ retail estate at the foot of the chalk cliff which is immediately to the rear of the site.
- 4.9.4 In addition, the Inspector commented that it is clear is that the storage and hobby use has resulted in a material change in the character of the land. The volume of lorries and associated material, plus the storage containers has a significant visual impact and there is potential for greater noise and disturbance associated with repairs and work being carried out to those vehicles. Compared to the little used former state of the strip of land it seems clear that the present use amounted to a material change of use.
- 4.9.5 The Inspector concluded that, 'In planning terms the use is not lawful and there are no grounds to grant a CLEUD in relation to it.' The Inspector

considered that the fence and gates were erected more than 4 years ago, as agreed by both parties and the fence was considered lawful as a result. However, the Inspector determined overall the Council's decision to refuse to grant a CLEUD was well-founded and dismissed the appeal. The Council will now be progressing enforcement matters at the site.

4.10 Application No: 21/00350/BUNWKS

Location: 93 Mollands Lane, South Ockendon, Essex, RM15 6DJ

Proposal: Refusal of planning permission 21/00688/HHA for retrospective summer house.

Appeal Decision: Appeal Dismissed

4.10.1 Two appellants were named on the appeal form. In such circumstances the Planning Inspectorate allocates an appeal reference number to each appellant because, technically, two appeals have been made. In this case, the grounds of appeal are identical in relation to both appeals and a decision is made on each appeal. The Inspector considered the Enforcement Notice appeal in relation to the following breach of planning control: Without planning permission the erection of an outbuilding and decking area.

4.10.2 The requirements of the notice were to:

(i) Reduce the height of the outbuilding to no more than 2.5m in height

(ii) Remove all materials arising from step (i) above from the land.

The period for compliance with the requirements is three months from the date the notice takes effect.

4.10.3 The Inspector considered the appeal which was against Ground c) which was that there had not been a breach of planning control. In this case, the appellant's argument is that the building constitutes 'permitted development' on the basis that it complies with the limitations of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

4.10.4 The Inspector noted that the rear part of the building measured 2.48m from ground level to the top of the flat roof. However, the canopy is raised slightly above the height of the roof of the main part of the building and the top of the canopy roof is 2.61m from ground level.

4.10.5 The Inspector stated that given that the building and the attached canopy are a single structure the overall height is clearly above the 2.5m permitted by Class E and it does not constitute 'permitted development'. Whilst 11cm

may not be substantially over the 2.5m height limit but it is not immaterial or de minimis in the context of the limitations of the GPDO and in the absence of any leeway for discretion, a building either meets the limitations or it does not. In this case, the structure is higher than permitted by Class E. 9. As such, the Inspector concluded, it does not benefit from planning permission granted via the GPDO and amounts to a breach of planning control, in the absence of any planning permission granted by the Council. It follows that the appeal on ground (c) must fail.

4.11 Application No: 21/01277/FUL

Location: 36 High Street, Stanford Le Hope, SS17 0HQ

Proposal: First floor rear extension to the existing property to provide HMO rooms and kitchen space, with parking beneath for existing HMO rooms.

Appeal Decision: Appeal Dismissed

4.11.1 The Inspector considered the main issue was the effect of the proposal on highway safety with regard to the parking and servicing provision.

4.11.2 The Inspector noted that the development in the area typically adjoins the pavement with little off-street parking. On-street parking is restricted, including residential permit zones, within High Street, King Street and the surrounding roads, whilst there is a surface car park accessed from High Street. The area to the rear of the site is used for informal parking related to the commercial premises.

4.11.3 the Inspector commented that the development comprising the additional HMO rooms would be a car free development and would not be provided with any car parking spaces. It was noted that the site is in a highly accessible location where future occupants would not be reliant on private vehicles to access facilities and services, and acknowledging the environmental and health benefits associated with reduced car usage. However, the Inspector stated that there is no mechanism proposed by which the car free development could be secured and retained.

4.11.4 The Inspector went on to state that vehicles exiting the site would likely need to do so in a reverse gear, which may result in the potential conflict with pedestrians and users. The access is located on one of the main routes into the town centre and is close to the busy junction with High Street. The poor layout would therefore increase the risk of harm to pedestrian and highway safety in the locality. The Inspector concluded that the proposal would harm highway safety as a result of the inadequate parking and servicing arrangements. The development would therefore fail to accord with Policy PMD8 of the Thurrock Local Development Framework

Core Strategy and Policies for Management of Development 2015, which requires parking provision to be safe and of a high quality design and the National Planning Policy Framework, which requires safe and suitable access to be achieved for all users.

5.0 APPEAL PERFORMANCE:

5.1 The following table shows appeal performance in relation to decisions on planning applications and enforcement appeals.

5.0 APPEAL PERFORMANCE:

	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
Total No of Appeals	1	2	0	1	6	6	3	7	4			
No Allowed	1	1	0	0	2	2	0	3	0			
% Allowed	100%	50%	0%	0%	33.3%	33.3%	0%	42.8%	0%			

6.0 Consultation (including overview and scrutiny, if applicable)

6.1 N/A

7.0 Impact on corporate policies, priorities, performance, and community impact

7.1 This report is for information only.

8.0 Implications

8.1 Financial

Implications verified by: **Laura Last**
Management Accountant

This report is an update report and as such there are no specific financial implications.

8.2 Legal

Implications verified by: **Caroline Robins**
Locum Principal Solicitor

The Appeals lodged will either have to be dealt with by written representation procedure or (an informal) hearing or a local inquiry. During planning appeals the parties will usually meet their own expenses and the

successful party does not have an automatic right to recover their costs from the other side. To be successful a claim for costs must demonstrate that the other party had behaved unreasonably.

Where a costs award is granted, then if the amount isn't agreed by the parties it can be referred to a Costs Officer in the High Court for a detailed assessment of the amount due

8.3 **Diversity and Equality**

Implications verified by: **Becky Lee**
Team Manager - Community Development and Equalities Adults, Housing and Health Directorate

There are no direct diversity or equality implications arising from this report..

8.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, or Impact on Looked After Children.

None.

9.0. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- All background documents including application forms, drawings and other supporting documentation can be viewed online: www.thurrock.gov.uk/planning. The planning enforcement files are not public documents and should not be disclosed to the public.

10. **Appendices to the report**

- None