



Appeal Decision

Site visit made on 21 August 2025

by **R Lawrence BSc (Hons), PGDip (TP), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th September 2025

Appeal Ref: APP/E2205/W/25/3364504

Pemsey Field View, Lees Road, Brabourne, Kent TN25 6QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Stuart Morel against the decision of Ashford Borough Council.
 - The application Ref is PA/2024/2349.
 - The development proposed is change of use of storage building to a two-bed dwellinghouse, to include two parking spaces and garden area.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for a full award of costs has been made by Mr Stuart Morel against Ashford Borough Council. That application is the subject of a separate decision.

Main Issues

3. The main issues are
 - the effect of the development on the Stodmarsh designated sites,
 - whether the proposal would provide a suitable standard of accommodation for future occupants, with particular regard to external amenity space, privacy and outlook, and
 - whether the proposal would make adequate provision for car parking.

Reasons

Stodmarsh designated sites

4. The appeal site lies within the catchment area of the Stodmarsh Lakes, a complex of water bodies which are subject to designations as a Special Protection Area (SPA), Ramsar site, Special Area of Conservation (SAC), and a Site of Special Scientific Interest (SSSI) — collectively referred to as the Stodmarsh designated sites. Portions of the area are additionally designated as a National Nature Reserve (NNR). The sites are of international importance for their wildlife and are protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations.
5. Nutrient levels (nitrogen and phosphorus) have led to the eutrophication of the Stodmarsh Lakes, adversely affecting the protected habitats and species and resulting in an unfavourable ecological condition. Stodmarsh Lakes are considered

- to be at risk from additional nutrient inputs from new developments within the catchment area.
6. The development proposes a permanent new residential dwelling, a form of development which would generate wastewater, along with potential for pollution due to surface water runoff. Consequently, the development would establish a pathway for nutrient loading into the Stodmarsh system, and likely significant effects cannot be screened out.
 7. Natural England advises that, in such circumstances and in accordance with the precautionary principle, the proposal must be subject to an Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017 (as amended).
 8. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority for the purposes of this appeal.
 9. The AA is required to determine the effect on the integrity of Stodmarsh designated sites. For an AA to conclude that there is no likely significant effect, the decision maker must be satisfied that the development can achieve nutrient neutrality.
 10. The appellant has submitted a nutrient assessment dated 25 November 2024. This report identifies that the proposal would result in a nutrient surplus, albeit a small one, and therefore would contribute to an increase in nutrient load within the catchment and cannot be considered nutrient neutral. Although minor, the surplus nonetheless fails to demonstrate that the proposed development would avoid increasing nitrate and phosphate levels in the catchment.
 11. A number of potential water saving measures have been outlined, through the use of readily available fixtures and fittings, which could be secured by condition and could achieve a lower-than-average water usage. However, there is no specific information before me as to which water saving measures would be provided, nor have any calculations been provided to demonstrate their effectiveness in achieving nutrient neutrality.
 12. The appellant has referred to a regional mitigation strategy which is currently being developed and is likely to be adopted in the near future. I note that the appellant is content to subscribe to this strategy once adopted. However, the latest information before me indicates that the strategy remains in draft form and I have no certainty regarding its final content or implementation timeline. I appreciate that the lack of such a strategy may make it difficult for the appellant to demonstrate nutrient neutrality, but this does not negate my duties under the Habitat Regulations. Given the uncertainty surrounding the strategy's content and adoption timeline, I cannot conclude that it would provide appropriate mitigation for the proposal. Even if adopted, there is currently no planning obligation or legal mechanism in place to secure compliance with the strategy.
 13. The appellant has raised concerns regarding uncertainties in Natural England's advice, specifically in relation to the extent to which nutrient waste entering the River Stour affects the Stodmarsh designated sites. However, despite these uncertainties, Natural England—as the statutory consultee—has clearly stated that

nutrient neutrality must be achieved to avoid likely significant effects. In line with the precautionary principle, and in the absence of substantive evidence demonstrating that nutrient inputs via the River Stour do not impact the Stodmarsh designated sites, substantial weight must be afforded to Natural England's position as the statutory consultee.

14. Therefore, adopting a precautionary principle, I am unable to rule out any likely significant effects resulting from the proposal, alone or in combination with other developments, which would be harmful to the integrity of Stodmarsh designated sites.
15. For the reasons set out above the proposed development would conflict with the Habitats Regulations, Policy ENV1 of the Ashford Local Plan 2030 (ALP) and Paragraph 193 of the National Planning Policy Framework (the Framework). Taken together, these make it clear that development which would have an adverse effect on the integrity of European protected sites, alone or in combination with other projects, must not be permitted, and that if significant harm to biodiversity cannot be avoided, including with regard to mitigation, then planning permission should be refused.

Standard of accommodation

16. The proposed development includes a private external amenity space that wraps around two sides of the dwelling. Plans indicate this space would be grassed and enclosed by the existing brick boundary wall and the dwelling itself. While the overall size falls below the starting point calculation set out in Policy HOU15 (width of dwelling × 10m), the policy explicitly allows for flexibility where it can be demonstrated that the outdoor space is usable, well-designed, contributes positively to the character of the area, and supports a high standard of living conditions.
17. In this case, despite its modest size, the garden is well-integrated into the site layout. Its enclosure by the brick boundary wall and the dwelling provides a strong sense of privacy and security. The western portion of the garden, although narrow, offers a secluded area suitable for storage, planting, or quiet sitting, and is likely to benefit from shade during warmer periods. A modest outdoor storage unit was observed during the site visit, indicating active and practical use of the space.
18. The northern section of the garden is more open and enjoys a pleasant outlook beyond the boundary wall. Its shape and size are sufficient to accommodate typical domestic activities such as drying clothes, placing garden furniture, and outdoor relaxation. Although the space may be constrained for children's play, it remains functional and well-designed within the constraints of the site.
19. The northern part of the garden is overlooked by the rear balcony of an adjacent upper-floor flat. However, at the time of my site visit, bamboo screening was in place, offering a degree of mutual privacy between the two properties. The balcony itself benefits from a good outlook, and the screening did not appear to materially compromise its amenity value. I am satisfied that appropriate screening—secured through a Grampian condition controlling its design, installation, and retention—could be implemented prior to the occupation of the proposed dwelling to ensure continued privacy for both properties. Even if ownership were to change in the future, I consider there to be a strong likelihood that some form of screening would be retained, given the mutual benefit of maintaining privacy.

20. The appeal site is located within a courtyard-style development, enclosed by existing buildings on all sides. This physical context imposes clear limitations on the ability to provide a larger private garden area. Such spatial constraints are typical of town centre and edge-of-centre locations, where reduced or minimal external amenity provision has previously been accepted due to the nature of the built environment.
21. In support of this appeal, the appellant has referenced several comparable developments—including at 74–76 and 108–110 High Street, 21a Bank Street, 3 Middle Row, 17 Drum Lane, and 3 Queen Street. Each of these cases involved the change of use or redevelopment of existing buildings. While these sites are located in more central areas than the appeal site, they share similarly constrained settings.
22. Collectively, these decisions demonstrate a consistent planning approach: where physical constraints limit the ability to provide larger private amenity areas, and where public open space is readily accessible, reduced garden sizes—or even the absence of private outdoor space—can be considered acceptable. I consider the appeal scheme to align with this rationale. It is not only physically constrained in a manner comparable to the cited examples, but it also benefits from close proximity to accessible public open spaces, which can supplement the amenity needs of future occupants. Importantly, unlike the examples cited, the appeal proposal includes a well-designed, dedicated external amenity space, albeit of modest size.
23. This interpretation of Policy HOU15 represents a pragmatic and proportionate application of policy —balancing site constraints with access to communal or public amenities—and supports the re-use of buildings where such constraints are likely to occur.
24. The proposed internal accommodation would meet the requirements of the nationally described space standards, ensuring a good baseline for living conditions. With the exception of the bathrooms, all rooms would benefit from a dual aspect, enhancing natural light and ventilation throughout the dwelling.
25. While two elevations face shared spaces—including the access route and car parking area—these elevations are modestly set back from the access, which serves only a small number of properties. The car parking area lies within the curtilage of the appeal site and remains under the appellant’s control. In this context, the presence of parking directly in front of habitable room windows is not considered materially different from typical residential arrangements where driveways are positioned adjacent to or in front of dwellings. This layout is common and does not inherently result in harm to living conditions.
26. The parking spaces are offset from one another, and even when both are occupied, future residents would retain views around and above the vehicles. The full-height openings on this elevation allow for an outlook over the cars and at oblique angles toward the shared courtyard and access route.
27. The courtyard setting is a communal space, and some degree of intervisibility between the dwelling and the movement of pedestrians and vehicles is to be expected. This is typical of many residential environments and does not, in itself, result in unacceptable living conditions.
28. The appellant has cited examples of properties along Lees Road—including Myrtle House, Granville Villas, and those near the junction with Bridge Road—where

habitable room windows face directly onto the public highway, often with no separation from the pedestrian footpath. These examples illustrate that such arrangements are not unusual and are consistent with established residential patterns. In contrast, the appeal site benefits from a courtyard, cul-de-sac form of development that is set back from the public highway and footpaths, offering a quieter and more private setting.

29. Two elevations of the dwelling would face onto a private garden, further enhancing the sense of enclosure and privacy. Taken together, the internal layout, relationship to external spaces, and surrounding context would provide a good standard of living conditions for future occupiers.
30. The proposed development would deliver a suitable standard of accommodation for future occupants, both internally and externally, with particular regard to privacy and outlook. The internal layout meets national space standards and benefits from dual aspect rooms, while the external amenity space—though modest in size—is well-designed, private, and functional. The development therefore complies with Policy SP1, Policy SP6 and Policy HOU15 of the ALP. These policies, read together and insofar as relevant, seek to secure high-quality places to live through well-integrated, responsive design, and the provision of usable private external amenity space, whilst allowing for flexibility in amenity provision where justified by site-specific constraints.

Car parking

31. The proposed development would be accessed via an existing shared route, which also serves two residential properties to the west and buildings fronting Lees Road. At the time of my site visit, the adjacent parking area was clearly marked and appeared to be formally allocated. The shared access is well-established and functions effectively for the existing uses.
32. The proposal includes two off-street parking spaces located to the side of the proposed dwelling. These spaces are positioned outside the shared access route, thereby avoiding any obstruction to vehicular movements. The dimensions of the parking area are sufficient to accommodate two vehicles. Although one space is positioned close to the dwelling wall, its width exceeds the minimum standard set out in the Residential Parking and Design Guidance SPD, which compensates for the proximity and ensures usability.
33. The site is set well back from Lees Road, and the number of properties using the shared access is limited. As such, vehicle movements are expected to remain low, even with the addition of the proposed dwelling. The shared space is sufficiently sized to allow for adequate manoeuvring to and from the proposed parking spaces. Such manoeuvres are comparable to those required for the existing parking area opposite and do not appear unduly complex. While manoeuvring would occur outside the red line boundary of the appeal site, the long-standing nature of the access and its continued use by multiple premises provides reasonable assurance that it will remain available for future use.
34. The proposal does not alter the existing access onto Lees Road. The setback of the parking spaces allows sufficient room for vehicles to turn and exit the site in forward gear. Given the low anticipated traffic generation and the provision of compliant parking spaces, I am satisfied that the proposal would not result in harm to highway safety.

35. Policy TRA3(a) of the ALP requires two-bedroom dwellings to provide a minimum of two parking spaces per unit, in accordance with the design, layout, and accessibility principles outlined in the Residential Parking and Design Guidance SPD. The proposed development meets this requirement by providing two appropriately sized off-street parking spaces. The layout ensures that vehicle movements are safe and unobstructed, and the design reflects the guidance set out in the SPD. Therefore, I am satisfied that the parking arrangement is acceptable and compliant with Policy TRA3(a) of the ALP.

Planning Balance and conclusion

36. I have found that the proposal would be acceptable in terms of car parking provision and the standard of accommodation for future occupants. However, it would likely have a significant adverse effect on European Protected Sites when considered in combination with other developments. Critically, no mitigation measures have been proposed to ensure that the integrity of these habitat sites would not be adversely affected. This results in a clear conflict with both the development plan and the Habitat Regulations, which carries substantial weight and renders the proposal contrary to the development plan as a whole.
37. The proposal would make a modest but meaningful contribution to housing supply, particularly at a time when the Council cannot demonstrate a five-year supply of deliverable housing sites. This would bring social and economic benefits and support the government's objective to significantly boost housing delivery. However, these benefits are limited in scale and do not outweigh the likely harm to European Protected Sites.
38. The proposal also conflicts with the provisions of the Framework relating to the protection of habitat sites. The application of these policies provides a strong and compelling reason for refusing the development. As such, the presumption in favour of sustainable development does not apply.
39. In conclusion, the proposal is in conflict with the development plan, and there are no material considerations that indicate the appeal should be determined other than in accordance with it.
40. For the reasons given above, the appeal is dismissed.

R Lawrence

INSPECTOR