



Appeal Decision

Site visit made on 15 October 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 OCTOBER 2025

Appeal Ref: Appeal Ref: APP/A2280/C/24/3358271 **Land at 89 Bryant Road, Rochester, Kent, ME2 3ES**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Jagdeep Khiara against an enforcement notice issued by Medway Council.
 - The notice was issued on 20 November 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the conversion and change of use of a single storey store to the rear of the property to a self-contained residential flat.
 - The requirements of the notice are to (i) cease the use of the store building for residential use; (ii) removal all fixtures and fittings associated with the residential use of the building; (iii) remove all resultant debris and associated materials arising from compliance with the above requirements from the Land.
 - The period for compliance with the requirements is six calendar months from the date when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words *"Cease the use of the store building for residential use"* in section 5(i), and their replacement with the words *"Cease the use of the single storey store to the rear of the property as a self-contained residential flat"*, and the deletion of the words *"Remove all fixtures and fittings associated with the residential use of the building"* in section 5(ii), and their replacement with *"Remove all fixtures and fittings associated with the use of the building as a self-contained residential flat"*. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

2. An application for costs is made by Medway Council against Mr Jagdeep Khiara. This application is the subject of a separate Decision

Preliminary Matters

3. An application¹ was made for a lawful development certificate on 25 September 2023 for a 'C3 – dwellinghouse – No. 89b has been in use since the 1970s approx' for the same building that is the subject of this appeal. The Council's refusal to grant the LDC application was subsequently appealed² and was dismissed on 24 October 2024 (LDC Appeal). In dismissing the LDC appeal, the inspector

¹ LDC application reference MC/23/2144

² Appeal reference APP/A2280/X/24/3338822

commented, ‘I have had regard to all the evidence submitted, but there is nothing compelling before me to suggest that No. 89b was used continuously for self-contained residential purposes, and as a main residence, until Ms Carr’s tenancy commenced in February 2022. In contrast, it would appear that Mrs Khaira only used the facility, which clearly needed upgrading before it was rented out, on a casual basis. Indeed, she says in her letter that she and her husband “lived in that part of the building on and off...”’.

4. The LDC appeal decision is a material planning consideration of considerable weight, particularly in terms of my consideration of the ground (d) appeal and the Council's costs application. I also emphasise that the period considered for the LDC appeal was different by several months when compared to the period under consideration for the ground (d) appeal.
5. The National Planning Policy Framework was revised in December 2024 and subsequently amended in February 2025 (the 2025 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023 and referenced in the reasons for issuing the notice. The 2025 Framework has not materially changed in terms of considering the ground (a) appeal main issues below.

Appeal on ground (e)

6. An appeal made on ground (e) is made on the basis that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act. Section 172(2) of the Act provides that a copy of an enforcement notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants, and sub-tenants, being an interest which, in the opinion of the local planning authority, is materially affected.
7. The appellant’s claim on ground (e) is that the building has never been used as a store but has been used for residential purposes since its construction and has always had a shower room, kitchen, living room with a pull-out sofa bed. They say that it has never been used as a store or storeroom and so the Council’s request to convert it back to a storeroom is invalid. This is not a matter that can be considered in respect of a ground (e) appeal. I do, however, return to this issue as part of the consideration of the ground (f) appeal below.
8. The evidence is that the owner/occupier of the appeal property was issued with a copy of the notice. Moreover, the appellant has lodged an appeal and so is clearly aware that a notice has been issued. On the evidence that is before me, I find that the notice was properly served on everyone with an interest in the land as required by section 172 of the Act. The appellant has not provided any relevant evidence to support his ground (e) appeal.
9. For the above reasons, I conclude that the ground (e) appeal fails.

Appeal on ground (d)

10. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement

notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

11. The appellant claims that he occupied the flat between 2018 and 2022. However, this is a matter that has already been considered by another Inspector as part of the determination of the 2024 LDC appeal. The inspector decided that based on essentially the same evidence, it did not precisely and unambiguously demonstrate continuous use of the building for four years. Based on the evidence submitted as part of the 2024 LDC appeal, and also submitted as part of this appeal, I have no reason to depart from the overall conclusion reached by the LDC appeal inspector.
12. I acknowledge that the appellant has included a letter as part of this appeal from Estelle Summer of Wards of Kent Lettings dated 5 December 2023 which states '*I can confirm that I went to the above property in August 2018 and recommended a marketing figure of around £775.00pcm*'. However, the evidence is that this letter was before the inspector who considered the LDC appeal. Moreover, the letter does not have the weight of a statutory declaration and, in any event, even if such a visit/recommendation did take place at this time, it does not in itself precisely and unambiguously demonstrate that the building was immediately and subsequently used continuously as a self-contained dwelling.
13. While the evidence indicates that Council tax was paid by the appellant in respect of the property from 2018, the payment of Council tax does not in itself demonstrate continuous use of the building as a self-contained flat. Indeed, and as was considered by the previous inspector when considering the LDC appeal, Jagdeep Khiara has commented that she and her husband '*lived in that building on and off*' between 2018 and 2022. As was concluded by the LDC appeal inspector, I find that the '*on and off*' reference casts sufficient doubt about any claim of continuous use of the building as a self-contained flat between 2018 and 2022. In relative terms, the appellant has not submitted any new evidence as part of this ground (d) appeal, including the letter from Wards of Kent Lettings, which would lead me to reach a different conclusion to the previous inspector about residential occupation of the building for the 2018 to 2022 period.
14. The burden of proof rests with the appellant. I conclude that based on the totality of the evidence that is before me, and, on the balance of probability, it does not precisely and unambiguously demonstrate at least four years use of the building as a self-contained flat. I reach the same finding as the LDC appeal inspector which is that there is nothing compelling before me to suggest that the appeal building was used continuously for self-contained residential purposes, and as a main residence, until Ms Carr's tenancy commenced in February 2022.
15. The notice was issued on 20 November 2024. The evidence does not precisely and unambiguously demonstrate, on the balance of probability, that the building has been used as a self-contained flat from 20 November 2020 until 20 November 2024, i.e., a continuous four-year use. While more recent evidence of continuous occupation has been submitted as part of this ground (d) appeal (utility bills, bank statements, tenancy agreements etc), save for the Wards of Kent Lettings letter, the evidence does not differ from that already considered by the LDC appeal inspector for the 2018-2022 period.

16. For the above reasons, I conclude that when the notice was issued it was not too late to take enforcement action in respect of the breach of planning control. Therefore, the ground (d) appeal fails.

Appeal on ground (a) and the deemed planning application

Main Issues

17. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
18. I have considered the reasons for issuing the notice and the main issues are the effect of the breach of planning control on (i) the living conditions of the occupiers of the self-contained residential flat in respect of its size, outlook, privacy and provision of outdoor amenity space and access, and (ii) the integrity of the Thames Estuary and Marshes and the Medway Estuary and Marshes Special Protection Areas.

Living Conditions

19. The undisputed evidence is that the appeal dwelling has a gross internal floorspace of about 25.4 square metres. The Government's 2015 Technical housing standards – nationally described space standard (NDSS) states that for a one person, one bedroom, one storey dwelling with a shower room, the minimum gross internal floor area should be 37.0 square metres. The dwelling falls considerably short of the minimum gross internal floor area requirement in the NDSS. It provides a cramped and small internal living environment for any occupier.
20. Moreover, the NDSS requires a minimum of 1 square metre built in storage. There is no built-in storage. While the appellant comments that they would be prepared to provide built in storage, they do not provide further details in terms of this matter and, furthermore, this has the potential to lead to the loss of more gross internal floor area which, in turn, would make the existing cramped conditions even worse.
21. The evidence is that when the notice was issued, all the windows were fitted with opaque glass. This is still the case now. In this context, the breach of planning control does not provide an acceptable level of outlook for any occupier. Indeed, the internal living environment is oppressive. I have considered whether it would be possible to fit clear glass to some or all the windows and to deal with such a matter by planning condition.
22. The kitchen window faces directly towards the outbuilding used in association with the ground floor shop at No. 89 Bryant Road. This outbuilding is very close to the kitchen window of the appeal outbuilding. Owing to this and its height I find that the outlook would be poor if the window was fitted with clear glass. The other two windows face directly over the pedestrian access towards the neighbouring residential garden/amenity space. Given the associated comings and goings along the pedestrian access (the parties agreed on the site visit that it was also used by the occupiers of the shop and the upstairs flat) and overlooking from the neighbouring residential garden/amenity space, I find that any occupier of the appeal building would be subjected to an unacceptable invasion of privacy if these two windows were fitted with clear glass. Indeed, it is likely that any occupier would

likely have to keep curtains or blinds closed for most of the time which would also result in an oppressive living environment and poor outlook.

23. The outside amenity space that may be available for any occupier of the appeal building is very small. It is not a private space given that it is shared with the shop and the upstairs flat. The appellant does not provide detail or precision in terms of what area would be associated with the flat which is the subject of this appeal. In any event, most of space is essentially used as a communal access and so is not conducive to suitable and private outside amenity space.
24. The appellant comments that if I were to find that the outside amenity space was not acceptable, then such a finding would be outweighed by the fact that Northcote Road Recreation Ground and Strood Sports Centre are within walking distance of the appeal site. While I acknowledge that such facilities are close, there is a difference between public and private outside amenity space. Unlike the former, the latter offers the opportunity to conveniently relax or socialise in private, to undertake day-to-day activities like drying clothes, and/or to store domestic paraphernalia such as bicycles, barbecues and tables/chairs. I do not therefore find that the existence of public recreational facilities in the vicinity of the appeal site is sufficient to outweigh the deficient outside amenity space.
25. Access to the appeal dwelling is via a rear alleyway. This includes a door which can be locked and has good visibility from the appeal site to the main road. It is understood that it is also used by the occupiers of other flats in the area. I do not find that use of this access would likely result in any material issues from a crime or vulnerability point of view and as outlined by the appellant, it would be possible to improve lighting and surveillance in this area by affixing some sort of light/CCTV facility on the appeal land. A condition could be imposed in this regard. This finding does not, however, overcome my other living conditions concerns which are collectively very significant in decision making terms.
26. For the reasons outlined above, I conclude that the breach of planning control does not accord with the amenity requirements of policy BNE2 of the Medway Local Plan 2003 (LP), paragraph 135(f) of the 2025 Framework, and the NDSS.

Special Protection Areas

27. The evidence is that the appeal site is within 6 kilometres of the North Kent Special Protection Areas (SPA). Having regard to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy July 2014, the evidence is that the residential development on its own, and in combination with other projects, is likely to lead to significant environment effects arising from recreational disturbance on the over-wintering bird interest and hence to the integrity of the SPA.
28. The above strategy advises that one option to mitigate and compensate for adverse effects on the integrity of the SPA is a financial contribution made to the North Kent Strategic Access Management and Monitoring Scheme. The Council states that Natural England has advised that a financial contribution of £337.49 is required for the appeal development to fund measures within the protected areas. The latter is not disputed by the appellant.
29. In respect of mitigation, the deemed planning application does not include the necessary certainty, precision, and control for me to conclude that the residential

development has not/would not have an adverse effect on the integrity of the SPA and hence can continue. This is because the appellant has not provided me with a controlling mechanism (i.e., a planning obligation) to provide the certainty needed to rule out adverse effects on the integrity of the SPA given the dwelling on the land. Indeed, there is no completed planning obligation before me which provides for the payment of a financial contribution to address additional recreational pressure on the SPA. No other mitigation is proposed by the appellant. Furthermore, and in balancing the other considerations addressed later in this ground (a) appeal, I find that there are no imperative reasons of overriding public interest which indicate that the project should proceed.

30. As the competent authority, I cannot therefore conclude that the development accords with the biodiversity requirements of policies S6 and BNE35 of the LP, paragraphs 193 and 195 of the 2025 Framework, and the Conservation of Habitats and Species Regulations 2017.
31. It is noteworthy that paragraph 195 of the 2025 Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. Moreover, paragraph 193 of the 2025 Framework states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
32. In addition, section 63 of the Conservation of Habitats and Species Regulations 2017 states that before giving consent or permission, the competent authority must make an appropriate assessment of the implications of the plan or project.
33. My conclusion on this main issue is therefore a matter which weighs very heavily against granting planning permission for the breach of planning control.

Other Considerations

34. There is no dispute between the main parties that the local planning authority (LPA) cannot demonstrate a five-year supply of deliverable housing sites. In the context of the housing under-supply position, the provision of a dwelling on the land makes a small, albeit positive, contribution to the overall supply of housing sites in the area.
35. Moreover, there are some, albeit limited, positive economic benefits associated with residential use of the building in terms of supporting existing facilities, services and amenities in the locality.

Planning Balance and Conclusion

36. The breach of planning control causes significant harm to the living conditions of anyone residing in the appeal outbuilding owing to its size and the lack of built in storage, the poor level of outlook (and privacy depending on whether windows would include opaque or clear glass), and the deficient outside amenity space. Moreover, I cannot conclude that the development would not cause harm to the integrity of the SPA. These are matters of overriding concern and are not outweighed by the other considerations above.

37. I acknowledge that the evidence indicates that the LPA is unable to demonstrate a deliverable five-year supply of housing sites. However, given my conclusion on the SPA main issue, which constitutes a strong reason for refusing the development in the context of paragraph 195 of the 2025 Framework, the presumption in favour of sustainable development does not apply. This is because paragraph 11(d)(i) of the 2025 Framework states that the presumption in favour of sustainable development does not apply in this situation where *'the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed'*.
38. For the above reasons, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Appeal on ground (f)

39. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity which has been caused by any such a breach.
40. The appellant claims that the building has been used for residential purposes previously and that the requirement to *'cease the use of the store building for residential use'* is excessive. The Council comment that the appeal building was used as a 'store' prior to being used as a self-contained flat. The burden of proof is on the appellant to demonstrate the lawful use of the building prior to the unauthorised development occurring. The evidence from the appellant does not precisely and unambiguously demonstrate, on the balance of probability, that the appeal building has lawfully been used for a residential use.
41. Even if a hidden ground (b) appeal was pleaded, I would have concluded that such an appeal would have failed on the evidence that is before me. My site visit revealed that the outbuilding is in use as a self-contained residential flat and the appellant does not claim that it was not in use for this purpose when the notice was issued.
42. Notwithstanding the above, it is necessary that the requirements of a notice match the breach of planning control. In this case, the breach of planning control relates to a single storey *'self-contained residential flat'*. Given my conclusion in respect of the ground (d) appeal, I do not find that the appeal building can lawfully be used as a self-contained residential flat. In this context, I shall therefore vary requirement 5(i) of the notice, without injustice being caused to the main parties, by deleting the words *'cease the use of the store building for residential use'* and replacing them with *'cease the use of the single storey store to the rear of the property as a self-contained residential flat'*.
43. The appellant comments that it is excessive to require the removal of *'all fixtures and fittings associated with the residential use of the building'*. While the appellant states that the fixtures and fittings (in particular the kitchen cupboards and work surfaces) may serve a purpose if the building was to be used in accordance with section 57(4) of the Act, or indeed put to a different use, there is no objective evidence before me to demonstrate that the fixtures and fittings were not put in place to facilitate the use of the building as a self-contained residential flat on an

ancillary or subsidiary basis. In this regard, it is not excessive to require the removal of such facilitating fixtures and fittings.

44. Notwithstanding the above, it is necessary that the requirements of a notice match the breach of planning control. Therefore, I shall vary requirement 5(ii) of the notice, without injustice being caused to the main parties, by deleting the words '*Remove all fixtures and fittings associated with the residential use of the building*' and replacing them with '*Remove all fixtures and fittings associated with the use of the building as a self-contained residential flat*'.
45. As per my ground (e) appeal consideration above, the appellant raises concern that the notice requires the building to revert to a store. The notice does not include such a requirement. It simply requires the unauthorised self-contained residential flat use to cease and the removal of facilitating fixtures and fittings.
46. The purpose of the notice is to remedy the breach of planning control. In this regard, the requirements of the varied notice are not excessive. To the extent that I have varied requirements 5(i) and 5(ii) of the notice, I conclude that the ground (f) appeal succeeds.

Appeal on ground (g)

47. The appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
48. The compliance period in the notice is six calendar months. The appellant considers that this is not long enough because the flat is occupied on a fixed-term tenancy basis and more time is needed to enable the tenant to find alternative accommodation elsewhere. He also comments that more time is needed to instruct a contractor and for them to complete the required works. He comments that there is no public interest in potentially placing him in financial hardship to remedy the breach.
49. I recognise that compliance with the notice would, in turn, render the existing tenant homeless. However, the evidence does not provide sufficient justification in terms of why a period of more than six months is reasonably needed for the tenant to find alternative accommodation. Moreover, there is no reason why the appellant could not plan within this time for a contractor to be pencilled in to undertake the necessary works towards the end of the six-month compliance period, thereby ensuring full compliance with the requirements of the varied notice.
50. I fully acknowledge that upholding the notice would result in the tenant losing their home. It may also result in the appellant having to spend some money in terms of ensuring compliance with the notice, although the claim of placing the appellant in financial hardship should reasonably be considered in the context that they are likely to receive further rent until the tenant vacates the building. In any event, based on the evidence that is before me, I find that a period of six months is reasonable. It strikes a reasonable and proportionate balance between bringing the unauthorised development to an end in the public interest, while also considering the rights of the tenant as outlined in Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998.
51. For the above reasons, I conclude that the ground (g) appeal fails.

Conclusion

52. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR