
Appeal Decision

Site visit made on 21 October 2025

by **H Whitfield BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 November 2025

Appeal Ref: APP/E2205/W/25/3368842

Land at Woodfield, Bromley Green Road, Ashford, Kent TN26 2EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr B Robinson of BTR Acquisitions Ltd against the decision of Ashford Borough Council.
 - The application Ref is PA/2025/0880.
 - The development proposed is the residential development of 2 detached self-build 2 storey dwellings, together with all necessary infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance (PPG) advises that The Town and Country Planning (Permission in Principle) Order 2017 (as amended) ('the Order') is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second 'technical details consent' (TDC) stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent TDC application if permission in principle is granted. I have determined the appeal accordingly and have considered the proposed site plan as indicative only.
4. The Council's third reason for refusal relates in part to the potential effects on protected species. In its statement, the Council concedes that matters relating to general ecology (i.e., protected species) are for determination at the TDC stage and fall outside the scope of stage one of the PIP. Based on the information before me, I see no reason that matters relating to the potential effects on protected species could not be adequately addressed at the TDC stage and therefore will not consider this element of the third reason for refusal further.

Main Issues

5. The main issues are therefore whether the site is suitable for residential development, having regard to its location, land use and the amount of development proposed, with particular consideration to:
 - the effect of the proposal on the integrity of the Stodmarsh Lakes European sites;

- the Council's spatial strategy and accessibility to services and facilities;
- the effect of the development on the character and appearance of the site and surrounding area; and
- the site's proximity to an Ancient Woodland.

Reasons

Stodmarsh Lakes European sites

6. Article 5B(1) of the Order states that permission in principle cannot be granted for development which is habitats development. This is defined in Article 5B(5) of the Order as development which is likely to have a significant effect on a qualifying European site¹ either alone or in combination with other plans and projects and is not directly connected with or necessary for the management of the site. If a proposed permission in principle development is likely to have a significant effect on a qualifying European site without any mitigating measures in place, an Appropriate Assessment must be undertaken by the competent authority to establish whether the development would adversely affect the integrity of the protected site. If the outcome of the Appropriate Assessment is unfavourable, it would preclude the grant of permission in principle.
7. Stodmarsh Lakes is a European site designated as a Special Protection Area (SPA), Special Area of Conservation (SAC), Ramsar site and a Site of Specific Scientific Interest (SSSI). The SAC and SPA are wetland sites comprising open water bodies, reedbeds and grazing marshes, which together support a rich flora and fauna. The SAC is home to a sizeable population of Desmoulin's whorl snail. The SPA provides wintering and breeding habitats for important assemblages of wetland bird species, such as the Great Bittern, Gadwall and Hen Harrier. The sites' conservation objectives include ensuring their integrity, including the extent, distribution, structure, function and supporting processes of the habitats, and ensuring the population and distribution within the sites of each of the qualifying features, is maintained or restored.
8. While I understand Stodmarsh Lakes are some distance away from the appeal site, the site is within the catchment of the River Stour that feeds into the Lakes and is therefore hydrologically connected to the European sites. Advice published by Natural England (NE) advises that nitrogen and phosphorous levels in Stodmarsh Lakes are recorded to be excessive, such that they are considered to be in an unfavourable condition.
9. The principal pathway of impact on the SAC and SPA is nutrient pollution from surface water and wastewater from residential developments containing nitrogen and phosphorous. The proposal would result in two new dwellings served by a wastewater system. Given the susceptibility and vulnerability of the qualifying features of the SAC and SPA to such development, particularly when considered in combination with other plans and projects, the proposal would have a likely significant effect on the SAC and SPA due to increased nutrient levels. I must therefore undertake an Appropriate Assessment in accordance with my duty under the Habitats Regulations.
10. In order to avoid an adverse effect on the integrity of the SAC and SPA, guidance from NE advises that planning applications for residential development are required to demonstrate nutrient neutrality. The appellant does not dispute that the scheme would

¹ As defined by regulation 8 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations)

be required to demonstrate nutrient neutrality in order to mitigate the likely significant effects of the development on the SAC and SPA. However, there is no information before me in relation to how this would be achieved, with the appellant contending that this is a matter for consideration at the TDC stage and could be secured through a condition or planning obligation.

11. In these circumstances, the PPG is clear that permission in principle can only be granted if, after taking account of mitigation measures in the Appropriate Assessment, a decision-maker concludes the development would not adversely affect the integrity of the European site. However, in order to come to such a conclusion, I must be satisfied beyond all reasonable scientific doubt that any adverse effect on the integrity of the SAC and SPA would be avoided. This means there must be certainty that any necessary mitigation would be delivered.
12. No details have been submitted regarding how additional nutrient loads discharging into the surrounding water network would be dealt with and no mechanism to secure any necessary mitigation measures are before me. As such, I cannot be assured that the proposal would not raise nutrient levels in the SAC and SPA thereby harming water quality through nutrient pollution, resulting in adverse effects on habitats and harm to the integrity of these European sites.
13. The PPG states that planning obligations cannot be secured at the permission in principle stage. I note the appellant's suggestion that the necessary obligations and conditions could be secured at the TDC stage in relation to this matter. However, in carrying out this Appropriate Assessment, I must take a precautionary approach. In the absence of an effective mechanism before me through which any required mitigation measures could be secured, I do not have the necessary certainty that the development would not adversely affect the integrity of the SAC and SPA. Imperative reasons of overriding public interest of a social or economic nature are not present that would be sufficient to overcome the harm that would be caused to these European sites. Nor has it been demonstrated that there are no alternative solutions, and adequate mitigation measures are not demonstrated as secured by the appeal scheme.
14. For the above reasons, I therefore conclude that the proposal would have a likely significant adverse effect on the integrity of the Stodmarsh Lakes European sites. This conflicts with Policy ENV1 of the Ashford Local Plan 2030 (ALP) which seeks to ensure that biodiversity is protected and reflects the Habitats Regulations. The proposal therefore constitutes habitats development which is exempted from permission in principle under Article 5B(1) of the Order. Consequently, it follows that permission in principle cannot be granted. Nevertheless, for completeness, I will now consider the other matters in dispute.

Spatial strategy and accessibility

15. The appeal site relates to a parcel of land to the rear of Bromley Green Road and is sited some distance away from the nearest settlement. However, given the proximity of other development in the locality, the appeal site is not considered to be isolated in the context of paragraph 84 of the National Planning Policy Framework (the Framework).
16. Policies SP1 and SP2 of the ALP prioritise housing delivery in Ashford and its periphery and in rural settlements, according to spatial factors including accessibility to services, facilities and infrastructure and promote making the best use of brownfield land opportunities. Windfall housing is supported where it is consistent with this strategy and other ALP Policies. Policy HOU5 of the ALP sets out the Council's policy regarding

windfall housing development in the countryside. This policy is split into two sections – the first dealing with development on sites that adjoin, or are close to, the existing built-up confines of one of the listed settlements within the policy, which must comply with all of six criteria to be acceptable. The second relates to sites elsewhere in the countryside where proposals must meet one of five specific types of development.

17. As the site is not close to or does not adjoin the existing built-up confines of any of the settlements listed in the first part of Policy HOU5, criteria a-f do not apply. Neither does the scheme fall within any of the specific types of development permitted elsewhere in the countryside under the second section of this Policy. While the appellant argues that the proposal would result in the re-use of a redundant or disused building and lead to an enhancement to the immediate setting of the site, the scheme proposes the construction of two new dwellings rather than the re-use of any existing building. Therefore, even if I were to draw the conclusion that the development would result in an enhancement of the current appearance of the site, it does not meet this exception. Consequently, irrespective of whether the site could be regarded as previously developed land, when applying policies concerning the provision of housing in the countryside, the proposed development would not meet any of the criteria of Policy HOU5 and thus would conflict with the spatial strategy for rural housing as set out within the development plan.
18. The proposal would be some distance away from the nearest settlement where facilities and services are available. I observed limited stretches of pavements and streetlighting in the vicinity of the appeal site and on the majority of the surrounding highway connecting to nearby settlements. To access the nearest settlement on foot, future residents would have to walk along the highway, and I observed that while Bromley Green Road has a 40mph speed limit, much of the surrounding highway is subject to the 60mph national speed limit. Collectively, given the lack of footways, streetlighting and the speed of traffic between the nearest settlements, it is unlikely that future occupants would choose to travel regularly on foot or by bike in order to access the nearest services and facilities.
19. The appellant advises that Bromley Green Road is served by a school bus to Hamstreet and a bus service to Ashford and Lydd. However, there are limited details before me of the frequency of these services. Therefore, I have insufficient information before me to conclude these services would provide a meaningful alternative to car travel. Future occupants of the development are therefore likely to be heavily reliant on the private car to meet their daily needs. I note that opportunities to maximise sustainable transport solutions vary from urban to rural areas and the number of vehicle movements arising from two dwellings would be relatively low. However, the site's poor connectivity by sustainable travel modes nonetheless points, generally, to it being in a location where sustainable modes could not be maximised.
20. The appellant has drawn my attention to several examples of developments which they consider have similarities with the appeal scheme. In the case of Glendale House², the Council similarly found the development to be contrary to Policy HOU5 but concluded that the policy conflict was outweighed by material considerations in the planning balance. I shall conduct my own planning balance based on the merits of this appeal scheme in a subsequent section of this decision. However, this example does not alter my conclusions in respect of the issues identified above. Nor does the example cited at Linden Business Centre³ which related to a mixed-use development delivering housing

² Council Ref. 21/01374/AS

³ Council Ref. PA/2022/3073

in addition to employment and other uses. In this case, material considerations were found to outweigh any identified policy conflict and thus it is not directly comparable to this appeal. I have also been directed to a development at Ashford Golf Complex⁴, however, I have not been provided with any details of this case and therefore cannot ascertain whether it is comparable to the scheme before me.

21. Reference has been made to an appeal decision at Tack Farm⁵, however, this appeal relates to a development in a different local authority area where different local planning policies applied. Whilst I have not been supplied with the full details of this case or copies of the relevant planning policies or plans, from the evidence before me it would seem that the case is not directly comparable to the appeal scheme, which I have assessed on its own planning merits.
22. For the above reasons, I therefore conclude that the appeal site would not be a suitable for residential development due to its location, land use and the amount of development proposed, having regard to the Council's spatial strategy and accessibility to services and facilities. This conflicts with Policies SP1 and HOU5 of the ALP which together and amongst other things seek to focus new development in accessible and sustainable locations.

Character and appearance

23. The appeal site relates to land to the rear of properties on Bromley Green Road which contains a number of houses that reflects a typical ribbon pattern of development. The evidence indicates that part of the appeal site benefits from a Lawful Development Certificate⁶ for commercial use. At the time of my site visit, I observed the site to be in a generally overgrown state containing a bungalow in a poor state of repair.
24. The pattern of residential development in the surrounding area is relatively regular with properties arranged in a linear manner fronting the highway and set behind front gardens. Properties also typically have generous rear gardens backing onto surrounding woodland. There are some examples where residential properties are set further back from the highway. However, these are typically set behind extensive front garden areas or are sporadic back-land properties that are well separated from other development and set within generous plots. There are also examples of commercial activities along the road and buildings that are set behind residential properties. However, this is irregular and overall, back land residential development does not characterise the area.
25. The appeal scheme proposes the construction of two dwellings. Matters such as design, configuration, layout and scale are for consideration at the TDC. However, given the scale of the appeal site and its location, any development for two houses on the site would result in back land development behind properties fronting Bromley Green Road. Due to the size of the site, the two dwellings would have a closer relationship with properties on Bromley Green Road and smaller plot sizes than other sporadic back land developments that can be seen in the surrounding area. Such development would therefore result in an increased density that would be at odds with the predominantly linear pattern of residential development in the surrounding area and collectively would result in the suburbanisation of the site and its surroundings.
26. The site is set well back from the road and existing and proposed landscaping would provide a degree of screening of the development from the surrounding area. However,

⁴ Council Refs. 17/00469/AS & 18/01592/AS

⁵ APP/J1860/W/24/3354156

⁶ Council Ref. 92/1566/AS

views are likely to be achievable from the first floor of properties on Bromley Green Road and the principle of additional residential development on this site would nevertheless have a clear and demonstrable spatial effect on the pattern of surrounding development. Therefore, even if the layout and scale of the dwellings were to come forward in a different manner to that shown on the indicative plans, the principle of additional residential development on this site would inherently result in a harmful urbanising incursion of new buildings and associated development in a back land position.

27. I note there are structures on the site including the existing dwelling which is in a poor state of repair and the assertion that the proposal could assist in improving the site's current appearance. However, it has not been demonstrated that the proposed development is the only means by which such benefits could be achieved.
28. For the above reasons, I therefore conclude that the site would not be suitable for residential development and the location, land use and amount of development proposed would result in harm to the character and appearance of the site and surrounding area. This conflicts with Policies SP6 and ENV3a of the ALP which collectively seek, amongst other things, to promote high quality design that responds positively to the character, distinctiveness and sense of a place and development that respects the pattern and distribution of settlements. While the Council has referred to Policy HOU5 of the ALP, as I have found criteria a-f of this policy do not apply to the appeal scheme, it is not determinative in respect of this main issue.

Ancient woodland

29. The appeal site adjoins an area of Ancient Woodland (AW) to the east. The appellant has supplied copies of correspondence to NE which challenges the designation of the land to the east of the access track as AW. They argue that due to land clearance and activities on this land it should instead be considered as Priority Habitat deciduous woodland. However, in the absence of any correspondence from NE confirming any changes to the AW designation, I have determined the appeal on the basis that land to the east of the appeal site is AW.
30. The Council contends the development would be within 15m of the AW and this is uncontested by the appellant. AW is an irreplaceable habitat and given the development would result in two residential properties within the recommended 15m buffer of the AW there would be a risk of direct and indirect harm to the habitat arising from human activities close by.
31. Irreplaceable habitats are, by definition, very difficult to restore once destroyed. The Framework therefore advises that development resulting in their deterioration should be refused, unless there are wholly exceptional reasons, and the public benefit would clearly outweigh the harm. Evidence to demonstrate that no harm would be caused could be presented as part of the technical details consent stage, if it was established that the site was suitable in principle for a residential development. However, in the absence of such information, I cannot be sure there would be no deterioration of the AW as an irreplaceable habitat. No wholly exceptional reasons or compensation strategy are before me. As such, I must apply the precautionary principle which assumes that there would be harm unless there is objective evidence to the contrary.
32. Based on the evidence before me, I therefore conclude that the appeal site would not be suitable for residential development having regard to its location, land use and the amount of development proposed, given its proximity to an Ancient Woodland. This conflicts with Policy ENV1 of the ALP, as referred to in the officer report, which supports

proposals that safeguard features of nature conservation interest, including AW. It also fails to accord with the provisions of the Framework to protect irreplaceable habitats, particularly paragraph 193.

Other Matters

33. The Framework states that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. I have insufficient evidence before me that the entirety of the appeal site should be regarded as previously developed land. However, even if it was, the site is located in the countryside, outside of a settlement and I have found it would not be a suitable location, having regard to the Council's spatial strategy and accessibility to services and facilities.
34. The evidence refers to an intention to construct the dwellings to high standards of design and to include climate mitigation measures. However, as this is an application for permission in principle, no technical details have been provided, nor are there mechanisms available at this stage to secure such standards. While this may be a relevant consideration at the TDC stage, it carries only limited weight in this current assessment. The assertion that the development would be designed to comply with relevant development plan policies and technical standards also weigh neutrally rather than in favour of the proposal.
35. The appellant contends that the scheme would improve the living conditions of residential occupiers on Bromley Green Road as it would provide a buffer between commercial operations. However, there is no substantive evidence before me that any existing commercial activities are detrimental, or there would not be a less harmful way to secure the same benefits. The evidence also states there are significant opportunities for biodiversity net gain (BNG), however, the development is advanced as a self-build scheme which would be exempt from BNG if this was appropriately secured at the TDC stage. Nevertheless, additional landscaping could provide minor biodiversity benefits.
36. I note the appellant's concerns over the Council's handling of the application and consistency of its decision making. However, this has no bearing on my consideration of this appeal, which I have determined on its planning merits.

Planning Balance and Conclusion

37. I have concluded that the proposal would constitute habitats development which is exempted from permission in principle under Article 5B(1) of the Order. Consequently, it follows that permission in principle cannot be granted.
38. However, even if this was not the case and permission in principle could be granted, I have found that the appeal site would not be suitable for residential development, having regard to its location, land use and the amount of development proposed, contrary to the abovementioned policies of the ALP. This is sufficient to bring the development into conflict with the development plan when read as a whole. Development that conflicts with the development plan should normally be refused unless material considerations indicate otherwise.
39. The Council concedes that it cannot currently demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11(d) of the Framework indicates that permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. In accordance with Footnote 7 of the

Framework, habitats sites are one such asset. Consequently, irrespective of the level of shortfall, paragraph 11(d)ii is not engaged and the proposal does not benefit from the presumption in favour of sustainable development in this instance.

40. The development would nevertheless make an efficient use of land to provide two self-build dwellings. As a small-site, it could also be built-out reasonably quickly. The development would therefore make a small but beneficial contribution to the choice of homes in the area and the supply of housing land; as well as providing social and economic benefits during construction and after occupation.
41. Housing delivery is supported by the Framework and, therefore, this benefit weighs in favour of the proposal. However, given the scale of the development, any social, economic or environmental benefits associated with the delivery of two dwellings would be relatively limited, even taking account of the objective of significantly boosting the supply of housing in the Framework, and would not outweigh the harm I have identified.
42. Therefore, for the reasons given above, I conclude that even if permission in principle could be granted, the proposal conflicts with the development plan as a whole and the material considerations would not indicate that the appeal should be decided other than in accordance with the development plan. Accordingly, the appeal should be dismissed.

H Whitfield

INSPECTOR