



Appeal Decision

Site visit made on 13 November 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th November 2025

Appeal Ref: APP/A2280/W/25/3370619

107 Woodside, Rainham, Gillingham ME8 0PW

- 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 Ms Lisa Young against the decision of Medway Council.
 - The application Ref is MC/25/0505.
 - The development proposed is described as 'change of use of the annex to self-contained dwelling together with parking and amenity space and erection of a 1.8 m fence'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant sought to submit additional evidence regarding a scheme approved by the Council on land rear of Mulver House, 636 Mierscourt Road, Rainham in 2019 with the final comments. I did not accept this new evidence as there had been no change in circumstances since the submission of the appellant's statement and to do so could cause procedural unfairness or prejudice to other parties.
3. The Council has agreed an emerging Local Plan for publication and consultation, but there is no substantive information on the implications of any emerging policies on the appeal scheme. In any event, the emerging Local Plan has not yet been submitted for examination, so I give it limited weight.

Main Issues

4. The main issues in this appeal are:
 - the effect of the proposal on the integrity of Habitats Sites;
 - the effect of the proposal on the character and appearance of the area; and
 - whether the proposed scheme would provide acceptable living conditions for future occupants, with particular regard to access and noise.

Reasons

Habitats Sites

5. The proposal is to change the use of an annex to a self-contained dwelling on a site outside the Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar site but within the 6km Zone of Influence (ZOI) of it. The Habitats

Regulations¹ require that, where a project is likely to have a significant effect on a Habitats Site, either alone or in combination with other projects, the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.

6. The SPA is a wetland of international importance, noted for its grazing marshes, intertidal flats and saltmarshes. It provides breeding and wintering habitats for important assemblages of wetland bird species, particularly wildfowl and waders.
7. The conservation objectives of the SPA are to ensure its integrity by maintaining or restoring the extent, distribution, structure and function of the habitats, the supporting processes on which the habitats rely, and the population and distribution within the site of each of the qualifying features.
8. A threat to the integrity of the Habitats Site is recreational activities associated with additional development. The appeal site is within the ZOI where new residential accommodation is likely to result in recreational pressure, which would likely have a significant effect on the protected sites.
9. The development is for a self-contained dwelling and, as such, the number of additional recreational visitors would be limited. However, in combination with other developments, it is likely that the proposal would have significant effects on the Habitats Site.
10. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy 2014 (SAMMS) sets out a strategic approach to mitigation, and the Council is one of the partners in the project. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling, including engagement with dog walkers, wardening, signage and monitoring.
11. Natural England confirmed its position for the North Kent Marshes SPAs and Ramsar sites regarding bird disturbance from increased recreational pressure from new housing in 2015. It stated that the likely significant effect of recreational impact on the overwintering bird interest from new residential development can be screened out if an appropriate contribution is made to the provision of measures in the SAMMS.
12. An application for planning permission cannot be approved if it is likely to have a significant effect on a Habitats Site and that effect would be unmitigated. There is no mechanism to positively require a financial contribution by planning condition² and therefore a planning obligation would be necessary. This would ensure that there is the necessary legal certainty that the mitigation would be paid. The payment would also be linked to the permission, preventing occupation until it is paid. This approach also provides a transparent audit trail.
13. The Council states that the current tariff is £337.49 per dwelling which excludes legal and monitoring officer's costs which separately total £550. There is no dispute that a financial contribution needs to be secured to make the proposal acceptable. The appellant has submitted a draft unilateral undertaking (UU) which includes a contribution of £250.39. Setting aside that this amount is less than the sum referred

¹ Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

² Planning Practice Guide Paragraph: 005 Reference ID: 21a-005-20190723

to by the Council, the UU remains in draft form and has not been duly executed. As such, there is no certainty that the required contribution towards the provision of mitigation measures in the SAMMS would be made.

14. Therefore, the scheme does not include appropriately secured mitigation measures to address potential recreational disturbance arising from the use of the building as a self-contained dwelling. As a result, I cannot be confident that the proposal, in combination with other plans and projects in the ZOI, would not have a significant adverse effect on the integrity of the Habitats Site.
15. Consequently, and as directed by Regulation 63(5) of the Habitats Regulations, permission must not be granted. The proposal would also conflict with Policies BNE35 and S6 of the Medway Local Plan 2003 (LP) where they seek to protect international nature conservation sites, including securing mitigation measures.

Character and appearance

16. The appeal site comprises a single storey residential annex with an adjacent hardstanding parking area accessed from Asquith Road via a narrow track between houses and a rear garage court. The host dwelling is accessed from Woodside. The area is largely characterised by dwellings fronting the roads, accesses directly onto the street and sizeable rear gardens containing outbuildings. The existing rear annex building and nearby large garage blocks are somewhat at odds with the prevailing character.
17. The Council is concerned that occupiers, visitors and delivery drivers would have to access the site through the blocks of garages which would not create a high quality design, function well or maintain a strong sense of place. However, the vehicular access already exists and there is no substantive evidence that those currently accessing the annex do so via the host property at 107 Woodside (No 107) rather than through the garage court. Whilst the proposed access would not be ideal, as it would be a continuation of the existing arrangement, the function and design of the scheme would be acceptable.
18. Therefore, I conclude that the proposal would not harm the character and appearance of the area. It would accord with Policy BNE1 of the LP where it requires the design of development to be appropriate to the character, appearance and functioning of the built environment.

Living conditions

19. The grounds of the existing annex lie adjacent to the blocks of garages. The building includes a living room, bedrooms, bathroom and kitchen, with windows either facing away from the garage court or set back some distance from it.
20. The use of the existing building as an annex means that existing occupiers could have access to accommodation in the host dwelling at No 107. Nevertheless, whilst it shares a garden with the host property, the annex otherwise contains all the facilities needed to function as a dwelling. Therefore, in approving the annex in 2013³, the Council has already accepted the principle of living accommodation in this location close to the garage court.

³ Planning application ref: MC/13/1165

21. Irrespective of this, there may be some use of the garages for parking vehicles, hobbies and homeworking activities. Nevertheless, at my site visit I saw little to indicate that they are intensively used and there is no substantive evidence that vehicle movements and use of the garages cause disturbance to nearby residents. As such, the proximity of the proposed dwelling to the garage court would not cause undue disturbance to future occupiers.
22. Consequently, I conclude that the proposed scheme would provide acceptable living conditions for future occupants, with particular regard to access and noise. It would comply with Policy BNE2 of the LP where it seeks to secure the amenities of future occupants, including in relation to noise and activity levels.

Other Matters

23. The National Planning Policy Framework (the Framework) seeks to significantly boost housing supply and highlights the important contribution small and medium sized sites can make. The appellant indicates that the Council has a 3.1 year housing land supply for the period April 2024 to March 2029, a deficit of 3,628 homes against the required 9,564 dwellings. As this falls below the required five years, this triggers the circumstances in paragraph 11(d) of the Framework.
24. Nevertheless, I have concluded that the proposal is likely to have a significant effect in combination with other developments on the integrity of a Habitats Site. Therefore, paragraph 195 of the Framework states that the presumption in favour of sustainable development in paragraph 11 of the Framework does not apply.
25. The Council did not find harm or development plan conflict in relation to several other matters, including access to services and facilities, neighbouring living conditions, space standards, highway safety, and parking provision. In addition, there were no objections from neighbouring occupiers. Nonetheless, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposed scheme.

Conclusion

26. The proposal does not meet the Habitats Regulations requirements, and it conflicts with the development plan. The material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with the development plan and Habitats Regulations. The appeal should therefore be dismissed.

A Wright

INSPECTOR