



Appeal Decision

Site visit made on 18 November 2025

by **S Simms BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th January 2026

Appeal Ref: APP/L2250/W/25/3371656

The Pepperlands, Boarmans Lane, Brookland, Kent TN29 9QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Ms Jenny Shepherd against the decision of Folkestone and Hythe District Council.
 - The application ref. is 24/1958/FH.
 - The development proposed is outline planning application for the erection of a single dwelling with all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form was that for outline planning permission, with all matters reserved. However, the decision notice and appeal form refer to outline planning permission with all matters reserved except access. I have no evidence that the change was agreed with the applicant and the Design and Access Statement and Planning Statement submitted with the application are clear that the access, which would need to include a bridge over the drainage ditch, would be designed and submitted at the reserved matters stage.
3. As the description of development on the application form contained detail that did not comprise development, I have used that on the decision notice, albeit omitting the exception of access from the reserved matters. I have considered the appeal on the basis that all matters are reserved, treating any plans as illustrative.
4. In March and November 2025, the Environment Agency released an updated flood mapping dataset (NaFRA2) and in, September 2025, Planning Practice Guidance (PPG) on flood risk and coastal change was amended. As these changes may have introduced new evidence and policy of relevance to the appeal, the main parties and the Environment Agency were invited to comment and I have taken into account their responses.

Main Issues

5. The main issues are: (i) whether the proposed development would be in a suitable location with respect to flood risk, (ii) its effect on the character and appearance of the area and (iii) whether the standard of living conditions that it would provide for the occupiers of The Pepperlands would be acceptable.

Reasons

Flood risk

6. The appeal site comprises land in Flood Zones 1, 2 and 3. The highest flood risk is around Brookland Sewer, a watercourse running along the southeastern boundary, on which the access point would be located. A site-specific flood risk assessment (FRA) and Flood Evacuation Report (FER) were submitted with the application.
7. Whilst I note that the Design and Access Statement refers to a footpath through the former nurseries to the north of the site, I have no evidence that any private or public right of way exists. Consequently, I must assume that the access point and escape route would be as described in the submitted drawings and FER.
8. In the appeal¹ referred to by the appellant, areas at medium to high risk were to be used for planting and habitat enhancements. Paragraph 175 of the Framework exempts proposals only where an FRA demonstrates that no built development, including access or escape routes, would be at risk, now and in the future.
9. The updated Planning Practice Guidance (PPG)² states that a sequential test need not be applied where a site-specific FRA demonstrates clearly that the layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development, without increasing flood risk elsewhere. However, flood risk in this case relates primarily to flooding from the sea and not solely to surface water.
10. The appellant states that the FRA and FER conclude that the proposal is safe and neither poses a threat to life nor is at risk of impacting flooding elsewhere, and points to the Strategic Flood Risk Assessment (SFRA) for the area, which shows that the flood hazard rating for the site is zero.
11. However, the FRA shows that the safety of occupiers and users from current and future flood risk depends upon minimum floor levels and an FER, which requires the owner to sign up to flood alerts and evacuate in the event of a flood warning. Furthermore, extracts from the SFRA relate to hazard rating, rather than flood risk, and to future flood defence breach or overtopping scenarios, in which the site and escape route would be slowly rather than rapidly flooded.
12. Occupiers or users, for example emergency or other services, would not be safe should they need to leave or reach the dwelling in these circumstances, and I am not convinced that the SFRA demonstrates the site is not at risk of flooding. The sequential test is therefore required to establish whether alternative sites are available with a lower risk now or in the future of flooding from all sources.
13. A letter submitted by the appellant states that paragraph 176 of the Framework exempts some minor development from the need for a sequential test, and it would therefore be unreasonable to apply it to a single dwelling. However, the definition of minor development in the footnote to this paragraph includes only householder development, small non-residential extensions and certain changes of use. It does not include new dwellings, which are subject to the requirement.

¹ APP/X0360/W/23/3331651

² Ref. ID: 7-027-20220825

14. The letter also states that no sites of the same or similar size were in the adopted Local Plan or Brownfield Register, but this does not meet the test, as alternative sites need not be in the Local Plan or Brownfield Register to be reasonably available, appropriate for the proposal and in areas with a lower flood risk.
15. Furthermore, sites in the area of search recommended by the PPG³ have not been ruled out. As a result, it cannot be established that there are no other reasonably available sites appropriate for the proposal in areas with a lower risk of flooding, as required by the Framework. The sequential test is not passed in this case.
16. Whilst I note that other developments have been granted in the area, many are on land at lower risk of flooding or comprise replacement dwellings for which flood risk mitigation could be secured. Moreover, I cannot be certain that the circumstances, including the policy at the time, were the same as those before me now.
17. I also note that neither the Environment Agency nor the Internal Drainage Board object to the proposal. However, the Council also has responsibilities with respect to flood risk and must consider whether the sequential and exception tests have been appropriately applied. The PPG is clear that this responsibility lies with the relevant decision maker. The absence of those objections does not therefore provide a justification to alter the above judgement.
18. Consequently, I am not persuaded that the proposed development would be in a suitable location with respect to flood risk. As such, it would be contrary to Policy SS3 of the Folkestone & Hythe District Council Core Strategy Review 2022, which requires a detailed flood risk assessment for development in zones at risk from flooding to demonstrate that the proposal meets the sequential approach, and where applicable, the exception tests set out in the Framework.

Character and appearance

19. The appeal site is an L-shaped plot forming part of the garden of The Pepperlands, a house on the edge of the village of Brookland on the Romney Marsh. The site contains a field shelter, a shed and a derelict indoor swimming pool re-purposed from a commercial glasshouse. The existing access is via a bridge over Brookland Sewer to a single-track lane and is shared between The Pepperlands and its neighbour. The lane is tree-lined and the section near the site is characterised by well-separated houses set back from the lane and watercourse within large plots, forming a soft edge to the settlement in views from marshland to the south-east.
20. Whilst access and siting are reserved matters, the appellant states that a new bridge would be built to the lane and the house would be at the northern end of the site, close to The Pepperlands, following demolition of the swimming pool, shed and field shelter. Given the shape and extent of the red line boundary of the site, siting it elsewhere would encroach forward of other houses along the lane, further into both the countryside and areas at greater risk of flooding. In the remaining northern part of the site, however, the proposed house would have an uncharacteristically tight relationship with The Pepperlands.
21. I am aware that permission has been granted to build houses on former nurseries behind those on the lane and that some would be closer than the existing houses are to each other. However, they would neither be as close to The Pepperlands as

³ Ref. ID: 7-027a-20220825

the proposal would be nor as easily seen from the lane. Indeed, they would form part of a different visual context, seen mainly from the north-west or streets that would be created as part of their development. Seen from the lane, the proposal would either compromise the characteristic set-back or appear unduly cramped.

22. Consequently, and while siting and appearance are not matters before me, I am not satisfied that the proposal would not harm the character and appearance of the area, contrary to Policy HB1 of the Folkestone & Hythe District Places and Policies Local Plan 2020, which requires proposals to contribute positively to their location and surroundings, particularly with regard to layout, proportions and density.

Living conditions – neighbours

23. Whilst siting is a reserved matter, were the house to be located at the northern end of the site as suggested, the shape of the plot dictates that it would be close to the rear windows and garden of The Pepperlands, the rear elevation of which is oriented roughly 60 degrees to the closest boundary of that part of the site.
24. Whilst this may present difficulties ensuring adequate living conditions in terms of, for example, daylight, privacy and outlook for both its future occupiers and those of The Pepperlands, I am not persuaded that this would be impossible. Even if the house were to be located elsewhere on the site, it is likely that adequate living conditions could be secured. In either event, this issue could and therefore should be dealt with at reserved matters stage.
25. Therefore, I find the standard of living conditions that the proposal would provide the occupiers of The Pepperlands would be acceptable and comply with Policy HB1 of the Folkestone & Hythe District Places and Policies Local Plan 2020, which requires proposals not to adversely impact the amenity of future occupiers.

Other Matters

26. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species would be affected by the development and whether associated mitigation measures would be effective. Great Crested Newts (GCNs) are so protected. A Preliminary Ecological Appraisal submitted with the application reported that the site offers potential terrestrial habitat for GCNs, which could be present. A District-level Licensing Scheme is in place in respect of GCNs, to which the appellant has contributed financially. Consequently, I am satisfied that suitable mitigation measures would be in place to ensure that the proposed development would not result in harm to any European Protected Species.
27. The application form states that the proposal is a self-build project, which would be exempt from biodiversity net gain requirements. However, no means are before me to ensure it would be occupied in accordance with this exemption. This might have been resolved by the submission of a unilateral undertaking, but given my conclusions on the main issues, it is not necessary for me to consider this further.
28. I note that the proposal would reuse land that is partially previously developed on the edge of a sustainable settlement and redevelop a redundant building. Whilst I attach moderate weight to these benefits, this does not outweigh the harm I have found in respect of character and appearance and flood risk.

Conclusion

29. For the reasons given above the appeal should be dismissed.

S Simms

INSPECTOR