



Appeal Decisions

Site visit made on 10 February 2026

by **E Dade BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th March 2026

Appeal A Ref: APP/U2235/W/25/3374529

Land north of Old Ashford Road, Lenham, Kent ME17 2GT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Red Iskandar on behalf of Abbey Developments Ltd against Maidstone Borough Council.
 - The application Ref 25/501778/SUB sought approval of details pursuant to conditions nos 3 and 5 of a planning permission Ref 17/500357/HYBRID, granted on 28 September 2018.
 - The development proposed is hybrid planning application comprising: full application - erection of 48 dwellings and associated infrastructure, landscaping and open space; outline application - erection of 102 dwellings (access, layout and landscaping to be sought).
 - The details for which approval is sought are [3] proposed slab levels and [5] surface water drainage scheme.
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Appeal B Ref: APP/U2235/W/25/3374530

Land north of Old Ashford Road, Lenham, Kent ME17 2GT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Red Iskandar on behalf of Abbey Developments Ltd against Maidstone Borough Council.
 - The application Ref 25/501782/SUB sought approval of details pursuant to conditions nos 7, 9, 10, 11, 12, 14, 15, 19 of a planning permission Ref 17/500357/HYBRID, granted on 28 September 2018.
 - The development proposed is hybrid planning application comprising: full application - erection of 48 dwellings and associated infrastructure, landscaping and open space; outline application - erection of 102 dwellings (access, layout and landscaping to be sought).
 - The details for which approval is sought are [7] materials, [9] surface materials, [10] boundary treatments, [11] external meters, vents or flues, [12] landscape, [14] lighting, [15] EV charging, [19] SUDS.
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Decision

1. Appeal A is allowed and the details submitted pursuant to condition nos 3 and 5 attached to planning permission Ref 17/500357/HYBRID granted on 28 September 2018 in accordance with the application dated 30 April 2025 and the plans submitted with it are approved.
2. Appeal B is dismissed insofar as it relates to the details submitted pursuant to conditions nos 7, 9, and 11.
3. Appeal B is allowed insofar as it relates to the details submitted pursuant to condition nos 10, 12, 14, 15, and 19 attached to planning permission Ref 17/500357/HYBRID granted on 28 September 2018 in accordance with the application dated 30 April 2025 and the plans submitted with it are approved.

Applications for costs

4. An application for costs in respect of both appeals was made by Mr Red Iskandar on behalf of Abbey Developments Ltd against Maidstone Borough Council. This application is the subject of a separate decision.

Preliminary Matters

5. At time of my site visit, the attenuation pond that relates to conditions no 5 (Appeal A) and no 19 (Appeal B) had been constructed and appeared to be operational. This weighs neither for nor against the proposal which I have determined on the basis of the submitted plans.

Main Issues

6. The Council has confirmed that had it been in a position to determine either proposal, it would have recommended a split decision in respect of both appeals.
7. The Council has confirmed that it would have approved the details of slab levels relating to condition 3 (Appeal A) and the details of boundary treatment, landscaping, lighting, and EV charging relating to conditions 10, 12, 14, 15 (Appeal B). Since these matters are not in dispute and I have no substantive evidence to the contrary, I am satisfied that the submitted details would fulfil the requirements of those conditions and should be approved. Therefore, these matters are not main issues.
8. However, the Council indicate it would have refused to approve the details pursuant to conditions 5 (Appeal A) and 19 (Appeal B) due to alleged effects on the integrity of European sites, and conditions 7, 9 and 11 due to alleged harm to the character and appearance of the area. These matters comprise the main issues in these appeals.

Reasons

Character and appearance (Appeal B – conditions 7, 9 and 11)

9. The appeal site comprises a rectangular parcel of land which has been partly built out through the Phase 1 development. The Phase 1 development is substantially complete and comprises a mix of house types, which have a traditional appearance. In particular, the variety in the brick tone adds texture and is a key characteristic of the built environment.

Condition 7 - materials

10. Condition 7 requires the development “include the use of ragstone in walling as shown on the approved plans, clay tile hanging and roof tiles, slate roof tiles, painted timber boarding, and multi stock brickwork”. It is evident from my site visit that the materials utilised in the Phase 1 development meet these standards.
11. Forterra Village Sunglow brick would be used for 30 dwellings. This is a wire cut brick with modified facing to give the texture and variation of a stock brick. However, it would appear squarer and overall lower quality than the brick used in the Phase 1 development.
12. The roofs of 35 dwellings would comprise Slate Mini Stone Wold and 48 dwellings would utilise Redland Mini Stonewold Farmhouse Red, which are concrete roof tile

products. The Slate Mini Stone Wold would lack tonal variation and Redland Mini Stonewold Farmhouse Red would have prominent streaking, and both products would appear relatively thick. For these reasons, neither product would convincingly replicate or substitute slate or clay tile.

13. Condition 7 does not prescribe the number of dwellings that should utilise clay or slate roof tiles, and the appellant asserts that higher quality materials would be used in the most prominent locations, such as facing the public open space. However, the materials schedule indicates a significant majority of the 102 total dwellings would be finished with concrete roof tiles. Therefore, the material would be visually dominant throughout the development.
14. In addition, the appellant suggests the material choices reflect overall commercial viability of the development which has been adversely affected by delays and issues related to Nutrient Neutrality. However, I have been provided no viability evidence to justify a reduction in the quality of materials.
15. For these reasons, I consider the proposed materials would not be comparable in quality to materials used in the Phase 1 development and therefore would appear out of keeping with the character of development in the area.

Condition 9 - surface materials

16. Condition 9 requires submission of written details and samples of the surface materials to be used in the construction of that phase of the development.
17. The submitted plans show the layout of the various proposed surfacing materials, which the appellant indicates are intended to be the same materials used in the Phase 1 development. However, no detailed materials schedule or palette of materials has been provided, and therefore, there is uncertainty regarding the appearances of the material finishes.

Condition 11 - external meters, vents or flues

18. Condition 11 requires external meter cupboards be installed to limit their visibility from public viewpoints. Throughout the Phase 1 development, electricity meter boxes are located on the front elevation of many dwellings. However, these have a black finish which reduces their visual prominence in the street scene.
19. Conversely, the proposed dwellings would have white electricity meter boxes, prominently positioned at the front which would contrast with the brickwork, and would fail to achieve a high-quality design and appearance.
20. Paragraph 140 of the National Planning Policy Framework requires local planning authorities seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). For the reasons set out above, the proposal fails to demonstrate the quality of the development would not be diminished by the proposed materials. Therefore, I conclude the proposal would harm the character and appearance of the area.
21. For these reasons, conditions 7, 9 and 11 cannot be discharged.

Integrity of European sites (Appeal A - condition 5, Appeal B – condition 19)

22. Condition 5 of Appeal A requires the submission of a surface water drainage scheme prior to commencement of development and includes various technical specifications and condition 19 of Appeal B relates to details of the operation and maintenance of the proposed sustainable drainage scheme. The purpose of the conditions is to avoid increasing flood risk on or off-site and ensure there is no pollution risk to receiving waters.
23. The submitted surface water scheme comprises a suite of documents¹, including details of the attenuation pond situated within an area of grassland to the south of Old Ashford Road. The Lead Local Flood Authority (LLFA) confirmed the proposal contains the requisite information, and the proposed drainage scheme is in line with previous approvals and will connect to the wider network constructed under Phase 1. The LLFA has reviewed the SuDS Maintenance Plan April 2025 and concludes that all aspects of condition 19 have been satisfied. The LLFA therefore raises no objection to the discharging of conditions 5 and 19.
24. The site is within the River Stour catchment area. Natural England advise that development within the catchment has the potential to adversely affect the integrity of Stodmarsh Special Area of Conservation (SAC) through increasing nitrogen and phosphorus levels.
25. The SAC is a European site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The conservation objectives of the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the favourable conservation status of its qualifying features, namely populations of Desmoulin's whorl snail.
26. The development has been the subject of a Nutrient Neutrality assessment and mitigation has been secured through the purchasing of sufficient nutrient credits for Phase 2a which comprises 70 units. However, no credits have been purchased, nor any alternative mitigation implemented, for the remaining 32 units which comprise phase 2b of the development.
27. In October 2025, the Supreme Court judgment in *C G Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government & Somerset Council* confirmed that regulation 63 of the Habitats Regulations applies not only at the stage of granting planning permission, but also at subsequent stages of the planning process, including the discharge of conditions. This means that any step that authorises further development, including discharging pre-commencement conditions, triggers the requirement for an Appropriate Assessment where there is potential harm to a European protected site.
28. However, Natural England were consulted by the Council and advise that if it is clear that a conditions matter would not affect nutrient neutrality, it would be able to be discharged. The original application is accompanied by a planning obligation

¹ Including: Offsite Adoptable Sewer and Private Surface Water Drain Plan; Offsite Works Drainage Construction Details; Land Drainage Consent Application Plan and details; Private Storage Pond Plans; Section 104 Headwall Construction Details; Surface Water Drainage Maintenance Identification Plan; Section 104 Surface water contributing Areas and Pipeline Reference Plan; Site Wide Drainage Strategy Plan; Section 104 Drainage Construction Details; SuDS Maintenance Plan Drainage Layout; Domestic Drainage Construction Details Longitudinal Road Sections; Section 104 Agreement Plans; Maintenance Plan; Drainage Surface Water Calculations.

by deed of agreement under section 106 of the town and country planning act 1990, dated 27 February 2025 (hereafter “s106 agreement”).

29. The s106 agreement is the mechanism by which nutrient mitigation is secured. Notably, at Schedule 2 of the s106 agreement, paragraph 1.1.6 prohibits the commencement of development of any dwelling within Phase 2b unless written evidence has been submitted to the Council that demonstrates the required number of nutrient credits have been secured and allocated. Discharging conditions 5 and 19 would not alter the terms of the s106 agreement.
30. In the absence of nutrient credits, the s106 agreement prohibits commencement of Phase 2b. Consequently, conditions 5 (Appeal A) and 19 (Appeal B) would not authorise further development and thus would not harm the integrity of the Stodmarsh SAC and therefore should be discharged.
31. Moreover, a planning authority cannot use a discharge of conditions as a vehicle to introduce new environmental requirements. The acceptability of the development has already been established through the planning process and the mechanism to secure nutrient mitigation exists through the s106 agreement. Therefore, a decision not to discharge the condition would itself be counter to the principles of the Fry judgement.

Conclusion

32. For the reasons given above Appeal A should be allowed, and Appeal B should be allowed in part and dismissed in part.

E Dade

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/U2235/W/25/3374529	Mr Red Iskandar on behalf of Abbey Developments Ltd
Appeal B	APP/U2235/W/25/3374530	Mr Red Iskandar on behalf of Abbey Developments Ltd