



Appeal Decision

Site visit made on 23 February 2026

by **L Gardner MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2026

Appeal Ref: APP/E2205/W/25/3376190

Apple Tree Cottage, Wye Road, Boughton Aluph, Ashford TN25 4HY

- 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 planning permission
 - The appeal is made by Mr Nicholas Hanson against Ashford Borough Council.
 - The application Ref is 21/01789/AS.
 - The development proposed is one new detached 2 bed / 4 person dwelling, with garden space and off-street parking on land adjacent to Apple Tree Cottage, Wye Road, Boughton Aluph, Ashford TN25 4HY.
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Decision

1. The appeal is dismissed and planning permission for one new detached 2 bed / 4 person dwelling, with garden space and off-street parking on land adjacent to Apple Tree Cottage, Wye Road, Boughton Aluph, Ashford TN25 4HY is refused.

Applications for Costs

2. An application for costs was made by Mr Nicholas Hanson against Ashford Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. The appeal is made against the failure of the Council to reach a decision on the application within the relevant statutory timeframe. However, the Council has confirmed that, were it able to do so, it would have refused the application on two grounds, relating to highway safety and the effect on Stodmarsh Lakes.
4. The appellant has made various references to the length of time to which the application was pending, as well as their understanding that all issues other than the effect on Stodmarsh Lakes had been resolved. The latest comments from Kent County Council (KCC) as the Highway Authority, were received after the agreed extension of time for the application.
5. Nevertheless, the Council had not made a formal determination to the application and are now not able to do so, given that jurisdiction has been transferred from the Council upon the acceptance of the appeal. The Council is entitled to set out its objections and concerns through the appeal process, to which the appellant has had the opportunity to comment.

Main Issues

6. Based on the evidence before me, the main issues are:

- whether the appeal proposal would have an acceptable effect on highway safety; and,
- the effect of the appeal proposal on the integrity of Stodmarsh Lakes, a Special Protection Area (SPA), Special Area of Conservation (SAC), and a Ramsar site.

Reasons

Highway safety

7. Policy TRA7 of the Ashford Local Plan (2019) (the Local Plan) states that, amongst other matters, new accesses and intensified use of existing accesses onto the road network will not be permitted if a clear risk of road traffic accidents would be likely to result. Policy HOU3a of the Local Plan relates to residential windfall development within settlements, outlining a broad acceptance of such proposals, subject to various requirements set out in the policy. Part of criterion e) is that proposals should be able to be safely accessed from the local road network.
8. The appeal proposal relates to the creation of an additional detached dwelling, through the separation of the garden area for Apple Tree Cottage. It is proposed that the new dwelling would share, and thereby intensify the use of, the existing vehicular access from Wye Road. This is materially different to previous applications to widen the driveway.
9. The number of parking spaces for the proposed dwelling would be in line with the standards set through Policy TRA3(a) of the Local Plan. Nevertheless, visibility splays for the vehicular access have not been demonstrated on the submitted plans. It is clear, from both the plans and my own site observations, that visibility would be obstructed by the presence of roadside vegetation which comprises hedgerow and trees. I note that the appellant has applied for consent to remove a tree to the left hand side of the driveway but I do not have the outcome of this application before me.
10. Without appropriate visibility, the access arrangements present a highway safety risk through an increased likelihood of vehicular collisions. Whilst the relatively low speed of road, at 20mph, would reduce the risk, it would not eradicate it altogether.
11. During my site visit, I observed numerous instances of frontage parking along Wye Road where vehicles would not be able to turn on site and leave in a forward gear. I accept on this basis that occupiers of neighbouring dwellings are likely to apply caution to vehicles potentially reversing into the highway. However, the existing parking arrangements for neighbouring plots were not directly comparable in relation to the same level of restricted visibility. The risks associated with the appeal site are therefore greater and the existing driveway arrangements along the road do not justify the acceptance of the appeal scheme.
12. The appellant presents that the required visibility splays would be disproportionate to the site frontage and would detract from the character and appearance of the area. In the absence of precise splays showing the required visibility, I cannot be certain of the extent of works which would be required to the site frontage. I therefore cannot reasonably conclude that the effects to the character and appearance of the area would outweigh the highway safety risks identified above.

13. Even in the acknowledgement that the traffic generation from the proposal would not be significant, the proposal would still lead to an unacceptable effect on highway safety through an increased risk in vehicular collision, due to vehicles accessing the highway without appropriate visibility. There is therefore a clear risk of road traffic accidents likely to result. On this basis, I conclude that the proposal is contrary to Policies TRA7 and HOU3a of the Local Plan.

Stodmarsh Lakes

14. Stodmarsh Lakes is a European site designated as a Special Protection Area (SPA), Special Area of Conservation (SAC), Ramsar site and a Site of Special Scientific Interest (SSSI).
15. It is a wetland comprising open water bodies, reedbeds, grazing marshes and alder-carr. The site provides wintering and breeding habitats for important assemblages of wetland bird species, particularly wildfowl and waders. It regularly supports nationally important over-wintering populations of bittern and hen harrier as well as supporting over 1% of the national breeding population of gadwall, bearded tit and shoveler.
16. 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.
17. The appeal 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.
18. It is intended that the proposed dwelling would connect to the mains sewer drainage network which discharges foul water into Ashford Wastewater Treatment Works. 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.
19. 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.
20. 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. It is clear from the evidence before me that the appellant has made endeavours to provide suitable mitigation to achieve 'nutrient neutral' status. This includes consideration of third-party credits as part of a strategic solution. Nevertheless, I do not have any formal means of mitigation before me either through confirmation of the purchase of such credits, or an associated legal agreement securing alternative mitigation.

21. The appellant contends that the matter can be dealt with by condition. It is suggested that this approach has been taken elsewhere but limited details have been provided to evidence this, or how it would be comparable to the appeal scheme before me.
22. Planning Practice Guidance (PPG) states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Whilst it goes on to accept that they may be appropriate in exceptional circumstances, I have not been presented with, nor have I identified any exceptional circumstances which would justify such a condition in this case.
23. 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. In this case, and in the absence of necessary mitigation, 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.
24. I am therefore unable to rule out any significant effects resulting from the proposal, alone or in combination with other developments, which would be harmful to the integrity of Stodmarsh Lakes. 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.
25. The proposal would therefore conflict with the Habitat Regulations and Policy ENV1 of the Local Plan, which amongst other matters states that development that will have an adverse effect on the integrity of European protected sites, alone or in combination with other plans or projects, will not be permitted.

Other Matters

26. The appeal site is within the Boughton Lees Conservation Area (CA) wherein I have a statutory duty under Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
27. The special character of the CA is derived in part from the openness of the village setting, with views through to the countryside. The appeal site as existing makes a positive contribution to the character of the CA due to its relative absence of built form, albeit I understand the site was previously partially occupied by a garage and conservatory associated with Apple Tree Cottage.
28. The Council has identified that the proposal would have a neutral effect on the character and appearance of the CA. I see no reason to take a different judgement in relation to the heritage implications of the proposal.
29. I also note that the Council would not have resisted the proposal on matters of principle or living conditions to either future occupiers or neighbouring properties. Nevertheless, these factors do not specifically weigh in favour of the proposal.

30. Whilst I sympathise with the appellant in relation to the associated stress which has been experienced during the application process, this in itself does not lead me to reach a different conclusion on the matters outlined above.

Planning Balance and Conclusion

31. The proposal has received some local support with interested parties contending that it would bring a vacant parcel of land into use which is only bounded on one side by a neighbouring property. The National Planning Policy Framework (the Framework) outlines support for the development of small-scale proposals and windfall sites, noting the contribution that these can make to overall housing needs. There would also be economic benefits associated with the construction of the dwelling, albeit due to the scale of the proposal these would be modest.
32. The appellant makes various references to the proposal contributing towards affordable housing. However, this is contrary to the application form which confirms the proposal relates to a market dwelling. I also have no mechanism before me to secure that the dwelling would be affordable. Nevertheless, the delivery of a market dwelling in a sustainable location represents a benefit to the proposal. In the context of a single dwelling, the benefits are modest.
33. The Council accept they cannot demonstrate a sufficient supply of housing land, thereby engaging paragraph 11 d) of the Framework. However, this paragraph identifies that planning permission should be granted unless the policies in the Framework that protect areas of particular importance provide a strong reason for refusing the development. Habitat sites are areas of particular importance, and paragraphs 193 b) of the Framework states that development on land within a SSSI, and which is likely to have an adverse effect on it, should not normally be permitted. This gives a strong reason for refusing planning permission and the presumption in favour of sustainable development therefore does not apply.
34. The benefits of the proposal, including a modest housing delivery are not sufficient to outweigh the harm identified. This brings the scheme into conflict with the development plan and material considerations do not indicate a decision otherwise than in accordance with it. I therefore conclude the appeal should be dismissed and planning permission refused.

L Gardner

INSPECTOR