



Appeal Decision

Site visit made on 8 January 2026

by **Thea L Davis BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th May 2026

Appeal Ref: APP/L2250/W/25/3374680

Telecommunications Centre & Land Adjoining, Stanley Road, Folkestone CT19 4RL

- 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 Mr N Childs against the decision of Folkestone and Hythe District Council.
 - The application Ref is 24/1025/FH.
 - The development proposed is demolition of existing derelict building on brownfield site and construction of four two-bedroomed, and two three-bedroomed town houses all with private gardens and including off-street parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on the living conditions of:
 - occupiers of 6 and 7 Milky Whey through loss of outlook, and 2, 3 and 5 Milky Whey through loss of privacy.
 - future occupiers of plots H1-H4 through loss of privacy.

Reasons

Living conditions for occupiers of 6 and 7 Milky Whey

3. The appeal site is an area of land previously associated with a telecommunications facility that is accessed from Stanley Road, Folkestone. The site runs alongside Milky Whey, a small housing development to the south. The access road provides separation from Laurel Court, a retirement block to the north. A pair of semi-detached dwellings are proposed at plots H5 and H6 and a terrace of 4 dwellings at plots H1-H4. Plots H5 and H6 would be located towards the west end of the site. According to the appellant's appeal statement, the side wall of the dwelling at plot H5 would be approximately 3-3.5m from the rear boundary of 6 and 7 Milky Whey.
4. The appeal statement indicates that in its pre-application advice, the Council had not raised concerns specifically that the proposed development would be overbearing or result in privacy impacts. However, the detail of the pre-application advice, although likely to have informed evolutions to the scheme, is not the focus of this appeal.
5. The appellant's appeal statement states that a shed in the rear garden of 6 Milky Whey and vegetation at 7 Milky Whey would mitigate the visual effect of the side

wall of the dwelling at plot H5. However, these gardens do not fall within the scope of this appeal and could not be relied upon to remain in perpetuity in order to mitigate visual effects sufficiently due to the scale and proximity of the side wall to Milky Whey properties.

6. Moreover, due to the siting and scale of the side wall of plot H5, the semi-detached dwellings would introduce a visually dominant and overbearing built form close to the rear boundary of the Milky Whey dwellings that would materially reduce outlook to the rear of these properties. Consequently, the proposed development would create a sense of enclosure and reduce the level of sky exposure to the rear of 6 and 7 Milky Whey that would result in an adverse effect on the living conditions of the occupiers of these dwellings amounting to moderate harm.
7. Subsequently, by reason of its layout, scale and proximity to 6 and 7 Milky Whey, the proposal would fail to respect existing residential buildings and conflicts with paragraph 135 of the National Planning Policy Framework (NPPF) and Policy HB1 of the Folkstone and Hythe Places and Policies Local Plan 2020 (PPLP) which, amongst other things, seeks quality places through design that make a positive contribution to location, enhancing integration while also respecting existing buildings and land uses, particularly with regard to matters such as layout and scale. Additionally, Policy HB1 requires development not to lead to an adverse impact on the amenity of neighbouring occupiers, taking account of outlook.
8. I acknowledge that the appellant has sought to amend the roof type from gable to hip and has included amended plans with this appeal. However, even if I were to accept this alteration, it does not overcome the fundamental harm that I have found to the provision of outlook of neighbouring occupiers at 6 and 7 Milky Whey.

Living conditions for occupiers of 2, 3 and 5 Milky Whey

9. The parties disagree as to the distance between the rear walls and first floor windows of the dwellings at plots H1-H4 and 2, 3 and 5 Milky Whey. The Council considers there would be a separation of 17m, whereas the appellant believes this to be closer to 18.5m. In either case, the distance between rear walls would be no greater than 18.5m. Although residential properties do back on to one another in the wider area, it has not been brought to my attention that the limited and harmful separation between the rear of dwellings on plots H1-H4 and dwellings on Milky Whey would be typical or commonplace in the area.
10. There are some trees and vegetation close to the boundaries between plots H1-H4 and 2, 3 and 5 Milky Whey which would mitigate overlooking to a degree. However, the retention of this vegetation cannot be relied upon to protect privacy in perpetuity and it is outside the appeal site. Moreover, the existing coverage and that proposed in the landscape plan would be inconsistent along all affected rear boundaries.
11. The effect of the proposal would be a loss of privacy for occupiers of 2, 3 and 5 Milky Whey through the introduction of overlooking from new viewpoints from the first-floor windows to the rear of dwellings on plots H1-H4. Furthermore, due to the layout, orientation and density of the proposed development, the proximity and alignment of the first-floor windows of the existing and proposed dwellings would inevitably result in mutual overlooking, with occupiers also to experience a loss of privacy through windows and to rear gardens. It is not unusual for gardens to be overlooked, for example through upper floor windows of side-adjoining properties.

However, even this overlooking preserves some amenity areas closest to the dwellinghouse where overlooking cannot easily occur from the side. In the case of the proposed development, occupiers' gardens would be overlooked from side-adjointing properties and any areas not currently overlooked would become overlooked by the dwellings at plots H1-H4.

12. The effects on privacy for occupiers of 2, 3 and 5 Milky Whey would be contrary to paragraph 135 of the NPPF, and Policy HB1 of the PPLP which seeks, as set out above and amongst other things, to avoid an adverse impact on the amenity of neighbours, taking account of loss of privacy and for development to respect existing buildings and land uses. The effect of the proposal through loss of privacy for occupiers of 2, 3 and 5 Milky Whey would lead to substantial harm.

Living conditions of future occupiers

13. The appellant does not address effects on future occupiers of the development in their appeal statement. However, due to explicit references to '*mutual overlooking*' and '*future occupiers*' in the reason for refusal, I have considered the effects of overlooking and privacy for future occupiers of the development for both neighbouring occupiers as well as future occupiers accordingly.
14. As the effect of the proposal on the occupiers of 2, 3 and 5 Milky Whey would be a loss of privacy due to mutual overlooking, the same effect would result for future occupiers of the dwellings at plots H1-H4. Due to an insufficient separation distance, the first-floor windows to the rear of 2, 3 and 5 Milky Whey would have an invasive view into windows and overlook the private amenity space of proposed plots H1-H4, resulting in loss of privacy for future occupiers. The overlooking would be to such an extent that there would be little or no amenity space in the rear gardens that would be private. It follows that the proposal would therefore result in insufficient privacy for future occupiers of dwellings at plots H1-H4.
15. As already rehearsed, PPLP Policy HB1 sets various expectations for development. In relation to future occupiers, this includes that adverse impacts to amenity for future occupiers are avoided, taking account of loss of privacy. The proposed development would fail to deliver on these expectations, particularly as a result of the layout and scale of the development, which neither enhances integration nor respects the existing residential buildings and the adverse impact that would result through loss of privacy to future occupiers. Therefore, the proposed development is contrary to paragraph 135 of the NPPF and Policy HB1 of the PPLP. The compromised privacy future occupiers of the proposed development would experience would result in substantial harm.

Other Matters

16. The existing building is positioned close to the footprint of the proposed terrace (plots H1-H4). In their appeal statement, the appellant states the rear wall of the proposed terrace would be 7m further back than the rear wall of the existing building, which is smaller and has fewer windows than the proposed terrace. The first-floor windows of the existing building on the appeal site overlook the rear gardens of 4 and 5 Milky Whey and to a lesser extent, 3 Milky Whey. Ground floor windows of the existing building are obscured to an extent by the boundary fence.
17. The appellant's appeal statement states the site was previously used as offices and that a fallback position would be a continuation of the office use. On 10

December 2025 and during the course of the appeal, prior approval was issued for the conversion of the existing building on the site from offices to 5 flats. As a result, I have considered these as two fallback positions that are material to this appeal.

18. In relation to the layout, scale and orientation of the proposed development the appellant's appeal statement indicates local planning precedents. I note the buildings identified, for example in the Kent Road area, are a denser form of development which is different in layout to that of the proposed scheme. Some examples show residential properties with rear boundaries close to side walls of other residential properties and some backing on to commercial property. The examples do not include residential back-to-back configurations as close in proximity to that of the proposal. These examples are not so similar as to represent a compelling reason to allow the proposed development.
19. I note the comments from Kent County Council Ecological Advice Service dated 7 August 2025 regarding bat roosts at the site and that these would require sufficient mitigation to be agreed by Natural England. However, as I am dismissing this appeal, it is not necessary to look into this matter in any more detail.

Planning Balance

20. The proposed development would conflict with the development plan due to adverse impacts on amenity for occupiers of 2, 3 and 5 Milky Whey and future occupiers of dwellings at plots H1-H4 as a result of overlooking and loss of privacy and through an unacceptable loss of outlook for surrounding occupiers at 6 and 7 Milky Whey. NPPF paragraph 232 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. PPLP Policy HB1 engaged for this appeal is consistent with the NPPF.
21. It is common ground that the Council cannot demonstrate a 5-year housing land supply and also that its latest position is a housing land supply of 3.1-years. Due to the Council's deficit in housing land supply, NPPF footnote 8 applies. Therefore, the presumption in favour of sustainable development is engaged and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Moreover, it has not been brought to my attention that policies in the NPPF that protect areas or assets of particular importance would in this instance provide a strong reason for refusal. However, NPPF paragraph 125 states that substantial weight should be given to the value of using suitable brownfield land within settlements, unless substantial harm would be caused.
22. Benefits of the development include a limited contribution of 6 new dwellings, mitigation of overlooking and loss of privacy to 4 Milky Way, redevelopment of brownfield land, bringing back into use and improving the appearance of a vacant site. Taking into account the existing building on the site and whilst I acknowledge that the site benefits from prior approval, the scheme before me would result in increased harm that would not outweigh the benefits identified above. The proposed dwellings at plots H1-H4 would introduce an unacceptable level of overlooking and loss of privacy to 2 Milky Whey and would increase the level of overlooking to 3 Milky Whey due to the introduction of a longer building with more windows at first floor. As a result of the proposed development, a greater level of harm to future occupiers of the proposed terrace at plots H1-H4 would occur due to the exposure of rear-facing windows and private amenity areas. Moderate harm to

6 and 7 Milky Whey would also result through adverse impacts to outlook due to reduced sky exposure and an overbearing built form as a result of the layout and scale of the proposed dwellings at plots H5 and H6.

23. Having taken into account the policies in the NPPF as a whole, considering policies that weigh both in favour of and against the proposed development and having particular regard to key policies for directing development to sustainable locations and making effective use of land, I conclude that when taken together, the adverse impacts of allowing the appeal that include substantial harm by way of loss of privacy to 2, 3 and 5 Milky Whey as well as future occupiers of dwellings at plots H1-H4 and an adverse impact on outlook for 6 and 7 Milky Whey amounting to moderate harm would significantly and demonstrably outweigh the benefits of allowing the appeal. Subsequently, the presumption in favour of sustainable development does not apply and the other material considerations do not justify allowing the appeal.

Conclusion

24. For the reasons given, the proposed development would conflict with the development plan and the material considerations, including the NPPF, do not indicate that a decision should be made other than in accordance with it. Thus, the appeal is dismissed.

Thea L Davis

INSPECTOR