

# Appeal Decision

Site visit made on 9 September 2024

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 September 2024**

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**Appeal Ref: APP/W1715/W/24/3338792**

**Brighstone, Botley Road, Horton Heath, Hampshire SO50 7DT**

- 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 A Phipps of Alderbury Homes Ltd against the decision of Eastleigh Borough Council.
  - The application Ref is F/23/95549.
  - The development proposed is Construction of five dwellings, landscaping, parking and associated works following demolition of existing dwelling, site clearance and preparation.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the appeal was lodged, the Government launched a consultation on "Proposed reforms to the NPPF and other changes to the planning system" and the "National Planning Policy Framework: draft text for consultation". The Secretary of State also issues a written ministerial statement entitled "Building the homes we need." In view of the matters raised, I have sought the views of the parties on the implications of these for the appeal before me. I have taken those views into account where relevant.
3. The appellant submitted a unilateral undertaking under section 106 of the Town and Country Planning Act 1990 (as amended) (the UU). This is signed and dated 14 June 2024. This makes provisions for financial contributions towards mitigation against adverse effects arising from additional recreational use associated with new housing on European protected habitats sites of both the Solent region and the New Forest National Park. It also makes provisions to address nutrient impacts on the protected sites within the Solent region arising from the proposed development. I deal with this later in my decision.

## Main Issues

4. The main issues are the effect of the proposed development on: i) the living conditions of neighbouring occupiers, with particular regard to noise and disturbance from vehicle movements, loss of outlook and overlooking; and ii) protected trees.

## Reasons

### *Living conditions*

5. The appeal site currently comprises Brighstone, which fronts Botley Road, and its long rear garden. The proposal is to demolish the existing dwelling and to construct five houses, three of which would be located behind two new houses which would front Botley Road. A new access would run along the rear boundaries of the gardens to properties fronting Cherry Drove, namely Southview, Hideaway and Number 14 Cherry Drove (No 14), as well as along the side boundary of Neerome, directly to the north of the site, fronting Botley Road. It would provide access to two parking spaces for Plot 2 as well as the three remaining houses.
6. The rear part of the site is an undeveloped garden and has no vehicular access. The Cherry Drove properties have very shallow gardens, with No 14 being particularly close to the shared boundary. The introduction of 3 dwellings in this area with their associated access and parking areas would give rise to vehicle activity where there currently is none. Therefore, additional noise and disturbance at the rear of the adjacent properties to the north would occur. Due to the limited separation distance between these properties and the proposed driveway, this would be experienced both within the neighbouring properties, particularly when their windows are open, as well as within their private garden area where occupants could reasonably expect a degree of peace and quiet.
7. Future occupants would have good access to existing public transport connections on Botley Road and to new cycle infrastructure within the locality. They would not be solely reliant on private motor vehicles for access, therefore reducing the number of such trips associated with the proposed development. In view of this and the modest size of the proposed development, the overall number of vehicle movements would be relatively low. Traffic speeds would also be low which would reduce their impact. However, this does not mean there would be no harm. Furthermore, vehicles would need to turn around within the site. There is a parking area proposed to be opposite No 14 and further west in the site to the rear of Southview. With vehicles manoeuvring to park and turn around at various times during the day and potentially at night, there would be noise and disturbance to occupants of these properties to the detriment of their living conditions.
8. Although there would be noise associated with its current use as a private garden, such as lawn mowing, children playing and other recreational activity, these are not comparable to the noise associated with vehicles. A quiet surface material could be utilised to limit noise disturbance. In addition, it may be that some vehicles accessing the site are electric vehicles and significantly quieter. Nevertheless, there is no guarantee of this. In any event, this would not adequately prevent noise arising from vehicle movements in such close proximity to the properties to the north. These factors do not therefore alter my conclusions on this matter.
9. Plot 5 would be located at the far end of the appeal site, behind Southview. It is proposed that a part two/part single-storey house would be constructed here. This would incorporate an attached garage with accommodation above

within the roofspace. This garage would be positioned closest to and a short distance from the shared boundary with Southview.

10. Southview has south facing floor to ceiling windows and Juliette balconies on the two first floor bedrooms as well as floor to ceiling doors and windows at ground floor within its rear elevation and close to the shared boundary. The introduction of a building on Plot 5, due to its proximity, bulk and height would be visible from all these windows causing some loss of outlook. Whilst the garage section of the building would be stepped back from the main part of the proposed house and designed with a hipped roof and dormers to address concerns about its impact on Southview, this would not overcome the visual intrusion and subsequent reduction in outlook for these neighbouring occupiers. This would be particularly harmful in respect of the first floor bedroom windows directly opposite the garage.
11. The first floor south-facing window of No 14 is positioned very close to the shared boundary. Due to the short distance between this window and the proposed dwelling on Plot 3 there would be some loss of outlook for these occupants, although of modest impact due to the proposed dwelling being offset and not directly behind No 14.
12. I appreciate that there would be a change in the view from properties on Cherry Drove. However, the protection of private views is not a planning matter. Nonetheless, my findings are that there would be some loss of outlook to both Southview and No 14 which would be unacceptable.
13. Concerns have been raised by adjoining neighbours about possible overlooking and loss of privacy. However, the proposed dwellings have been designed and positioned to prevent first floor windows with direct views into neighbouring properties or gardens. Windows within the proposed dwellings that would face towards nearby properties would serve bathrooms and landings and could be conditioned to ensure they would be obscurely glazed and kept shut. As such, harm in terms of overlooking would not arise.
14. Whilst the design of the proposed dwellings would be sympathetic to the character of nearby surrounding development, this would not overcome the harm that would arise to living conditions from the proximity of parts of this proposal to nearby occupiers.
15. For these reasons, I conclude that the proposal would cause significant harm to the living conditions of neighbouring occupants, through noise and disturbance and loss of outlook. The proposal would therefore conflict with Policy DM1 of the Eastleigh Borough Local Plan 2016-2036, adopted 2022 (the EBLP) and the guidance set out in the Council's Quality Places Supplementary Planning Document, adopted 2011 (the QPSPD) which together require new development to not have an unacceptable impact on residential amenities of existing residents.

#### *Protected trees*

16. Located at the far west end of the site, there are three mature oak trees. These are protected under a Tree Preservation Order<sup>1</sup>. I observed the trees are located close to the site boundary but within the garden of the adjacent

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<sup>1</sup> TPO No. 416

property to the west at No 11 Cherry Drove. The trees are substantial specimens, with wide spreading canopies which extend across part of proposed Plot 5. The trees are prominent and contribute positively to the verdant character of the site and visual amenity of the area as well as ecology.

17. The dwelling would be positioned so that it would not encroach into the root protection areas of these trees nor under their canopies. There is a degree of separation between the trees and the proposed dwelling which would benefit from sufficiently sized private garden space to the south and west. Despite the size of the trees, the southern garden area would not be unduly shaded and the western section, only during the latter part of the day. It is therefore unlikely that there would be increased future pressure for works to be undertaken to the trees to improve this garden space for future occupants.
18. Consequently, I conclude that the proposal would not cause harm to protected trees. It would therefore comply with Policies DM1 and DM11 of the EBLP, the QPSPD and the Trees and Development Supplementary Planning Document, adopted 2022, which together seek to protect trees and avoid their loss through development by providing space for existing retained trees to grow and avoiding post-development pressure for tree works.

## **Other Matters**

### Protected habitats sites

19. The appeal site lies within the 5.6 kilometre (km) catchment zone of the Solent and Southampton Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. It is also within the 13.8km catchment zone for the New Forest SAC, SPA and Ramsar site. These are European habitats sites and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of these sites.
20. It has been established that new residential development within these catchment zones would give rise to harms arising from recreational use of the areas. Mitigation to address such harmful impacts is therefore required. The submitted UU proposes financial contributions in respect of this.
21. In addition, the appeal site would be served by the Chickenhall Lane wastewater treatment works. This discharges into the River Itchen and on to the wider Solent sites. Residential development contributes to additional nitrogen and phosphorus inputs into the Solent complex which are causing eutrophication of the designated sites. Mitigation for the proposed development in the form of nutrient neutrality is proposed to be secured through the submitted UU.
22. As the competent authority for this appeal, I would need to undertake an appropriate assessment (AA) in accordance with the Regulations to confirm that the integrity of the European sites would not be adversely affected. However, it has not been necessary for me to pursue this further because the scheme is unacceptable for other reasons.

### Other considerations

23. The existing access off Botley Road is shared by the host property and Neerome. Concerns about this were raised by this neighbour, however, the scheme would formally separate this entrance therefore ensuring occupants of Neerome would have their own dedicated access.
24. The proposal would not cause harm to the character and appearance of the area in this location. This is a neutral factor.

### **Planning Balance**

25. The application that is the subject of this appeal was submitted prior to the publication of the Framework on 19 December 2023. Accordingly, the Council is required to demonstrate a five years supply of deliverable housing sites in respect of the consideration of this appeal.
26. The Council asserts that, at the time the application was made, it could demonstrate a supply of 5.1 years. This was based upon its published housing land supply figure in July 2022. The appellant disputes this on the basis that this figure was tested as part of a separate appeal<sup>2</sup> where the Inspector concluded that the Council's supply of deliverable housing sites was closer to 4.7 years. The Council has not submitted evidence to refute this position. In the absence of evidence to the contrary, my decision is therefore based on the figure of a 4.7 year supply of housing.
27. I have limited information before me about the number of housing units that the Council needs to provide in order to demonstrate it has a 5 year supply of deliverable housing sites as required by the Framework. Nevertheless, a supply of 4.7 years is indicative of a modest shortfall against the required 5 year supply.
28. Where a 5 year supply cannot be demonstrated, the provisions of paragraph 11 d) of the Framework and the presumption in favour of sustainable development should apply. Paragraph 11 d) i) sets out that this does not apply where the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 explains that these assets include European sites. I have not completed an AA and reached a conclusion in this regard.
29. The provision of four additional dwellings would make a small contribution to the supply of housing on the edge of and within the defined settlement boundary of Horton Heath. It would have access to services and facilities by means other than private motorised vehicles. The location would be appropriate for a modest residential development in terms of the spatial strategy. In addition, economic benefits both during the construction and subsequent occupation and management of the proposed development would arise, although limited in scale due to the modest size of the scheme. Together, these factors carry modest weight in favour of the scheme.
30. The proposal would not cause harm to protected trees. However, this is a neutral factor.

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<sup>2</sup> APP/W1715/22/3292580

31. Weighed against the benefits, the scheme would cause significant harm to the living conditions of neighbouring occupants in terms of noise and disturbance and loss of outlook. These harmful impacts are matters of very substantial weight and importance in the planning balance.
32. In my view, had I completed an AA and found the effects of the proposal on the European sites to be acceptable, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

### **Conclusion**

33. I find that the proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

*Rachael Pipkin*

INSPECTOR