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# 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: 13 November 2024**

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**Appeal Ref: APP/W1715/W/23/3328986**

**Cockpit Farm Barn, Knowle Lane, Horton Heath SO50 7DZ**

- 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 Andy Phipps of Alderbury Homes Limited against the decision of Eastleigh Borough Council.
  - The application Ref is F/23/94713.
  - The development proposed is Construction of six (6) dwellings, including landscaping, parking and associated works following demolition and site preparation.
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## Decision

1. The appeal is allowed and planning permission is granted for construction of six (6) dwellings, including landscaping, parking and associated works following demolition and site preparation at Cockpit Farm Barn, Knowle Lane, Horton Heath SO50 7DZ in accordance with the terms of the application, Ref F/23/94713, subject to the conditions in the attached schedule.

## Preliminary Matters

2. The Council no longer intends to uphold reason for refusal 2 in respect of highway safety. Nevertheless, interested parties have raised concerns about traffic volumes, the suitability of the road for increased traffic and the absence of a footpath. I have therefore dealt with this as a main issue below.
3. 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 issued 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.
4. In its statement of case, the Council highlighted a discrepancy between the site layout plan submitted with the application (drawing reference SL01 Rev A) and the site layout shown on the submitted street elevations plan (drawing reference SE.01), the latter showing a greater extent of proposed residential garden land. The appellant has submitted an updated drawing (reference SE.01 Rev A) to correct this discrepancy. This reduces the size of proposed garden land to align with the submitted site layout plan. I have taken this updated drawing into account in my decision.

## Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the area, including the settlement gap between Horton Heath and Fair Oak;
- the effect of the proposal on highway safety; and
- whether or not the proposed development would adversely affect the integrity of protected habitats sites.

## **Reasons**

### *Character and appearance*

6. The appeal site lies within a semi-rural setting, a short distance to the north-east of the settlement of Horton Heath. It fronts Knowle Lane, which is a rural road characterised by hedgerows and sporadic development. A long single-storey, low profile building, formerly used as a poultry shed, extends much of the length of the Knowle Lane frontage. It is behind boundary trees and vegetation, set back and at a lower level to the carriageway. To the rear of the building, the remainder of the site includes several trees and areas of open grassland. Beyond the site, there are open fields and paddocks on the land to the south and west which slopes away from the site towards Botley Road.
7. The poultry shed is visible from the surrounding area, including in views between buildings from Botley Road, along Knowle Road itself and from a public footpath along the site's northern boundary. Nevertheless, due to its modest height and agricultural appearance, set against trees and surrounded by open land, the existing building does not detract from the open and rural character of the site. It therefore contributes to the settlement gap, helping to maintain the physical and visual separation, between Horton Heath and Fair Oak which lies to the north-west.
8. The proposed development would demolish the existing building and structures on the site and replace them with four single-storey buildings with accommodation in the roofspace. These would comprise two detached, a pair of semi-detached and a pair of link-detached dwellings with integral garages, arranged in a linear pattern set back from the road. They would be served by a single access from Knowle Lane with two existing site entrances being closed up and planted with vegetation to augment the existing boundary vegetation.
9. The proposed dwellings have been designed to resemble agricultural buildings and are successful in this regard. The design would be appropriate for this semi-rural location. The buildings would be substantially taller than the existing building and thus more visually prominent when seen from Botley Road and Knowle Lane. However, due to their agricultural appearance together with their position, separated from the village edge by an intervening field, they would not appear to extend the settlement along Knowle Lane. Moreover, whilst there would be some apparent urbanisation of the site, much of the site would be retained as open land and used for tree planting. Consequently, the existing gap between the two settlements would largely be preserved as open fields or woodland and the settlement gap would not be unduly undermined.
10. A link from the footpath would be created to allow access to a permissive path through the site. This opening up of the site in combination with taller buildings would increase the amount of development seen from this footpath. Nonetheless, additional planting is proposed which, over time, would augment

the screening of the buildings and help to increase the verdant character of the site when viewed further west along the footpath.

11. The proposed access on to Knowle Lane would be set between native planting along the road frontage. Where it enters the site, it would be opposite front gardens rather than parking areas which would lessen its urbanising impact when seen in fleeting views travelling along the road. Consequently, whilst it would be more formal than the three existing accesses to the site, it would not be unduly so.
12. Thus, whilst the proposal would lead to some urbanisation of the site through the introduction of the residential curtilage and domestic paraphernalia, on balance, I find that moderate harm to both the semi-rural character of the area and settlement gap would arise from this.
13. The site benefits from extant prior approvals for conversion to five residential dwellings<sup>1</sup> and to an office use<sup>2</sup>. Whilst the existing building with its agricultural character would be retained, there would nevertheless be a similar apparent change in the form of a domestic curtilage, parked vehicles and garden areas associated with the change of use. This scheme, which is extant, would provide one less dwelling than the appeal proposal but the addition of an office use.
14. The Council has suggested that the conversion scheme would have a smaller residential curtilage and a less formal access from Knowle Lane and would be less harmful. Nevertheless, there would be nothing to prevent future occupants of that scheme from placing domestic paraphernalia within their gardens or parking outside their properties. To my mind, the conversion schemes would give rise to a similar degree of harm to the appeal scheme but with less control over aspects such as landscaping, which would make the appeal scheme less harmful.
15. I have been referred to two appeals<sup>3</sup> in respect of 'The Mazels' on the opposite side of Knowle Lane. The Inspector in that case found that the urbanising impacts of the proposed developments, in that case schemes of twelve and four dwellings respectively, and their proposed vehicular access onto Knowle Lane with views of parked cars and residential paraphernalia would be harmful to the rural character of the area. I do not have the full details of these appeals, however, I note that these related to development of an undeveloped site, unlike the appeal scheme. There was also no fallback scheme as is the case here. The conclusions of that Inspector do not therefore alter my findings.
16. On balance, I conclude that the proposed development would not be harmful to the character and appearance of the area, including the settlement gap. It would therefore accord with Policies DM1, DM26, S5 and S6 of the Eastleigh Borough Local Plan 2016-2036, adopted 2022 (the EBLP) and the Framework. These policies, together and amongst other things, permit development in settlement gaps that would not undermine the physical extent and / or visual separation of settlements, would not have an urbanising effect or cause loss of

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<sup>1</sup> Council Ref: PN/22/92315

<sup>2</sup> Council Ref: PN/22/92314

<sup>3</sup> APP/W1715/W/17/3173253 and APP/W1715/W/17/3178540

landscape features of value on the character of the countryside and are sympathetic to local character.

#### *Highway safety*

17. Heading out of Horton Heath, the appeal site is located beyond a bend in Knowle Lane. Currently served by three access points, it is intended to reduce this to a single access point positioned some distance from the bend in the road. The proposed access would be an adequate size to accommodate two vehicles entering and exiting the site at the same time. The submitted evidence indicates that a satisfactory visibility splay would be achieved. Subject to the clearance of vegetation which could be secured by a planning condition, this has been confirmed by the highway authority.
18. The speed limit along the road is 30 miles per hour (mph), reducing from 40mph a little further north along the road. At the time of my site visit around midday and just a snapshot in time, I observed the road was well used but not unduly busy or fast-moving. I have not been provided with any substantive evidence of collisions or highway safety related incidents along the road.
19. A new footpath is proposed to the south to connect to Horton Heath and through the site to connect with an existing public footpath which runs along the northern boundary and connects to a recreation ground and Botley Road. This would provide safe access to and from the site for pedestrians.
20. Whilst the introduction of six dwellings in this location would lead to an increase in vehicle activity in and around the site, the scheme would provide satisfactory access and pedestrian links. It would not therefore be harmful to highway safety. Furthermore, I am mindful that under the approved schemes for the conversion of the building to an office and five residential units, there would likely be a more significant increase in traffic to and from the site. The appeal scheme would be less harmful than the approved schemes.
21. The proposed development would not have an unacceptable impact on highway safety. It would therefore accord with Policies DM1 and DM13 of the EBLP and the Framework which together require development that provides safe, suitable and convenient access to the site and the highway network.

#### *Habitats sites*

22. The appeal site lies within 5.6km and the buffer zone of the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site; and Portsmouth Harbour SPA and Ramsar site, Solent Maritime Special Area of Conservation (SAC) and River Itchen SAC (the protected sites). These sites are European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations).
23. Together these sites form part of the Solent Coast, with the River Itchen feeding into this catchment. The sites are designated due to the important habitats, particularly mudflats, shingle and saltmarshes, that they provide for a range of breeding and non-breeding and overwintering birds as well as habitat for other species of mammals, fish and invertebrates.
24. Natural England (NE) has advised that the increase in wastewater from new housing developments within the borough is having a detrimental effect on the

quality of water entering the Solent catchment area through nitrification. Additional housing can have a significant effect on the protected sites through increased recreational use of the sites.

25. Accordingly, and when following a precautionary approach, the proposal for six new dwellings, in combination with other plans and projects, would be likely to have a significant adverse effect on the protected sites. As the competent authority, I am therefore required to carry out an appropriate assessment, in accordance with the Regulations, to consider the implications of the proposal on the protected sites in view of their conservation objectives.
26. The sites' conservation objectives can be summarised as restoring as appropriate and avoiding a deterioration of habitats and minimising bird disturbance, thereby ensuring the integrity of the sites is maintained. In order to avoid any such harms, suitable mitigation would be required for new housing development in respect of both nutrient neutrality and recreational impacts.
27. NE advises that to mitigate harms arising from wastewater discharging into the protected sites, all new housing developments are required to reach nutrient neutrality thereby ensuring that it does not add to existing nutrient burdens. The proposal is required to achieve nutrient neutrality for both nitrogen and phosphates.
28. The Council has a nitrate offset scheme which allows for the purchase of nitrate credits to offset excess nutrient outputs against land owned by the Council that has been taken out of agricultural use, thereby creating a net reduction in nutrients arising from the land. It also has an Interim Phosphate Mitigation Strategy which provides a similar option to purchase phosphate credits generated from land that has been set aside for phosphate mitigation in perpetuity. The appellant has provided written confirmation from the Council that both nitrate and phosphate credits are available and can be purchased from the offset schemes.
29. In accordance with the Regulations, I have consulted NE and had regard to its response. NE raised no issues in respect of the proposed mitigation and use of nitrate credits. It did however raise a concern in respect of the phosphate offset scheme and the total number of phosphate credits available. In particular, NE is concerned that some of the parcels of land included within the scheme at Allington Lane appear to drain to the main Itchen channel downstream of the Chickenhall Eastleigh Wastewater Treatment Works (WTW) which would serve the proposed development. Using credits generated from these parcels of land would not address phosphate budgets for development discharging wastewater to the WTW.
30. The strategy provides for 147 phosphate credits of which, the Council has confirmed, around 8 credits have been sold to date. The Council has confirmed that there are adequate parcels of land available to the appellant for purchase that are upstream of the Chickenhall Eastleigh WTW which therefore provide the required mitigation.
31. I am satisfied that there are nutrient credits available to the appellant for purchase and, because phosphate credits could be bought in relation to land upstream of the WTW, that these would secure appropriate mitigation against nutrient impacts.

32. The appellant has submitted a signed unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended), dated 2 August 2024. This prevents the occupation of the development until the nutrient impacts have been secured and implemented in accordance with details approved by the Council. I am therefore satisfied that the scheme would not adversely affect the integrity of the protected sites through nutrient inputs. As this measure would be secured through the UU, a condition requiring this is not necessary.
33. The UU also secures mitigation as a financial contribution in accordance with the Habitats Mitigation (Bird Aware Solent) Contribution. This would be appropriate in terms of avoiding harm to the protected habitats sites arising from any recreational impacts associated with future occupiers of the proposed development.
34. I am satisfied that the planning obligation is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development. Moreover, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended.
35. The proposal would not harm the integrity of protected habitats sites. It would therefore accord with Policy DM11 of the EBLP which supports development that protects and conserves protected sites.

### **Other Matters**

36. Concerns have been raised that the proposal will lead to a loss of biodiversity. However, ecological enhancements to the site are proposed and a condition imposed to secure a biodiversity net gain would ensure this. The scheme would lead to the removal of some mature trees as set out within the Arboricultural Implications Assessment and Method Statement. This affects one group of trees, considered to be of low quality. The loss of these would be mitigated through additional tree planting on the site. In addition, six trees/groups would have activities within the root protection areas. Measures to safeguard these trees for their ecological and visual amenity value have been proposed and could be secured through planning conditions.
37. I have no substantive evidence before me to confirm that local infrastructure cannot accommodate the amount of development proposed here.

### **Conditions**

38. The Council has proposed a number of conditions should the appeal be allowed in addition to those which I have already referred to earlier in my decision. I have considered these and imposed them where they meet the tests set out in Paragraph 56 of the Framework, amending where necessary for the sake of simplicity, clarity and precision. I have also amended the timescales of certain conditions to avoid unnecessary pre-commencement conditions.
39. A condition specifying compliance with submitted drawings is necessary in the interests of certainty.
40. I have imposed a condition requiring agreement to a Construction Environmental Management Plan to protect the local environment and amenities. I have attached a condition to minimise the risk arising from

contaminated land. Conditions are also necessary to secure appropriate foul and surface water management in the interests of reducing flood risk and minimising pollution and the provision of appropriate visibility splays in the interests of highway safety. These conditions are required to be pre-commencement as these matters need to be addressed before development takes place on site.

41. In the interests of character and appearance, conditions controlling materials, landscape and boundary treatments are necessary. A landscaping condition is also necessary in the interests of biodiversity. A condition requiring the provision of refuse and recycling storage is necessary in order to protect residential amenity and the local environment.
42. A condition requiring the homes to be constructed to building regulations optional requirements on accessibility and adaptability is necessary to comply with Policy DM29 of the EBLP. I have also imposed a condition to secure water efficiency within the development in accordance with Policy DM2 of the EBLP.
43. A condition securing the provision and ongoing maintenance of the permissive path is necessary in order to secure safe and suitable pedestrian access to the site. A condition requiring cycle storage is necessary and reasonable to encourage travel by alternative means than the private car. I have also imposed conditions securing the provision and retention of car parking on the site in the interests of highway safety.
44. A condition restricting certain permitted development rights is both reasonable and necessary in respect of enlargement of the property including the roof, means of enclosure and formation of access to the highway, in order to protect the open character of the site and its contribution to the settlement gap. Other restrictions on permitted development, including other alterations to the roof, porches, buildings / enclosures within the rear garden and the provision of hard surfacing would be unnecessary and I have not included these within the condition.
45. I have not imposed a condition requiring a noise assessment as the proposed dwellings are located in a quiet area, not near a busy road or any other potential major sources of noise. Building regulations would require necessary insulation and prevention of noise spread. No substantive evidence has been submitted to demonstrate that such a condition is necessary.

## **Conclusion**

46. For the reasons given above, the appeal should be allowed.

*Rachael Pipkin*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall start no later than three years from the date of this decision.
- 2) The development hereby permitted shall be implemented in accordance with the following plans numbered: 001 (Site Location Plan), SL01 Rev A (Site Layout), SE01 Rev A (Site Elevation), L01 Rev F (Landscape Strategy Plan), P1-2.p (Plots 1 & 2 Floor Plans), P3-4.p (Plots 3-4 Floor Plans), P5-6.p (Plots 5 & 6 Floor Plans), P1-2.e (Plots 1 & 2 Elevations), P3-4.e (Plots 3-4 Elevations), P5-6.e (Plots 5 & 6 Elevations).
- 3) No development shall start on site until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority, which shall include:
  - a. A programme of and phasing of construction work including demolition;
  - b. The provision of long term facilities for contractor parking;
  - c. The arrangements for deliveries associated with all construction works;
  - d. Vehicle routing plan;
  - e. Methods of construction works;
  - f. Access and egress for plant and machinery;
  - g. Protection of pedestrian routes during construction;
  - h. Location of temporary site buildings, compounds, construction material and plant storage areas;
  - i. Details of the methodology for ensuring dirt is not transferred onto the highway from the site (i.e. wheel washers), and onwards mitigation should this fail such as the employment of mechanical road sweepers, and the subsequent refresh of street lining (as and when required) should this be damaged during the process;
  - j. Measures to minimise dust, noise and vibration;
  - k. Precautionary measures for the protection of species as set out in the Preliminary Ecological Appraisal prepared by Ecosupport dated 31 May 2023;
  - l. Measures to prevent pollution from surface water run-off during construction;
  - m. Details of external lighting.

Demolition and construction work shall only take place in accordance with the approved CEMP.

- 4) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
  - i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
  - ii. the site has been remediated in accordance with the approved measures and timescale; and

- iii. a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
  - ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 5) No excavation, demolition or development related works shall commence until the tree protection measures have been installed as per the tree protection plan contained within the arboricultural report reference 221462 - AIA 2 and letter reference 221462 – Let 2. Once installed, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within the protected area. Tree protection measures shall be retained in their approved form for the duration of the work.
- 6) Notwithstanding the information submitted to date, no development related works shall take place on site until a detailed Arboricultural Method Statement (as per BS5837:2012 Trees in Relation to Design, Demolition and Construction) is submitted to and approved in writing by the local planning authority. The approved Method Statement must include a management plan and full details of cellular confinement installation. The development shall thereafter take place in accordance with the approved documents.
- 7) No development shall start on site until the access lines of sight of 2.4 metres by 43.0 metres are provided in accordance with plan ref. NJC-001 Rev A (Appendix 2 to Highway Technical Note, Nick Culhane). The lines of sight splays shown on the approved plans shall be kept free of any obstruction exceeding 0.6 metre in height above the adjacent carriageway and shall be subsequently maintained so thereafter.
- 8) Notwithstanding the details submitted with the application, no development shall commence on site until a detailed foul and surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include:
- a. A technical summary highlighting any changes to the design from that within the submitted Drainage details;
  - b. Detailed drainage plans to include type, layout and dimensions of drainage features including references to link to the drainage calculations;
  - c. Detailed drainage calculations to demonstrate existing runoff rates are not exceeded and there is sufficient attenuation for storm events up to and including 1:100 + 40% for climate change;
  - d. Confirmation that sufficient water quality measures including filtration have been included to satisfy the methodology in the Ciria SuDS Manual C753;
  - e. Assessment of risks to controlled water;
  - f. Exceedance plans demonstrating the flow paths and areas of ponding in the event of blockages or storms exceeding design criteria.

The drainage scheme must thereafter be implemented in accordance with the approved details and verified as correctly installed.

- 9) Prior to first occupation of the development hereby permitted, details for the long-term maintenance of the surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include:
- a. Maintenance schedules for each drainage feature type and ownership specifying the responsibilities of each party for the implementation of the SuDS scheme.;
  - b. Details of protection measures.
  - c. A timetable for implementation.
  - d. A management and maintenance plan for the lifetime of the development including the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The drainage system shall thereafter be maintained in accordance with the approved details.

- 10) Prior to any development above foundation / slab level, full details including samples where requested, of the proposed external materials for the buildings and hard surfacing, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

- 11) Notwithstanding the details shown on the submitted Landscape Strategy Plan L01 Rev F, no development above foundation/slab level shall take place until a fully detailed soft landscaping and planting scheme (to 1:200 scale) has been submitted to and approved in writing by the Local Planning Authority. The landscaping plan shall include long term management responsibilities and the planting scheme shall specify species, density, planting, size and layout.

The approved landscaping scheme shall be carried out in the first planting season following occupation of the development, or completion of the development (whichever is sooner) and shall thereafter be retained.

If, within a period of 10 years after planting any tree or plant is removed, dies or becomes, in the opinion of the Local Planning Authority, seriously damaged, defective or diseased, another tree or plant of the same species and size as that originally approved shall be planted at the same place within the next planting season.

- 12) Prior to any development above foundation / slab level, full details of boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 13) Prior to development above foundation / slab level, full details of the permissive path southern and northern routes with connections into the existing footpath networks shall be submitted to, and approved in writing by, the Local Planning Authority. No occupations on site shall commence until the two pedestrian access links are provided in accordance with the approved plans

and details. These pedestrian access links shall remain open for use in perpetuity and shall be subsequently maintained so thereafter.

- 14) The dwellings hereby approved shall not be occupied until the Building Regulations Optional requirement M4(2) for accessibility and adaptability have been complied with.
- 15) The dwellings hereby approved shall not be occupied until the Building Regulations Optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.
- 16) Prior to first occupation of the development hereby permitted, the vehicle parking spaces shown on the approved plans shall be provided and shall thereafter be retained for vehicle parking only.
- 17) The development shall incorporate biodiversity enhancement measures as set out in the recommendations of the Preliminary Ecological Appraisal prepared by Ecosupport dated 31 May 2023, unless alternative measures are first submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 18) Prior to first occupation of the development hereby permitted, secure cycle storage facilities shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The cycle storage facilities shall thereafter be retained for cycle storage only, in accordance with the approved details.
- 19) Prior to occupation of the development hereby permitted, provision for the storage of refuse and recyclables shall be made in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority, and shall thereafter be retained.
- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development permitted by Classes A and B of Part 1, Schedule 2 and Classes A and B of Part 2, Schedule 2 of the Order shall be carried out without the prior written consent of the Local Planning Authority through submission of a formal planning application.

## **End of schedule**