



# Appeal Decision

Site visit made on 9 April 2024

**by Ben Plenty BSc (Hons) DipTP MRTPI**

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

**Decision date: 2 May 2024**

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**Appeal Ref: APP/W1715/W/23/3329709**

**Moorgreen Farm, Burnetts Lane, West End, SOUTHAMPTON, Hampshire SO30 2HH**

- 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 Stephen Pryor against the decision of Eastleigh Borough Council.
  - The application Ref is F/23/95117.
  - The development proposed is the conversion of first floor of existing detached garage to C1 AirBnB.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. A costs application has been made by Mr Stephen Pryor against Eastleigh Borough Council. This is the subject of a separate decision.

## Preliminary Matters

3. The proposal is within the zone of influence of the Solent Complex (Special Protection Area [SPA], Special Area of Conservation [SAC] and Ramsar sites) and the New Forest National Park (SPA, SAC and Ramsar sites). European Designated Sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the Habitat Regulations). It is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of these protected sites. The appellant has provided financial contributions, through payments to the Council, towards mitigating the effects of the proposal on these sites. Although the Council is content that these payments have largely resolved this point of dispute, it remains necessary to consider this matter as a main issue.
4. Planning permission was granted in 2021 for a double garage with an office space at first floor. This was built soon after permission was given. The Appellant states that the proposed change of use is already being undertaken. As such, I shall consider the proposal as a retrospective scheme, under section 73A of the Town and Country Planning Act 1990.

## **Main Issues**

5. The main issues are:

- The effect of the proposal on the integrity of the Solent Complex (Special Protection Area [SPA], Special Area of Conservation [SAC] and Ramsar sites) and the New Forest National Park (SPA, SAC and Ramsar sites), and
- Whether the proposed development would be located in a suitable location.

## **Reasons**

### *European sites*

6. When considering the effect that a proposal may have on a European Site, a decision maker must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal. I have no evidence to assure me that visits to both European sites would not have a significant effect on the internationally important features of these sites. Furthermore, Natural England confirmed during the application process that the proposal would result in adverse effects without mitigation. In such circumstances I am required to undertake an AA to consider the implications of the proposal in view of its conservation objectives.

### Recreational disturbance

7. The Solent and Southampton SPA is protected due to its overwintering birds. New housing within a 5.6km buffer places pressure on the wildlife due to increased visitor numbers and dog walkers. Increased pressure from visitors would be likely to affect population numbers of wildlife and therefore without mitigation the proposal would be likely to affect the integrity of the SPA. The Council's Mitigation Strategy<sup>1</sup> is part of a scheme that funds wardens to patrol the Solent and Southampton Water SPA coastline. Wardens are asked to educate visitors as to the importance of the area and funds are also required to provide alternative areas away from the coastline that can be used for recreation to relieve pressure. The mitigation measures, set out by chapter 4 of the Strategy, include the provision of rangers and education initiatives, to encourage responsible dog walking, establish a code of conduct, provide new/enhanced greenspaces and deliver visitor management projects.
8. Natural England<sup>2</sup> notes that the Council has adopted planning policy to mitigate against adverse effects from recreational disturbance, as agreed by the Solent Recreation Mitigation Partnership, also known as Bird Aware Solent. As active measures, Natural England is satisfied that the proposal with the submitted mitigation payment would address the potential adverse effects of the development on the integrity of these European sites and has no objection to this aspect. A payment towards these mitigation measures has been provided by the Appellant as a financial contribution to the Council in December 2023. I find that the submitted contribution would mitigate the likely adverse effect on the Solent and Southampton SPA.
9. The New Forest SPA is also under threat from additional visitors creating recreational disturbance to ground nesting birds. It is around 23kms from the

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<sup>1</sup> Solent Recreation Mitigation Strategy, December 2017

<sup>2</sup> Natural England advice 4 April 2024

site, but the proposal would be likely to harm its integrity without mitigation from increased pressure caused by visitors. The Council's Interim Mitigation Strategy [2022] has been prepared to address recreational impacts on this SPA. This funds alternative recreational areas within the borough to reduce pressure on the New Forest. The Strategy identifies a sum that is to be paid, per residential dwelling, to offset the adverse impact of development. This financial mitigation was paid to the Council in December 2023 in accordance with the Council's Habitat Regulation Assessment.

10. Nonetheless, Natural England (NE) has objected<sup>3</sup> to the Council's interim strategy stating that it finds that the amount of provision of Suitable Alternative Natural Greenspace (SANG), the lack of information on increasing visitor capacity at the Itchen Valley Country Park and a lack of an accompanying monitoring strategy raise concerns. As such, it finds that the Interim strategy is not precautionary enough and NE cannot conclude there would be no adverse effects on the integrity of the New Forest designated sites and therefore has objected to the proposal. As required by the courts, I have attributed great and considerable weight to the opinion of NE.
11. The Council's interim Strategy explains that NE is concerned as to the rate that the SANG is provided. The Council plans to make SANG available at a rate of 2ha/1000 population increase, whereas NE would prefer a provision of 8ha/1000 population increase. The NE preferred rate is the rate used within the 5km zone of influence of the Thames Basin Heaths SPA and has also been adopted by the New Forest District Council. However, the interim Strategy explains that "none of the planned Eastleigh housing growth will be in the 5km zones within which 62% of all day visits originate. It will account for just over 20% of all planned new residential development between 5-14km from the New Forest protected sites from which 13% of all day visits originate".
12. However, limited scientific reasoning has been provided to demonstrate why the reduced proportion of provision would provide an adequate provision of SANG to mitigate against the effect of recreation disturbance to the New Forest SPA. In applying great weight to NE's concerns, I find that the Council's suggested provision of 2ha/1000 has not been shown to be a scientifically proportionate rate of provision for this proposal despite being located more than 5km from the boundary of the SPA. This alone would not justify such a reduction in proportional requirement. Consequently, the submitted mitigation sum may not be sufficient to off-set the adverse effects of development on this European site.
13. In terms of visitor capacity at Itchen Valley Country Park, the Appellant has demonstrated that this is around 3 miles from the site and subject to major investment to attract visitors. However, details of visitor capacity or details of suitable monitoring have not been disclosed. As such, I am unable to conclude that the Country Park has sufficient capacity to accommodate the further demand of the proposal or would provide a suitable alternative venue for visitors.
14. I am cognisant that the proposal relates to the increased use of an ancillary building associated with a dwelling. This small space could have been occupied by an extended family member, such as an elderly relative without requiring planning permission. However, the frequency and type of use proposed would

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<sup>3</sup> Natural England email, 4 April 2024

be fundamentally different to how ancillary accommodation operates, and it seems more likely that visitors of a holiday let would visit the New Forest than an additional permanent resident.

15. Consequently, it has not been demonstrated to my satisfaction that the secured mitigation sum for the New Forest SPA would provide an appropriate mechanism to ensure that the proposed development would not have a likely significant effect on the integrity of the New Forest SPA.

#### Nitrates

16. Water quality within the Solent area would also be affected by new residential accommodation. This would exacerbate existing levels of nitrogen and phosphorous nutrients in the Solent which are causing eutrophication of the waters depleting oxygen in the water. Natural England's standing advice, note 5, requires nutrient neutrality to be achieved to prevent additional nitrogen arising from sewerage generated by future occupiers of residential development.
17. The Appellant proposes to replace the existing sewerage treatment plant with a more efficient Package Treatment Plant<sup>4</sup> (PTP) that would serve both the dwelling and the holiday let. This proposal is supported with a monitoring and maintenance plan to secure nutrient neutrality. The Appellant's Nutrient Report<sup>5</sup> calculates that the proposal would yield a net nitrogen reduction that would exceed the nutrient neutrality requirement.
18. However, NE advise against the use of private sewerage treatment due to their failure rates and the lack of review and periodic upgrades. It has sought more details with respect to the efficiency certificate of the PTP and Monitoring and maintenance plan. It also requires a decision maker to be satisfied that the values used in the calculation, that the nutrient budget calculation is correct, and the bespoke effluent discharge figure has been suitably evidenced. Although a certificate has been included as an appendix to the report, I do not have sufficient evidence to address all of NE's concerns. I therefore cannot be satisfied that the PTP would operate efficiently in perpetuity or would adequately mitigate the effect of nitrate increase. As a result, I cannot be satisfied that this would be effective, resulting in the possibility that the proposal would provide a pathway to impact water quality within the habitat site.
19. Nevertheless, the Council's adopted nutrient neutrality Strategy removes existing farmland from nitrate intensive use, reducing the nitrogen levels entering the watercourse to offset the impact of new development. This approach has been agreed by NE. The Council has calculated that the proposed scheme would generate 0.84kg/TN/year of nitrates. It determined that this could be offset by nitrate credits, at a value of £2,200 per dwelling. NE<sup>6</sup> has stated that if the nutrient mitigation measures, including contributions to them, are implemented they will be effective and reliable at preventing harmful effects. By ensuring no net increase in nitrates, the strategy allows development to achieve nutrient neutrality.

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<sup>4</sup> Specification of sewerage plant, cover letter and owners handbook, August 2023

<sup>5</sup> Nutrient Assessment and Budget, Aqua Callidus Consulting, August 2023

<sup>6</sup> Natural England letter, 5 June 2023

20. The Council is satisfied that this matter could be addressed using nitrate credits, a matter agreed with NE, to prevent harmful effects on the habitat site. The Council has stated that nitrate credits are available for this proposal and therefore I have sufficient certainty that these would be available to the Appellant, had I been minded to allow the appeal. As such, I am satisfied that nutrient loading in the area would not be increased and the scheme would not result in likely significant effects, either alone or in combination, to the Solent SPA.

#### Summary

21. The proposal would harm the qualifying features and conservation objectives of the New Forest SPA. Accordingly, it has not been demonstrated, beyond reasonable scientific doubt, that the proposed use would not have a significant impact individually, or in combination with other development, upon the integrity of the New Forest National Park (SPA, SCA and Ramsar sites). Consequently, the proposal would conflict with Eastleigh Borough Local Plan [2022] (LP) policy DM11, the National Planning Policy Framework (the Framework) and the Habitat Regulations. These seek development which is likely to adversely affect the integrity of an international or European nature conservation site to not be permitted, subject only to imperative reasons of overriding public interest and securing any necessary compensatory measures.

#### *Suitability of location*

22. The LP establishes the Council's approach to the distribution of new development across the borough. This seeks to focus development within its key settlements. For policy purposes the site would be away from settlements, within the open countryside. LP policy S5 restricts development in the countryside to a list of suitable types of development. This includes at (b) residential extensions and (c) tourist uses through the re-use of buildings. The Framework, at paragraph 88, supports well-designed, beautiful new buildings and sustainable rural tourism which respects the character of the countryside.

23. During my site visit I observed that the first-floor space, above the garage, included a shower and toilet in a small room at the end. The main room had a kitchenette, consisting of a sink and fridge, and some storage cabinets. It appears that the en-suite and kitchenette were not shown on the approved plans. However, the carrying out of operations to change the internal appearance or layout of a building does not constitute development, whether the purpose of the works is to meet the needs of the present user or facilitate a change of use of the building.

24. The Appellant states that the facility was never used as an office and acknowledges that as the proposal is not a reuse it would clearly conflict with LP policy S5. Nonetheless, the building was built and completed as a garage with office above. Once the building was substantially complete its form and purpose would have been deemed to be implemented, there would have been a short period of time before the holiday let commenced. Once the holiday let use commenced, the first-floor space was subject to a material change of use. This approach aligns with the information given at the time on the application form which described the proposal as a conversion "from C3 office use to C1 AirBnB use". Therefore, it is evident that a material change of use took place after the building was completed. Consequently, the scheme should be

considered as a change of use rather than 'new build', a finding also consistent with the description of development.

25. The Council's concerns, with respect to intensification, do not relate to traffic generation but rather increased patronage altering the character of the family home. The proposed residential use would attract guests to the site. Nonetheless, the site is at the end of a long driveway and visually connected to a large dwelling, and the garage already exists. As such, external visual effects and any alteration to the character of the dwelling would be minimal. Consequently, the impact of the proposal on the character of the site and its surroundings would be negligible in comparison to the existing activities associated with the dwelling.
26. The proposed conversion to tourist accommodation would be an acceptable use in a suitable location as a reuse and it would not result in a substantive intensification of the site. Accordingly, the proposal would comply with LP policies S1, S2 and S5 and the Framework. These seek, among other matters, for tourism development to result from the reuse of a building and for development to meet community needs without compromising the identity of the Borough. Furthermore, as the building was not previously occupied by a dwelling LP policy DM26, for a replacement dwelling, would not be relevant. This policy therefore weighs neither for nor against the proposal.

### **Other Matters**

27. Moorgreen Farmhouse, adjacent to the site, is a grade II listed building. Its significance derives from its origins from C16, its architectural features of interest and being a building of traditional rural character. Being a scheme for a low intensity change of use, the proposal would preserve the setting of the Farmhouse.

### **Conclusion**

28. The proposal would conflict with the development when taken as a whole and accordingly the appeal is dismissed.

*Ben Plenty*

INSPECTOR