**Officer Report – Application made under Regulation 77 to the LPA The Conservation of Habitats and Species Regulations 2017**

| | |
|---|---|
| Reference: | **PL/2023/05198** |
| Address: | Former Piggery Buildings At Cotswold Farm, West Dean Road, West Tytherley, SP5 1QA |
| Proposal: | Application for approval under Regulation 77 of The Conservation of Habitats and Species Regulations 2017 for Change of Use of Agricultural Barn (Class Q) to two residential dwellings (Class C3). |
| Applicant: | Mr Simmonds |

**Publicity expiry: 4/8/23**

BACKGROUND: legislation and site history

On 21 June 2023, prior approval under Class Q was approved for the conversion the former pig barn into two dwellings under PL/2023/03548.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) enables certain types of development to take place without the need for specific planning permission, provided certain criteria are met. Provisions exist under Schedule 2, Part 3, Class Q for the change of use of an agricultural unit to a dwellinghouse subject to limitations and conditions.

Article 3 (1) of the GDPO, by incorporating regulation 73-76 of the Conservation and Habitats and Species Regulations 2010 (the Habitats Regulations), imposes a condition requiring prior approval under these Regulations, that the local planning authority is satisfied that there is no adverse effect on the integrity of any European site, before permitted development can go ahead.

The Habitat and Species Regulations 2010 have since been amended by the Habitats and Species Regulations 2017, specifically regulations 75-78.

Regulation 75 of the Habitats and Species Regulations 2017 prevents development from commencing until the developer has received written notification of the approval of the local planning authority under regulation 77.

This application is therefore made under regulation 77 to enable the approved prior approval development (under Class Q) to commence.

**Designations affected**

The proposed works are intended to be carried out under permitted development rights (Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)). However, the site of the proposed works is within:

- **the River Test catchment which drains into the Solent.** This region is protected by a number of international designations including the Solent Maritime SAC, Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site; as well as the nationally designated Sites of Special Scientific Interest (SSSIs) that underpin these international designations

**- the Mottisfont bat SAC**

- **the zone of influence for the New Forest SPA, New Forest SAC and New Forest Ramsar site**

As such these designations trigger assessment under Regulation 75 of The Conservation of Habitats and Species Regulations 2017 (as amended), which states:

***75.*** *It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—*
*(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
*(b) is not directly connected with or necessary to the management of the site,*
*must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77 (approval of local planning authority).*

This application seeks such approval, under Regulation 77 of The Conservation of Habitats and Species Regulations 2017 (as amended).

The European sites in question are the River Test catchment, the New Forest protected areas and the Mottisfont bat SAC. The local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

The local planning authority is the 'competent authority' for the purposes of the Habitats Regulations and an application made under Regulation 77.

## DOCUMENTS SUBMITTED

- Existing and proposed Location Plan
- Proposed Floorplans and Elevations
- BIO BUBBLE WwTP 2020_Biological Performance Reductions
- Bio Bubble COMPACT 6-8PE COMPACT 10-30PE Technical Datasheet
- BIO BUBBLE WwTP 2020_Biological Performance Reductions
- Comments from BioBubble
- Solent Nutrient Budget Calculator 28 09 22

## CONSULTEE RESPONSES

Summaries of responses are provided below – the full responses are available online.

**Natural England - None received**

**Wiltshire Council Senior Ecologist – No objection**

**Parish Council – Object**

*Winterslow Parish Council resolved to object to the application for the following reasons:*
*Insufficient details on the application, clarification is needed on the plans to ascertain whether the plans are for a new build or conversion or an alteration.*

**Officer note – these matters are not considerations for this application under Reg 77.**

## ASSESSMENT

Regulation 77(2) requires that the local planning authority must, on receipt of an application

approval, "…*assume that the development is likely to have a relevant effect*".

Having established a likely significant effect, Regulation 77 requires that the local planning authority undertakes an Appropriate Assessment of the submitted project:

*(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body* [Natural England]*, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site's conservation objectives.*

*(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.*

The Council's ecologist has concluded:

*I have reviewed the application and supporting documents against OS Maps and aerial photography of the site and surrounding area, together with GIS layers of statutory and non-statutory sites and existing records of protected species.*

***Habitat Regulations Assessment (HRA)***

*Mottisfont Bat Special Area of Conservation (SAC)*

*The application site is located within a consultation zone for barbastelle bat associated with the Mottisfont Bats SAC. The application has not been supported by an ecological survey. However, the building is single skinned and naturally light inside. It is therefore considered highly unlikely to provide any roosting opportunities for bats and it would not be reasonable to request a bat survey in this instance. The proposed residential conversion would result in additional windows but given the site and its surroundings, this would have very limited additional impact on existing lighting* levels as a result of the conversion. The low increase in light spill is not considered likely to result in the loss of foraging/commuting habitat or loss of connecting corridors.

*A test of likely significance has been carried out by the relevant Competent Authority (Wiltshire Council) as required by Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended). This concluded that given the scale and nature of the development and the surrounding environment that there is no mechanism for adverse effect and operational impacts would be* ***de-minimis****.*

*River Test Catchment*

*WCS policy CP50 (Biodiversity and Geodiversity) and the NPPF requires the Local Planning Authority to ensure protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system. Whilst the application site is not adjacent to any rivers or in any respective flood zones, it is situated within the River Test catchment which drains into the Solent. This region is protected by a number of international designations including the Solent Maritime SAC, Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site; as well as the nationally designated Sites of Special Scientific Interest (SSSIs) that underpin these international designations.*

*The Solent water environment is one of the most important for wildlife in the United Kingdom. It is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations 2017 (as amended) as well as through national legislation for many parts of the coastline and adjacent maritime areas. Natural England has confirmed high levels of nitrogen and phosphorus are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for which the European sites are designated. These nutrient inputs mostly come either from agricultural sources or from*

*wastewater from existing housing and other development.*

*Natural England currently advises that every permission for new dwellings in the River Test Catchment Area could result in increased nutrients entering the Solent area (Guidance dated June 2020) from the increase in wastewater and land use change. In line with Natural England's Advice on Nutrient Neutrality a nitrogen budget has been submitted to support this application. The nitrogen budget is in line with Natural England's advice, and it is agreed that the development will be nitrogen neutral therefore no mitigation is required.*

*A test of likely significance has been carried out by the relevant Competent Authority (Wiltshire Council) as required by Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended). This concluded that given the application will be* ***nutrient neutral*** *there is no mechanism for adverse effect.* ***Therefore the application is not likely to have significant impacts on the Solent Protected Sites and Appropriate Assessment is not required.***

*New Forest protected sites*

*The development lies within the zone of influence for the New Forest protected sites which includes the New Forest SPA, New Forest SAC and New Forest Ramsar site. It is screened into appropriate assessment under the Habitats Regulations 2017 (as amended) on account of its potential to cause adverse effects through increased recreational pressure, which may occur alone and in-combination with other plans and projects. Many of the special features afforded protection are vulnerable to increased recreation as demonstrated in Natural England's supplementary advice issued for the SPA on 19 March 2019 and for the SAC on 18 March 2019.*

*The Council has prepared an "Interim recreation mitigation strategy for the New Forest internationally protected sites" (Version 1, 25 March 2022) which identifies the zones of influence within which residential and tourism development have the potential to generate additional recreation pressure. The strategy details mitigation required to avoid and reduce impacts. Provision of Suitable Areas of Natural Greenspace (SANGs) will be provided to reduce visitor numbers at protected sites and where visits are unavoidable, strategic access management and monitoring (SAMM) methods will be used to control people's behaviour. The strategy explains that residential developments of 50 or more homes will be required to directly provide high quality open space while other development will contribute indirectly though allocation of funds from the Community Infrastructure Levy. Together this package of measures has been endorsed by Natural England on 24 March 2022 who consider the strategy to be sufficient to mitigate for development coming forward through the Wiltshire Core Strategy.*

*The Council therefore concludes that, provided the necessary mitigation is secured by condition or S106 as appropriate, the current application alone and in-combination with other plans and projects will not lead to adverse effects on the New Forest protected sites.* ***The necessary mitigation for this development is contributions through CIL towards SAMM.***

## RECOMMENDATION

On the basis that the approved change of use under Class Q is determined to have a de-minimis impact on the Mottisfont bat SAC, is considered to be nutrient neutral within the River Test catchment and would provide mitigation for the New Forest protected areas under CIL, it is ascertained that there is a very low risk of any adverse effects on the integrity of these sites.

Therefore, this application made under Regulation 77 of The Conservation of Habitats and Species Regulations 2017 is recommended for **Approval**.

Footnote

[i] https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site