

**Application No:** 25/01036FULL Full Application

**Site:** Batchley Farm, Broadmead, Sway SO41 6DH

**Proposal:** Replacement annexe (demolish existing)

**Applicant:** Mr H Murray Philipson

**Case Officer:** Carly Cochrane

**Parish:** Hordle Parish Council

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**1. REASON FOR COMMITTEE CONSIDERATION**

Called-in by New Forest District Councillor

**2. POLICIES**

**Development Plan Designations**

None

**Principal Development Plan Policies**

DP2 General development principles

DP18 Design principles

DP35 Replacement dwellings

DP37 Outbuildings

SP7 Landscape character

SP15 Tranquillity

SP17 Local distinctiveness

SP19 New residential development in the National Park

**Supplementary Planning Documents**

Design Guide SPD

**NPPF**

Sec 12 - Achieving well-designed places

Sec 15 - Conserving and enhancing the natural environment

**3. MEMBER COMMENTS**

None received

**4. PARISH COUNCIL COMMENTS**

Hordle Parish Council: Happy to accept the decision reached by the National Park Authority's Officers under their delegated powers.

**5. CONSULTEES**

None required.

**6. REPRESENTATIONS**

Councillor Ward: Referred application to NPA's Planning Committee due to the site history.

**7. RELEVANT HISTORY**

Application under part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 in respect of the siting, appearance and design of an agricultural building (22/00400) Details Not Required, 13 June 2022

Replacement Dwelling (10/94943) granted on 06 April 2010

Removal of Condition 3 on planning permission LYB0974O/L to allow non agricultural occupancy (08/92680) refused on 09 June 2008. Subsequent appeal allowed on 22 June 2009

Removal of condition 3 on planning permission LYB0974O/L to allow non agricultural occupancy (08/93670) refused on 06 February 2009

Removal of condition 3 on planning permission LYB0974 O/L to allow non-agricultural occupancy (07/92334) refused on 15 January 2008

Agricultural dwelling; demolition of existing (05/86625) refused on 16 March 2006

COU of dairy to farm office and design workshop (NFDC/94/55802) granted on 23 January 1995

**8. ASSESSMENT**

**Application Site**

- 8.1 The application site is located to the eastern side of Broadmead, which itself is south of Silver Street. The access track is unmade and is also a public bridleway which continues south and connects to Wainsford Road. The

wider site comprises the main dwelling of Batchley Farmhouse (formerly 'Avon View') with its residential curtilage, and Batchley Farm, which covers an area of approximately 48 hectares, and its associated agricultural buildings. The application building, known as the "Old Dairy" is located to the south of the main dwelling and immediately adjacent to the farm yard.

- 8.2 There are several previous applications which are pertinent in understanding the context to this current application, detailed as follows.
- 8.3 Planning permission was granted in 1995 (reference NFDC/94/55802) for the conversion of the dairy building which formed part of the agricultural holding, to a farm office and design studio/workshop. Condition 1 of this permission controlled the use of the building for these purposes only, and Condition 2 restricted the use of the building to be for the benefit of the applicant. Planning permission was granted in 2010 (reference 10/94943) for the replacement of the dwelling, known as Avon View at the time; this application followed an allowed appeal for the removal of the agricultural occupancy condition (reference 08/92680) which was imposed at the time of the original grant of planning permission for the dwelling in 1965 (reference LYB09740/L). Following the permission for the replacement dwelling, and during its construction, it is known that the occupants temporarily moved into the Old Dairy, which was altered to provide bedrooms, a bathroom, kitchen and living spaces. Following the completion of the replacement dwelling circa 2012, the internal layout and use of the Old Dairy did not revert to those uses controlled by Condition 1 of the 1995 permission, and the building continued to be used for ancillary accommodation. An application for a lawful development certificate was submitted in 2023 (reference 23/00754) which sought to demonstrate that the building had been occupied in breach of the aforementioned condition for the requisite period. The certificate was granted, and it is noted that the application also sought to establish that the Old Dairy had become incorporated into the residential curtilage of Batchley Farmhouse; this was accepted.
- 8.4 In 2023 the situation was that the use of the Old Dairy for ancillary residential purposes, in breach of condition, had been established and was immune from enforcement action and lawful due to the passage of time.
- 8.5 A pre-application enquiry was submitted in 2025 in relation to the replacement of the Old Dairy. The response provided to the applicant by the Authority set out points that were considered to require addressing in order to demonstrate policy compliance. Whilst it is noted that pre-application advice appeared to suggest that the proposal could be supported, such advice is offered without prejudice to the determination of any subsequent planning application.

### **Proposed Development**

- 8.6 This application seeks permission for the replacement of the Old Dairy with a new building of a slightly smaller footprint and lower ridgeline height than

that existing, however, maintaining the agricultural vernacular. The building would be used for ancillary habitable purposes, as per the existing building.

## Consideration

- 8.7 Notwithstanding the response to the pre-application enquiry, the Authority is of the firm opinion that such development is contrary to policy and cannot be supported. This position is set out below, firstly with reference to the examples provided within the application and then with reference to the specific application details, planning history and policy pertinent to the current application.
- 8.8 Two examples of applications have been provided in support of the application, both of which were also used in support of the pre-application enquiry. Whilst the application for the replacement of a two storey annexe at “The Breakers” (reference 18/00792) was refused and the subsequent appeal dismissed by the Planning Inspectorate, the Inspector's appeal decision noted that as the proposed annexe “would essentially replace the existing provision rather than provide additional habitable accommodation”, and as the use could be controlled by condition, the replacement annexe would not be tantamount to the creation of a separate dwelling. A subsequent application, reference 20/00662 for, amongst other development, the “extension of an outbuilding to form annex building” was granted, given the Inspector's comments. It is noted in this case that the use was being carried out in an existing, unrestricted (by any condition) outbuilding.
- 8.9 In respect of the example of reference 23/00212, the property of Gablemead is located within the defined village boundary of Sway. The building the subject of the application for the replacement of an outbuilding for use as a purpose-built annexe was granted following a lawful development certificate (reference 22/00785) which demonstrated that, as the building was not subject to any restrictive condition in respect of its use, it could lawfully be used for such ancillary purposes, and this would not amount to development. The examples provided in support of this application, being:
- 21/00893, for the change of use of an existing outbuilding to ancillary residential use, including associated use as bed and breakfast accommodation. In this case, the property is located within the Defined Village boundary, and whilst the building the subject of the application was subject of a restrictive condition, the building it had replaced was not. Nonetheless, the defined village location of the site means that there is no in-principle conflict with either Policies SP19 or DP36 of the Local Plan.
  - 21/00802, for the extension to an existing outbuilding to facilitate the continued use as a self-contained annexe ancillary to the main dwelling. This application was refused by the Authority due to conflict with Policies SP19 and DP37, however, was allowed at appeal.

Whilst the Inspector identified and acknowledged conflict with the relevant Local Plan policies, the appeal decision stated: “Even though the annexe would provide facilities for independent day-to-day living I consider on balance, given the very specific circumstances in this case, that it would not become a separate planning unit due to the level of dependency and proximity to the main dwelling.”

- 19/00280, for the conversion of a garage to form an ancillary annexe to the main dwelling. This site is located within a defined village, however, due to the provision of a self-contained unit, was considered to result in the inappropriate overdevelopment of the site. The appeal was dismissed on neighbouring amenity grounds, however, the Inspector commented that the building would clearly be perceived as an ancillary structure and given the nature and scale of the proposal, the close physical relationship and level of dependency between the dwelling and appeal building.

- 8.10 In addition to the examples provided, the Authority can provide opposing examples which would align with the approach applied in the consideration of this application. Notably, a purpose-built, self-contained annexe was provided within the residential curtilage of the property of 2 Rose Cottages (reference 18/00386) to replace existing, unrestricted buildings, and was refused by the Authority and dismissed at appeal, with the requirements of the enforcement notice, being the removal of the building, upheld. The Inspector considered that a new unit of residential accommodation was being provided which was tantamount to a new dwelling due to its self-contained nature, and therefore conflict with Policy SP19 of the adopted New Forest National Park Authority Local Plan was identified.
- 8.11 A more recent example is that of 23/01476, for the extension and alterations to an existing annexe. The building the subject of this application had secured a Lawful Development Certificate in 2005 (reference 04/82107), demonstrating that the use of the building for ancillary accommodation purposes had continued for the requisite period and was therefore immune from enforcement action. The extension was proposed to replace a section of the building previously removed through partial demolition, and the application was assessed on the basis that the proposal would facilitate a purpose-built structure, providing additional habitable accommodation in an outbuilding. As such, conflict with both Policies DP36 and DP37 were identified. This decision was not appealed.
- 8.12 With reference to the examples provided at paragraphs 8.8 and 8.9, there are notable differences between these and the application building, being the comments made within the Inspector's appeal decision constituting a material consideration in the determination of the subsequent application at The Breakers, and the unrestricted existing domestic outbuilding within the residential curtilage of a dwelling, within a defined village, at Gablemead.

- 8.13 To clarify, the Old Dairy was originally an agricultural building located outside of the residential curtilage of the (at the time) agriculturally-tied dwelling, granted permission for use as a farm office with a design studio with a condition restricting the use for those purposes only, and then occupied in breach of the condition for the requisite period such that the Authority had to issue a certificate of lawfulness. The Old Dairy then, is not an existing, unrestricted, domestic outbuilding within a defined village, which could otherwise lawfully be or have been used for ancillary purposes. The circumstances of the case are therefore not directly comparable to the examples provided, and it is considered that there are material differences between these examples and the current application.
- 8.14 Additionally, the Lawful Development Certificate (23/00754) related to the existing building. Should the building, being the building which was subject of the restrictive use condition (reference NFDC/94/55802) and which it has been demonstrated was occupied in breach of, be demolished such that, as a matter of fact and degree, it no longer exists, as would be the case in relation to the replacement of the building, then the subsequent building to be erected would be a new building which does not benefit from the accrued immunity confirmed within the certificate.
- 8.15 In respect of a “fallback” position, which is asserted within the submitted Planning Statement to be the use of the entirety of the existing building for habitable accommodation, this would and could occur with no further development being carried out and would not conflict with the Certificate. In general, for a fallback argument to succeed, it must be demonstrated that there is a reasonable likelihood of the fallback development being carried out if a future planning application is refused, and that the proposed development would be less harmful and provide wider benefits than the fallback option. Such a prospect is therefore a material consideration. In this case, however, the fallback position is already in place, and the building can continue to be used for ancillary purposes. Whilst it may be that the proposed replacement building would be of a slightly smaller scale, it would constitute the provision of a purpose-built, self-contained annexe building, in a location outside of the defined villages, and involve the replacement of a building which could not have otherwise lawfully been used for such purposes due to its original use, location relative to the main dwelling and restrictive use condition.
- 8.16 Whilst it may be the case that the actual use of the replacement building would not differ from the use of the existing building, the development would result, as aforementioned, in the provision of a purpose-built, self-contained unit of accommodation, and can be considered tantamount to a new dwelling in the open countryside. In respect of the adopted Local Plan policies which become engaged, Policy SP19 (New residential development in the National Park) sets out the circumstances under which such development can be considered. The proposal does not fall within any of the provisions of this policy. If it is considered that the existing annexe is a dwelling by reason of its self-contained nature, then Policy DP35 (Replacement dwellings) explicitly precludes the replacement of dwellings

which have been the result of an unauthorised use. The lawful development certificate confirms the unauthorised use of the building, as it was being used and occupied in breach of condition. Whilst the proposed development would replace an existing building, the development would result in a new building, as set out in paragraph 8.13 of this report. As such, Policy DP37 (Outbuildings) sets out that outbuildings will be permitted where they do not provide additional habitable accommodation; the proposal would be in clear conflict with this requirement. The conflict with policies within the Local Plan is considered to outweigh any fallback position, which is considered to hold limited weight.

## **Conclusion**

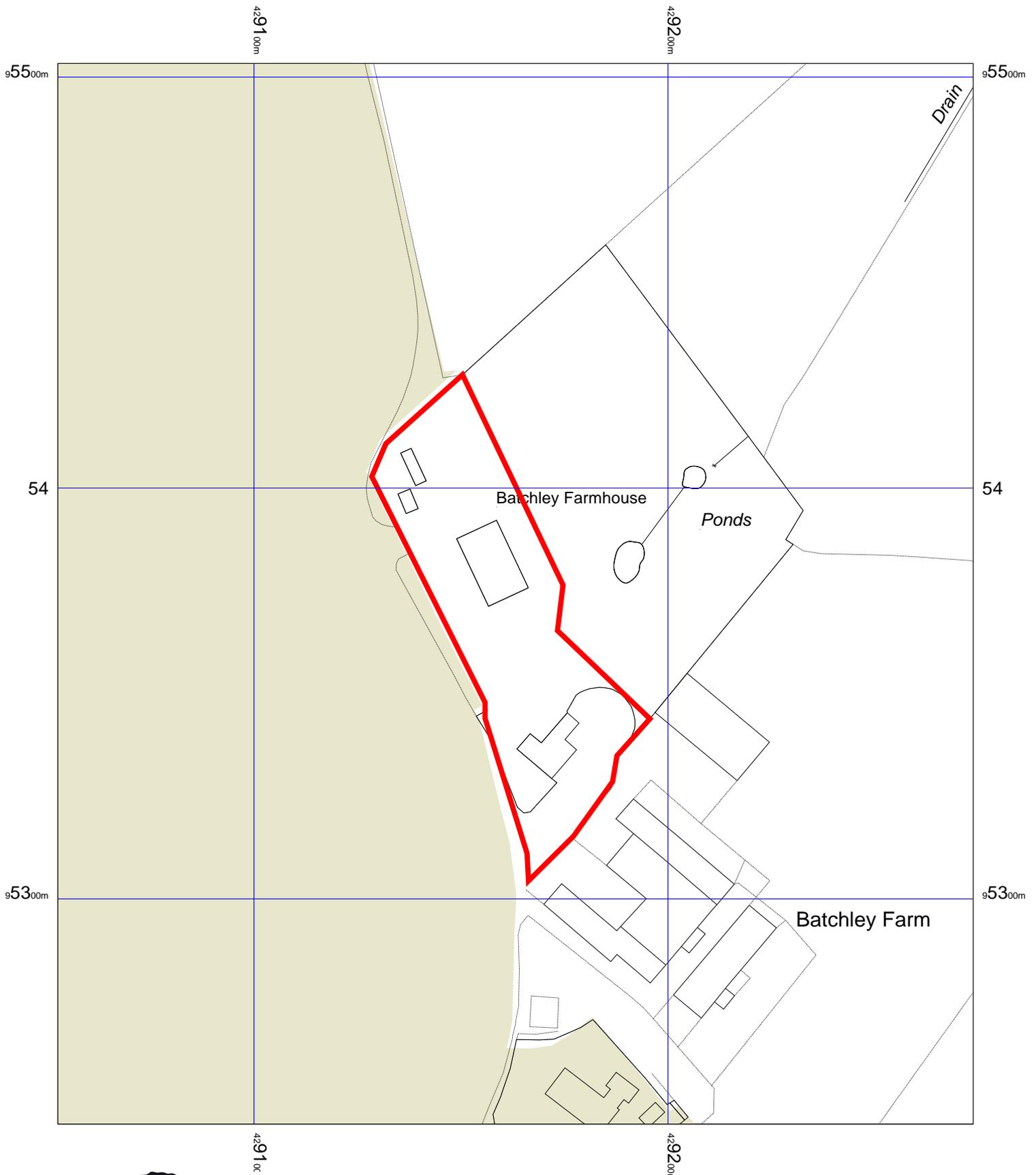
- 8.17 The existing annexe is a result of an unauthorised use which has accrued immunity via the passage of time, and a lawful development certificate confirms this position. Whilst the use of the existing annexe can lawfully continue and the proposal seeks to replace the existing building with no change to the use carried out within it, the proposal would result in the provision of a new, purpose-built, self-contained unit of accommodation which does not benefit from the immunity accrued and which would be contrary to adopted policies within the Local Plan.

## **9. RECOMMENDATION**

Refuse

### **Reason(s) for refusal:**

1. The application would result in the provision of a new, purpose-built, self-contained unit of accommodation for which there are no exceptional circumstances, in a location which is unsupported. The proposal would therefore be contrary to Policies DP2, DP35, DP37 and SP19 of the adopted New Forest National Park Local Plan 2016 - 2036 (August 2019). Furthermore, the proposed development would not seek to further the purposes of the National Park, contrary to the requirement of Section 245 of the Levelling Up and Regeneration Act 2023, which amended Section 11A of the National Parks and Access to the Countryside Act 1949.



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Date: 09/01/2026

**Ref: 25/01036FULL**

**Scale: 1:1250**

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