



## Appeal Decisions

Site visit made on 30 January 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

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

**Decision date: 27 February 2019**

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### **Appeal A Ref : APP/L1765/C/18/3195411**

#### **Land known as Texas, Texas Drive, Olivers Battery, SO22 4HT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M. Oakley against an enforcement notice issued by Winchester City Council.
- The notice was issued on 9 January 2018.
- The breach of planning control as alleged in the notice is without planning permission (i) the partial construction of a dwellinghouse on the land shown in its approximate location edged in a bold black line and marked with 'X' on the plan attached to the notice, and (ii) the carrying out of engineering operations consisting of alteration to the site levels on the land.
- The requirements of the notice are (i) remove the footings and foundations of the partially built dwelling house and remove the rubble from the land; (ii) fill in with soil and level the area from which the foundations have been removed, (iii) return the site levels on the land to those which existed before the unauthorised changes were implemented as shown on the topographical survey: April 2013: drawing number: 1501-25-P1 submitted with previously approved planning permission reference number 16/00320/FUL dated 28 October 2016;(iv) finish the surface with a minimum 150 mm depth of topsoil and apply grass seed.
- The period for compliance with the requirements is step (i) 2 months, step (ii) 3 months, step (iii) 3 months, step (iv) 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### **Appeal B Ref : APP/L1765/C/18/3197434**

#### **Land known as Texas, Texas Drive, Olivers Battery, SO22 4HT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission;
- The appeal is made by Mr M Oakley against the decision of Winchester City Council;
- The application ref 17/02190/FUL dated 18 August 2017 was refused by notice dated 21 December 2017.
- The development proposed is alterations to planning permission reference 16/00320/FUL repositioning of dwelling, alterations to site levels and exterior materials amendments to landscaping and boundary treatment.

**Summary of Decision: the appeal is allowed, and planning permission is granted in the terms set out below in the Formal**

## **Decision.**

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### **Preliminary Matters**

1. The main issue for the Appeal A deemed planning application is the same as the main issue for Appeal B and therefore I shall deal with them together below.
2. Appeal A concerns partial construction of a dwellinghouse and engineering operations. A strict interpretation of section 177(5) would result in the deemed planning application being solely for the development already carried out. But in this case as the nature of the completed building is known I have taken a pragmatic approach in treating the deemed planning application as for the completed building in accordance with the plans submitted in relation to Appeal B.

### **Appeal A Ground (a) and Appeal B.**

#### Main issue

3. The main issue in the determination of these appeals is the effect of the development on the character and appearance of the area.

#### Character and appearance

4. The appeal site is the site of a former two storey dwelling known as 'Texas' accessed via a single width track which also serves a neighbouring property. It is located in the countryside within a designated settlement gap designed to prevent the visual and physical coalescence of the large urban area of Winchester and the rural hamlet of Compton. The landscape in which the site sits is scenic and important as a strategic gap. The site slopes and sits on a downslope forming part of a shallow valley between two hilltops and to the north is the built-up area of Oliver's Battery. Paddocks and pasture land surround the site. Public rights of way are nearby, and the hill top of Yew Hill comprises a covered water reservoir and nature reserve. There are mature trees on the northern corner and along the north western boundary and the site is within the Hursley Scarplands Landscape Character Area.
5. The development plan (including the Winchester District Local Plan Part One – Joint Core Strategy (the Core Strategy) and the Winchester District Local Plan Part Two – Development Management and Site Allocations (the DM)) mirrors the Framework in emphasising the need for development to respect its surroundings. Policy CP13 of the Core Strategy provides that development is expected to meet the highest standards of design and make a positive contribution to the local environment. Policy CP18 of the Core Strategy seeks to retain the generally open and undeveloped nature of the defined settlement gap. It restricts development to that which does not physically or visually diminish the defined gaps. Policy CP20 provides that particular emphasis should

be given to conserving natural landscapes that include features or elements of natural beauty and local distinctiveness. Policy DM17 of the DM provides that development which accords with the development plan will be permitted where certain specified criteria are met. These criteria include no unacceptable effect on landscape characteristics.

6. Planning permission reference 16/00320/FUL has been granted for the erection of a replacement dwelling on the appeal site (the approved dwelling scheme). The development the subject of these appeals differs from the approved dwelling scheme in that it is proposed to be sited 4m to the east of the position in the approved dwelling scheme, includes changes in internal layout, changes to the levels of the site and internal parking provision. The Appellant advises that the re-siting of the foundations was to accommodate the personal circumstances of an occupier. The Council's concerns relate to the siting and levels and not the internal changes and parking provision and I agree that these are the main issues in determining these appeals.
7. The Officer's report recommended that planning permission should be granted on the application the subject of Appeal B but local planning authorities are not bound to accept the recommendation of their officers. I recognise that some local residents, the Parish Council and members of the planning committee object strongly to the proposed development and I have carefully considered all relevant objections (although some matters raised such as the application of a dark sky policy are not relevant considerations in this case).
8. The approved dwelling scheme is a significant material consideration because it would appear to be capable of implementation if planning permission were to be refused in this case. In granting permission for the approved dwelling scheme, the Council clearly considered that the approved dwelling was acceptable in terms of its effect on the character and appearance of the area. There has been no significant change in relevant policy in the interim. Compared to the approved dwelling scheme and in the context of the overall size and scale of the proposed dwelling the differences including change in the siting of the proposed dwelling by 4 metres, the elevation changes, glazing and rooflights are not significant. The changes do not create a building that is contrary to the development plan. The site sits in a sensitive location in terms of short- and long-term views but the overall visual effect of such changes would be very modest. The changes in siting and position would not in my view significantly alter how the scale and appearance of the building is viewed from local viewpoints. The openness of the gap would not be unduly harmed. The views of the site from public rights of way will not be significantly more intrusive nor would the amended levels be materially more visually harmful. There is no disagreement as to the high-quality design of the proposal. The materials proposed do not differ from the approved dwelling scheme and the position of the proposed dwelling does not make the materials unacceptable. To my mind the approved dwelling scheme is a realistic fall back position and is a factor that weighs considerably in favour of the appeal.
9. I find no material conflict with the development plan or the Framework. The proposed dwelling would be broadly in keeping with the character and appearance of the area. Like the approved dwelling scheme it would comprise development within the designated gap but its size and form would not physically or visually diminish the defined gap. It would stand comfortably in its

plot and its scale and design would be in keeping with the character and appearance of the area. I do not find it to cause harm to views of the site from public rights of way in the locality or to harm the natural topography of the site. I note the planning officer's revised assessment of the development on the landscape character of the area, including comments on the visualisations submitted by the Appellant. But on the facts I cannot agree that the repositioning of the dwelling by 4metres and the modest changes in the levels create demonstrable harm to the character and appearance of the area. Any marginally higher impact than the approved dwelling scheme would be mitigated by landscape proposals and could be adequately controlled by condition. I find the development to be of high quality design and to retain the generally open nature of the defined settlement gap and to be generally in keeping with the character and appearance of the area. It accords with the design requirements in policy DM16 of the DM and respects the qualities, features and characteristics that contribute to the distinctiveness of the local landscape in accordance with policies DM15 and DM17. It does not detract from the enjoyment of the countryside from the public realm or public rights of way. I find that the development would accord with the development plan, including policies CP13, CP18 and CP20 of the Core Strategy and policies DM15, DM16, DM17 and DM23 of the DM.

10. I agree with the Council officer recommendation that the proposed development would not create an intrusive development or be at odds with the character of the area when compared to the fall back position. The local objections do not alter my conclusion that the differences between the proposed scheme and the approved dwelling scheme do not cause undue harm to the character and appearance of the area.
11. My attention is drawn to the potential for ancillary or minor development to change the rural character of the valley but I consider that this, landscaping and lighting could be adequately controlled by condition.
12. Overall I conclude that the proposed development is contrary to relevant policies in the development plan and the Framework. Compared to the approved dwelling scheme the proposal would not cause undue harm to the character and appearance of the area including the generally open nature of the defined settlement gap.
13. I have considered the conditions proposed by the parties in the event that the appeals are allowed. I have taken into account the Planning Practice Guidance. I agree with the Council that as the development has commenced it is not possible to impose pre-commencement conditions and it follows that there is no requirement for me to obtain the Appellant's agreement to the conditions set out below. I note that there are no specific objections raised to the Council's proposed suite of conditions save for the condition concerning archaeological observations.
14. I agree that it is necessary and reasonable and for the avoidance of doubt to require the development to be constructed in accordance with submitted plans. I also consider it reasonable to remove some permitted development rights to protect the visual amenity of the area, to prevent the burning of materials on site during construction to protect environmental and residential amenities and to control external lighting. I have adopted the Council's proposed drafting in these matters.

15. The Council's proposed conditions include a number where actions are required within one month of the date of the permission. There is no objection to this time period by the Appellant and I consider it to be reasonable in the circumstances of this case. It is reasonable to define the materials to be used in order to ensure a satisfactory appearance through the agreement of samples of the roof, wall render colour and texture of external surfaces. It is reasonable in this landscape to agree the type of glass in rooflights and relevant windows, to agree a landscaping and tree protection scheme. I do not see it necessary to recite the details of arboricultural supervision as this can be included in the agreed scheme if appropriate. I have considered whether it is appropriate to include a condition affording archaeological access. The Council suggests that an archaeological condition is appropriate as a watching brief but there is nothing in the archaeological report to support this and the Council do not suggest that further ground works are planned. I conclude that such a condition is not necessary or reasonable in the circumstances of this case. I consider it necessary and reasonable to require a construction method statement and I have amended the Council's proposed condition to make this a requirement before further development take place.
16. For the reasons given above I conclude that the appeals should succeed and planning permission will be granted subject to conditions. In these circumstances the appeal on grounds (f) and (g) for Appeal A do not need to be considered.

## **Formal Decisions**

### **Appeal A Ground (a)**

17. The appeal is allowed, the enforcement notice is quashed and planning permission is granted subject to conditions on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development the subject of Appeal B.

### **Appeal B**

18. The appeal is allowed, planning permission is granted for alterations to planning permission reference 16/00320/FUL repositioning of dwelling, alterations to site levels and exterior materials amendments to landscaping and boundary treatment at land known as Texas, Texas Drive, Olivers Battery, SO22 4HT in accordance with the terms of application reference 17/02190/FUL dated 18 August 2017 and subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1501B-01-P1, 1501B-02-P1, 1501B-03-P1, 1501B-04-P1, 1501B-05-P1, 1501B-06-P1, 1501B-07-P1, 1501B-08-P1, 1501B-09-P1, 1501B-10-P1, 1501B-11-P1, 1501B-12-P1, 1501B-15-17-P1: VIEW 2, 1501B-18-20-P1: VIEW 3, 1501B-21-23-P1: VIEW 4, 1501B-26-P2, 1501B-29-P2, 1501B-30-32-P1; VIEW 7 & KEY PLAN, 1501B-34-P1-BUND SECTION, BOUNDARY PLANTING PLAN SEPT 2017 REV A, 1501B-27-29-P1 VIEW 6 SUPERSEDED, 1501B-24-26-P1 VIEW 5 SUPERSEDED, Revised Landscaping Plan 1516 – 0103 Rev 3.
  - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development )(England) Order 2015 (or any order revoking or re-

enacting that order), no development ( as defined in section 55 of the Town and Country Planning Act 1990) as may be permitted by Classes A,B,C,E,F,G and H of Schedule 2 Part 1 of the Order and Part Two Minor Operations Class A of the Order shall be carried out without the prior written consent of the Local Planning Authority.

- 3) During construction no materials shall be burnt on site.
- 4) There shall be no external lighting of the site without the prior written consent of the local planning authority.
- 5) Within 1 month of the date of this permission details and samples of the roof, and wall render colour and texture to be used in the construction of the external surfaces of the replacement dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved sample details and retained thereafter at all times.
- 6) Within 1 month of the date of this permission details and specifications for low transmittance/tinted glass which reduces light pollution from all rooflights and the windows serving the living room and bedroom (southwest and southeast elevation) are submitted to and approved in writing by the local planning authority. The glazing shall be installed in accordance with the approved details and retained thereafter at all times.
- 7) Within 1 month of the date of this permission a detailed scheme for landscaping tree and/or shrub planting shall be submitted to and approved in writing by the local planning authority. The scheme shall specify the species, density, planting, size, layout and an implementation timetables. The works shall be carried out in the planting season prior to occupation or in accordance with the programme agreed with the local planning authority. If within a period of five 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, unless the local planning authority gives its written consent to any variation.
- 8) Within 1 month of the date of this permission a scheme detailing protective measures, including fencing and ground protection for the existing trees and hedges on the site, shall be submitted to and approved in writing by the local planning authority. The approved measures shall be installed prior to any further demolition, construction or groundwork commencing on the site and retained during construction and there shall be no deviation from these measures unless agreed in writing by the local planning authority.
- 9) Within 1 month of the date of this permission details and specifications of a hard landscaping scheme shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to occupation.
- 10) No further development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide details of how the

construction will be undertaken and a programme of works specifying hours of construction, measures for traffic management, delivery and operating hours and measures to ensure that mud and debris is not deposited on the public highway or other local roads. The approved Statement shall be adhered to throughout the construction period for the development.

- 11) Prior to occupation of the dwelling hereby approved a schedule of landscaping maintenance for the lifetime of the development shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Landscape maintenance shall be carried out in accordance with the approved schedule.

*S. Prail*

**Inspector**