

The Head of Planning Management
Winchester City Council
City Offices
Colebrook Street
Winchester
Hampshire SO23 9LJ

5th August 2019

Dear Madam

Land to the rear of 5 Hillside, Kitnocks Hill, Curdridge SO32 2HJ
Application for Certificate of Lawful Use or Development.
Use of land as residential garden.

1. We have been instructed by Grant Atkinson of 5 Hillside to invite your Council to issue a Certificate of Lawful Use or Development which recognises that, as the 'red land' to the rear of his home has been used as residential garden for over a decade and an Enforcement Notice has not been served, it is now lawful.
2. Robert Tutton invited Grant Atkinson to compile a short list of witnesses to the commencement and subsequent continuation of residential garden use of 'red land'; each witness drafted his/her own Declaration and completed it before a Solicitor of their choice. Their completed Declarations are reproduced as attachments to this application but a summary of their consistent, robust and reliable evidence is presented here.
3. David John Allen has declared that the 'red land' originally formed part of a one-acre plot (0.4047 hectare) that was purchased by his great-grandfather in 1922; a semi-detached pair of houses ('Holmcott' and 'Riceen') were erected on the Lockhams Road frontage; 'Holmcott' (now 'Hazel Mount') became the home of Mr Allen's grandparents and 'Riceen' (now 'Fieldfare') the home of his own parents, where he was raised; and, as two generations of the same family lived side-by-side, the land behind their houses (including the 'red land') unusually formed part of the domestic garden of *both* houses. Mr Allen has recalled that the 'red land' was used over the years for the growing of fruit and vegetables, the keeping of a horse and other domestic activities; he has confirmed that the red land was used by the residents of no.6 Hillside for general garden use and relaxation and keeping a horse until 2010, when they vacated and the 'red land' was sold to Mr and Mrs Atkinson.
4. Grant Atkinson has declared that he and his wife Jacqueline have lived at 5 Hillside since 1999, so they witnessed the 'red land' being used by 'the occupiers' of 6 Hillside (Sandy and Nick Penwill) as an extension to their garden, until they moved away in May 2010 – until then, the 'red land' comprised the southeast end of a larger area of garden that had been rented by Mr and Mrs Penwill from Mrs Allen. Grant Atkinson recalls that Mr and Mrs Penwill moved out of no.6 in May 2010, David Allen tidied the 'red land' and he and his wife took ownership of it in July 2010. Mr Atkinson's declaration provides a detailed description of the character and use of the red land over the last nine years – the erection of a garden room and greenhouse, the laying of a patio, the provision of a washing line, low level lighting and a fence to control his dogs – and asserts that *"We often have BBQs and small get togethers in our garden and are very considerate towards all our neighbours and have never had any complaints at all from anyone."* Mr Atkinson has declared that he sees and accepts the 'red land' as part of his garden *"...as it has been used for this for so long...Its history goes back to 1922."*
5. Grant Atkinson's brother-in-law Andrew John Ball is a builder who was aware that Sandy and Nick Penwill were using the 'red land' as part of the residential garden of 6 Hillside before it was acquired by Mr and Mrs Atkinson in 2010 – he has declared that he carried out several building projects for his sister at 5 Hillside (eg a wooden garden structure in 2009) and recalls that it was being actively used by the Penwill's as an extension of their residential garden before it changed hands in

Directors: Robert Tutton BSc (Hons), MRTPI and Niall Tutton BSc (Hons), MA

Offices also at 293 Havant Road, Farlington, Portsmouth, Hampshire, PO6 1DD.

2010. To Mr Ball's 'certain knowledge', "...the 'red land' formed part of (and was used as) the residential garden of no.6 Hillside for several years prior to its acquisition by Mr and Mrs Atkinson in 2010".

6. Sam James Stubbington has declared that he carried out electrical work at 5 Hillside in 2010/2011, to repair wiring in the old stable block and store on the 'red land' and fit new indoor and outdoor lighting for a patio/seating area and new garden room. The area of land on which he undertook the work was already familiar to Mr Stubbington, who had "...always assumed it to be a residential garden plot before Mr and Mrs Atkinson took it over and this continued to be the case under their new ownership." Mr Stubbington has revisited the 'red land' garden area several times in his professional capacity over the years and would find it "...hard to remember a time when this wasn't the case."

7. Jackalyn Ann Dennis has declared that she has been a friend of Mr and Mrs Atkinson for over 40 years and they have regularly met at each other's houses over the last 15 years. Duncan Knight, too, has been a friend to the Atkinsons for over 35 years and has declared that *"In all that time, most of my memories are of being sat at the top of the garden, at the bottom of the field, enjoying a few drinks, some food and great company...It's not easy to remember back to a time when that area was not part of their garden, although I now understand that it was approximately 10 years ago."* Dr Christopher Mark Jones recalls that he and his wife have been friends with Grant and Jackie Atkinson for about 20 years and *"...have often dined at their house and shared their generosity for suppers and outdoor meals on many occasions, both in their original and then in the extended garden."* Richard Horwill Carne, too, has stated that he and his wife *"...have visited the Atkinsons on many occasions on a social basis, particularly over the last 9 years and have sat in their garden area at the bottom of their garden, enjoying BBQ and other social events that they have organised."*

8. It is submitted that the Declarations of these eight witnesses comprises robust and reliable evidence that the 'red land' at the rear of 5 Hillside has been in use as residential garden since at least 1922 - first as the shared garden of 'Holmcott' and 'Riceen', then as the extended garden of 6 Hillside and finally as the extended garden of 5 Hillside since 2010 - and that, as over a decade has passed and an Enforcement Notice has not been served, said use should be recognised as lawful.

Yours faithfully



Robert Tutton
Director

Directors: Robert Tutton BSc (Hons), MRTPI and Niall Tutton BSc (Hons), MA

Offices also at 293 Havant Road, Farlington, Portsmouth, Hampshire, PO6 1DD.

2010 5 Hillside (1350)

DECLARATION

I, David John Allen of 4 Vicarage Lane, Curdridge, Southampton in Hampshire SO32 2DP

DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I was born on 11th March 1963. I make this declaration in support of the application that is being made to Winchester City Council by Robert Tutton Town Planning Consultants Limited on behalf of Mr and Mrs Atkinson for a Certificate Of Lawful Use or Development in respect of the residential garden use of land to the rear of No.5 Hillside, Curdridge that is shown edged red (the red land) on the plan **(DJA1)** attached hereto
2. The red land formed part of a one acre plot that was purchased by my great grandfather, James Short, in 1922. By the early 1950s, the plot comprised a pair of semi-detached houses fronting Lockhams Road; Holmcott (now Hazel Mount) was lived in by my grandparents, James Henry Herbert Short and Ada Lillian Short, Riceen (now Fieldfare) by my parents, Richard George Allen and Kathleen Annie Allen, Riceen was the house in which I was brought up. The part of the garden furthest away from those houses (including the "the red land") was part of the domestic garden of both houses.
3. My up bringing and occupancy of "Riceen" and my lifelong association with the red land enable me to confirm that it was used over the years for the growing of fruit and vegetables , the keeping of a horse and other domestic garden activities-these include my playing on the red land as a child, flying kites, shooting bow and arrows, playing with the family dog and generally enjoying the garden as part of the family holding.
4. Whilst I moved out of the family home in 1986, I moved back to my present address in Curdridge in 1988. I then frequently visited my Grandparents and parents seeing the red land which latterly included the use of the red land by the occupier of No.6.
5. From my personal knowledge, I can confirm that the red land was more recently used throughout the late 1990s and 2000s by the occupier of No. 6 Hillside for general garden use and relaxation, aswell as providing a stable/shed block for her horse.
6. I saw the same uses in 2008 and 2009 when I visited and viewed the red land from both Hillside and and the right of way which is attached to the red land and which runs from the Wickham Road (A334) to the red land . These uses continued untill 2010, when the occupier of No. 6 vacated, the red land was tidied up by myself, and sold to Mr And Mrs Atkinson in July of that year as domestic garden/recreational land.
7. The facts above deposed come within my own knowledge and **I MAKE** this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835

DECLARATION

I, Grant William Atkinson of 5 Hillside, Kitnocks Hill, Curdridge, Southampton SO322HJ do solemnly and sincerely declare as follows:

1. I was born on 29th November 1962. I make this declaration in support of the CLEUD application which my wife (Jackie) and I have applied for on the ground behind our property (location plan attached area marked in red GWA1) for the continued use as a residential garden.
2. My wife Jacqueline and I purchased the land to the rear of our property from a Mrs Kathleen Allen in July 2010. Before this date it had been rented to our next door neighbours, Sandy and Nick Penwill, from Mrs Allen. We had lived here since 1999 and had witnessed the ground being used as an extension to the next doors garden and had seen it develop over the years to a pretty piece of garden set aside from the main section of ground where Sandy grazed a small pony and kept the two separate with a boundary fence. There were flowers and bushes planted and the grass was kept short in this area and we would sometimes sit with Sandy in an area directly behind our property. Her husband, at the time, built a small stable block and also chairs and tables that were in use for some time. There was a five bar gate installed allowing access to her original garden area. This was certainly the case in years 2008/9 when we learned the land was to be sold. We were lucky enough to take ownership of the ground in July 2010 with our neighbour moving out in May 2010. The ground was cleared up by Mr Allen in these 2 months before we purchased with most of the garden trappings removed ready for us to take ownership in July of that year.
3. We took ownership in July 2010 and immediately set about improving and enhancing the overall aspect of this small section of the ground by extending the original stable block by erecting a small garden room also erecting a small green house for fruit and veg and having a proper patio area built away from neighbours. Our washing line was erected out of site at the side of the old stable block and is very discreet in its position. A small vegetable patch completes the scene. We have had the electrics repaired and some low level lighting installed in various areas, again away from neighbours. The remains of the old fence was cleared away and a new fence with gateway was installed to provide access to the main section of ground where we walk our dogs. We have every year, hanging baskets and tubs and have further plans to increase the size of our vegetable plot as we are enjoying some degree of success in that area! Small fruit trees and roses have also been planted. We often have BBQs and small get togethers in our garden and are very considerate towards all our neighbours and have never had any complaints at all from anyone. The grass is well tended and we are constantly complimented on the improvement we have achieved since taking ownership. We recently buried our old labrador in this part of our garden. He was 10 years old and had spent virtually all of his life enjoying this ground with us.
4. We see and accept this piece of ground as part of our garden as it has been used for this for so long. Its history goes back to 1922 when it belonged to the two houses along the Lockhams Road when it was their gardens. We have very much improved and enhanced this ground through our ownership and hard work and have more plans for it. We hope to continue to use this section of ground as it has always been used, as a garden area, for years to come.

DECLARATION

I, ANDREW JOHN BALL of Lilac Cottage, Outlands Lane, Curdridge Southampton SO30 2HD
Do solemnly and sincerely declare as follows:

1. I was born 22nd July 1970. I make this declaration to support Mr and Mrs Atkinson in their application for a CLEUD on their property for the use of the land to the rear of 5 Hillside Curdridge Southampton for continued use as a residential garden.
2. I am related to Mrs Atkinson as her brother and I am a builder by trade. I have visited her house on many occasions and have been aware of the land to the rear of their property since they have lived there. I have seen the land in use prior to the Atkinsons ownership and have memories from the year before they owned it as being used as a garden to the lady next door as I was carrying out building work at my sisters house. I helped to install a wooden garden structure in 2009 which overlooks the land to the rear. I then, in 2010, when they purchased the ground helped my brother in law to remove an old concrete base which had been used as a patio area. I have no reason to believe that the ground marked as red on the map (AJB1) was not being used as a garden prior to Mr and Mrs Atkinson s purchase of it in 2010 and I do not believe they would have purchased the ground at considerable cost had they not thought the same as me. The ground quite clearly had been used in this way for years in my opinion.
3. Since Mr and Mrs Atkinsons purchase of the land they have improved and enhanced its overall appearance by erecting a garden room and green house . I have built a new patio area for them and have enjoyed their hospitality on many occasions in this piece of garden. I believe the area has been significantly improved with plants and hedging since their ownership of it .
4. The facts above deposed come within my own knowledge and I MAKE this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

A. Ball

DECLARED at Red Lion House Bishop's Cleevein Hampshire

This 22nd August July 2019

Before me Henry KnowleySolicitor

ck

DECLARATION

I Sam James Stubbington of No. 2 Beverley Close, Park Gate, Southampton SO31 6QU **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

1. I was born on 11 September 1990. I make this declaration in support of the application that is made to Winchester City Council by Jackie and Grant Atkinson for the continued use of their land to the rear of their property as a residential garden.

2. I have known the Atkinsons for most of my life and have trained as an electrician. I now own my own electrical repair Company and in 2010/11 I carried out electrical repair work for Mr and Mrs Atkinson at their home at 5 Hillside Curdrige. I was to repair existing wiring in an old stable block and store and fit new indoor and outdoor lighting for a patio/ seating area and also a newly built garden room. The ground was already familiar to me and I had always assumed it to be a residential garden plot before Mr and Mrs Atkinson took it over and this continued to be the case under their new ownership. I have revisited this area of their garden several times in my professional capacity over the years and each time I do I find it further improved and matured and hard to remember a time when this was not the case. I refer to the red section on the map SJS1.

3. The facts above deposed to me come within my own knowledge and **I MAKE** this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Stubbington

DECLARED at Red Lion Street Bishopscottam in Hampshire

Ch This 1st August ~~July~~ 2019

before me Hampry Henry Murray Solicitor

DECLARATION

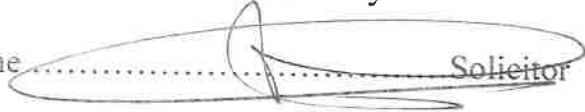
I, Jackalyn Ann Dennis of 6 Bronte Close, Totton, Southampton, SO40 8SR **DO SOLEMNLY AND SINCERELY DECLARE** as follows:-

1. I was born on the 15 July 1963. I make this declaration in support of the application that is to be made to Winchester City Council by Jackie and Grant Atkinson in respect of the Use of Land as a residential garden at the rear of 5 Hillside, Curdridge. The land, the subject of the application is shown edged red on the plan JAD1, attached.
2. I have been a friend of Jackie and Grant Atkinson for over 40 years and over the last 15 years we and a group of other friends have regularly met up at each other's houses. I have been to the property at 5 Hillside, Curdridge on numerous occasions, going back to 2010 and for birthdays, small gatherings, BBQ's and just generally socialising, probably two or three times a year, and have spent many a happy time in their garden at the back of their property. It is really well kept, with a lovely greenhouse on the land, together with a lovely covered patio area for those chilly evenings. I have always believed that this land was their garden and used for that purpose. I have seen the plan of the garden, and to my knowledge declare that it is the garden I have spent time in.
3. The facts above deposed come within my own knowledge and I MAKE this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Jackalyn Ann Dennis

DECLARED at *1. Le. & d. 4. B. & d. 7. P.*
Compton SF1 9BG

This.....*30th*.....July 2019

before me..... Solicitor

M. J. M. Phillips
Solicitor

DECLARATION

I, **Duncan Knight** of 5 Waters Edge, Hedge End, Southampton SO30 4AE **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

1. I was born on 31/4/63 (date) and have known Grant Atkinson (Aco) and Jackie for over 40 years: with my wife Kate, we have been friends as couples for over 35 years. I make this declaration in support of the application that is being made to Winchester City Council by Robert Tutton Town Planning Consultants Limited on behalf of Mr Grant Atkinson for a Certificate of Lawful Use or Development in respect of the residential garden use of land to the rear of no.5 Hillside, Curdridge that is shown edged red ("the red land") on the plan (DK1) attached hereto.

2. Our children grew up together, in particular my eldest son Matthew and their son Joe, who played football for the same teams. As families we have shared BBQs, birthdays and anniversaries together. We have visited them at Hillside on many occasions for the above reasons and generally socialising. In all that time, most of my memories are of being sat at the top of the garden, at the bottom of the field, enjoying a few drinks, some food and great company. It's not easy to remember back to a time when that area was not part of their garden, although I now understand that it was approximately 10 years ago.

3. The facts above deposed come within my own knowledge and **I MAKE** this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.



DECLARED at Eric Robinson Solicitors
this 31st day of July 2019 before me Richard Wallace-Lower Solicitor



Richard Wallace-Lower
Solicitor
ERIC ROBINSON
SOLICITORS
5a ST. JOHNS ROAD
HEDGE END
SOUTHAMPTON SO30 4AA
DX 95100 HEDGE END

DECLARATION

I, Dr Christopher Mark Jones of Cherwell, Gordon Road, Curdridge, Southampton SO32 2BE DO SOLEMNLY AND SINCERELY DECLARE as follows:


1. I was born on 15th October 1959. I am a Medical Doctor and Consultant Psychiatrist, now retired from clinical practice. I currently work for the Ministry of Justice as the Medical Member of Mental Health Tribunals. I make this declaration in support of the application that is being made to Winchester City Council by Robert Tutton Town Planning Consultants Limited on behalf of Mr Grant Atkinson for a Certificate of Lawful Use or Development in respect of the residential garden use of land to the rear of no.5 Hillside, Curdridge that is shown edged red ('the red land') on the plan (CMJ1) attached hereto.
2. My wife and I have been friends of Grant and Jackie Atkinson of 5 Hillside, Curdridge for about twenty years. We have often dined at their house and shared their generosity for suppers and outdoor meals on many occasions, both in their original and then in the extended garden. Like us, they had long wanted a larger garden and we were more than a little envious when they had the opportunity to purchase the plot behind (the land edged red on the attached plan, CMJ1). Since very shortly after they bought the extra land, we have enjoyed their hospitality for barbecues and other outdoor meals in that section of their garden. The bottom of the new land adjoining their original garden is flat and put to lawn, making it a natural extension. We have spent many an enjoyable evening there, sitting around tables or round the fire pit.
3. I clearly remember, when we visited very shortly after Grant and Jackie acquired the property, that the lawn in the extended area was already very well established, with the grass growing close together and thickly. My experience of trying to reestablish a lawn that has not been regularly mown is that it rapidly deteriorates and grows in clumps and tufts. This grass was not like that, which indicated to me that it has been regularly mown and tended.
4. Over the years, Grant and Jackie Atkinson have gradually enhanced the plot with a patio, barbecue area and an L-shaped wooden building for storage (fortunately there is room for a beer fridge), a covered open area and a garden room, within which Jackie's flair for decoration has been to the fore. There is bunting, hanging baskets, mats on the floor, lights, a music system and chairs with cushions and rugs. I had been surprised when I first saw this as I had imagined it much more as a 'Man Cave' for Grant. We have, additionally, been able to shelter here on occasions, when the English weather has impacted on our enjoyment of the garden.
5. The facts above deposed come within my own knowledge and I MAKE this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED at Eric Robinson Solicitors, Vanbrugh House,

this 30 day of July 2019 before me

ELIZABETH EASTLEY

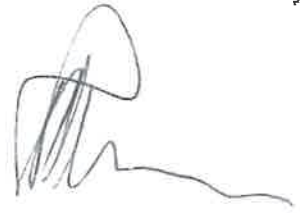
Solicitor


Orange Drive,
Hedge End
Soton
SO30 2AF

DECLARATION

I, **Richard Horwill Carne** of 'Crossways', Curdridge Lane, Southampton SO32 2BJ DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. I was born on 8th December 1954 and have lived at 'Crossways' since September 1995. My wife and I are personal friends of Grant and Jacque Atkinson and we have known them for over 20 years. I make this declaration in support of the application that is being made to Winchester City Council by Robert Tutton Town Planning Consultants Limited on behalf of Mr Grant Atkinson for a Certificate of Lawful Use or Development in respect of the residential garden use of land to the rear of no.5 Hillside, Curdridge that is shown edged red ('the red land') on the plan (RHC1) attached hereto
2. We have visited the Atkinsons on many occasions on a social basis particularly over the last 9 years and have sat in their garden area at the bottom of their ground enjoying BBQ and other social events that they have organised. I recall that there is a patio, established outbuildings, a greenhouse and all the usual items that one would expect to see in an established garden – washing line with tended flowers and hanging baskets. The grass has always been kept short and well tended.
3. There has never been any doubt in my mind that the area of land in question forms a well tended part of their garden.
4. The facts above deposed come within my own knowledge and I MAKE this solemn declaration conscientiously, believing it to be true and by virtue of the provisions of the Statutory Declarations Act 1835.



DECLARED at Red Lion Street Bishop's Waterhouse SO32 2JF
this 20 day of August 2019 before me Anthony Henry Mundy Solicitor



TOWN AND COUNTRY PLANNING ACT 1990: Section 191 (as amended)
Town and Country Planning (Development Management Procedure) (England) Order 2015
Article 39

REFUSAL OF APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR AN
EXISTING USE

TO: Mr. G. Atkinson

OF: 5 Hillside, Kitnocks Hill, Curdridge, SO32 2HJ

In pursuance of their powers under the above-mentioned Act and Order, Winchester City Council, as local planning authority **HEREBY REFUSE** your application for a Certificate of Lawfulness for the existing use under Section 191 of the Act, dated the 6th of August 2019 under reference number 19/01696/LDC in respect of the Land described in that application, namely Land to the Rear of 5 Hillside, Kitnocks Hill, Curdridge, SO32 2HJ shown edged red on the plan attached hereto.

The grounds for the Council's decision are as follows:

The Council is not satisfied that on a balance of probabilities the lawful use of the Land is residential garden.

There is evidence from the applicant in the form of statutory declarations which, on a balance of probability, demonstrates that the Land has been used as an extension to the residential garden at No. 5 Hillside, Kitnocks Hill for a period of time prior to 6 August 2019 when the application for a certificate of lawful existing use was made. The question for the purposes of this decision is whether the change of use from agriculture to residential garden has in fact been in existence for at least 10 years prior to 6 August 2019 in order to become immune from enforcement.

In order to become immune from enforcement action where a change of use has occurred, an application for a certificate of lawfulness needs to demonstrate on a balance of probability that the use has been carried out for at least ten years prior to the date that the application is received by the Council. Section 171B(3) of the Town and Country Planning Act 1990 (as amended) provides that an unlawful change of use which continues for a period of 10 years without any enforcement action being taken against it becomes immune from enforcement action and becomes lawful as a result thereof.

The burden of proof is on the applicant to demonstrate that, on the balance of probability, in accordance with his/her application each and every part of the Land has been used at some time in such a way as to constitute its use for extended domestic garden and that the use of each part has been uninterrupted for a period of 10 years prior to the date of the application. The assessment is one based on a matter of fact and degree as to whether the change of use has continued uninterrupted for the full 10 year period.

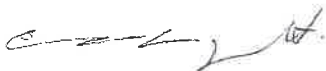
The applicant took transfer of the Land in July 2010 and, according to his statutory declaration, he immediately set out improving and enhancing the overall aspect of this small section of the ground. This is not definitive in any material respect as exact details of such improvements and enhancements are not specified on any given date. These improvements i.e. addition of a garden

room to the stable block, a greenhouse, a patio, a washing line and vegetable patch etc. do not appear to be evident in the photograph and statements contained in the statutory declarations provided by Steve and Georgia Wallin of No. 6 Hillside. This evidence states that the photograph of the Land and beyond into the extended field was taken on 11 March 2011, which would suggest that the improvements and enhancements described by the applicant were not as immediate as one would expect. This contradictory evidence tilts the balance of probability and casts doubt as to whether the Land has actually been used as a domestic garden for 10 full years prior to 6 August 2019. If the Land was a fallow field on 11 March 2011 then it was probably still fallow field prior to July 2010.

For the purposes of assessing whether immunity from enforcement has been attained under the 10 year rule, the character of the Land prior to 2010 is pertinent as the calculation of the immunity period would, for the purposes of this application, commence before 6 August 2009. The Land was owned and used by the previous owner, Mrs. Kathleen Allen, who has provided photographs and a statement of alleged facts regarding the use of the Land to her knowledge. It would appear that between 1993 and May 2010, when Mrs. Allen sold the Land to the applicant, the Land was used for the grazing of a pony or ponies. Mrs. Allen apparently allowed Mr. and Mrs. Penwell, the occupiers of No. 6 Hillside at the time, to graze their pony and part of this agreement included the right to cultivate the land. It would appear that the land was used for the grazing of ponies and when this was not happening, the Land lay fallow.

It seems improbable that the Land was in fact used to the degree required by law to be regarded as a residential garden associated with No. 5 Hillside on or before 6 August 2009 i.e. 10 years prior to the date of the application. The physical layout and location of the Land in relation to No. 5 Hillside is peculiar in the sense that the Land is actually more to the rear of No. 6 Hillside. In fact this is so much so, that the Owner of No. 5 Hillside, Mrs. Allen, even let the Owners of No.6 Hillside use the Land for grazing and cultivation. The use of the Land prior to 2010 would appear to have been more incidental to the associated dwelling house at No. 6 than it did to No. 5. The physical separation of the Land from the main dwelling at No. 5 Hillside and the past character of use of the Land would suggest, on a balance of probability, that the Land was not being used at residential garden incidental to the use and enjoyment of the associated dwelling house at No. 5 Hillside. The evidence would suggest that the Land was probably a grazing paddock for ponies and/or fallow field throughout many of the years prior to 2010 when the applicant acquired the property and began transforming, to some degree, the field into a residential garden to be used in association with the enjoyment of the associated dwelling house at No. 5.

Therefore, while the Land has undoubtedly undergone improvement in more recent years to make it more enjoyable as a residential garden for leisure activities associated with the use of the residential dwelling at No. 5 Hillside, on a balance of probabilities it has not been used as a residential garden for more than 10 years prior to 6 August 2019. Therefore, the unlawful change of use from agriculture to residential garden has not yet become immune from enforcement action under section 171B(3) of the 1990 Act and the certificate of lawfulness is therefore refused .



Signed:

Service Lead – Legal (Interim)
Winchester City Council

Dated: 15 October 2019

The Head of Planning Management
Winchester City Council
City Offices
Colebrook Street
Winchester
Hampshire SO23 9LJ

6th November 2019

Dear Madam

**Land to the rear of 5 Hillside, Kitnocks Hill, Curdridge SO32 2HJ
Use of land as residential garden.**

1. We have been instructed by Grant Atkinson of 5 Hillside at Kitnocks Hill, Curdridge, to seek your Council's permission to use 0.108 hectare of land to the rear (northwest) of his home as residential garden.
2. No.5 stands on the northwest side of Hillside, to the north of Kitnocks Hill (A334) in the southeast quadrant of Winchester City Council's administrative area. Hillside is a cul-de-sac, so one can only approach the application site from the south; the land-form, frontage buildings and vegetation combine to generally screen the site from public view in that approach. Vehicular and pedestrian access to the land at the rear of no.5 can only be afforded via its residential curtilage. It is evident that it lies within an area that is dominated by residential development and does not display the customary characteristics of *open* countryside.
3. The Policies Maps of the 'Winchester District Local Plan Part 2 – Development Management and Site Allocations' (LPP2) show the location and extent of *special areas*, such as the 'South Downs National Park', 'Protected Open Areas' and 'Settlement Gaps' but this site falls within *none* of them. As it lies outside a 'Settlement Boundary' and no relevant findings of the Winchester District Landscape Character Assessment bear directly on it, this proposal falls to be considered under the general provisions of Core Strategy 'Countryside' Policy MTRA4 (which seeks to ensure that development in the rural area does not cause harm to its character and landscape) and Policy DM23 of LPP2, which similarly seeks to ensure that development does not have an unacceptable effect on rural character by means of visual intrusion. Notably, neither policy directly addresses the issue of a change of use to residential garden.
4. With regard to development proposals in 'The Countryside', paragraph 7.30 of the Joint Core Strategy states that *Development will be limited to that which has an essential need to be located in the countryside, this may include development which is necessary for agricultural, horticultural or forestry purposes and certain types of open recreational uses which require a countryside location* (emphasis added). It is surely the case that a private garden for the enjoyment of the residents of an existing house in the countryside is precisely the 'type of open recreational use' that Officers and Members of Winchester City Council had in mind when they adopted Core Strategy Policy MTRA4 in 2017:- *'In the countryside...the Local Planning Authority will only permit the following types of development...development which has an operational need for a countryside location, such as for agriculture, horticulture or forestry'* (emphasis has again been added). Policy MTRA4 cites three *examples* of development types that would customarily be acceptable for a countryside location, so it does not purport to provide a decision basis for every conceivable kind of 'Countryside' proposal that may come before Winchester City Council over the plan period of eighteen years (2013-2031) and it would be unreasonable and unrealistic to contend otherwise; the absence of a specific reference to another class of development (ie residential garden) should not lead to automatic rejection of such use, as a matter of policy. On the contrary, it is submitted that a fuller list of acceptable developments would include *'recreation'* and *'leisure'*, which are precisely the kinds of 'quiet enjoyment' activity that one would normally associate with the garden use of land behind a house in the countryside. Indeed, it was Winchester City Council's own recognition that residential garden use is acceptable within 'countryside' that paved the way for the grant of such consents at The Barn, Curbridge in 2014 (14/00707/FUL) and Church Road, Newtown in 2015 (15/01173/FUL).
5. When Inspector Holt allowed Mr and Mrs Snook's appeal in August 2001 and granted permission 01/00592/FUL for garden use of 0.6 hectare of land beside 'Rowndale' in North Boarhunt (that site was six times the size of this proposal), he opined that *'...bearing in mind the current appearance of the site, a garden use and the introduction of appropriate planting and landscaping would be likely to secure an enhancement in the character and appearance of the area.'* Inspector Stone came to a similar view at Oak Farm on Winchester Road, Wickham in September 2018 (17/01203/FUL) – *"Policy MTRA4 of the JCS seeks to ensure development in the rural area does not cause harm to the character and landscape of the area or neighbouring uses...Policy DM23 of*

Directors: Robert Tutton BSc (Hons), MRTPI and Niall Tutton BSc (Hons), MA

Offices also at 293 Havant Road, Farlington, Portsmouth, Hampshire, PO6 1DD.

the Local Plan Part 2: Development Management and Site Allocations (DMSA) similarly seeks to ensure development would not have an unacceptable effect on rural character by means of visual intrusion...Neither policy directly addresses the issue of change of use to residential amenity land and, given the context of my conclusions regarding the effect on the character of the area, I am satisfied that the proposal would not conflict with these policies." Our client has followed the clear leads given by Winchester City Council and appeal Inspectors and brought forward this proposal, to put the land beside his home to beneficial recreation/leisure use and enhance its appearance with a comprehensive landscaping scheme.

Yours faithfully



Robert Tutton
Director

WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

Case No: 19/02468/FUL
Proposal Description: Use of land as residential garden.
Address: Land To Rear Of 5 Hillside Kitnocks Hill Curdridge Hampshire
Parish, or Ward if within Winchester City: Curdridge
Applicants Name: Mr G. Atkinson
Case Officer: Liz Marsden
Date Valid: 8 November 2019
Recommendation: Permit

Pre Application Advice: No



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WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

General Comments

Councillor Bentote, request for application to be determined by Planning Committee, see Appendix 1

Site Description

The application site comprises an area of just under 0.13ha, set predominantly to the rear of the garden of the adjoining property, No. 6 Hillside. This is in two parts, currently separated by a post and rail fence with a field gate. The smaller part of the site (around 350 sq.m in area) is located closer to the dwelling and has been the subject of an application for a certificate of lawful development (LDC). This contains a number of structures including an 'L' shaped shed/storage building along the south eastern boundary, a small greenhouse, rotary clothes drier and a low platform supporting a picnic table. There is no fence or other barrier between this part of the site and the garden of no.5.

The remainder of the site is an open grassed area which rises gradually in land level to the north west. Beyond the boundary of the current application site, there is a further parcel of land covered with fruit trees which is to be retained in its current state. The site is bounded to the south west by a mature, dense, hedge and to the north west by a post and rail fence.

There is a private right of way which runs from Kitnocks Hill, along the rear of properties in Hillside, culminating at the application site, where there is field access in the south western boundary. The section of the right of way in the vicinity of the site has not been used for a considerable number of years and is currently overgrown and impassable. The applicants have confirmed that they have no intention of reopening it.

The surrounding area is predominantly rural in character, resulting in large part from the distance between the properties in Hillside and those along Lockhams Road and the extent of open space between them. Old maps and plans of the area indicate that the majority of this land, including the application site, was included in the extensive gardens of the Lockhams Road properties.

Proposal

The applicant proposes to extend the curtilage of their property to incorporate the land to the north and to use it as garden in connection with the house. This includes the retention of the storage building and greenhouse in the smaller area, the removal of the dividing fence between the two parts of the site, the planting of a new hedge along the north eastern boundary, tree planting and the creation of new planting beds and a pond, designed to attract insects and birds. There are to be no permanent structures in this area, though there is provision for a couple of picnic tables and benches. For clarification, the proposed landscaping is set out in a more detailed plan that was submitted subsequent to the application, but very shortly after it had been publicised.

Relevant Planning History

19/01696/LDC – Continued use of land as residential garden – Refused 15.10.19 as, whilst it was recognised that the land had undergone improvement it was not demonstrated that it had been used as a residential garden for more than 10 years prior to the date of the application.

Case No: 19/02468/FUL

WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

National Planning Policy Guidance/Statements:
National Planning Policy Framework

Supplementary Planning Guidance
Curdrige Village Design Statement

Planning Considerations

Principle of development

Paragraph 47 of the NPPF requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise. The site is located in the countryside, outside any settlement boundary and there are no specific policies relating to the change of use of land to residential curtilage. Policy MTRA4 of the Winchester Local Plan Part 1 - Joint Core Strategy (LPP1) states that the Local Planning Authority will seek to limit development to that which has an essential need to be located within the countryside. Applications for such proposals must therefore be assessed on their individual merits and potential adverse impacts to the overall character and appearance of the countryside location in accordance with policy DM23 of LPP2.

Policy CP16 supports development which maintains, protects and enhances biodiversity across the area. The proposal will, through its landscaping and planting of species designed to improve the habitat on the site and will serve to enhance the biodiversity of the land which is currently of little ecological value.

Impact on character of the area

The majority of the site, with the exception of the smaller section that was the subject of the LDC, is a featureless grassed area, which it is apparent has been maintained and mowed. The proposed landscaping of the site will, through the introduction of planting beds and a pond feature, result in a more domestic appearance to the land than is currently the case. However, these are natural features, which in the main do not require planning consent and it is not proposed to introduce large areas of hardstanding or buildings.

The site forms part of an area that separates the two rows of houses along Lockhams Road to the north west and Hillside to the south east and appears to have formerly been part of the gardens of properties along Lockhams Road. The rear parts of these plots have are generally less domestic in appearance, being generally left to grass, but the subdivisions between the gardens are still visible and there is no evidence that they have been used for agricultural purposes. Therefore, whilst the land contributes to the open and undeveloped aspect of the area, the proposal to use it as part of the garden of No. 5 will not have a material impact on the appearance on the site or adjacent land. Furthermore, there are no footpaths or other public vantage points in the vicinity of the site and the proposal will not therefore be visible in or detrimental to the character and appearance of the area as a whole.

It is acknowledged that authorised gardens benefit from a range of permitted development rights, including the erection of buildings and enclosures, which could have a more significant impact on the appearance of the site. Whilst no such structures are currently proposed it is considered that a condition restricting permitted development rights, in order

Case No: 19/02468/FUL

WINCHESTER CITY COUNCIL
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Case No: 19/02468/FUL

WINCHESTER CITY COUNCIL
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part of the process of decision-making. The weight given to the Equality Duty, compared to the other factors, will depend on how much that function affects discrimination, equality of opportunity and good relations and the extent of any disadvantage that needs to be addressed. The Local Planning Authority has given due regard to this duty and the considerations do not outweigh any matters in the exercise of our duty.

Conclusion

The proposed change of use of the land to form part of the garden to No. 5 will not have a significant or detrimental impact on the character and appearance of the rural area or the residential amenities of occupants of adjacent properties and is therefore in accordance with policies of the Development Plan.

Recommendation

Permit subject to the following condition(s):

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 (1) of the Town and Country Planning Act 1990 (as amended).

2. 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 E and F of Part 1 Schedule 2 of the Order shall be carried out without the prior written consent of the Local Planning Authority.

Reason: To protect the amenities of the locality and to maintain a good quality environment.

3. No external lighting should be located within the application site without the prior written consent of the Local Planning Authority.

Reason: To safeguard the amenities of nearby residential properties.

4. The development shall be carried out in accordance with the following approved plans:

Plan ref. 0879-19 – Proposed landscaping plan

Reasons: For the avoidance of doubt and in the interests of proper planning

Informatives:

1. In accordance with paragraphs 186 and 187 of the NPPF, Winchester City Council (WCC) take a positive and proactive approach to development proposals, working with applicants and agents to achieve the best solution. To this end WCC:
 - offer a pre-application advice service and,
 - update applicants/agents of any issues that may arise in the processing of their application, where possible suggesting alternative solutions.

Case No: 19/02468/FUL

WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

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Case No: 19/02468/FUL

WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

In this instance a site meeting was carried out with the agent.

2. The Local Planning Authority has taken account of the following development plan policies and proposals:-
Local Plan Part 1 - Joint Core Strategy: MTRA4, CP13, CP16,
Local Plan Part 2 - Development Management and Site Allocations: DM1, DM15, DM16, DM19, DM20, DM23
3. This permission is granted for the following reasons:
The development is in accordance with the Policies and Proposals of the Development Plan set out above, and other material considerations do not have sufficient weight to justify a refusal of the application. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should therefore be granted.

Winchester Planning Committee 18th February 2020

**Land to the rear of 5 Hillside, Kitnocks Hill, Curdridge.
Use of land as residential garden (19/02468/FUL).**

1. Chairman, thank you for allowing me to speak in favour of my client's application, which seeks planning permission to use land to the rear of no.5 Hillside at Kitnocks Hill as residential garden - it includes that part nearest the house for which a Certificate of Lawful Use was sought last year but declined by your Officers because they were not convinced (on the balance of probabilities) that residential garden use had commenced more than ten years before. Rather than appeal that decision, Grant Atkinson has chosen to present this application.
2. This site falls outside a 'Settlement Boundary' but it does not lie within the South Downs National Park, a protected Open Area or a Settlement Gap, so Policies DM23 and MTRA4 of the local plan would customarily apply. Policy DM23 seeks to ensure that development does not have an unacceptable effect on rural character by visual intrusion. Policy MTRA4 gives three *examples* of development which have an operational need for a countryside location (agriculture, horticulture, forestry) but the list is not exhaustive and it would be unreasonable to reject a 'garden' proposal simply because the policy is silent on the matter. Indeed, your Council has itself granted permission for residential garden use within 'countryside' at Curbridge in 2014 and Newtown in 2015. Furthermore, appeal Inspectors at Rowndale in North Boarhunt in 2001 and Oak Farm, Wickham in 2018 recognised that garden use is likely to secure **enhancement** of the countryside by the introduction of new trees and shrubs. In the latter case, Inspector Stone found that neither Policy DM3 nor MTRA4 "...*directly addresses the issue of change of use to residential amenity land*" and satisfied himself that such use would not conflict with those policies. On 6th December, we submitted a landscaping scheme prepared by Nigel Trowell (a former Parks and Recreation Officer with your Council) and it is our contention that the use of this land as residential garden (and the introduction of a planting scheme described as '*...responsible and appropriate*' by your Officers) would **enhance** the local landscape, in the manner intended by Local Plan Policy DM23.
3. Chairman, your Officers are satisfied that clear leads have been given by your Council and appeal Inspectors regarding residential garden use in the countryside, so Members are invited to accept their recommendation and grant permission. Thank you.

Duration: 2 minutes 30 seconds.



TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

REFUSAL of Planning Permission

Planning Application Reference: **19/02468/FUL**

Decision Date:- 19.02.2020

Winchester City Council **REFUSES** planning permission for:

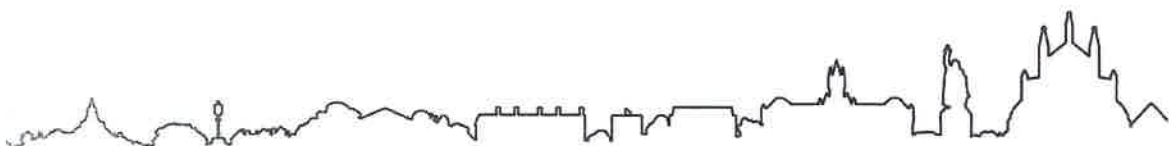
Use of land as residential garden. at

Land to rear of 5 Hillside, Kitnocks Hill, Curdridge, Hampshire,

for the following reason:

1. The proposed development is contrary to policy MTRA4 of Winchester District Local Plan Part 1 and policy DM23 of Winchester Local Plan Part 2, in that It would result in the domestication of the land through the introduction of residential features to the detriment of the landscape character and appearance of the surrounding rural area.

J Pinnock
Julie Pinnock BA (Hons) MTP MRTPI
Head of Development Management



Notes To Accompany Planning Decision Notice

General Notes for Your Information:

1. In accordance with paragraphs 186 and 187 of the NPPF, Winchester City Council (WCC) take a positive and proactive approach to development proposals, working with applicants and agents to achieve the best solution. To this end WCC:
 - offer a pre-application advice service and,
 - update applicants/agents of any issues that may arise in the processing of their application, where possible suggesting alternative solutions.In this instance a site meeting was carried out with the agent.
2. The Local Planning Authority has taken account of the following development plan policies and proposals:-
Local Plan Part 1 - Joint Core Strategy: MTRA4, CP13, CP16,
Local Plan Part 2 - Development Management and Site Allocations: DM1, DM15, DM16, DM19, DM20, DM23

Rights of Appeal:

- The applicant or the applicant's representative has the right to appeal to the Secretary of State against any of the conditions applied to this permission under section 78 of the Town and Country Planning Act 1990.
- As this is a decision relating to a Planning Application, any appeal against the reason for refusal must be made within six months from the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- Appeals must be made using a form which you can get from the Secretary of State at:

The Planning Inspectorate (England)
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

PLANNING COMMITTEE

Tuesday, 18 February 2020

Attendance:

Councillors

Evans (Chair)

Rutter
Bronk
Laming
Cunningham

McLean
Read
Ruffell

Deputy Members:

Councillor Bentote

Others in attendance who addressed the meeting:

Councillors: Achwal, Gordon-Smith, Miller and Porter (Cabinet Member for Built Environment and Wellbeing)

Apologies for Absence:

Councillors Clear

Audio recording of the meeting

A full audio recording of this meeting is available via this link:

Audio recording

1. **APOLOGIES AND DEPUTY MEMBERS**

Apologies were received from Councillor Clear and Councillor Bentote was in attendance as Deputy Member for Councillor Clear (except for items 10, 11 and 12).

2. **DISCLOSURES OF INTERESTS**

Councillor Bentote declared that in respect of item 7 (Whiteley Town Centre) he was a ward councillor and had been contacted by objectors and had attended a meeting with the developer, officers and Councillor Weir (Cabinet Member for Local Economy) but he had not expressed any view on the application and having an open mind he stayed and voted on this item.

Councillor Bentote also declared that in respect of item 10 (Land to Rear of 5 Hillside, Kitnocks Hill, Curdridge) he had submitted objections to the application

At the conclusion of debate, the committee agreed to grant permission for the reasons and subject to the conditions and informatives set out in the Report.

RESOLVED:

That the decisions taken on the Planning Applications in relation to those applications outside the area of the South Downs National Park be agreed as set out in the decision relating to each item, subject to the following:

(i) That in respect of item 7 (Whiteley Town Centre, Whiteley Way, Whiteley - Case number: 19/01194/FUL) permission be granted for the reasons and subject to the conditions and informatives set out in the Report and the Update Sheet and subject to the inclusion of an additional condition on the inclusion of a Development Phasing Plan.

(ii) That in respect of item 8 (Shady Oaks Farm, Durley Brook Road, Durley - Case number: 19/02419/FUL) that permission be granted for the storage only of up to a maximum of 40 caravans/campervans and for no other purpose as an exception to policy MTRA4. There was an operational need for such storage in the countryside as there were no alternative sites in the vicinity and the application demonstrated unique circumstances as this was a low key storage facility with no loss of agricultural land. Its position would not be intrusive as the visual harm could be mitigated with conditions relating to a lighting plan and a robust landscape scheme with long term management.

(iii) That in respect of item 11 (Land To Rear Of 5 Hillside Kitnocks Hill Curdridge - Case number: 19/02468/FUL) permission be refused as the application site was in the countryside and to urbanise it as a garden would be to the detriment of the landscape character and appearance of the area.

(iv) That in respect of item 12 (Land To The East Of Sun Lane, Alresford - Case number: 17/01528/OUT) permission be granted for the reasons and subject to the conditions and informatives set out in the Report and the Update Sheet subject to the Service Lead - Legal being given delegated authority to update or amend the Heads of Terms of the Section 106 Agreement including Clause 9 relating to the Service Delivery Management Plan to be amended to change the word "should" to "must" or wording of similar effect.

15. **PLANNING APPEALS PDC1156**
(Report PDC1156 refers)

RESOLVED:

That the summary of appeal decisions received during July – September 2019 be noted.



Department of the Environment and
Department of Transport

Common Services

Room 1422 Tollgate House Houlton Street Bristol BS2 9 DJ

Telex 449321

Direct line 0272-213
Switchboard 0272-218811



Messrs Young & White
217 West Street
FAREHAM
Hants
PO16 0EU

WINCHESTER
Planning Department
EG/PP/S1
- 1 JUL 1983

Your reference
DGM/JT/P944

Our reference
T/APP/5241/A/83/2811/PH2

Date

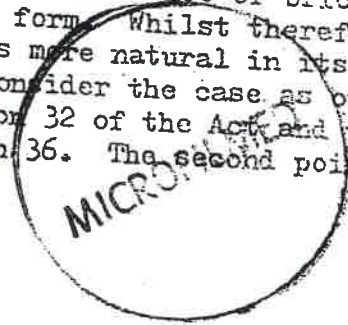
30 JUN 1983

ACTION.....
PASSED TO
W/3794/5

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY MR & MRS C CAHALAN
REFERENCE W/3794/5

1. I refer to this appeal, which I have been appointed to determine, against the decision of the Winchester City Council to refuse planning permission for construction of vehicular access and driveway, erection of wall, change of use from field to garden. I have considered the written representations made by you, by the council and the county council. I inspected the site on 6 June 1983.
2. From my inspection of the site and its surroundings and from the written representations made I am of the opinion that the main issues for consideration in this case are whether or not the proposal would lead to unacceptable hazards to road users and whether or not there would be a change in the appearance of the site unsuitable for the rural area in which it lies.
3. Waltham Chase is a roadside village on the A333 12 miles south-east of Winchester, and Lower Chase runs east from the northern end of the village towards Swanmore. The appeal site is situated at the junction of this road with Ludwell Lane which it joins at a bend, and which is a cul-de-sac serving a group of 4 detached houses. It contains a new brick and tile 2-storey dwelling, an old bungalow, and some outbuildings within the inner curtilage, the rest of the site, roughly triangular in area being partly in rough grass and partly landscaped with mown grass and assorted young trees.
4. At the extreme north-western corner of the site there is a gate, set back with sight lines, in substantial 3 bar post and rail fence, and a drive has been constructed curving round towards the house. The original access to Ludwell Lane has been closed with permanent close board fencing, and the approved access at the junction of the 2 roads, has never been opened. Plans showing this access, as approved with the house, were not produced.
5. There are 2 points of difficulty in this appeal, firstly the drive has been constructed and the new set-back gateway put in, but the latter is not of brick as indicated by the drawings, and suggested by the appeal form. Whilst therefore I am of the opinion that the existing construction appears more natural in its position than would an isolated brick structure, I must consider the case as one for retention of the driveway and landscaping under Section 32 of the Act, and the construction of brick pillars and wing walls under Section 36. The second point



relates to whether or not planning permission is necessary for change of use from field to residential. In the absence of plans, and in an unaccompanied inspection it is not known whether the approved curtilage in the case of the new house included the whole 5.26 acres or not. In this case I will assume that it is necessary.

6. The most important issue relates to the views put forward by the highway authority, who, despite various consultations with the planning authority, have asserted their objection to the use of the access. On the points they have raised, based upon strict interpretation of the regulations, which it is necessary for them to do, I have the following comments:-

- a. Visibility splays consisting of open fencing would give adequate sight lines.
- b. There is now only one access to the curtilage and although the use of the new access might be greater than as an agricultural one, the total using the road would be the same.
- c. No additional traffic would use Lower Chase Road.
- d. Traffic using Ludwells Lane junction would be reduced.


I consider therefore that bearing all these points in mind, the effect upon road users of the use of this access for normal residential purposes as the only entrance to the property would be minimal. The construction of brick pillars and wing walls would however be visually out of place, and cause more danger to road users.

7. On the question of the landscaping, including the driveway, whilst the change from a small grass field, to cut grass and trees, changes the visual impact of the scene, I do not consider, in the way that it is done, that it carries any offence, indeed it may well enhance the beauty of the area, although I appreciate that this is a subjective point of view. I therefore propose to refuse the appeal insofar as the construction of the wall and pillars are concerned, but allow the retention of the driveway and landscaping. It is not in my view the case that the replacement and setting back of the gate, with a gate of agricultural appearance requires permission.

8. I have taken into account all the written representations made but find no reason to vary the decision I now make and for the above reasons, and in exercise of the powers transferred to me, I hereby allow that part of the appeal relating to landscaping and driveway and grant planning permission for the retention of the landscaping including the driveway but dismiss the appeal with respect of the construction of brick pillars and wing walls at Pine Lodge, Ludwells Lane, Waltham Chase, Southampton in accordance with the terms of the application (No. W/3794/5) dated 12 July 1982 and the plans submitted therewith.

9. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

I am Gentlemen
Your obedient Servant


S. B. K. CLARK ARICS MPTPI
Inspector



Appeal Decision

Hearing held on 2 August 2001

by **N A C Holt** TD BArch DipTP DipCons RIBA MRTPI

an Inspector appointed by the Secretary of State for Transport,
Local Government and the Regions

The Planning Inspectorate
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Date **- 8 AUG 2001**

Appeal Ref: APP/L1765/A/01/1064591

Land adjoining Rowndale, Southwick Road, North Boarhunt, Fareham, Hants, PO17 6JH

- 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 and Mrs P Snook against the decision of Winchester City Council.
- The application (Ref.W12533/02), dated 12 March 2001, was refused by notice dated 23 April 2001.
- The development proposed is the use of land as a private garden.

Summary of Decision: The appeal is allowed subject to conditions.

Procedural Matters

1. At the hearing an application for costs was made on behalf of Mr and Mrs P Snook against Winchester City Council. This application is the subject of a separate Decision.

Planning Policy

2. The appeal relates to the use of an area of 0.6 hectares to the east of Rowndale as a private garden. Whilst the site is in the countryside outside an identified developed area, the north side of the road contains sporadic development. There is currently no boundary between the curtilage of Rowndale and this area of land, but it is separated from the B2177 by a low level timber post and rail fence behind which a yew hedge has recently been planted.
3. The development plan for the area comprises the Hampshire County Structure Plan 1996-2011 Review, adopted in 2000 and the Winchester District Local Plan adopted in 1998. In the structure plan Policy C1 defines and seeks to protect the countryside areas and Policy C2 seeks to normally restrict new development in the countryside to that essential for agriculture, horticulture or forestry or other development for which a rural location is essential. Policy UB3 states that all development permitted in accordance with other policies of the plan should be appropriate in design, scale, layout and density to its surroundings and contribute to the quality of the built environment.
4. The general countryside policies of the local plan, including Proposal C1 similarly seek to protect the countryside and restrict new development. Proposal EN5 states that development which accords with other relevant proposals of the plan will be permitted provided that it accords with a series of criteria. These include a requirement that it is in sympathy with the appearance and character of the local environment and that features such as open areas, trees and hedges, which are important to the character of the area, are retained. Proposal EN7 states that development will not normally be permitted where it would detract from beneficial landscape features, including trees and hedgerows.

Main Issue

5. From all that I have heard, read and seen, I consider that the main issue in this case is whether having regard to development plan policy the proposal would have damaging consequences for the character and appearance of the countryside.

Reasons

6. The primary purpose of Policies C1 and C2 of the structure plan and Proposal C1 of the local plan is to protect the character and appearance of the countryside. This is an important objective which accords with national guidance and deserves full support. The policies indicate that only a limited range of development will normally be accepted in the countryside and no mention is made of the change of use of land to private gardens among the acceptable categories.
7. However, providing a proposal did not harm the character or appearance of the countryside or did not have other undesirable consequences, I do not consider that it would be contrary to the objectives of the general countryside policies of the development plan. In such circumstances an exception to them would in my opinion be justified. In recently accepting the change of use of land to form a garden extension on Trampers Lane at North Boarhunt the Council appear to recognise that in certain circumstances the general policies relating to development in the countryside can be applied flexibly.
8. I would accept that development along the north side of Southwick Road is sporadic, interspersed with open areas, and that several of the houses have large gardens. I would also accept that the undeveloped gaps between the dwellings contribute to the overall rural character of the locality. Whilst the area does not enjoy any special designation it is attractive countryside.
9. There is no delineation between the appeal site and the existing residential curtilage of Rowndale and to the east is the residential curtilage of The Bungalow. To the north a dense copse separates the site from agricultural land and to the south is Southwick Road. The site which is currently mown and is not in productive use is consequently severed from any agricultural holding.
10. I would accept that the use as a private garden could bring with it ancillary structures and paraphernalia associated with modern living such as childrens' play equipment. There would also be a danger of the area being used for parking or external storage purposes which would also have a damaging effect on the openness of the area. However these undesirable consequences could be controlled by condition.
11. In my opinion, bearing in mind the current appearance of the site, a garden use and the introduction of appropriate planting and landscaping would be likely to secure an enhancement in the character and appearance of the area. Again the landscaping is a matter which could be the subject of a condition and in the development of the scheme consideration could be given to augmenting the planting along the road frontage with native deciduous trees as suggested by the Parish Council.
12. If the site is not used as a private garden I consider there is a risk that it would be neglected and with the current open nature of the site from Southwick Road it would stand out as a discordant feature which would have a seriously detrimental effect on the locality. I noticed that another area of land fronting the road to the south east of The Bungalow is disused and

somewhat overgrown. On the other hand if the appeal is allowed there is every prospect that the land will be maintained and it will make a positive contribution to the local scene.

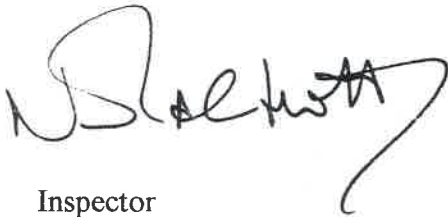
13. In the circumstances I consider that an exception to the normal policies preventing development in the countryside unconnected with agriculture or otherwise requiring a countryside location would be justified. Furthermore, I consider that subject to conditions removing certain permitted development rights, preventing parking and external storage and requiring the agreement and implementation of a landscaping scheme, the proposal would be in sympathy with the appearance and character of the local environment and avoid harm to features of interest. As such it would be in accord with Proposals E5 and E7 of the local plan. Whilst the acceptance of the use would result in Rowndale having a large garden in relation to the size of the house I do not consider that this would appear out of place in the context of this stretch of the north side of Southwick Road.
14. I have taken account of all the other matters that were raised at the hearing and in the written material before me, including the reference to a 1983 appeal decision. I am also aware that in the case of the site on Trampers Lane, where the Council have recently granted permission for a change of use of land to a private garden, the circumstances were different in that the area involved did not front the road. These other matters do not alter my overall conclusion that the appeal should be allowed.

Formal Decision

15. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for the use of land adjoining Rowndale, Southwick Road, North Boarhunt, near Fareham, Hants, as a private garden in accordance with the terms of the application Ref. W12533/02 dated 12 March 2001, and the plans submitted therewith, subject to the following conditions:
- 1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
 - 2) No development shall take place until full details of landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development which would otherwise be permitted by Classes E and F of Part 1 of Schedule 2 of the Order shall be carried out without the prior consent of the local planning authority.
 - 4) The site shall not be used for the parking of vehicles or caravans, for open storage or for the stationing of childrens' play equipment without the written consent of the local planning authority.

Information

16. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within 6 weeks from the date of this decision.
17. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.
18. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.



Inspector

APPEARANCES

For the Appellant

Robert Tutton BSc MRTPI

Town Planning Consultant, 3 The
Potteries, Wickham Road, Fareham,
Hampshire, PO16 7ET.

P Snook

Rowndale, Southwick Road, North
Boarhunt, Nr Fareham, Hampshire,
PO17 6JH.

For the Council

Elaine Patterson BA DipTP MRTPI

Planning Officer, Winchester City
Council.

DOCUMENTS

Document 1

List of persons present at the hearing

Document 2

Council's letter of notification of
hearing.

Document 3

Letter from Boarhunt Parish Council.

Document 4

Appellant's statement and appendices,
together with letter and enclosures of
29 June.

Document 5

Council's statement and appendices.

Document 6

Further extracts from local plan
handed in at hearing.



Appeal Decision

Hearing held on 24 October 2006

Site visit made on 24 October 2006

by **Daphne Mair** BA(Econ), MPhil, MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 17 November 2006

Appeal Ref: APP/L1765/A/06/2007126

Tinnisbourne, Beacon Hill Lane, Exton, Southampton, Hants, SO32 3LT

- 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 and Mrs T R Chase against the decision of Winchester City Council.
- The application Ref 05/02606/FUL, dated 27 October 2005, was refused by notice dated 23 December 2005.
- The development proposed is change of use from meadow to garden for part of existing meadow.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural and Background Matters

1. The development has already taken place and I shall therefore treat the appeal as for the continuation of the use.
2. The site is within the Exton Conservation Area, the East Hampshire Area of Outstanding Natural Beauty (AONB) and also within the proposed South Downs National Park.
3. At the hearing I was told that the Winchester Local Plan Review was adopted in July 2006 and that this is a full replacement for the 1998 Local Plan.
4. The appellant proposed via a letter of 30 March 2006 to the Planning Inspectorate that the application site be amended to exclude an 8m strip of land that had now been fenced off as part of the adjacent sheep paddock rather than within the private garden. This would broadly accord with the landscape plan enclosed with that letter. The Local Planning Authority had on file the latter plan but they had not received the letter. The landscape plan is said by the appellant in that letter to have been prepared to discharge Condition 5 to the 2003 planning permission for the substantial extension to the small dwelling Stable Gates. The Local Planning Authority said they had not had time to consider or consult on the proposal to exclude the 8m strip from this appeal proposal and wished that the appeal to proceed on the basis of the submitted application plan. They confirmed however that there would be no change to their objection to the development on general policy principle.
5. The effect of the amendment (which I saw accords with the de facto position on the land) is to reduce the area of land taken into domestic use. I conclude that neither the Local Planning Authority nor neighbours would be prejudiced were I to consider the plan produced at the hearing ("Plan C" showing the fence as a dotted line) as the appeal plan.
6. At the Hearing an application for costs was made by the appellant against the Local Planning Authority. This application is the subject of a separate Decision.

The Main Issue

7. The main issue is the effect of the change of use on the character and natural beauty of the area, both on its own merits and as part of a cumulative impact if similar proposals elsewhere are encouraged by this change of use.

Planning Policy

8. The following Development Plan policies are most relevant to the appeal and are found in the Hampshire County Structure Plan 1996-2011 (Review) adopted in 2000 (policies E7, E16, E17, C1 and C2) and the Winchester District Local Plan Review adopted in 2006 (policies HE.4, DP.3 and CE.6). The policies addressing the protection of the AONB and rural character are the most significant here (CE.6, E7 and C2).
9. Planning Policy Statement 7 gives the national policy approach for such an area and is an important material consideration. I have also had regard to the Exton Village Design Statement of 2002 and provisions of Planning Policy Guidance 15.

Reasons

10. The quality and character of the wider countryside should be protected and where possible enhanced, as confirmed in both local and national policy. Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty.
11. Planning permission was granted in 2003 for a substantial 4 bedroom, two-storeyed extension to the modest roadside building formerly known as Stable Gates, together with a single storey link to the latter. The former has been completed and the latter is nearing completion. It is common ground that a large part of the fairly modest garden of Stable Gates was built over as a result but the Local Planning Authority did not consider that the remaining garden would be inadequate to a house of the completed size. The adjacent Primrose and Dairy Cottages to the north west and The Homestead to the south east have gardens of similar depth to that of Tinnisbourne prior to the appeal development. I am told that when the appellants bought the land comprising the areas shown as "B" (the appeal site) and adjacent "A" it was overgrown paddocks. Plot A is now a well tended and fenced sheep pasture and as noted above extends 8m into the appeal plot for the whole of its depth.
12. I saw that the wider surroundings of Exton are indeed beautiful and outstandingly so. The village itself is of considerable charm and is not readily seen from the main road because of the lie of the land and its being on the far side of and in the valley of the river Meon. From within Exton, the area taken into the private garden is concealed from the entrance to Beacon Hill Lane by the original house and its extension and by a well established hedge to the rear of its drive and parking area. There is a dense hedge and trees along the boundary with the large garden of Brook Cottage which conceals the appeal land from the south east. The boundaries of the smaller gardens at Primrose and Dairy Cottages are similarly leafy and there is a long established wall of at least 2m high along about two thirds of the south west boundary with the extensive grounds of Exton Cottage and adjacent land. Through the barbed wire fence along the remainder I could see sheep grazing on meadowland close to the river. Apart from along that third or so length there is a high sense of enclosure to plot B and very little sense of its being of a piece with agricultural land or the wider countryside beyond the appeal site. The South Downs Way runs through the northern extremity of the village but I saw that there is no view of the site from either at or near its junction with

Church Lane or near where it crosses the main road because of the well treed nature of the village and the lie of the land.

13. In responding to a consultation by the Local Planning Authority the Planning Officer of the AONB Joint Committee said “whilst there may be limited visibility of the site from publicly accessible points ...”. The Local Planning Authority was unable to assist me by saying where any such limited viewpoints are and the appellant had driven extensively round the area and concluded that there are none. I concur.
14. There is a 2m high brick and flint retaining wall built down a large section of the appeal land and well within its boundary with the paddock. It is similar to those marking the front boundaries of many nearby dwellings to the lane. The retaining wall could be seen from the rear part of the Exton Cottage land but it would be seen only as a low wall from that house or other neighbours on its uphill side. If more widely seen it would be a discordant feature but the high degree of containment means its impact is not materially harmful.
15. Whilst much of the garden is a formal lawn, it is open in character and there is potential to plant further trees, preferably of native species in a similar way to those on the tongue of land extending from Exton Cottage just beyond the rear boundary. There are no sheds or other structures on the land and none of it is paved. My conclusion is that the quality of the landscape and its scenic beauty would not be harmed provided there were no buildings or other built structures put on the land and it was well landscaped.
16. The question is thus whether the change of use can be objectionable in principle if it cannot be seen and it causes no harm to any other interest of acknowledge importance. The retaining wall has a modest adverse impact on open character but whilst the land has changed it otherwise remains open and conditions can be imposed to ensure it remains so. The difference between the paddock with its Jacob sheep and the mainly grassed garden where none of it is seen in public views seems to me to be of little significance to the character or appearance of the countryside. Other than as open land the site makes little contribution to the distinctive character of the AONB or to its natural beauty, amenity or tranquillity. Because of its high degree of visual containment, its development does not affect local distinctiveness or the intrinsic qualities of the countryside here. Policy C2 of the Structure Plan appears to me to be aimed mainly at built development but the proposal is contrary to the letter of that policy. Despite it not serving the needs of a rural based business, no significant adverse effect has however resulted to the natural beauty, amenity, tranquillity, distinctive character and quality of the landscape (Policies CE.6 and E7) which is here the more important consideration. There would be no disbenefit to all (PPS7 Page 6). An exception to policy C2 is warranted.
17. I have also had regard to the desirability of preserving or enhancing the character or appearance of the Exton Conservation Area. The garden is not part of a view in or out of the village and I have concluded above that it has no material impact on its landscape setting. I saw that flint walls separate most of the nearby dwellings from the road and little can be seen of any rear gardens. The village in general and this part in particular is characterised by being well treed and with substantial open and grassed areas and the appeal land is largely enclosed by gardens, two of which are extensive such that modest gardens are not themselves a defining characteristic of the Conservation Area. The large “Georgian style country house” extension to the former Stable Gates having been allowed, a garden of the size here is in character with it and the Conservation Area. Provided the garden

contributes to the open, well treed and naturalistic characteristic of the area in a substantial way I consider that the landscape setting and the appearance and character of its Conservation Area would be preserved, in accordance with policies HE.4 and E16.

18. On the question of precedent, the sheep paddock (plot A plus the 8m strip) is indeed similar to the appeal site though larger, in slightly greater public or semi-public view and overlooked from two other dwellings. It may well be attractive as a garden extension. I have not found that the particular circumstances of this appeal case would cause harm to the aims of local and national policies, subject to the conditions I intend to impose. It would be for the Local Planning Authority to judge whether such development of Plot A would on its own merits be harmful. Beyond the immediate area, there are other places in the village where garden extensions would have a greater impact because of a different relationship with the countryside. In allowing this appeal, I do not consider I would weaken the Local Planning Authority's ability to resist such development if it were harmful.

Conditions

19. I shall impose conditions withdrawing "permitted development rights" regarding buildings on the land and another designed to prevent smaller structures that may otherwise be considered de minimis being placed on the land, along with parking and storage restrictions. I shall also include fences and walls because the maintenance of the visual link with pasture land to the south is important. I shall also require that no garden use extends into the area beyond the dotted line shown on Plan C as discussed. In view of the fact that development has already taken place I shall require the use to cease unless the landscaping condition shall be complied with within a set period.

Conclusions

20. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

Appeal Ref: APP/L1765/A/06/2007126

21. I allow the appeal, and grant planning permission for change of use from meadow to garden for part of existing meadow at Tinnisbourne, Beacon Hill Lane, Exton, Southampton, Hants, SO32 3LT in accordance with the terms of the application, Ref 05/02606/FUL, dated 27 October 2005, and the plans submitted with it (as revised by plan C), subject to the following conditions:
- 1) The use hereby approved applies only to the land shown to the south east of the dotted line shown on the plan below and not to the 8m wide strip of land to the north west of that line within plot B but used as part of the sheep paddock shown as plot A.

(conditions continue on page 6)

APPEARANCES

FOR THE APPELLANT:

Mr Robert Tutton, BSc(Hons), MRTPI	Agent
Mrs Jane Chase	Appellant
Mr Trevor Chase	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Tom Patchell, BA(Hons), Dip TP, MRTPI Senior Planning Officer with the Council

DOCUMENTS additional to those submitted before the hearing

Document	1	Letter of notification of arrangements for the hearing and list of those notified
Document	2	Extracts from Winchester Local Plan Review adopted in July 2006
Document	3	Exton Village Design Statement

PLANS

Plan	A	Application plan
Plan	B	Landscaping plan enclosed with letter of 30 March 2006
Plan	C	Amended application plan showing 8m wide strip of appeal site retained as sheep paddock



Costs Decision

Hearing held on 24 October 2006

Site visit made on 24 October 2006

by **Daphne Mair** BA(Econ), MPhil, MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 17 November 2006

Costs application in relation to Appeal Ref: APP/L1765/A/06/2007126

Tinnisbourne, Beacon Hill Lane, Exton, Southampton, Hampshire, SO32 3LT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs T Chase for a full award of costs against the Winchester City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for change of use from meadow to garden for part of existing meadow.

Summary of Decision: The application is partly allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Appellant

1. Circular 8/93 confirms the principle (at Annex 3 paragraphs 7) that a planning authority should not prevent, inhibit or delay development which could reasonably be permitted in the light of the Development Plan (as far as is material to the application) and any other material considerations. Paragraph 8 indicates that the authority will be expected to produce evidence in any appeal proceedings, to substantiate each reason for refusal, by reference to the development plan and relevant advice in PPGs and Circulars. If the authority cannot show that the application was properly handled and considered in this light, costs may be awarded. Prior notification was given (by letter dated 30 March) that application would be made at this hearing for reimbursement of costs incurred in the prosecution of the appeal.
 2. Officers of the City Council gave weight to policies which were not relevant to the application before them, failed to take other relevant provisions into account and attributed no attention to two previous appeals in their district in this subject and two permissions by their own Department (including one in May last year). Inspectors Clark and Holt recognised (in 1983 and 2001 respectively) that there is no fundamental conflict between garden use of land and conservation of the countryside.
 3. The City Council was reminded (in the Grounds of Appeal and on several subsequent occasions) of its Officers' decisions and those of Inspectors relating to sites within the district, which had acknowledged that the amenity and character of the local environment is not harmed by garden use of agricultural land and that a planning condition removing permitted development rights can afford effective control. In light of Mr Belderson's lead, my letter dated 21 January invited the City Council to identify those matters which, if a condition was somehow inadequate, could be made the subject of a planning obligation; the response was not helpful.
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4. Ms Whitehead's precedent allegation has been shown to be a generalised fear and specific evidence has not been presented to identify those locations in Exton where, if this appeal were allowed, the City Council's development control powers would be fettered. The *Poundstretcher* case established that evidence must be presented in order to rely upon a precedent claim.
5. Winchester City Council acted unreasonably in withholding permission for development which in light of the development plan and other material considerations should have been permitted. With the City Council's cooperation, this matter could have been settled without an appeal. Substantial evidence has not clearly demonstrated how the grant of planning permission would harm the character or visual amenities of Exton or its adjoining countryside. My clients have incurred unnecessary expense in needing to prosecute this appeal. Madam, you are requested to direct Winchester City Council to reimburse my clients for the costs incurred in prosecuting the appeal.

The Response by the Local Planning Authority

6. Within Annex 2 of Circular 8/93 it states "a precondition for an award of costs is that a party has incurred unnecessary expense in the proceedings" (paragraph 2) and that "reasons for refusal should be complete, precise, specific and relevant to the application (paragraph 8).
7. Policies have been put forward by the Council to support the reason for refusal, concerning its impact within the immediate surrounds of Exton Village, the Conservation Area and the wider Area of Outstanding Natural Beauty.
8. Arguments have been put forward by the Council to support the reasons for refusal that are supported by the adopted policies if the Winchester District Local Plan Review and the Hampshire County Structure Plan Review.
9. With regard to policies that the appellants believe are not relevant to this application: Policy C19 of the emerging Winchester District Local Plan, now policy CE23 of the adopted Winchester District Local Plan Review, refers to residential extensions within the Countryside. If this appeal was successful, the Council could receive applications for a residential extension on the land.
10. This has not put the applicant to any unreasonable additional expense as there have been arguments put forward to support the main arguments of the Council with regards to the impact on the character of the area from the change of use.
11. This is of particular relevance as the Council would not consider favourably any proposal for a residential extension on agricultural land.
12. Precedent can only be established if it can be demonstrated that it follows a virtually identical situation, in addition each application should be determined on its own merits.
13. The appellants have failed to demonstrate that the two planning approvals and two Planning Inspector's appeal decision letters are virtually identical to the situation before you today. It has not been demonstrated that any of the sites are within a small village that is located within a Conservation Area and an Area of Outstanding Natural Beauty.

14. The Council has put before you today that an application could be received for precisely the same proposal, for the change of use of land to residential curtilage, for the area of land identified as "B". Being immediately adjoining the application site, with residential dwellings to the road frontage, with the same residential properties surrounding, located within a Conservation Area and an Area of Outstanding Natural Beauty the precedent would be set and the situation would be virtually identical.

Response by the Applicant

15. Policy C19/CE23 is a red herring. It addresses bricks and mortar and not the merits of this proposal. Any residential extension would stand or fall by the built development policies of the plan.
16. Should my four planning decisions be put aside because their circumstances are not identical? My purpose was to show that Local Planning Authorities and The Planning Inspectorate had agreed that change of use to garden was not contrary to countryside policies because they were not harmful. That is equally applicable in an AONB. The Local Planning Authority seems to say that Area B is the concern. There was no indication in any of their hearing statement submission that that was the concern. It was sites elsewhere in the village that they referred to.
17. They have not actually said in their response that the claim for costs is unreasonable.

Conclusions

18. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
19. I find nothing in the Local Planning Authority statement or their contribution at the hearing to indicate that they had given consideration to the factors that had allowed the 4 other cases referred to by the appellant to be permitted. Certainly, as I clarified at the hearing, there are substantial differences including that none of those cases were within the AONB. It is wholly right that the Local Planning Authority should have looked even more critically at the impact of the appeal development on the landscape because such an area has the highest level of protection. I find it surprising that the Local Planning Authority did not seek to distinguish this appeal site from those others but that does not amount to such unreasonable behaviour in my view as to warrant costs being awarded, given that important difference.
20. National policy does not now say that the countryside should be protected "for its own sake" but "for the benefit of all". The quality and character of the wider countryside should be protected and where possible enhanced. The Local Planning Authority said that this change to garden use was objectionable in principle because of the change in character of the land without relating to that the impact on the landscape or saying how the change of character was harmful to the natural beauty, amenity, tranquillity and distinctive character of the East Hampshire AONB set out in Policy CE.6. They neither showed how the appeal land had contributed to those qualities of the AONB before its development nor analysed in any substantial detail how the garden use detracted from them. In the sections of the adopted Local Plan with which I was supplied I find no reference to the countryside either within or without the AONB needing to be kept unchanged without analysis of the impact

on specific interests of acknowledged importance such as those relevant to the AONB. This is not Green Belt and there is no “presumption against” as referred to at paragraph 6.2 of their statement. The Local Planning Authority referred to many dwellings in Exton being small and in small plots (paragraph 6.3 of their statement) but the latter is not noted as an important feature of the village in its Design Statement, nor do the large adjacent gardens of Brook and Exton Cottages make it demonstrably the case here. They failed to show how the development would “result in development characteristics which would be out of character to local surroundings” (paragraph 6.3) or why conditions such as imposed in the other appeal cases submitted by the appellant would not address that adequately. The Local Planning Authority failed to substantiate that part of the reason for refusal and behaved unreasonably. Unnecessary expense resulted for the appellants.

21. The relevance of the Council’s reference to the policy on residential extensions in the reasons for refusal, in its statement and in its oral contribution to the main part of the hearing was only fully explained in response to this application. I was not favoured with a copy of the policy in its adopted form but the draft policy operative at the time the Local Planning Authority took its decision clearly refers to extensions to buildings not the extension of gardens. The Local Planning Authority was in a position to withdraw this specific approach to its objection but persisted with it which was unreasonable. It was however perfectly clear that the main objection was to the intrusion of the change of use into the open countryside and AONB. If as their response above indicates they were also concerned about a proposal for a further extension of the house or a building incidental to its enjoyment in the garden they did not show why that could not be addressed by condition or if and when any built development on the garden was proposed. Given the small part the reference to draft policy C.22 played in their case and that little time was spent discussing this small aspect of the main issue I conclude that the appellants were caused minimal unnecessary expense on this. The other policies referred to were pertinent. Even though there was not a specific objection relating to failure to preserve the character or appearance of the Conservation Area in the reason for refusal the Council and I are both required to have regard to that for any proposal so located. Reference to those Conservation Area policies was not unreasonable.
22. On the precedent element of their reason for refusal, the Local Planning Authority in their statement made only generalised statements that many dwellings nearby had small gardens and that their occupiers may be encouraged in any wish to extend their gardens if the appeal was allowed. At the hearing however they referred specifically to the similarity of the adjacent plot (actually marked “A” not “B” on the appeal plan). The appellant was not put in any difficulty by the addition of this late strand to the Council’s case and no additional expense would have been incurred. The Local Planning Authority was right to have the possible cumulative impact in mind and was not unreasonable in pursuing it, given the similarities between plots A and B.
23. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that a partial award of costs is justified.

Formal Decision and Costs Order

24. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers

enabling me in that behalf, I HEREBY ORDER that Winchester City Council will pay to Mr and Mrs T R Chase the costs of the appeal proceedings but excluding such costs as were incurred in addressing sub paragraph (ii) of the reason for refusal relating to precedent; such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of planning permission for change of use from meadow to garden for part of existing meadow an agricultural workers dwelling on land at Tinnisbourne, Beacon Hill Lane, Exton, Southampton, Hampshire, SO32 3LT.

25. The applicant is now invited to submit to Winchester City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Daphne Mair

INSPECTOR