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Our Ref: WIN-1355-NM  
Your Ref: 19/02468/FUL  
Email: [neil@southernplanning.co.uk](mailto:neil@southernplanning.co.uk)  
Date: 20<sup>th</sup> December 2019  
Status: Letter of objection

**By Email** – [planning@winchester.gov.uk](mailto:planning@winchester.gov.uk)

Dear Ms Marsden,

**19/02468/FUL – Use of land as residential garden, Land To Rear Of 5 Hillside Kitnocks Hill Curdridge Hampshire**

I am writing on behalf of Mr and Mrs Wallin of 6 Hillside, Kitnocks Hill, Curdridge, who wish to strongly object to the above application.

The application site address is stated as being 'Land to the rear of 5 Hillside'. However, the majority of the land is actually situated immediately to the rear of Mr and Mrs Wallin's property, 6 Hillside.

The application site would therefore more accurately be described as 'Land to the rear of 6 Hillside'.

The application follows the recent refusal of a Lawful Development Certificate application for the 'Continued use of land as residential garden' on 15<sup>th</sup> October 2019. The application includes the land that was subject to the refused LDC and is therefore part retrospective.

The continued use of the land as residential garden remains unauthorised, i.e. in breach of planning control, and is subject to an on-going enforcement investigation by Winchester City Council.

The area of land for which change of use is being sought is significantly larger than the area of land which was subject to the LDC refusal – see site location plan comparisons overleaf (Note: there is identified error with the red line area show on the submitted site location plan as it covers a smaller area than is shown on other submitted plans – as is detailed further on in this letter. As a result, the increase between the LDC area and the change of use area being applied for is around 350%).

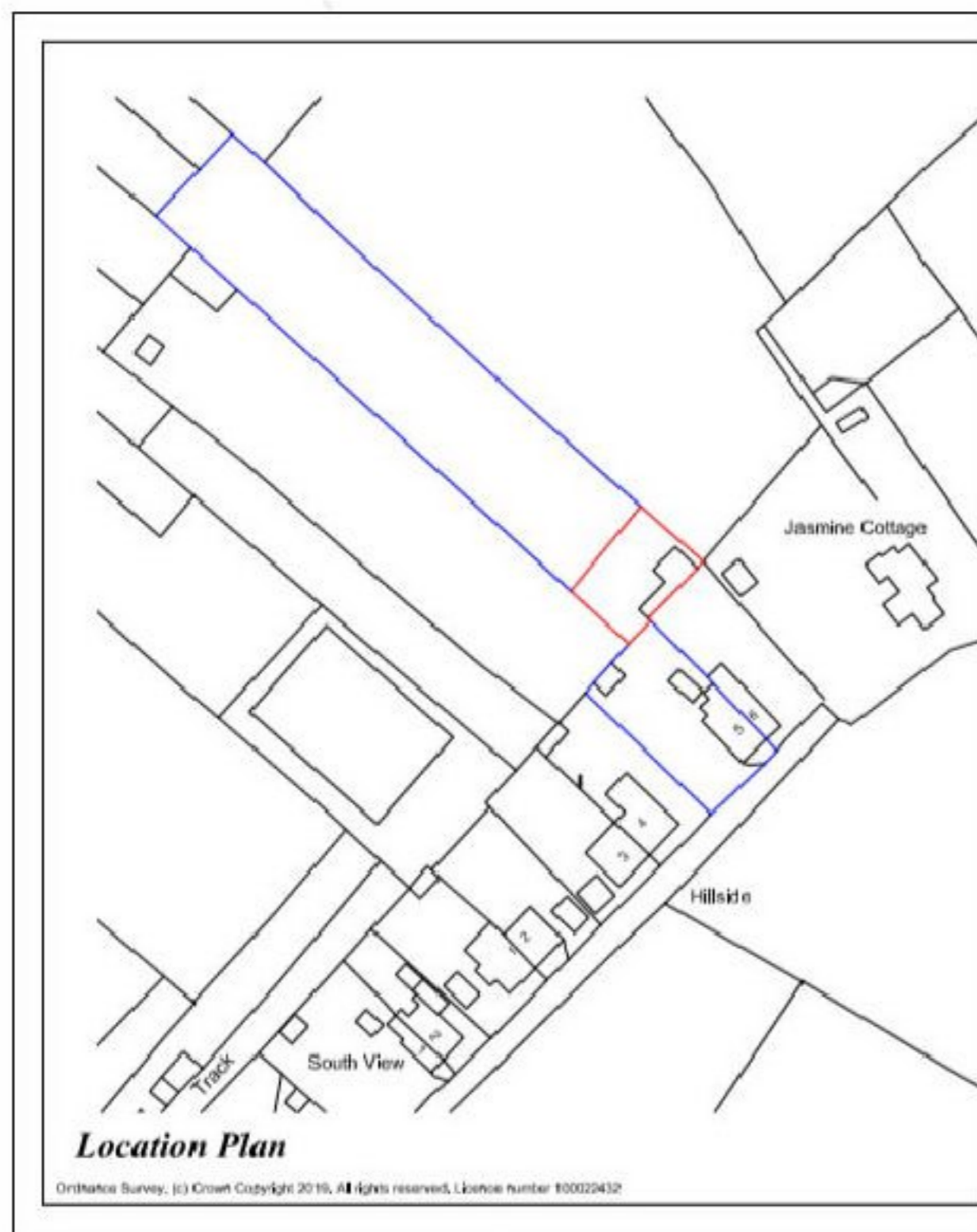
One of my client's principle concerns is that the land for which change of use is being sought is located immediately to the rear of their property and the part of the land already being used by the applicants as garden directly abuts their rear boundary. This is the land that was subject to the LDC refusal, which is regularly used by the applicants for socialising, parties, BBQ's etc, generates noise

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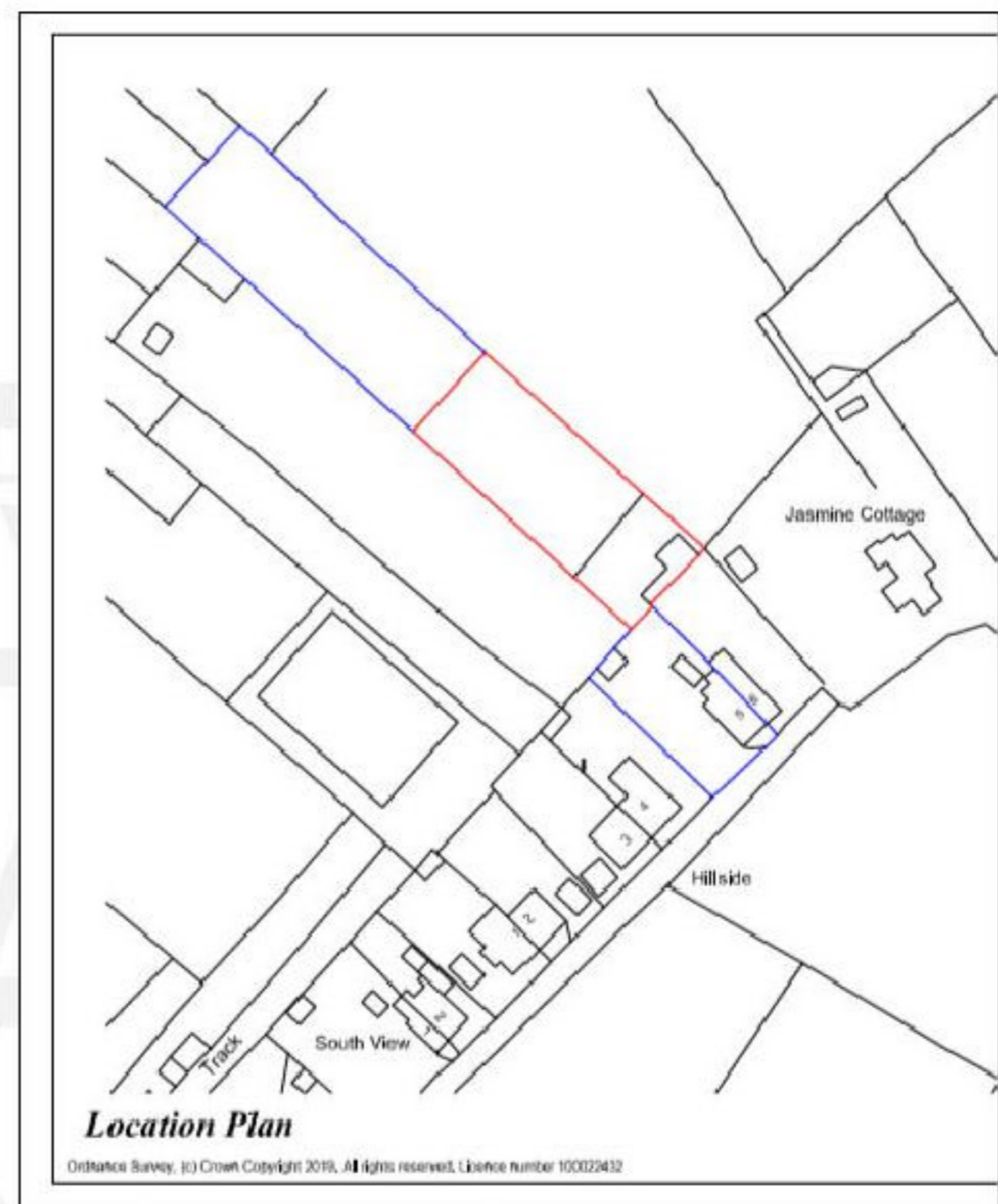
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and disturbance, lights on at night, etc. The level and frequency of disturbance that my clients have, and continue, to experience is significantly affecting their residential amenities and their ability to enjoy their own property. They cannot see how the existing situation can be permitted, let alone the prospect of the garden area being extended by a further 350%.



LDC application site



Planning application site

### Incorrect Plans

The submitted plans contain a number of errors and inaccuracies, and as a result, do not truly or accurately represent what is currently on the land or what is being proposed.

Two sets of plans have been submitted:

- 8<sup>th</sup> November – Site Location Plan and Proposed General Arrangement
- 6<sup>th</sup> December – Proposed Landscape Plan and Existing Site Plan

Our first observation is that the blue line around the house and garden of No. 5 shown on the Site Location Plan, the Proposed Landscape Plan and the Existing Landscape Plan is incorrect as the shared boundary between No.5 and No.6 is in the wrong place – as demonstrated in the photograph overleaf. The position of the shared boundary between No. 5 and No.6 as shown on the plans therefore needs to be checked on the site. The plans as drawn give the impression that more of the

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subject land overlaps the rear boundary of No.5 than is actually the case and is therefore misleading. It is a fundamental error that needs to be rectified.



View from the first floor of No. 6 looking rearwards (north west) across the application site. The photo was taken in 2015. It shows the position of the shared boundary between No.5 and No. 6, which is separated from the end of the shed by a short section of hedge. The plans show the shared boundary being right up to the end of the shed. Note that the land also rises as it extends away from No. 6.

The extent of the red line area shown on the Site Location Plan is also incorrect and is different to the red line area shown on the Proposed Landscape Plan and Existing Site Plan. The red line area on the Site Location Plan is approx. 1328 sqm. However, on the Proposed Landscape Plan and Existing Site Plan the red line area is stated as being 1606 sqm. On the application form the site area is stated as being 0.13 hectares and in paragraph 1 of the supporting letter / statement it states that they are seeking permission to use 0.108 hectares of land as residential garden.

Items shown on the Proposed General Arrangement plan are missing from the Existing Site Plan and therefore the two plans are inconsistent.

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Items missing from the Existing Site Plan include:

- Patio area (used for socialising, BBQ's, parties, etc)
- Vegetable patch
- Washing line
- Five bar gate - situated in the bottom south west corner of the land, providing access into the land via a private right of way off the A334 and along the rear of the properties along Hillside (see photo above).

On the Existing Site Plan and Proposed Landscaping Plan the shed is labelled as 'Storage shed', whereas this is fitted out with sofas (which can be seen in the photo insert on the Existing Site Plan) as well as beer fridges, sound system, etc, and is used for socialising, parties, etc.

The scales on the Existing Site Plan and Proposed Landscaping Plan are also wrong.

#### Existing use of land / buildings

The sworn statements and letters submitted by the applicant and his friends / acquaintances as part of the evidence in support of the refused LDC application provides first-hand accounts of how the land is used and is therefore relevant to the consideration of this application. They confirm that the land is used for parties and BBQ's. There is also a garden room, washing line, vegetable patch and patio.

Many of the comments talk about the plot being 'enhanced' through the addition of a patio and barbecue area, beer fridge, lights, music system, chairs, cushions and rugs.

The applicants already have a large existing garden (not surveyed) which provides ample opportunity to support the intent of this application without the extension into the countryside.

#### Details of external lighting

Details of the external lighting that has been installed is not show on any of the plans or included anywhere in the application submission.

#### Principle of development

In his supporting letter, the applicant's agent argues that the use of land as private garden is precisely the type of open recreational use that is supported under Policy MRTA4. However, the wording of Policy MRTA4, which is the key consideration (not the supporting text), is clear that the LPA will only permit development which has an operational need for a countryside location, such as agriculture, horticulture or forestry. Most dwellings in the countryside have an area of land around the property that is recognisable as being its garden. If a homeowner wants to increase or extend the size of their existing garden, e.g. by annexing an adjoining parcel of agricultural land, that is not operational need. Otherwise, it would be open season for every householder in the countryside to

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annexe adjoining farmland to use as part of their garden, with no limit on how much land they wanted to use.

The types of open recreational uses permitted under Policy MRTA4 would be things like golf courses, football or cricket pitches, archery practice, etc. Not gardens.

The supporting letter makes reference to an appeal decision from 2001, although very little weight can be attached to that decision as the prevailing policies that would have applied / taken into account at the time have long since been superseded by more up to date planning policies / local plans, including the National Planning Policy Framework, which requires planning policies and decisions to contribute to and enhance the local environment by protecting valued landscapes and recognising the intrinsic character and beauty of the countryside.

The appeal decision in 2018 at Oak Farm, Wickham that has also been referred to in the supporting letter involved land which was already being used in connection with the siting of two residential mobile homes, for which lawful development certificates had recently been granted. It was therefore no surprise that the owner wanted to be able to use the land around the mobile homes as residential garden. It was not a proposal to extend an existing or established garden, as in this case. The inspector noted that the surrounding areas were in a variety of commercial uses including a storage depot, a farm shop, a rest home and a repair garage, which led him to conclude that the immediate area has a strong industrial and commercial character, rather than that of a rural area of open countryside which is located further to the east. The factors in that appeal case are, therefore, significantly different, and in no way comparable to the case in hand.

It is perhaps unsurprising that the appellants agent has chosen not to mention another appeal case that he was involved in at Flintwall Cottage, Ingoldfield Farm, Ingoldfield Lane, Soberton in 2016 (APP/L1765/W/16/3147290). This involved extending an existing area of garden into adjacent farmland and included plans for additional landscaping, including tree planting and a landscaped pond, much like in this case. The inspector noted that there was no mention in MRTA4 of converting agricultural land to allow the extension of residential gardens, although the City Council considered that such proposals were beyond the scope of the types of development that require a countryside location that MRTA4 would normally allow. The inspector concluded that these types of proposals need to be treated on their own merits 'within the general framework of protecting the countryside from inappropriate development' and that only limited weight could be given to past decisions in the Council's area since each will have involved different local circumstances. The inspector had no doubt that changes to the status of the appeal site would lead to changes in its visual impact. Virtually every garden accumulates domestic paraphernalia and such developments would emphasise the degree to which the existing development boundary would be extended into the open countryside. To enclose this land as a domestic garden would, in his view, result in a change in the site's character that would not be acceptable. His overall conclusion was that 'the proposed change of use is not supported by Policy MTRA 4 and would be contrary to the battery of adopted development plan policies that seek to protect the countryside.'



Another interesting point to come out of that appeal decision, which is also relevant to the case in hand, was that the proposed landscape work was deemed not to require planning permission and could therefore take place anyway, irrespective of whether or not planning permission for the change of use was granted.

Much of the planting and landscape enhancement work proposed in this application also would not require planning permission and could therefore take place without the change of use to garden needing to be granted. If the applicants have a particular desire to improve the biodiversity of the land, enhance habitat for wildlife, etc, by carrying out additional planting, then there is nothing to prevent them from doing this. My clients would not have any objection to that.

#### Impact on character and appearance of the area

The application states "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."

However, as the above photograph and available aerial photography shows, the land is surrounded by an interlocking network of agricultural fields and paddocks that provide a natural rural boundary / buffer between the properties along Lockhams Road, Hillside and Lake Road, that extends north east as far as Gordon Road. It provides an attractive and appealing outlook for all those properties that back onto and overlook the land.

Curdrige and Curbridge Village Design Statement (adopted as Supplementary Planning Guidance in 2002), states:

"Curdrige is a green village. Such is the abundance of trees, hedgerows and open spaces."

"Open spaces and housing, often screened by hedges and set well back from the roads, are the main features which help create the essential rural character of the village"

"Planning Guidelines – Landscape. Planning Guideline - 6: A defining feature of the village character is its abundance of trees, hedgerows and open spaces. The preservation of this valued characteristic is a high priority.

The change in the character and appearance of the land, as a result of it being used as garden land, with all of the domestic trappings, paraphernalia and activities that comes with it, would be harmful to the sylvan charm and undeveloped nature of this part of the village.

As such, the proposal would be contrary to Policy DM23 (Rural Character) of Local Plan Part 2 and Planning Guideline 6 of the Curdrige and Curbridge Village Design Statement.



### Impact on No. 6 Hillside

From a spatial point of view, the location of the land to the rear of No. 6 is a very odd arrangement.

Being located immediately to the rear of their property, my clients are, understandably, very concerned at the outcome of the application and the prospect of the existing unauthorised use of the land as residential garden being legitimised and becoming even more extensive and established than it already is.

They already experience noise and disturbance emanating from the land and buildings when it is being used by the applicants for socialising, parties and BBQ's. Invariably, these types of activities tend to take place in the warmer summer months when they are also using the outside areas of their own property and when they tend to have their windows open, although I am advised that they also take place at other times during the year (one of the letters in the LDC application talks about sitting out on chilly nights).

Whilst there is no objection to a neighbour using their established / existing garden for parties, BBQ's family get togethers, etc, this is an accepted part of life and is a mutual arrangement between neighbours. However, it is different scenario when someone wants to use land immediately to the rear of your property for such activities, which is largely disconnected and only very loosely annexed to their own property.

The rear of my clients property, especially the upper floors, looks across and over / into the application site. The land also rises up as it extends away from their property (see photo on page 3). They are, therefore, directly affected by activities that take place on the land. The proposal to increase the size of the garden area by 3.5x would further accentuate the impact on them and their property, beyond that which they already have to put up with.

Lights on at night and external illumination of the field is a particular problem – as demonstrated in the photograph overleaf. Amongst other things, it prevents them using their telescope at night (for astronomy purposes). Since the lights were installed, there also been a noticeable reduction in the number of bats seen.

Policy DM17 (Site Development Principles) of Local Plan Part 2 states:

New development (including changes of use) should be satisfactory in terms of their impact, both on and off site. Development which accords with the Development Plan will be permitted where it:

- viii. does not cause unacceptable levels of pollution to neighbours by means of noise, smell, dust or other pollution;*
- ix. provides only for lighting that is not visually intrusive on the surrounding area.*

The proposal clearly conflicts with both of these criteria and is therefore contrary to Policy DM17.

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View from the first floor of No. 6 looking rearwards (north west) across the application site at night – showing the external illumination of the field from the subject land

### Summary

This is an unwarranted / unjustified garden extension into the countryside, which would erode the open and rural character of this part of the village and would have huge implications for my clients in terms of their enjoyment of their own property, given the impact that they are already experiencing with the unauthorised use of the land nearest to their property as extended garden – for socialising, BBQ's and sitting out (with beer fridges, music system, external lighting, etc).

If the applicants want to improve bio-diversity and habit for wildlife, there is nothing to stop them planting additional trees and hedging without the need for a change of use.

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A number of issues / errors with the plans have also been identified, which present a misleading and inaccurate picture of what is being proposed and what is already on the land.

For these reasons, the City Council is urged to reject the proposal and refuse planning permission.

Yours sincerely,



**Neil March** Bsc (Hons) Dip TP MRTPI  
**Director**



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