

Room 3B
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol BS1 6PN

Your refs: APP/L1765/C/20/3248934
& APP/L1765/W/20/3247907

24th August 2020

Dear Ben White

**Appeals by Mr W G Atkinson, Mr Grant Atkinson.
re. Land to the rear of nos.5 & 6 Hillside,
Kitnocks Hill, Curdridge, Southampton SO32 2HJ.**

**Application for reimbursement of Mr Atkinson's appeal costs.
Comments on Winchester City Council's letter dated 20th August.**

1. Thank you for your letter dated 20th August 2020 and its attachment; in accordance with the timetable set down therein, we are pleased to present our comments on the letter dated 20th August that was submitted by Case Officer Rose Lister on behalf of Winchester City Council. [Cross-referral has not been assisted by the absence of paragraph numbers from the Council's letter.]

2. Paragraph 2.4 of the Grounds of Appeal against the refusal of application 19/02468/FUL drew attention to the decision by Inspector Mair in November 2006 regarding the 'Tinnisbourne' site in Exton (Appendix 4 to the submission) - that appeal was allowed for residential garden use within a Conservation Area and an AONB (neither of which apply in Mr Atkinson's case) but the decision was noteworthy because costs were awarded against Winchester City Council because its Officers had failed to give attention to material considerations ie previous 'agriculture-to-garden' consents within its district. In his deputation to the Planning Committee on 18th February 2020, Robert Tutton reminded Members of the permissions that they themselves had granted at Curbridge in 2014 and Newtown in 2015 in their recognition that residential garden use does not conflict with the general intentions of Core Strategy Policy MTRA4 (it was adopted in March 2013). It is submitted that Members of the Planning Committee did not accord due weight to material considerations (ie previous appeal decisions within Winchester district and their own determinations in 2014 and 2015) in their consideration of planning application 19/02468/FUL and thereby failed to comply with a fundamental requirement of Section 38 of the Act. The City Council's contention that "...*the application was given all due and proper consideration by the elected members which comprise the Planning Committee*" is so inaccurate as to be misleading; the Members actually failed to discharge their duty and their behaviour was thereby unreasonable.

3. In his deputation to the Winchester Planning Committee on 18th February 2020, Robert Tutton reminded Members that Mr Atkinson's land does not lie within the South Downs National Park, a protected Open Area or a Settlement Gap ie it does not lie within an area of special status. Policies DM23 and MTRA4 of the development plan would customarily apply to an application for residential garden use of such land - DM23 seeks to ensure that development does not have an unacceptable effect on rural character by visual intrusion and MTRA4 is silent on the matter. Members were reminded that they themselves had granted planning permission for agriculture-garden changes at Curbridge in 2014 and Newtown in 2015, in recognition that such use was likely to secure enhancement of the local countryside by the introduction of new trees and shrubs. In that regard, it is particularly noteworthy that 'WCC Landscape' opined that, as this site is relatively featureless, Nigel Trowell's proposal would be '*...a responsible and appropriate scheme of planting in this area*'. In light of her findings at her site meeting with Robert Tutton on 4th December 2019, case officer Liz Marsden recommended the Planning Committee to grant permission, subject to conditions. Without visiting the site, Members of the committee decided on 18th February 2020 that the Officers' recommendation should be put aside, so "*...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*." As only very restricted impressions can be gained of the site from the public domain [it can only be approached from the southwest along Hillside; the land-form, dwellings and vegetation combine to screen the site from Hillside, Kitnocks Hill and Lockhams Road; and no footpaths or bridleways cross the land] it is submitted that Members could not (indeed did not) reach an informed judgement in the committee room, regarding the prospective impact of the garden use on the

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local landscape. Liz Marsden had visited the site to inform her recommendation and Inspector Fagan has recognised that a personal visit is required (on 3rd September) to ensure that the appeal determinations are based on informed judgements. The failure of the Members of the Planning Committee to visit the site before exercising their judgement on this subjective matter constituted unreasonable behaviour.

4. Liz Marsden recommended that planning permission 19/02468/FUL should be granted but Members of the Planning Committee put her advice aside and decided that permission should be withheld; the Members' decision should have been recorded on the decision notice, not the Officers' interpretation of it. 'Domestication' was not a word used by any of the Members in their consideration of the application, yet it appeared as a central charge on the notice. The Officers' failure to accurately reflect the Member's finding on the decision notice constituted unreasonable behaviour.

5. **SUBMISSION.** It is again submitted that the Members of Winchester City Council's Planning Committee behaved unreasonably by their rejection of a proposal which accorded with the development plan; failed to take material considerations into account; made a decision which was inconsistent with their previous determinations; and the notice issued on 19th February 2020 did not accurately reflect the basis of the decision that had been made. As a consequence of the unreasonable behaviour by Members of the Winchester Planning Committee, Grant Atkinson has been obliged to incur unnecessary expenditure by the prosecution of these appeals. The Secretary of State for Housing, Communities and Local Government is requested to direct Winchester City Council to fully reimburse Grant Atkinson for the costs that he has been obliged to incur in the prosecution of these appeals.

Yours sincerely



Robert Tutton
Director