

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

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

17th August 2020

Dear Sasha Coke

**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.**

Comments on Winchester City Council's statements of case.

1. Thank you for your letter dated 10th July 2020 and its attachments; in accordance with the amended timetable set down in your email at 1058 hours on 15th July, we are pleased to present our comments on the Statements of Case that have been submitted on behalf of Winchester City Council [cross-referral has not been assisted by the absence of paragraph numbers from the Council's statements.]

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2. No issue is taken with the generality that '*...each application is assessed on its own merits*' but Inspector Mair gave a clear lead in the 'Tinnisbourne' appeal in 2006 (Appendix 12 to the Grounds of Appeal) - "*The main issue is the effect of the change of use on the character and natural beauty of the area*"; there was limited visibility of the site from publicly accessible points (Inspector Mair's decision, paragraph 13); and "*This is not Green Belt and there is no 'presumption against'*" (paragraph 20 of Inspector Mair's Costs Decision). Paragraph 3.6 of the Grounds of Appeal submitted for the current case drew attention to the Officers' report on application 15/01173/FUL in 2015, wherein Members of the Winchester Planning Committee accepted that Inspector Mair's decision should be accorded weight in their consideration of the agriculture-to-garden proposal at Church Road, Newtown. Consistency of decision-making is surely a basic tenet of good public administration, so it is concerning that, whilst the Officers reminded Members of that approach in support for application 19/02468/FUL (the use of land as residential garden at 5 Hillside), Members put their prompt aside. Simply because land lies beyond a settlement boundary (and consequently within 'countryside') does not generate an automatic presumption against a grant of permission for residential garden use.

3. Policy DM23 of Local Plan Part 2 re 'Rural Character' generates a presumption in favour of development proposals which "*...do not have an unacceptable effect on the rural character of the area, by means of visual intrusion, the introduction of incongruous features, the destruction of locally characteristic rural assets or by impacts on the tranquillity of the environment.*" Contrary to the City Council's assertion, it is submitted that the requirements of Policy DM23 are **satisfied** in this case.

4. Policy MTRA4 of the Core Strategy cites agriculture, horticulture and forestry as **examples** of development which have an operational need for a countryside location; it does not purport to constitute an exhaustive list of the kinds of development which may come before the City Council during its eighteen-year plan period (2013-2031). The absence of an explicit reference to 'residential garden' use in MTRA4 should not be construed as generating an automatic rejection of such a proposal, as a matter of principle; on the contrary, a more comprehensive list of acceptable developments would surely include 'recreation' and 'leisure', which are precisely the kind of 'quiet enjoyment' activities in a residential garden that one would normally associate with the occupation of a house in the countryside. As exemplified by their decision at Church Road, Newtown in September

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2015 (Appendix 14 to the Grounds of Appeal), Members of the Winchester Planning Committee satisfied themselves that the character and appearance of the local countryside would be assured by the imposition of conditions that would control the exercise of permitted development rights; the inconsistency of the recent Hillside decision is striking.

5. The roads about the site - Hillside, Kitnocks Hill and Lockhams Road - are characterised by frontage residential development which blocks impressions of it and no footpaths or bridleways cross the land, to afford public vantages. Contrary to the City Council's contentions, the appeal site lies within a semi-rural area and its use as residential garden would not harm the character of the locality. Few members of the public enjoy access to an aircraft, so aerial photographs are of little value in assessment of the character of the locality.

6. Robert Tutton presented a deputation to the Planning Committee on 11th February 2020 in favour of planning application 19/02468/FUL and remained in the public gallery, to hear the subsequent debate. While '*domestication*' of the land was to form part of the charge set down in the decision notice, that word had formed no part of the Members' debate; the Reason for Refusal simply did not derive directly from the decision made by Members. Bearing in mind that it was the **Members decision** to refuse consent without a corporate site visit, the notice that was issued should have reflected their actual concerns, not the Officers' later interpretation of it.

7. The Secretary of State for Housing, Communities and Local Government is again respectfully requested to allow this appeal and grant permission for development that accords with the requirements of the development plan and no other material considerations indicate otherwise.

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8. Responses to the City Council's case against the Ground A appeal are set out in paragraphs 2-7 above.

9. The Declaration by David John Allen is central to the consideration of the Ground C appeal. Paragraph 7.1 of the Grounds of Appeal against the Enforcement Notice reminds one of the Declaration by Mr Allen regarding the use of the appeal site since 1922. Paragraph 7.2 recorded that Enforcement Officer Tony Ridley visited the appeal site in February 2019 and, exercising his delegated discretionary authority, advised that planning permission for its garden use was not required. The appeal should succeed on Ground C.

10. One welcomes Winchester City Council's acceptance that a material change of use (from agriculture to residential garden) took place on 4th August 2010. As more than ten years have passed since that material change took place and there was no Enforcement Notice 'in place' (because it is under challenge), application was made via the Planning Portal on 6th August 2020 for a Certificate of Lawful Use or Development (PP-08917023) but it has not yet been registered by the City Council - a copy of the application is presented with this submission. It is submitted that the appeal should succeed on Ground D.

11. The Secretary of State for Housing, Communities and Local Government is again respectfully requested to allow this appeal on Grounds A, C, D and G.

Yours sincerely



Robert Tutton
Director