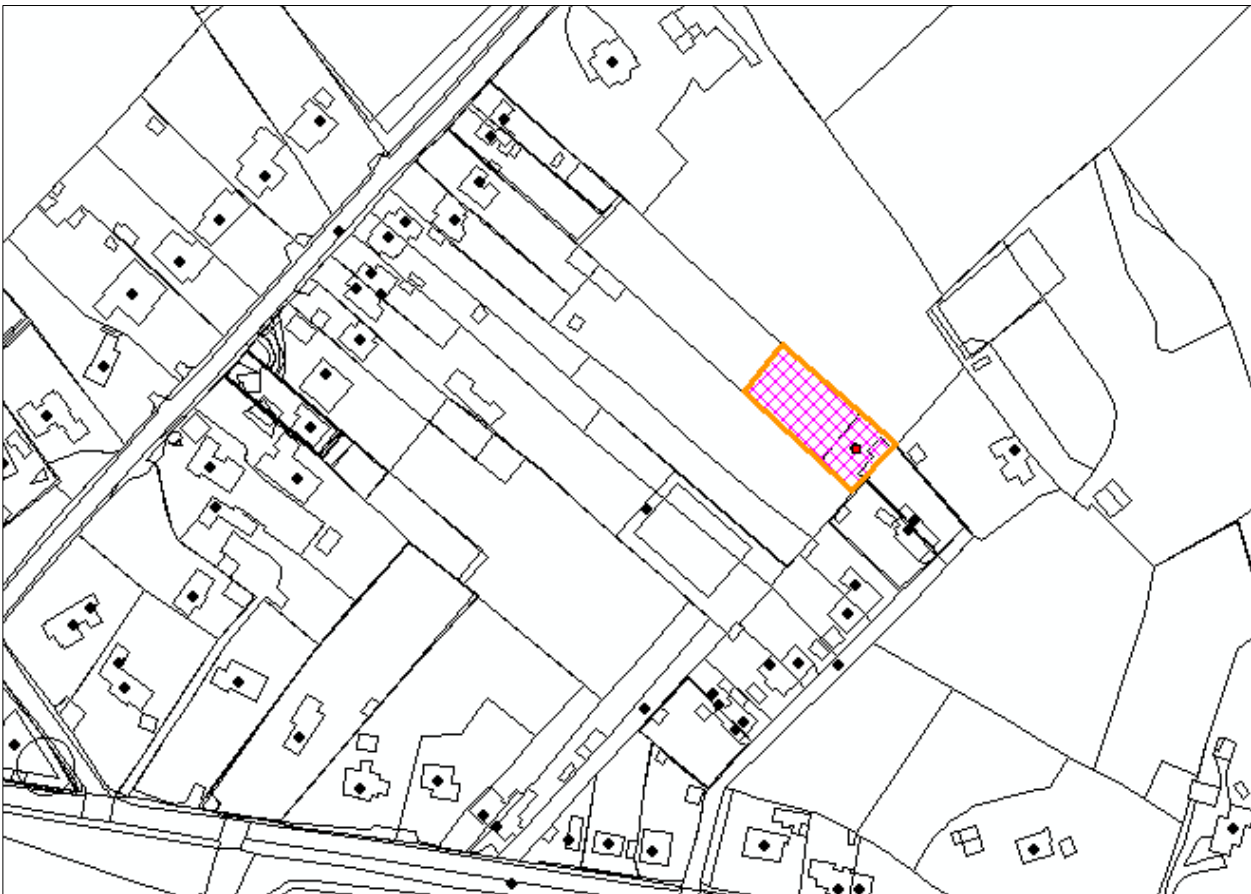


WINCHESTER CITY COUNCIL  
PLANNING COMMITTEE

**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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**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.

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**Consultations**

WCC Landscape (verbal comments) – the proposed landscaping is a responsible and appropriate scheme of planting in this area.

**Representations:**

Cllr Bentote

- Errors or misdirections in the application
- Does not fall within requirements of Policy MTRA4
- Fear that garden will develop with outhouses leading to houses
- Adverse impact on adjoining property and light pollution (Policy DM17)

Cllr Achwal requested application to be considered by the planning committee but provided no reason.

Curdrige Parish Council

- Concern that if permitted would set a bad precedent within the parish
- Resolved that the Council would decline supporting the application
- If minded to permit would require a condition limiting lighting

2 letters received objecting to the application for the following material planning reasons:

- No need to re-designate the land as garden, given the area already available to the property.
- Field is an important gap between the roadsides and forms a valuable corridor for the safe movement of wildlife
- Concerned that the wildlife area will be impacted by the potential increase in the use of the access track to the rear of properties in Hillside.
- A field gate has been installed in the boundary fence of the new garden area which might indicate that the use of the track could increase in future.
- New plans were submitted which completely changed the proposal.
- Inaccuracies in the plans
- Position of the shared boundary appears to be incorrect
- Would erode the open and rural character of this part of the village
- Adverse impact on neighbours due to the location of the land primarily to the rear of No.6 and its use for socialising
- Illumination of the site causes disturbance and adverse impact on wildlife.
- Not necessary to change the use of the land to improve its biodiversity.

1 neutral letter requesting clarification over red and blue lines and the site area.

Letter received from applicant supporting the proposal and addressing the objections that had been raised.

**Relevant Planning Policy:**

Winchester Local Plan Part 1 – Joint Core Strategy  
MTRA4, CP11, CP13, CP16

Winchester Local Plan Part 2 – Development Management and Site Allocations  
DM1, DM15, DM16, DM19, DM20, DM23

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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

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to enable the LPA to assess the impact of any future proposals, would be appropriate in this case.

Impact on neighbour amenity

No. 5 Hillside is a semi-detached property and has a relatively short boundary with the application site, which is primarily set behind the garden of the adjoining dwelling, No. 6. The house is set about 16m from its rear boundary and, with the exception of the shed building which has been in situ for a number of years, the proposals will not have any direct adverse impact on the occupants of No. 6, through loss of light or overshadowing. The landscaping of the site will alter the outlook from upper windows of the house, but should result in a more varied and attractive view which could not be said to result in loss of visual amenity.

The principal impact would therefore be from the use of the site and concern has been raised about noise and disturbance from the use of the site for socialising together with light pollution. It is understood that the smaller part of the site has been used for a number of years as an extension to the garden, as is evidenced by the picnic table and seating within the shed, and this appears to have caused some issues although there have been no formal complaints to the Council. There is nothing in the proposed layout and landscaping which suggests that the activity in the garden as extended would be so intensified as to result in an unacceptable level of noise or that a planning reason for refusal could be sustained on this basis particularly as such disturbance is subject to other legislation and methods of control.

With regard to light pollution, it is accepted that in rural locations the ambient night time light levels are lower than those within urban areas and therefore additional lighting in currently dark areas is generally more intrusive. However, such intrusion can be minimised to an acceptable level by the use of sympathetically located and designed lighting and a condition has been applied to ensure that no external lighting is installed without the details being assessed and approved by the LPA.

Other Matters

**Discrepancies in application.**

- There is some comment about a discrepancy in the plans, which appears to suggest that the storage shed extends along the full width of the rear boundary of No. 6's garden, whereas there is a gap, though this is filled by a dense hedge of around the same height as the shed. The submitted plans have used an OS map base which shows the same error and there is no deliberate intention to mislead any interested party. Furthermore, since it is apparent on site where the actual boundary is, it is not considered that this discrepancy has affected the ability of the council to make an assessment of the merits of the application.
- It has also been noted that there was a discrepancy in the overall length of the site between the location plan and the landscape plan submitted on 06.12.19, where the landscape plan showed a larger area. An amended landscape plan has now been submitted which accords with the location plan and ensures that there is no confusion over the application site.

Due regard should be given to the Equality Act 2010: Public Sector Equality Duty. Public bodies need to consciously think about the three aims of the Equality Duty as

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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.

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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.

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Appendix 1

City Councillor's request that a Planning Application be considered by  
the Planning Committee

Request from Councillor: Roger Bentote
Case Number: 19/02468/FUL
Site Address: land to rear of 5 Hillside, Kibknocks Hill Cambridge
Proposal Description: Use of land as residential garden
Requests that the item be considered by the Planning Committee for the following material planning reasons: Several errors or misdirections in planning application MTR44 - <del>the</del> dept does not follow requirements of MTR44 - fear that garden will develop with out houses leading to houses. DMIT - adverse impact on adjoining property also light pollution