

TOWN & COUNTRY PLANNING ACT 1990
SECTION 78 “HOUSEHOLDER” APPEAL

**APPEAL AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO
REFUSE A GRANT OF FULL PLANNING PERMISSION FOR “FIRST FLOOR
FRONT, REAR AND SIDE EXTENSIONS”**

AT

SPINDRIFT, FERRY ROAD, HAYLING ISLAND, PO11 0DG

LOCAL PLANNING AUTHORITY REFERENCE: APP/19/00129

Written Representations of Mr & Mrs Bruce Battersby

5th June 2019



Pickup Town Planning
57 Sea View Road
PORTSMOUTH
Hampshire
PO6 1EW

Tel/Fax:
023 92 375050

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Appendices

- I Officers Report on Application APP/19/00129**
- II Spindrift Appeal Decisions from September 2004**
- III Tamarisk Appeal Decision (PINS Ref: APP/X1735/W/16/3158213)**

1.0 Introduction and Background

1.1 This householder planning appeal is made to the Planning Inspectorate following the decision of Havant Borough Council, as Local Planning Authority (LPA), to refuse a grant of planning permission for front, side and rear extensions to the existing dwellinghouse Spindrift, Ferry Road, Hayling Island.

1.2 The planning application, that is now the subject of this appeal, was submitted to and validated by the LPA on 7th February 2019. The decision notice issued by the LPA on 4th April 2019 stated that the application was refused for the following reason: -

- “1 *The proximity to the neighbouring property at Sinah House of the proposed first floor element of the extension on the eastern side of the dwelling would adversely affect the outlook from, and light available to and be detrimental to the amenities of the occupier of the adjacent residential property. The proposal is therefore contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Design Guide Supplementary Planning Document 2011 and the National Planning Policy Framework 2018.*
- 2 *The proposal would by reason of its size, design and prominent siting would appear cramped and be harmful to the existing character and appearance of the area conflicting with the established pattern of development and spatial characteristics and setting of the streetscene. The proposal therefore conflicts with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Design Guide Supplementary Planning Document 2011 and the National Planning Policy Framework 2018.”*

1.3 This written statement of case seeks to demonstrate that the decision of the LPA to refuse planning permission was unreasonable and that the proposed extensions would only have an impact upon secondary room windows to the adjacent property Sinah House. Consequently, it is argued that the LPA has placed a disproportionate amount of weight on the impact of the proposed development upon secondary room windows and not taken into account that the same room is also served by primary windows to the front and rear.

1.4 Additionally, it is considered by the appellants that the LPA has also misinterpreted the context of development within this part of the Ferry Road streetscene which is characterised by dwellings which are sited in very close proximity to one another with only limited separation distances between their flank elevations. Furthermore, the LPA appears not to have taken into account a recent appeal decision (PINS Ref: APP/X1735/W/16/3158213) relating to the dwellinghouse currently under construction immediately west of The Deck House (which is next door to the appeal property). The Inspector did not, in this instance, consider the proposed dwellinghouse to be of a “*size, design and prominent siting [that] would appear cramped and be harmful to the existing character and appearance of the area conflicting with the established pattern of development and spatial characteristics and setting of the streetscene.*”

1.5 The appellants cannot understand how their application for a number of modest extensions to their house has been refused when this very large new dwelling, that is built immediately adjacent its boundary with The Deck House, has been permitted.

1.6 Section 38(6) of the Planning and Compulsory Purchase Act, 2004 states *“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”* It is considered by the appellants that the appeal proposal is not in conflict with the policies of the development plan. It is the contention of the appellants that the appeal proposal would not cause demonstrable harm to interests of acknowledged importance.

2.0 The Appeal Site and Its Surroundings

2.1 The appeal property comprises a part single, part two-storey detached dwellinghouse located on the north side of Ferry Road at its western end. The dwelling is centrally located in a row of five, closely spaced, detached houses which vary in terms of their scale, design and appearance which can be seen from the photograph below.



Figure 1 Ferry Road Streetscene from South-East

2.2 The dwellinghouse provides accommodation over two floors. The two storey element of the building is on the western side of the site being surrounded to the south, east and north by single storey extensions. The two storey part of the dwelling sits beneath a gradually sloping mono-pitch roof, whereas the surrounding single storey additions have mainly flat roofs. The dwelling has a contemporary appearance with its elevations finished in a light coloured smooth render.



Figure 2 Street Elevation of Spindrift

2.3 The property's southern boundary, onto Ferry Road, comprises two, 2.0m high metal gates (one pedestrian; one vehicular). Behind the boundary gates is a paved forecourt area which is used for vehicle parking. The forecourt allows access to a boat store, which is on the west side of the dwelling, and the residential element of the house, which is served by both stepped and ramped pathways. The ground floor of the building is in an elevated position above the level of the forecourt.

2.4 The interior of the ground floor of the dwelling is divided into two parts. The western half accommodates a boat store which extends for the full depth of the dwelling, front to back, being secured by metal gates at both ends. The eastern half of the ground floor comprises a kitchen, two en-suite bedrooms together with a workroom at the rear. Stairs allow access to a smaller first floor area which accommodates a livingroom and balcony, facing towards Ferry Road, together with a further bedroom, with balcony, oriented towards the shore. Also accessed from the hallway landing is a bathroom.

2.5 To the rear of the dwelling is a concrete yard which slopes gradually down and away from the dwelling to the adjacent shoreline. Within the yard is a range of boat storage and maintenance equipment.

2.6 As has been stated the dwellings along this stretch of Ferry Road are built almost entirely across their respective plots with very little distance separating them from each other. The appeal property is the only dwelling of the five that has a 'gap' at first floor level between it and an adjacent dwelling.



Figure 3 Front and Rear Elevations of Spindrift



Figure 4 Streetscene Image of Row of Five Dwellings at Western End of Ferry Road

2.7 The appeal dwelling, Spindrift, and the adjacent dwelling to the east, Sinah House are built at a slight angle to one another. As such, the width of the appeal property's plot is narrower at the front than it is at the back. Consequently, the east elevation of the single storey flat roofed addition is built at an angle; the extension is narrower at the front than it is at the rear (the extension has a width of between 3.9m and 5.2m if measured from the east façade of the dwellings first floor elevation).

2.8 As can be seen from the photograph at Fig. 5 immediately adjacent the appeal property is the gabled western elevation of Sinah House. Within this elevation are two "porthole" windows either side of a chimney stack. These are secondary windows serving a bedroom which also has primary windows to the front and rear.

2.9 The context of development along Ferry Road is considered to be an important issue with regards to this planning appeal especially as the LPA is arguing that the proposed development would be in conflict "...with the established pattern of development and spatial characteristics and setting of the streetscene..." When visiting the site the Planning Inspector will see the proximity of the recently constructed dwelling to "The Deck House" (see fig.6) which is immediately west of the appeal site. The image at Fig.7 shows the relationship of "The Deck House" to both the dwelling under construction and the appeal

property. Finally, the image at Fig.8 shows the gap between “Sinah House” and “Windsong”.



Figure 5 View from Rear Balcony of Spindrift towards West Elevation of Sinah House



Figure 6 Relationship between “The Deck House” and Dwelling under Construction



Figure 7 “The Deck House” positioned between Dwelling under Construction and “Spindrift”



Figure 8 Gap between “Sinah House” and “Windsong”

3.0 **Planning History**

3.1 The following planning history relates to the appeal property.

01/59612/000

Demolition of existing dwelling and erection of a 3 storey, 5 bedroom house utilising existing vehicular access from Ferry Road

Withdrawn.

03/59612/001

Demolition of single storey chalet & construction of 2 storey house comprising ground floor boat storage/garage with 3 bed living accommodation above, utilising existing access to Ferry Road.

Refused 10th November 2003

Appeal Dismissed – 28th September 2004

04/59612/002

Demolition of single storey chalet and construction of two storey dwelling comprising ground floor boat storage/garage with 3 bedroom living accommodation above, utilising existing access to Ferry Road.

Refused 2nd March 2004

Appeal Dismissed - 28th September 2004

05/59612/003

Demolition of the existing dwelling and construction of a two-storey dwelling comprising ground floor boat storage/garage with 3 bedroom living accommodation above, utilising existing access to Ferry Road. (Revised submission).

Refused 11th April 2005

05/59612/004

Demolition of existing dwelling and construction of a two-storey dwelling comprising of 3 bedroom and integral garage/ boat store and workshop utilising existing access to Ferry Road. (Revised submission).

Refused 25th November 2005

05/59612/005

Demolition of existing dwelling and construction of a two-storey dwelling comprising 3 bedrooms and integral garage/ workshop utilising the existing access to Ferry Road. (Revised Submission)

Permission Granted 7th February 2006

09/59612/006

Revision to replacement dwelling approved under planning permission 05/59612/005. Removal of sloping skylights on the east elevation, replacement of circular opening skylight on the flat roof at first floor level with rectangular opening skylight, glazed infill panels on balconies and replacement of fixed windows on east elevation with casement windows and modification of the front access ramp.

Permission Granted 21st April 2009

3.2 In addition to the planning history relating to the appeal property it is relevant that the LPA has recently granted planning permission to Sinah House for “New cladding to North, South and West elevations, balustrades to North Elevation and alterations to fenestration under application APP/18/00149. The details of this application can be found by following the hyperlink below:

https://planningpublicaccess.havant.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=DCAPR_242898

3.3 It will be noted that amongst the several changes proposed to this dwelling are the addition of 2.0m high privacy screens at either end of new balustrading to the north facing first floor terrace.

3.4 Furthermore, as has been mentioned at paragraph 1.4 planning permission was granted at appeal for a replacement dwelling at Tamarisk (formerly Ferry House), Ferry Road, Hayling Island, PO11 0DG – which is two plots to the west of the appeal property. The details of this application can be found by following the hyperlink below:

https://planningpublicaccess.havant.gov.uk/online-applications/applicationDetails.do?previousCaseType=Property&keyVal=D CAPR_236864&previousCaseNumber=PROPLPI_7609_1&previousCaseUprn=100060444501&activeTab=summary&previousKeyVal=PROPLPI_7609_1

3.5 The two-storey flank wall of this dwelling aligns with the front elevation of the ground floor extension to “The Deck House” and projects beyond this dwellings rear elevation and balcony.

3.6 It is considered that the cases at Sinah House and Tamarisk are relevant to the determination of this appeal given the concerns of the LPA with regards to the “outlook” from some secondary first floor windows and the “spatial characteristics and setting of the streetscene.”

4.0 The Appeal Proposal

4.1 This appeal seeks a grant of planning permission for the construction of two first floor extensions to Spindrift which would enlarge the existing property with additions to the north, south and east sides of the dwelling. The proposals would involve the construction of an “L” shaped first floor addition above an existing flat roofed ground floor extension which wraps around the south and east sides of the building. Secondly, it is proposed to construct a further first floor addition to the rear (north) side of the dwelling above another existing ground floor flat roofed extension/balcony, on its western side.

4.2 The proposed front (south) extension would have a width of some 10.4m and a depth of between 4.9m (where adjoining the existing first floor part of the dwelling) and 8.725m where it extends to the north elevation of the eastern part of this extension. Due to the slanted orientation of the appeal property’s boundary with Sinah House, the proposed, eastern extension, would have a width of 10.4m at the front; 3.9m where it would project east of the south-east corner of the existing first floor and; 5.245m along its southern elevation.

4.3 The proposed extensions have been designed with mono-pitch roofs. The roof above the proposed front and rear extensions, to the western side of the building, would adjoin and replicate the shape, appearance and profile of the existing roof. The proposed roof to the eastern extension would mimic the design and appearance of the existing roof. As such, the dwelling, when completed, would sit beneath a “gull-wing” building. The eaves of the roof at the western and eastern sides of the building would be approximately 9.0m and 7.5m above ground level respectively, with a central gulley reducing the height of the roof to some 6.8m. Externally, the north and south elevations would accommodate floor

to ceiling fenestration incorporating Juliet balconies. The proposed eastern elevation would also include a high-level Clerestory window set immediately beneath the proposed eaves. The proposed extensions would be completed with a light-coloured render finish to match the existing dwelling.

4.4 Internally, the proposed extensions would allow for the enlargement of the existing first floor bedroom and lounge with a further bedroom, office, and bathroom in the eastern part of the development. The proposals also include the provision of a mechanical lift between the ground and first floors.

5.0 Planning Policy

5.1 The revised National Planning Policy Framework (NPPF) was published by the Government on 19th February 2019.

5.2 Paragraph 7 of the Framework states that *“...The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs...”*

5.3 Section 12 of the NPPF relates to “Achieving well-designed places.” Paragraph 124 states *“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities...”* Paragraph 127 sets out 6 design criteria. It states that *“Planning policies and decisions should ensure that developments:*

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”*

5.4 Furthermore paragraph 130 advises that *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents...”*

Local Plan Policy Context

Havant Borough Local Development Framework

5.5 The Havant Borough Core Strategy was formerly adopted on 1st March 2011. It is the principal document in the Council's Development Plan and sets out the spatial planning strategy for the area up to 2026. The LPAs decision stated that the appeal proposal was contrary to policy CS16. This policy states:

“CS16 High Quality Design

Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:
 - a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;
 - b) Integrates with existing local landscape features, promotes wildlife and biodiversity and/or applies characteristics of the local area into the design of a scheme wherever possible to create variety and interest;
 - c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors;
 - d) Is well connected to and integrates with the immediate local area and the wider area by linking to existing pedestrian and cycle routes and encouraging people to use public transport where possible; and
 - e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.
2. Produces a positive relationship between buildings, street and spaces both existing and proposed, where:
 - a) The layout of the development reduces opportunities for crime and antisocial behaviour; contributes to improving community safety; and makes provision for

the management and maintenance of the development;

- b) New streets are not dominated by vehicular traffic;
 - c) The layout of the development is legible, meaning it is easy to orientate oneself and move through.
3. Contributes to the improvement of the public realm close to the development, particularly sites close to town, district and local centres and other priority regeneration areas by using high quality hard and soft landscape material and street furniture; and where development is of a significant scale or prominence makes provision for public art.
 4. Is inclusive by considering the needs of those with disabilities, ensuring safe and convenient access for all; and integrating affordable and supported housing with market housing through tenure blind design to minimise social exclusion and promote social integration.
 5. Maximises opportunities for mixed use developments, particularly in town and district centres; and encourage higher densities (50+ dwellings per hectare) where appropriate.
 6. Mitigates negative environmental impacts through sustainable design and construction methods, resource efficiencies, particularly water and the provision of facilities for waste recycling.
 7. Adapts to the changing needs of the users and the changing climate over the lifespan of the building."

5.6 Havant Borough Council has also produced a number of Supplementary Planning Documents. The SPD quoted by the LPA in its decision is the Borough Design Guide – Adopted 14th December 2011. This provides guidance on building design. Whilst referred to in the decision notice the Officers Report does not specifically state how the proposed extension is actually contrary to the guidance.

6.0 Planning Considerations

6.1 In summary, full planning permission is sought, via this appeal, for the construction of first floor extensions to the north, south and east sides of the existing dwelling. As has been described these extensions would be built over existing ground floor additions and would mimic, in terms of their appearance, the style the design of the existing dwelling.

6.2 The LPA has refused a grant of planning permission for two reasons. Firstly, the LPA considers that *"The proximity to the neighbouring property at Sinah House of the proposed first floor element of the extension on the eastern side of the dwelling would adversely affect the outlook from, and light available to and be detrimental to the amenities of the occupier of the adjacent residential property..."* Secondly, the LPA states that *"The proposal would by reason of its size, design and prominent siting would appear cramped and be harmful to the existing character and appearance of the area conflicting with the established*

pattern of development and spatial characteristics and setting of the streetscene...

Loss of Outlook

6.3 Reason for refusal 1 indicates that the LPA is concerned that the proposed first floor extension to the eastern side of Spindrifft *“...would adversely affect the outlook from, and light available to and be detrimental to the amenities of the occupier of the adjacent residential property...”* The Officers report (attached as **Appendix I**) provides a more detailed explanation of what the LPA considers to be unacceptable about the proposed development.

6.4 Paragraphs 7.6 and 7.7 of the Officers report state:

“7.6 Concerns were raised regarding the impact of the eastern part of the extension giving rise to loss of light, overshadowing, overbearing and lack of privacy.

7.7 It could be argued that the first floor windows in the western elevation of Sinah House are secondary and any resulting impact of the proposal would not constitute a defensible reason for refusal. However, there is history of previous planning applications where although the schemes differed from that of the current application, the impact on Sinah House was similar. These applications were refused and subsequently dismissed on appeal.”

6.5 The case Officer makes reference to two planning appeal decisions (attached as **Appendix II**) which related to the construction of a replacement two storey dwelling within the Spindrifft plot. The Officers report also states that *“Neither the LPA’s policy position nor the circumstances of the site have altered since the time of this appeal. It is therefore considered the proposed scheme does not warrant a change in stance of the decision previously reached by the Planning Inspector that the western facing windows are an important facet of the amenity of Sinah House...”* (paragraph 7.9). The appellant contends most strongly that the physical context of the appeal site (as explained above) together with current planning policy have changed since the appeal decisions in 2004.

6.6 At the time of the Inspector’s site visit in 2004 Spindrifft was a single storey, pre-fabricated building allowing for the occupiers of Sinah House to enjoy mainly unobstructed views from the porthole windows, at first floor level, across the appeal site. The site, at this time, was dominated by its boat related use and activity. This is no longer the case. Planning permission was granted in 2009 for the replacement of Spindrifft with the dwelling now occupying the site. This is constructed with a first floor of accommodation which is on the western side of the dwelling. The first-floor part of Spindrifft now blocks and reduces the outlook from these porthole windows across the Spindrifft plot.

6.7 When the Inspector dismissed the two appeals in 2004 she noted that the first floor room with the porthole windows in Sinah House was in use as a living room. This, again, is no longer the case. The room is now in use as a bedroom. The hyperlink at paragraph 3.2 of this statement will take the Inspector to the Council’s online file for application APP/18/00149 which was granted permission by the LPA in 2018. If viewing the “Amended Proposed Floor Plans” (drawing number 1513 412C) it will be noted that the existing first floor bedroom (with the

porthole windows) is to be modified. The chimney breast is shown as being removed with a bed being placed against the western wall under the windows. Whilst these windows might, in the past, have allowed for the rooms occupiers to enjoy relatively unobstructed views to the west, they no longer do, due to the physical obstruction of the replacement dwelling at Spindrift. Furthermore, the change in use of the room itself to a bedroom (from a living room) would also reduce both the frequency of the use and level of value afforded by these windows. It is argued, therefore, that these windows now have the character and amenity value, of secondary room windows with the rooms primary room windows being located in the north and south elevations of the dwelling which allow for views over the harbour and Ferry Road respectively.

6.8 The Inspector, when commenting on the two appeals in 2004, was of the view that the two porthole windows were an integral part of the dwellings design, and were not “secondary windows”. The appellant argues that the physical environment of Sinah House has changed since the appeal decisions in 2004 and that the function of the porthole windows as primary windows has now diminished significantly in subsequent years. When considering whether windows are primary or secondary room windows the appellants consider that the following factors should be taken into account:

- Location of window within the room;
- Design of window;
- Size of the window;
- Method of glazing (Clear/obscured);
- Cill height of window – views possible from sitting/standing position.

6.7 All of the above factors should be combined to determine the importance of a window. The **location** of a window within a room is usually determined by the outlook available from that window and the amount of light that it would let into a room. In the case of Sinah House the principle outlook would be expected to be out of the dwellings windows to the north and south, towards the harbour and Ferry Road. The outlook from the porthole windows would be towards the other dwellings in Ferry Road to the west. It is argued, therefore, that the outlook from the windows to the front and rear of the dwelling offer more amenity value to the rooms occupiers than would allow an outlook towards the flank elevation of adjacent dwellings. Furthermore, whilst it is recognised that the porthole windows would allow some afternoon and evening sunlight in to the room it is considered, due to their size, that this would be secondary to the amount of light let in by the room’s other windows.

6.8 The appellants would describe the porthole windows to be “feature” windows that are **designed** to be interesting to look at, from either inside or outside the dwelling, that reflect the character of the sites coastal, and boat related, location. However, the window within the rooms north elevation is a bay window which has been designed to allow the rooms occupiers to enjoy expansive views of the harbour beyond. Whilst the porthole windows are designed to be visually interesting it is considered that the bay window in the rooms north elevation is designed specifically to allow the occupiers of the room the best possible views towards the harbour.

6.9 It is also considered that the **size** of a window would reflect its functional importance to a room. In the case of the porthole windows it is considered that these are relatively small reflecting their main function which is as decorative, feature windows. The larger windows are to the north and south which allow more light into the room and offer the occupier a more expansive outlook towards the harbour and Ferry Road than do the porthole windows.

6.10 Secondary room windows can be either clear or obscure **glazed**. Given that the porthole windows are clear glazed it is considered that one of their functions is to allow the rooms occupiers to look out of them. However, the windows to the north and south are also clear glazed offering the rooms occupiers more expansive outlooks.

6.11 Finally, it is considered that the **cill** level of a window is also a determining factor as to whether a window is a primary or secondary opening. Due to the cill height of the porthole windows being set at approximately 1.4m above internal finished floor level an occupier of the room would only be able to enjoy the outlook from the porthole windows if they were standing up (i.e. not sitting down). As such, it is considered that they offer lesser levels of amenity value than the windows to the north and south of the room.

6.12 It is apparent that one of the main reasons the LPA refused the planning application, now the subject of this appeal, was because of the two appeal decisions from 2004. However, the appellant argues that the LPA was wrong to state that the site circumstances have not changed since 2004 as they clearly have with both the replacement of the original, single storey, dwelling at Spindrift and the change in function of the first-floor room, to a bedroom, on the west side of Sinah House. Consequently, it is contended that the amenity value afforded to the two porthole windows within the west elevation of Sinah House has reduced to the extent that they can no longer be considered primary windows.

6.13 When considering the proposed extension along the eastern side of Spindrift the Case Officer has stated “...*It is therefore considered that the issues raised earlier are still pertinent to the current application and the development would be harmful to the established pattern of development in the vicinity and would result in an excessive building bulk on the eastern side of the property, detrimental to the visual outlook and amenities of the occupiers of this property...*” (para. 7.9).

6.14 Other than the earlier reference to the impact of the appeal proposals upon the high-level windows within the west elevation of Sinah House the LPAs comments are not specific with regards to any other form of alleged harm caused by the proposed development to the amenities of the occupiers of Sinah House other than “... *excessive building bulk on the eastern side of the property, detrimental to the visual outlook and amenities of the occupiers of this property...*”.

6.15 In making these comments the LPA has not referred to other similar development that has been permitted recently within this part of Ferry Road. For instance, the LPA appears not to have taken into account a recent appeal decision (attached as **Appendix III** - PINS Ref: APP/X1735/W/16/3158213) relating to the dwellinghouse currently under construction immediately west of The Deck House (which is next door to the appeal property). The Inspector will note

when viewing development within the area the similarities between the relationship of the appeal property and the adjacent dwelling immediately to the east (i.e. proximity to boundary; height of flank wall etc).



Figure 9 Dwelling under Construction following Appeal decision APP/X1735/W/16/3158213 (please also refer to Figs. 6 & 7)

6.16 It is clear that LPAs should be consistent when making decisions on planning applications. In the recent case of *Baroness Cumberlege v Secretary of State for Communities & Local Government* [2017] EWHC 2057, a planning permission granted by the secretary of state for a housing development was quashed after he had failed to take into account a decision taken by his own department a mere 10 weeks earlier. In this case the High Court held that the secretary of state's decision that a planning policy was out-of-date, and thus could be given less weight, was completely inconsistent with the decision of his own department, which was that the policy was up-to-date. Howell QC stated (at paragraph 100) that: *"There is a public interest in securing reasonably consistency in the exercise of administrative discretions that may mean that it is unreasonable for a decision-maker not to take into account other decisions that may bear in some respect on the decision to be made. There is no exhaustive list of the matters in respect of which a previous decision may be relevant. That must inevitably depend on the circumstances."* A commentary on this case entitled [*"The importance of consistency in planning decisions"*](#) published in the journal *PBC Today* on 19th December 2017 noted *"...The earlier decision was not so different that it could reasonably be ignored. Any reasonable decision-maker would have considered it and decided whether they agreed with the reasoning given for regarding the policy as being up-to date and whether the reasons were equally applicable to the present case. They should also have provided reasons for any departure from the previous decision...."*

6.17 It is considered that the relationship between Spindrift and Sinah House is very similar to that between the dwelling under construction in the "Tamarisk" plot and "The Deck House" which is immediately to the east. In this case the

Inspector did not consider the proposed development would cause “...excessive building bulk on the eastern side of the property, detrimental to the visual outlook and amenities of the occupiers of this property...”.

6.18 The appellants contend, therefore, that the proposed development would not cause harm to the amenities of the occupiers of Sinah House to the extent that planning permission should have been refused by the LPA.

6.19 Other than the matters raised in the LPAs first reason for refusal it is apparent that in all other respects, regarding impacts on residential amenity, Havant Borough Council finds the proposals to be acceptable. It is stated at paragraph 7.10 of the Officers Report that “Regarding the first-floor front and rear extensions on the western side of the property, there are a continuation of the existing western elevation, retaining the 1 metre distance to the boundary and there are no new windows in the side elevation. A 45 degree angle test was carried out as recommended in the Havant Borough Council Borough Design Guide SPD, which verified the proposed front extension falls outside the overshadowing zone of first floor windows at The Deck House. It is therefore considered a reasonable outlook would be retained from the closest neighbouring windows at this property...”

Established Pattern of Development and Spatial Characteristics and Setting of the Streetscene

6.20 The LPAs second reason for refusal states that “The proposal would by reason of its size, design and prominent siting would appear cramped and be harmful to the existing character and appearance of the area conflicting with the established pattern of development and spatial characteristics and setting of the streetscene...”

6.21 The appellant simply does not understand the LPAs second reason for refusal. Figure 10 below shows the row of 5 dwellings located on the northern side of Ferry Road at its western extremity. Spindrift is the property in the centre of this row. The Inspector will note that Spindrift is the only dwelling within this row that is not developed almost entirely across the width of its plot at first floor level.



Figure 10 Ferry Road Streetscene

6.22 Contrary to the allegation of the LPA, the appellant argues that the construction of the first floor extensions would reflect “...the existing character and appearance of the area...” and rather than conflict “...with the established pattern of development and spatial characteristics and setting of the streetscene...” the appeal proposals would complement the context of development in the immediate area.

6.23 It is apparent that the gap that would be left between Spindrift and Sinah House would be similar to the gaps separating all of the other dwellings within the

road. This was recognised by Inspector Clifford who allowed the Tamarisk appeal. This tight knit urban grain represents the established pattern of development in the area and the appeal proposal, if allowed, would replicate the spatial characteristics and setting of the streetscene.

6.24 The appellants argue that their proposals are compliant with current planning policy. For instance paragraph 127 of the NPPF states that *“Planning policies and decisions should ensure that developments... a) will function well and add to the overall quality of the area...b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping... c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change ...”* The appellant contends that his proposals are compliant with the design section of the NPPF.

6.25 Furthermore, the appellant considers that the appeal proposals are compliant with both Local Plan policy CS16 and the Council's Design SPD. Policy CS16 states *“All development should demonstrate that its design: 1. Responds to, draws inspiration from and respects local context and: a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site...b) Integrates with existing local landscape features... c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors...”*

6.26 The Case Officer states at 7.9 of the report that *“Neither the LPA's policy position nor the circumstances of the site have altered since the time of this appeal....”* The appellant would like to point out that this statement is incorrect. Almost all planning policy that was current in 2004 has been replaced by the NPPF, 2019, the Havant Borough Local Development Framework, 2011-2026, and other Supplementary Planning Documents.

6.27 In particular, the appellant would like to advise the Inspector that the Council's Design Guide currently seeks to protect the amenities of the occupiers of adjacent residential property from overlooking from first floor secondary room windows. This guidance has been adopted by the LPA since the appeal decisions of 2004. Paragraph 5.06 of the Council's Design Guide, 2011, states *“Some overlooking of gardens from the upper floors of dwellings will be unavoidable in most urban and suburban housing layouts. However, the design should aim to mitigate these effects as far as possible by carefully designing the internal floor layout to concentrate habitable rooms away from adjacent properties where overlooking could be an issue. The council could also impose a planning condition as part of a planning consent, requiring obscurely glazed first floor bathroom or secondary windows to protect residential amenity.”* It can be seen that the Council now recommend, according to this guidance, that side facing, first floor secondary windows should be fitted with obscure glazing in order to minimise overlooking. It is also the case the LPAs often view clear glazed windows, within first floor side elevations of dwellings, as being unreasonably prejudicial to the future redevelopment of adjacent sites.

6.28 The appellant is perplexed, therefore, with the LPAs decision refuse the appeal application and, in effect, allow his property to be continually overlooked

by the clear glazed secondary room windows in the west elevation of Sinah House.

7.0 Conclusions

7.1 The appellants argue that, in the case of the appeal application, the LPA should have taken a more 'balanced' view. It is contended that the decision of the LPA to refuse planning permission was unreasonable and that the proposed extensions would only have an impact upon secondary room windows to the adjacent property Sinah House. The appellant argues that the LPA has placed a disproportionate amount of weight on the impact of the proposed development upon secondary room windows and not taken into account that the same room is also served by primary windows to the front and rear.

7.2 Furthermore, the appellants contend that the LPA has also misinterpreted the context of development within this part of the Ferry Road streetscene which is characterised by dwellings which are sited in very close proximity to one another with only limited separation distances between their flank elevations. Additionally, LPA appears not to have taken into account a recent appeal decision relating to the dwellinghouse currently under construction to the west of The Deck House. It is considered that this development consolidates the prevailing character of housing development within this stretch of Ferry Road as being tight knit.

7.3 Given the foregoing it is considered that the proposed development would not *"cause demonstrable harm to interests of acknowledged importance."* It is respectfully requested that the Planning Inspector views the proposal favourably and allows this appeal.

APPENDIX I

Officers Report on Application APP/19/00129

(Attached as a separate document)

APPENDIX II

Spindrift Appeal Decisions from September 2004

(Attached as a separate document)

APPENDIX III

Tamarisk Appeal Decision (PINS Ref: APP/X1735/W/16/3158213)

(Attached as a separate document)