

Development Management Committee Report



Committee Date: **21 February 2024**

Application Number **06/23/0393/VCF** - Click [here](#) to see the application webpage

Site Location Darwin Court, Nuffield Crescent, Gorleston, Great Yarmouth, NR31 7LP

Proposal Retrospective application for a variation of Conditions 2 (approved plans) and 9 (Landscaping) of pp. 06/14/0773/F (Construction of 46 no. dwellings with associated parking and site works on site of former residential care home) - Amendment to surface water drainage soakaway location and revised timescale for tree planting

Applicant Mr Michael Coe, Holly Lodge, 118 Corton Long Lane, Corton, Lowestoft NR32 5HD

Case officer Rob Tate

Parish & Ward Magdalen Ward, Gorleston

Date Valid 30-05-23

Expiry / EoT Date 23-02-24

Reason at committee Constitution: This is a major development of more than 25 dwellings.

SUMMARY OF RECOMMENDATION: GRANT PLANNING PERMISSION SUBJECT TO CONDITIONS

1. The Site and Proposal

- 1.1. The application site is 0.82 ha in area and previously contained the Magdalen House care home. In 2016 planning permission was granted for the "Construction of 46 no. dwellings with associated parking and site works on site of former residential care home" (permission ref. 06/14/0773/F). The permission created a square of four rows of terraced houses around an internal parking courtyard and at the centre of the courtyard was a small landscaped space also surrounded by parking. The dwellings have been constructed and the scheme has been fully occupied since July 2020.
- 1.2. This application has been submitted retrospectively to propose regularising the current development which has not been carried out in accordance with the details required by the approved planning permission 06/14/0773/F.
- 1.3. Specifically, the surface water drainage soakaway has not been installed as per the approved drawings, because it was required to be located underneath the shared parking area but it has been relocated to the area of green space at the centre of the parking court.

- 1.4. It is also clear that the applicant has failed to provide any of the tree planting necessary required as part of the development, neither within the interior nor around the outward-facing perimeter streets, contrary to the approved planting/landscaping scheme details and therefore in breach of conditions. The tree planting which had not been undertaken by mid-January 2024 is:
- 7no. street trees have not been provided on Nuffield Crescent, Hertford Way and Magdalen Way; and,
 - 2no. trees have not been planted within the site's interior on the central island open space.
- 1.5. The application initially proposed an amended landscaping scheme which sought approval to remove the existing requirement to provide the trees as approved. However, that proposed landscaping scheme was considered to be unacceptable and a retrograde step which could not be supported. The applicant was made aware that their proposed amended landscaping scheme would not be supported, and has recently agreed to implement the original landscaping scheme.
- 1.6. The current application has been amended accordingly. It now seeks (retrospective) permission for just the revised soakaway location.

2. Relevant Site Constraints

- 2.1 The site is within the development limits defined by GSP1.
- 2.2 Part of the site is at medium risk of Surface Water Flooding (in in 100 year event risk).
- 2.3 The site is within Affordable Housing Submarket Area 2 as defined by CS4.
- 2.4 The site is within the Green 2.5km+ Indicative Habitat Impact Zone.
- 2.5 TPO No.2 of 2014 covers a group of 4 trees and a single tree at the Nuffield Crescent entrance to the internal parking courtyard.

3. Relevant Planning History

06/14/0773/F. Construction of 46 no. dwellings with associated parking and site works on site of former residential care home. APPROVED 08-08-16.

Planning permission was granted subject to a Section 106 Agreement dated the 8th August 2016. The Main terms included Library Contributions, Recreation and Open Space, Green Infrastructure, Affordable Housing and Road Provisions. All contributions have been made and the only remaining obligations are to maintain the road and drainage as private concerns.

4. Consultation responses

- 4.1 Local Highway Authority (Norfolk County Council)

No objection.

- 4.1.1 The Highways Officer noted concern about the changed landscaping scheme and noted that they would prefer the trees to be planted as agreed.

4.2 Arboricultural Officer

No objection.

5. Publicity & Representations

5.1 Consultations undertaken: As a major development the application was advertised by Site notices and Press advert. The latest consultation period expired after 21 days on 29-09-23.

5.2 Ward Members – Cllrs Green, Pilkington and Wainwright

No representations have been received.

5.3 Public Representations

At the time of writing no public comments have been received.

6. Relevant Planning Policies

The Great Yarmouth Core Strategy (adopted 2015)

Policy CS9: Encouraging well-designed, distinctive places.

Policy CS11: Enhancing the natural environment.

The Great Yarmouth Local Plan Part 2 (adopted 2021)

Policy I3: Foul Drainage.

Policy E4: Trees and landscape

Policy A2: Housing Design Principles.

7. Other Material Planning Considerations

National Planning Policy Framework (Dec 2023)

The policies in the Framework are material considerations which should be taken into account in dealing with applications.

- Section 4. Decision-making
- Section 12. Achieving well-designed and beautiful places
- Section 14. Meeting the challenge of climate change, flooding and coastal change

8. Planning Analysis

Legislation dictates how all planning applications must be determined. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

- 8.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) states: *In dealing with an application for planning permission the authority shall have regard to:*
- (a) the provisions of the development plan, so far as material to the application,*
 - (aza) a post-examination draft neighbourhood development plan, so far as material to the application,*
 - (b) any local finance considerations, so far as material to the application, and*
 - (c) any other material considerations.*
- 8.2 This is reiterated at paragraphs 11, 12 and 47 of the National Planning Policy Framework.

Main Issues

The main planning issues for consideration include:

- Principle of Development
- Drainage
- Trees and Landscaping
- Impact on Designated Habitat Sites

9. Assessment:

Principle of Development

- 9.1 The principle of development has already been accepted by permission 06/14/0773/F. This application is seeking alterations for the surface water drainage scheme, and it is not necessary to revisit the principle of development.

Surface Water Drainage

- 9.2 The approved drainage scheme for planning permission 06/14/0773/F included a soakaway located under the now-tarmacked roadway which serves the shared parking area, as shown in approved drawing 6014-C-101-1 Rev. P1. The development was not carried out in accordance with this approved drainage scheme.
- 9.3 The application therefore seeks to regularise the installation of the soakaway within the central grassed island of the parking court. Aerial photographs would indicate that this was installed prior to 2018.
- 9.4 Policy CS11 expects that new development utilises sustainable drainage systems. Policy I3 states in part that “that no surface water connections should be made to the foul system and connections to the combined or surface water system should only be made in limited circumstances where there are no feasible alternatives”.
- 9.5 This is consistent with the drainage hierarchy outlined in Planning Practice Guidance which expects that surface water must be discharged as high up the following hierarchy as possible:
- Rainwater re-use (rainwater harvesting/greywater recycling)
 - An adequate soakaway or other infiltration system
 - Hybrid solution of infiltration and discharging to a surface water body
 - To a surface water body (e.g. an ordinary watercourse)
 - To a surface water sewer, highway drain, or other drainage system
 - To a combined sewer

- 9.6 Infiltrating surface water to a soakaway therefore remains a suitable solution to dealing with surface water. As indicated on the plans, the soakaways are similar sizes. Whilst a small part of the site is indicated as being at risk of surface water flooding, there is no indication that the change in position of the soakaway will affect its performance.
- 9.7 The relocation makes practical sense because it avoids the tarmacked courtyard being broken up at times when the soakaway needs maintenance including de-silting. To locate it in the central grassed space will cause occasional disruption but is suitable, providing it takes account of the required tree planting and includes suitable protection.
- 9.8 It is therefore considered that the amended location of the soakaway is acceptable and complies with Core Strategy Policy CS11 and Local Plan Part 2 Policy I3.

Trees and Landscaping

- 9.9 The approved landscaping scheme (drawing 2074-15 Rev.4) shows the planting of 2 trees within the central island (*Amelanchier Lamarkii* Snowy Mespilus) along with shrub planting. Street trees were also proposed, and therefore required, to be planted along Magdalen Square, Hertford Way and Nuffield Crescent.
- 9.10 Street trees are important design features and are expected under policies A2 and E4 and the NPPF is clear at paragraph 136 about the importance of trees in new developments. To have proposed a scheme without this planting would be unsuitable and contrary to both local plan policies and the NPPF which states that schemes which are amended at the expense of good design should be refused.
- 9.11 The applicant has not provided any evidence to justify why the planting has not been undertaken. The applicant has now agreed to plant the trees in accordance with the landscaping scheme approved by the original planning permission. It should be noted that condition 9 of permission 06/14/0773/F require that the planting should have taken place prior to completion of 80% of the dwellings. Given that this has not happened, the development is in breach of the planning condition and is not immune from enforcement of that condition. Formal planning enforcement action is being held in abeyance whilst this application is determined.
- 9.12 It is recommended that any permission granted to amend the soakaway drainage solution also amends the existing Condition 9 to ensure that planting of the remaining trees takes place in the current planting season (i.e. no later than by the 31st March), and that these trees are replaced if they fail or die within 3 years of being planted. The applicant has suggested the planting will be completed in February which would be comforting as it would improve the chance of successful establishment.
- 9.13 If a new permission granted is made subject to this amended condition, the landscaping scheme approved in 2016 is considered to remain acceptable, and it would continue to comply with policies CS11, A2 and E4.
- 9.14 However, the two trees required in the centre of the site where the soakaway is now located would need to be installed with suitable root containment / direction measures to protect the soakaway from the roots, and to ensure any replacement or repair of the soakaway can be undertaken without harm to the trees. To some extent the same applies to the trees required in the highway verge, but the importance of securing appropriate measures for trees adjoining the soakaway is greater given the tree roots will search out the water in the soakaway. No

details have been provided to date; further clarification will be provided in advance of the Committee meeting.

- 9.15 Permission should not be granted for soakaway relocation without both the trees on the street frontages and in the interior of the development being required, and with suitable protections, because the development would not provide suitable design or public amenity and would be contrary to adopted policies and the recently-adopted Borough-wide Design Code.

Impact on designated Ecological Sites

- 9.16 The application is an application made under Section 73a of the Town and Country Planning Act, to vary a planning permission for 46 dwellings where the development has already been commenced. Given the quantum of development, and the location of the site within the Green 2.5km+ Indicative Habitat Impact Zone, usually a bespoke Habitats Regulation Assessment (HRA) and a GIRAMS contribution of £ 9,698.64 (£210.84 x 46) would be expected to overcome the cumulative recreational impacts on designated sites within the Borough.
- 9.17 The original application was determined in 2016. The Conservation of Habitats and Species Regulations 2017 came into force, and prior to the Council adopting its Habitats Mitigation and Management Strategy (a precursor to the county-wide GIRAMS mitigation scheme) to address the legal requirement to prevent a likely detrimental impact on designated ecological sites. As such there was no need for the 2016 application to include a Habitats Regulations Assessment or provide mitigation at the time. The legal test for introducing the requirement to provide mitigation now, would be to consider if this Section 73a application is the permission or plan that creates a new impact on protected sites. Given that the site has been occupied in its entirety, it is not considered that any new permission granted would enable a new impact, and therefore, it is not considered reasonable to seek a new HRA or mitigation associated with this application.
- 9.18 As the development is 100% occupied and this Section 73 application does not result in a net increase in dwellings or a net change in recreational pressure on designated sites (as it relates only to the change of position of the soakaway), in this instance, it is not necessary to secure a HRA or GIRAMS contribution.

Local Finance Considerations

- 9.18 Under Section 70(2) of the Town and Country Planning Act 1990 the Council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are defined as a government grant such as new homes bonus, or the Community Infrastructure Levy (which is not applicable to the Borough of Great Yarmouth). Whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision on the potential for the development to raise money for a local authority, for example. There do not appear to be any planning-related local finance considerations linked to this development.

10. Conclusion and Recommendation

- 10.1 The soakaway position as installed is considered acceptable and continues to accord with the drainage hierarchy as outlined in Planning Practice Guidance, without apparent detriment to the remainder of the development other than the possible successful introduction of trees

within the central landscaped space. Case law has established that applications made under section 73 can be determined with amended conditions where they are directly relevant to the matters proposed under the variation. Amended conditions are therefore required to ensure that the outstanding tree planting is carried out with suitable tree establishment, growing mediums and protection measures in place.

10.2 Furthermore, the applicant has agreed there is no evidence that tree planting in the landscaped spaces and in the highway frontages would not be possible. The applicant has agreed to a planting timescale of before March 31st, in order to avoid the need for formal planning enforcement action as a breach of planning condition, which requires an amendment to the previous Condition 9.

10.3 Other conditions will need to be revised to ensure that they remain in place as compliance conditions as per the table below:

Condition on 06/14/0773/F	Condition Requirement	Proposed Modification	Proposed condition
1	Time Limit to commence	No need to reimpose – development has been commenced	n/a
2	Approved Plans	Reword to include revised drainage plan and to provide further clarity.	1
3	Boundary railings shall not overhang highway	Reword to retain railings.	5
4	Car Parking / Access to be provided and retained	Reword to retain car parking / access for that specific use.	6
5	Materials in accordance with approved details	Reword to retain in accordance with materials schedule.	7
6	Off-site highway improvement works to be carried out	Removed - No need to reimpose as works have been carried out.	n/a
7	Bin storage to be provided and retained	Reword to retain bin store areas.	8
8	Boundary treatments to be provided and retained	Reword to retain the boundary treatments which have been installed in accordance with plans.	9
9	Landscaping to be provided prior to 80% of dwellings being completed. Any trees which dies in 3 years are to be replaced in the next planting season.	Impose with revised wording to ensure that planting is provided to the agreed specification within 28 days.	2
		Add a new separate condition that requires planting to be undertaken in accordance with specific details for trees planted in the vicinity of the soakaway, including use of root barriers.	3
		Add new separate condition to ensure that replacements are	4

		provided if there are any which die or are removed or damaged.	
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- 10.3 Having considered the details provided, and those additional details which are considered reasonable and necessary and expected to be provided prior to the Committee meeting, it is considered the application is able to comply with policies CS9, CS11, A2, E4 and I3.
- 10.4 The Section 106 Agreement which forms part of the parent planning permission Ref 06/14/0773/F contains a clause allowing changes under S.73 of the Act to proceed without the need to specifically amend the s106 Agreement. As such, this application requires no changes to the existing Section 106 Agreement, but any new permission granted will continue to be bound by the terms of the Section 106 Agreement dated 8th August 2016.
- 10.5 It is considered that there are no other material considerations to suggest the application should not be recommended for approval.

11. RECOMMENDATION

- 11.1 It is recommended that application 06/23/0393/VCF should be APPROVED, subject to the proposed conditions listed below:

PROPOSED CONDITIONS

Development to accord with approved plans and details

1. The development shall be retained in accordance with the following revised plan received by the Local Planning Authority on the 6th February 2024:

- Soakaway Location. GC/419/01 Rev.A
- Planting Specification

And the development shall be undertaken in strict accordance with the following plans approved by the Local Planning Authority as part of Planning Permission 06/14/0773/F:

- Site Layout Plan GC/161/01 Rev.A
- Street Scenes GC/161/02
- Roof Plan GC/161/03
- Floor Plans, Plots 1-22 GC/161/04
- Elevations, Plots 1-22 Sheet 1 GC/161/05
- Elevations, Plots 1-22 Sheet 2 GC/161/06
- Elevations and Floor Plans – Plots 23-29 GC/161/07
- Elevations and Floor Plans – Plots 30-35 GC/161/08
- Elevations and Floor Plans – Plots 36-40 GC/161/09
- Elevations and Floor Plans – Plots 41-46 GC/161/10
- Elevations and Floor Plans, sheds serving flats. GC/161/11
- Soft Landscaping – Planting 2074-15 Rev.4
- Site Layout – External Works 6014-C-100-1 P7
- External Works and Highway Drainage Details 6014-C-101-1 P2
- External Works and Highway Drainage Details 6014-C-101-2 P2
- Drainage Details – Sheet 1 6014-C-103-1 P1
- Drainage Details – Sheet 3 6014-C-103-3 P1

Reason: For the avoidance of doubt.

Landscaping/Planting to be carried out

2. No later than 31st March 2024, the planting indicated on the approved landscaping scheme drawing 2074-15 Rev.4 shall be carried out in its entirety (9no. trees in total). Save for the two *Amelanchier Lamarkii* trees to be provided in the central grassed area of the site, all trees shall be planted in strict accordance with the Planting Specification Document submitted to the Local Planning Authority on the 6th February 2024.

All trees shall thereafter be maintained in strict accordance with the maintenance details provided within the Planting Specification Document received on the 6th February 2024.

Reason:

To create visually attractive street scenes and to provide biodiversity benefits, in accordance with Core Strategy (2015) Policy CS11 and Local Plan Part 2 (2021) Policies A2 and E4.

Planting specifications for trees in the vicinity of the soakaway

3. *NOTE TO COMMITTEE – This condition is expected to be updated prior to the Committee meeting, concerning the clarified details of root containment and tree planting details.*

No later than 31st March 2024, the two *Amelanchier Lamarkii* trees to be provided in the central grassed area of the site shall be planted in accordance with *[specific details for trees to be successfully planted in the vicinity of the soakaway, including use of root barriers]*.

All trees shall thereafter be maintained in strict accordance with the maintenance details provided within the Planting Specification Document received on the 6th February 2024.

Reason:

As the trees within the central grassed area are necessary ensure a high quality form of development and in the interests of ensuring appropriate visual amenity for the local area, to enhance biodiversity and to secure appropriate residential amenity in accordance and the root barrier measures are required to ensure that the planting does not adversely affect surface water drainage; in accordance with Policies CS9 and CS11 of the adopted Great Yarmouth Local Plan Core Strategy (2015).

Trees to be replaced if they die within 3 years of this consent

4. For the duration of a period of 3 years from this consent, any trees, shrubs or hedges planted in accordance with the landscaping scheme which die, are removed or become seriously damaged or diseased shall be replaced in the next immediate planting season with others of similar size and species.

The reason for the condition is :-

To ensure a high quality form of development and in the interests of ensuring appropriate visual amenity for the local area, to enhance biodiversity and to secure appropriate residential amenity in accordance with Policies CS9 and CS11 of the adopted Great Yarmouth Local Plan Core Strategy (2015).

No part of boundary railings to overhanging highway

5. No part of the installed boundary railings shall overhang or encroach upon highway land and no gate if installed shall open outwards over the highway.

Reason: in the interests of highway safety in accordance with Core Strategy (2015) Policy CS16.

Access / car parking area to be retained for that specific use

6. The access / car parking area, as shown on plan GC/161/01 Rev.A shall be retained thereafter for that specific use.

Reason: To ensure the permanent availability of the parking / manoeuvring area, in the interests of highway safety in accordance with Core Strategy (2015) Policy CS16.

Materials

7. The materials used in the development shall be in accordance with the approved materials schedule within planning permission 06/14/0773/F.

Reason: In the interest of the visual appearance of the development, in accordance with Core Strategy (2015) Policies CS1 and CS9.

Bin Storage Areas

8. The bin storage areas shown on drawings GC/161/01/A and GC/161/11 along with the bins, shall be provided and retained and shall at all times be available for bin storage thereafter.

Reason: To ensure satisfactory on site bin storage provision, in accordance with Core Strategy (2015) Policy CS9.

Boundary Treatments

9. The boundary treatments shown on drawing GC/161/01/A and GC/161/02 shall be provided and thereafter retained in accordance with the details provided on the approved plans.

Reason: To ensure that the development is carried out in the manner envisaged by the Local Authority, in accordance with Core Strategy (2015) Policies CS1 and CS9.

PROPOSED INFORMATIVE NOTES

NOTES - Please read the following notes carefully:-

1. It is an OFFENCE to carry out any works within the Public Highway, which includes a Public Right of Way, without the permission of the Highway Authority. This development involves work to the public highway that can only be undertaken within the scope of a Legal Agreement between the Applicant and the County Council. Please note that it is the Applicants' responsibility to ensure that, in addition to planning permission, any necessary Agreements under the Highways Act 1980 are also obtained and typically this can take between 3 and 4 months. Advice on this matter can be obtained from the County Council's Highways Development Management Group based at County Hall in Norwich.
2. Public Utility apparatus may be affected by this proposal. Contact the appropriate utility service to reach agreement on any necessary alterations, which have to be carried out at the expense of the developer.
3. If required, street furniture will need to be repositioned at the Applicants own expense.
4. This proposal involves excavations adjacent to the public highway. It is an OFFENCE to carry out any works that may affect the Public Highway, which includes a Public Right of Way, without the permission of the Highway Authority. Please note that it is the Applicant' responsibility to ensure that, in addition to planning permission, any necessary consents or approvals under the Highways Act 1980 and the New Roads and Street Works Act 1991 are also obtained from the County Council.
5. This application is the subject of a legal agreement under Section 106 of the Town and Country Planning Act 1990 dated 8th August 2016 (originally associated with pp 06/14/0773/F) and includes a Management Agreement for the site, including the roads and drainage features.

Appendices:

Site Location Plan

APPENDIX 1: Site Location Plan

