

# Development Management Committee Report



Committee Date: **21 February 2024**

Application Number	06/23/0847/CU – (Click <a href="#">here</a> to see application webpage)
Site Location	1 Carrel Road, Gorleston, Great Yarmouth, NR31 7RF
Proposal	Retrospective application for the construction of residential driveway and change of use of land from open space/amenity land to private residential curtilage
Applicant	Mr & Mrs Fish
Case officer	Ellie Nutman
Parish & Ward	Gorleston Ward
Date Valid	12 January 2024
Expiry Date	08 March 2024
Reason at committee	Connected application: The land the subject of this application is owned by Great Yarmouth Borough Council.
Procedural notes	This application was reported to the Monitoring Officer as an application submitted for development on land owned by the Borough Council, for determination by the Borough Council as Local Planning Authority. The application was referred to the Monitoring Officer for their observations on 13/02/24, to afford the Monitoring Officer an opportunity to check the file and ensure they are satisfied that it has been processed normally and that no other members of staff or Councillors have taken part in the Council's processing of the application other than staff employed within the LPA as part of the determination of this application. Any discrepancies will be raised by the Monitoring Officer prior to the meeting.

## **SUMMARY OF RECOMMENDATION: DELEGATE TO HEAD OF PLANNING TO APPROVE SUBJECT TO NO ADVERSE COMMENTS FROM LOCAL WARD COUNCILLORS AND CONDITIONS**

### **1. The Site**

- 1.1 The application site is located in Gorleston within the housing estate situated south of the James Paget Hospital. The area consists of a mixture of detached, semi-detached and terraced dwellings.
- 1.2 The application site is a detached dwelling that benefits from a large drive and private garden space to the rear of the property.

- 1.3 There are a number of dwellings within the area, such as 5 Carrel Road and 2 and MacKenzie Close, that can be seen with large front drives.
- 1.4 There is a narrow strip of grassed open amenity land to the north of the site that stretched around the curved public footpath adjacent to Wood Farm Lane which continues into Carrel Road.

## **2. The Proposal**

- 2.1 This is a planning application that seeks retrospective permission for the construction of a private residential driveway and parking area and change of use of the land from being formal open space / public amenity land into use as part of a private residential curtilage.
- 2.2 The application is retrospective because the driveway has been constructed in full and the change of use has already commenced, and the application seeks to retain the residential driveway.

## **3. Site Constraints**

- 3.1 The land the subject of the retrospective development has a formal planning designation of being public amenity land and open space established by Section 106 Agreement.
- 3.2 The land is public open space and the type of open space is considered as "Informal Amenity Green Space" land as defined by the Open Space Supplementary Planning Document (SPD).

## **4. Relevant Planning History**

- 4.1 The site is within the Wood Farm Lane Housing Development that was carried out between the period of 1994 when the outline application was first received and 2007-2010 where the last dwellings on the estate were completed as seen from aerial map images.
- 4.2 The parent permission for the housing development is outline application 06/94/0247/SU, and there were various other applications such as 06/98/0466/SU that sought to vary conditions, and 06/03/0704/D which held details of reserved matters. The relevant planning history is detailed below:
- 4.3 06/94/0247/SU - Land part of Wood Farm Lane  
Business/commercial park and residential with associated landscaping and open space  
APPROVED 27 July 1995
- 4.4 06/98/0466/SU - Wood Farm (part) Wood Farm Lane  
Variation of cond 1 of pp 06/94/0247/SU to allow development to commence no later than July 2003  
APPROVED 22 February 1999
- 4.5 06/03/0704/D - South Gorleston Development Area, Gorleston  
Twelve detached houses and garages (reserved matters)  
APPROVED 19 September 2003

- 4.6 06/08/0005/F - 1 Carrel Road, Gorleston  
Single storey side extension  
APPROVED 28 January 2008
- 4.7 There are no conditions on the various permissions concerning use of the open space.
- 4.8 The Section 106 Agreement which originally established the public open space land is dated 27 September 2002 and forms of part of planning permission 06/94/0247/SU and 06/98/0466/SU. The open space designation is set out at section 1.3 of the Agreement.
- 4.9 A Second Section 106 Agreement was completed pursuant to the reserved matters approval (ref 06/03/0704/D), dated 24 July 2003. That Agreement concerned the defined extent of the highway and footpaths, and sewerage, but did not affect the land the subject of this application.

## **5. Consultation Responses**

### **5.1 Local Highway Authority**

**No objection**

### **5.2 Arboricultural Officer**

**No objection**

Summary of response:

- 5.2.1 The works that have been undertaken are outside of any Root Protection Area (RPA) of any adjacent public trees and will have had little to no impact upon their retention span, condition and public visibility.
- 5.2.2 Due to the construction the residential driveway is now in closer proximity to the adjacent trees. These trees will impact upon the driveway in future due to the growth of the tree, including above and below ground.
- 5.2.3 The nearby trees are upon GYBC-owned land so there is no requirement for the implementation of a TPO to preserve the trees currently.

## **6. Publicity & Representations received**

- 6.1 Consultations undertaken: A site notice was posted at the site. Public consultation ran until 05 January 2024.
- 6.2 Ward Councillors
- 6.2.1 Planning Officers have noticed that Ward Councillors have not been expressly consulted due to an administrative oversight. Councillors Cllr Flaxman-Taylor and Cllr Wells were consulted on 08 February and invited to provide comments by 29 February 2024.
- 6.2.2 At the time of writing, no comments have been received. Officers will endeavour to obtain a written position from the Ward Councillors before the Committee meeting and provide an update to the meeting.

- 6.2.3 In the event that comments are not provided by 21 February, the Officer recommendation will seek authority to determine the application at the end of the Ward Councillor consultation period, ie. from 29 February 2024.

6.3 Public Representations

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

**7. Relevant Planning Policies**

The Great Yarmouth Core Strategy (adopted 2015)

- Policy CS09: Encouraging well-designed, distinctive places.
- Policy CS11: Enhancing the natural environment.
- Policy CS15: Providing and protecting community assets and green infrastructure

The Great Yarmouth Local Plan Part 2 (adopted 2021)

- Policy GSP1: Development Limits
- Policy A1: Amenity
- Policy H9: Residential Extensions
- Policy E3: Protection of open spaces

**8. Other Material Planning Considerations**

Supplementary Planning Documents

Open Space SPD (adopted February 2023)

National Planning Policy Framework (Dec 2023)

- Section 4. Decision making
- Section 12. Achieving well-designed beautiful places
- Section 15. Conserving and enhancing the natural environment

**9. Planning Analysis**

- 9.1 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.

- 9.2 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.

### Main Issues

9.3 The main planning issues for consideration include:

- Principle of development
- Relevance of legal agreement
- Amenity
- Impact on open space
- Planning obligations

## **10. Assessment**

### Principle of Development - residential extensions

- 10.1 The site is situated within Gorleston, on the corner of Woodfarm Lane and Carrel Road. The surrounding area is predominantly residential. The land subject of this application was created as informal public open space under the S106 relating to planning permission 06/94/0247/SU as varied by 06/98/0466/SU and is therefore considered public amenity space.
- 10.2 To the north of the site is the James Paget Hospital and to the south of the site lies a business and commercial park. As a residential area inside the development limits it is acceptable in principle under policies CS1 and H9 to undertake householder developments and residential curtilage extensions when it is demonstrated that they either maintain or enhance the character and appearance of the building and surrounding area and that any developments proposed do not deprive the area of suitable amenity.
- 10.3 As aforementioned, dwellings 5 Carrel Road and 2 and 4 MacKenzie Close all benefit from a generous amount of hard surfacing to the front of their properties, and therefore it can be argued that the proposed drive is not out character for the area and therefore maintains the overall form and appearance of this part of Gorleston.

### Principle of Development – Loss of public open space

- 10.4 Core Policy CS15 states that open spaces and green assets positively contribute to the surrounding environment. Policy E3 sets out the importance of open space and circumstance in which it can be subject to development or removed from that use.
- 10.5 In the planning case officer's opinion, the land subject of this application, prior to the development of the land as a drive, would be classed as 'Informal Amenity Green Space' as defined under the adopted Open Space Supplementary Planning Document. Informal amenity green space is described on pages 20 and 21 of the SPD as:

*"Informal amenity green space provides opportunities for informal activities close to home or work or enhancement of the appearance of residential or other areas which are publicly accessible. Such spaces will be grass covered and will be expected to include tree and hedge planting to landscape the area and enhance biodiversity (this could assist with meeting the requirements of Biodiversity Net Gain). Informal amenity should be aesthetically pleasing as it contributes to the public realm. The site itself should be well over-looked by*

*surrounding residential properties.”*

- 10.6 From the above description it is considered that the land should be considered as ‘Informal Amenity Greenspace’. The consequent loss of open space as a result of the development is therefore resisted by local plan policies.
- 10.7 Policy E3 states that:
- “Open spaces which provide local amenity, or recreational benefit to the local community will be protected.*
- Development proposals that contribute to loss of either of these will only be permitted in limited circumstances and where:*
- (a) “The proposal is ancillary to the space and will add to the value and function of the local open space to the benefit of amenity or local community; or*
  - (b) The application can demonstrate that the local open space is no longer required in its existing open space use or an alternative open space use; or*
  - (c) The loss of space will be replaced by equivalent or better provision in terms of quantity and quality, including accessibility to the local community where relevant.”*
- 10.8 Policy E3 Supporting Text paragraph 10.14 states that:
- “In demonstrating whether an open space is no longer required, an applicant should undertake an open space needs assessment. This assessment should consider the provision of open space with the same use within the site catchment area, alternative open space uses and how the site relates to existing provision for each respective type of open space use in the locality.”*
- 10.9 As can be seen, there is a strong policy position against the loss of any form of open space, whether publicly accessible or not. Any loss must satisfy policy E3 criteria (a), (b), or (c).
- 10.10 The proposal does result in a loss of open space and the development is not ancillary to the space nor able to add value to the local open space to the benefit of amenity or the local community. There are no proposals to replace this open space within this application. The application therefore fails against criteria (a) and (c).
- 10.11 To justify the loss, the application must therefore address policy E3 criteria (b). The applicant has not attempted to provide an Open Space Needs Assessment as required by policy. Neither is there any evidence that the open space is no longer required in its former use.
- 10.12 Nevertheless, Officers have considered whether it can be argued that there is sufficient alternative resources available within the surrounding area.
- 10.13 The purpose of the land’s use as public open space was largely for the purposes of creating suitable appearance and visual amenity to support the urban design and living conditions of the residential estate. This area of the estate’s open space is considered ‘Informal Amenity Greenspace’ under the adopted Open Space Supplementary Planning Document (SPD). Whilst the Gorleston Ward does have an identified deficit of Informal Amenity Space (as is common for the whole Borough), the application site is considered to be only a very small amount of informal amenity space and before construction of the drive was not being used as formal or recreational open space.

- 10.14 The loss of the greenspace is regrettable, and only serves to exacerbate existing deficits, but on balance, it is the opinion of the planning officer that there is still a long stretch of grassed area that contributes to the appearance of the street scene, and this is considered to be sufficient to still provide the effect and purpose that the land was intended for originally.
- 10.15 Policy CS15 states: *"The Council will ... a) Resist the loss of important community facilities and/or green assets unless ... a detailed assessment clearly demonstrates there is no longer a need for the provision of the facility in the area."*
- 10.16 As discussed above in response to E3 and CS15, the remaining strip of grassed 'informal amenity greenspace' to the north of the site can be considered sufficient in providing the area with suitable alternative natural greenspace resource.

#### Relevance of S106 Agreement

- 10.17 The application site was one of the last dwellings to be completed within the Wood Farm housing development as it is shown on GYBC Aerial Map Images to have been completed between 2007 and 2010.
- 10.18 The S106 Agreement dated 27 September 2023 includes this application site as being part of the defined Open Space.
- 10.19 The Agreement requires at the Second Schedule paragraph 1.3 that the Council was to "lay out the Open Space as a public open space by 30 April 2022 *and thereafter maintain it in good condition*" (Planning Officer's emphasis).
- 10.20 Under the Agreement the transfer of the land from the developer to the Council was free of burdens and as there are no burdens on the land there are no other reasons to consider that this should not be treated as public open space.
- 10.21 The Agreement does not include anything to require the Open Space to be retained and used only as Open Space in perpetuity. Construction of the residential driveway on the public open space land means the entirety of the Open Space has not all been maintained in good condition, as required by the Agreement, but notwithstanding this, the principle of the loss of open space should be considered the determining factor.
- 10.22 The change of use of the land is considered acceptable in relation to the S106. The application must be considered on its own merits and it is considered that the loss of the small area of the wider Open Space will not be detrimental to the appreciation of the estate's design, character and appearance. Furthermore, it is not considered to be detrimental to the overall value that the site brings to the public realm.

#### Landscaping and urban design

- 10.23 The land subject of this application was part of an area designated for open green space upon the approval of application 06/94/0247/SU as amended by 06/98/0466/SU.
- 10.24 The residential estate was approved with the open space within this application site created as an important part of urban design and landscaping to provide important character within the overall development. There were no trees to be planted within the application site area, so it is not considered that the open space lost has a biodiversity or ecological function, meaning that its importance is found in the design and visual amenity benefits.

- 10.25 Whilst the protection of open spaces is vital, it is of the planning officer's opinion that there is already an adequate level of public open space existing in this area for the purposes of creating public realm and creating an appropriate urban design setting to the Wood Farm Lane housing estate. There are grassed open areas to the west, north and east of the application site.
- 10.26 Therefore, it can be considered that the change of use from open amenity space to residential curtilage does not significantly detract from the public value the remaining strip of open land provides and does not result in an unacceptable level of loss of public health or recreational benefits.
- 10.27 However, given the visibility of the site and its prominent position at the entrance of Carrell Road, it is considered that the development would be detrimental were the driveway to be used for commercial purposes or purposes other than residential parking, the prevention of which can be secured by planning condition on any permission.

#### Amenity

- 10.28 The change of use provides householder benefits as the development results in the provision of off-road parking. There is not considered to be any detrimental impacts on neighbouring dwellings and it will create neighbourhood improvements by removing parking off-street.
- 10.29 The loss of amenity land and loss of visual amenity for the wider public is limited in terms of the harm caused, as discussed in the landscape impact section of the report.

#### Other Material Considerations

- 10.30 The applicant considers that the use has been as a driveway since 2008. No Certificate of Lawful Established Use or Development (CLEUD) has been applied for nor approved since then, but it might be open to the applicant to suggest that the change of use from open space to residential curtilage has been established by the passage of time for long enough to be immune from planning enforcement action. The Local Planning Authority can take no definitive position on the matter without a CLEUD application, but it is possible that a fallback position could exist which might mean that the change of use now would be considered lawful development.

#### Local Finance Considerations

- 10.31 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.



## **11. The Planning Balance**

- 11.1 In terms of the benefits that the change of use will provide, the provision of vehicular access and off-road parking provision will result in better design as it will free up the space on road, making the street scene more open and removing obstacles to traffic flow.
- 11.2 It is acknowledged that the retention of the driveway results in the permanent loss of the green, amenity space, but this is a small area of visual rather than functional use.
- 11.3 On balance this development is considered to be positive, there is no unacceptable conflict with local plan policies, and there is not sufficient harm to conclude that this development should be refused.

## **12. Conclusion**

- 12.1 The change of use from open space ('informal amenity greenspace') to residential curtilage creates a beneficial driveway, reduces the need for on-street parking, and does not detrimentally impact the area in terms of amenity and design.
- 12.2 Having considered the details provided, the application is considered to comply with policy CS15 from the adopted Core Strategy, and policies A1 and E3 from the adopted Local Plan Part 2.
- 12.3 Furthermore there could be a fall-back position to suggest that the development might otherwise be considered established due to the passage of time that has elapsed.
- 12.4 Although policies E3 and CS15 seek to avoid the loss of open space, it is considered that the development satisfies the criteria for allowing limited development on open space areas, by virtue of there being a suitable amount of existing open space available in the surrounding area. Given the possible fallback position, and when considering the benefits that the driveway provides to the occupants of the dwelling, and to the adjoining highway network it can be considered that the development is acceptable on balance. There are no other material considerations to suggest the application should not be recommended for approval.

## **13. Recommendation**

- 13.1 It is recommended that powers be delegated to the Head of Planning to APPROVE application reference 06/23/0847/CU should be, subject to:
  - i. not receiving any adverse comments from local Ward Councillors by 29<sup>th</sup> February 2024 which cannot be resolved by planning conditions, and
  - ii. subject to the following proposed conditions

## **Conditions**

### Development to be retained in accordance with approved plans

1. The development hereby permitted shall be retained in accordance with the following plans received by the Local Authority on the 17<sup>th</sup> November 2023:

- Dwg No. 1862/1 Block Plan & Location Plan – Scale 1:500, 1:1250

Reason: For the avoidance of doubt.

2. The driveway hereby permitted shall only be used for the parking of vehicles and for private domestic parking only. No commercial storage or activities shall take place from the driveway and no structures shall be erected or installed thereon.

Reason: For the avoidance of doubt and in the interests of maintaining the residential amenities and visual amenity of the surrounding area, in accordance with policies CS09 and A1, and in the interests of maintaining highways safety and minimising traffic impacts, in accordance with policy CS16.

## **Informative Notes**

1. STATEMENT OF POSITIVE ENGAGEMENT: In dealing with this application Great Yarmouth Borough Council has actively sought to work with the applicant in a positive and proactive manner.

## APPENDIX 1: Site Location Plan

