

Item 4f **13/00982/CB3**

Case Officer **Mr David Stirzaker**

Ward **Adlington And Anderton**

Proposal **Change of use from public open space to individual garden extensions serving 3 -4 Barn View, 52-78 Fairview Drive and 11-17 Maytree Court**

Location **Land To The Rear Of 3-4 Barn View, 11-17 Maytree Court And 52-78 Fairview Drive Adlington**

Applicant **Chorley Borough Council**

Consultation expiry: 3 December 2013

Application expiry: 19 December 2013

Proposal

1. This application, submitted by Liberata on behalf of the Council, seeks planning permission for the change of use of land originally proposed as a landscaped buffer strip to garden curtilages. The land is owned and maintained by the Council.
2. Specifically, the gardens of 3 to 4 Barn View and 52 to 76 Fairview Drive are to be extended up to the boundary with the railway line whilst the garden curtilages of 11 to 17 Maytree Court are to be extended up to the boundary with a public right of way which runs behind these properties.
3. The application site comprises land to the rear of the aforementioned properties which are part of the Fairview Farm development in the settlement of Adlington.

Recommendation

4. It is recommended that this application is granted planning permission.

Main Issues

5. The main issues for consideration in respect of this planning application are:

- Principle of the development
- Open Space
- Impact on the neighbours
- Design
- Trees & Landscape
- Public Right of Way

Representations

6. One letter of objection has been received, the contents of which can be summarised as follows:

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- The owners of these properties have taken public land to extend their gardens up to and adjoining fencing belonging to Network Rail
- This is blocking off what has for years been a public space
- Whilst there is not a public footpath on the land, it has been regarded as such since these properties were built
- The owners of these properties have taken it upon themselves to rewrite the boundaries of their properties, to add value

- When the properties were being built, this stretch of land was laid to grass and trees planted and since then it has been maintained by ground staff who maintain all the other public land on the Fairview Farm estate

7. **Adlington Town Council** has no objection to this application and considers it should be left for residents comments.

Consultations

8. The **Waste and Contaminated Land Officer** does not raise any objections.

9. **LCC (Public Rights of Way Manager)** advises that whilst there may not be any public rights on this land, it is possible that use by the public as a right of way over a sufficient period of time could mean that there are unrecorded public rights of way or a town/village green on this land. Residents extending their gardens should be made aware of this possibility. The granting of this application would not remove or restrict any rights if such do exist.

10. No comments have been received from **Network Rail**. Any comments received will be reported on the addendum.

Assessment

Principle of the development

11. The application site is in the settlement of Adlington. The land was approved as a landscaped buffer as part of the Fairview Farm development and is maintained by the Council. The land sits between the rear garden boundaries of the aforementioned properties and the railway line boundary, apart from behind 11 to 17 Maytree Court wherein the application site only extends to the boundary with a public right of way.
12. Given the application site comprises open space, Policy LT14 of the Adopted Local Plan and Policy HW2 of the emerging Chorley Local Plan are pertinent as these policies seek to protect such areas of open space.
13. In accordance with Policy HW2, for the application to be considered acceptable 'in principle', alternative facilities would need to be provided nearby before the existing facilities cease to be available. If this cannot be achieved, Policy HW2 stipulates four criteria which need to be complied with. These are b) that the loss of the site should not lead to a deficit of provision in the local area in terms of quantity and accessibility, c) the site not to be identified as high quality and high value in the Open Space Study, d) the retention of the site not being required to satisfy a recreational need in the local area and e) the site not making a significant contribution to the visual character of the area.
14. In terms of criteria b) and c), the loss of the site would not lead to a deficit of provision in the local area in terms of quantity and accessibility as the site has not been identified in the Open Space Study and is not included in the calculation of current open space provision.
15. In terms of criteria d), given the nature of the site comprising a narrow strip of land to the rear of the properties and also being bounded to the west by the railway line, it is not considered that the land meets a recreational need in the local area, other than providing a pedestrian route behind the properties, especially given it is not identified in the Open Space Study. With regards to criteria e), the land does not make a significant contribution to the visual character of the site and locality nor is it a space which serves a functional open space purpose.
16. In light of the above factors, it is considered in this case that there are exceptional circumstances weighing in favour of planning permission being granted for the garden curtilage extensions as this will resolve the long running problems with the land. Therefore, it is considered that the 'principle' of the change of use of the land to garden curtilages is an acceptable one in this particular case.

Open Space

17. The change of use of the land in question would prevent public access behind the gardens of the properties being extended. However, the public right of way to the rear of 11 to 17 Maytree

Court will be maintained as the garden curtilages of these properties will only be extended to the top of the embankment before the land slopes down to the retained public right of way and the railway boundary.

18. In terms of the comments from the local resident, the land to the rear of 3 to 4 Barn View and 52 to 76 Fairview Drive will be closed off to pedestrians thus preventing access from 17 Maytree Court to the rear of 52 Fairview Drive. However, the loss of the use of the land has to be balanced against the wider benefits of addressing the long standing issues residents have been experiencing since completion of the Fairview Farm development. Also, the existing public right of way to the rear of 11 to 17 Maytree Court will be maintained.
19. With regards to the comments about the land potentially being registered as a Village Green, under Section 15 of the Commons Act 2006, land can only be registered as a green if it has been used by local people for recreation 'as of right' (i.e. without permission, force or secrecy) for at least 20 years. However, the reserved matters application (Ref No. 01/00120/REM) for the development was approved August of 2001.

Impact on the neighbours

20. The proposed change of use will not result in detrimental harm to the living conditions of local residents as all of the garden curtilages are proposed to be extended in unison. To the rear of the garden curtilage boundaries is the railway line so the curtilage extensions will not impact on the living conditions of the occupiers of properties to the west given there is an average distance between the site and properties facing the site, of 35m.

Design

21. The application site comprises a narrow strip of largely grassed open space originally designated as a landscaped buffer strip between the site and the railway line to the west. However, the site can be traversed on foot and only limited landscaping has been implemented comprising young tree specimens.
22. There are no dedicated surfaced footpaths on the land and as set out in paragraph 13, the land does not make a significant contribution to the character and appearance of the site and the wider locality due to its limited width and its position adjacent to the railway line. The change of use of the land will not therefore have a harmful impact on the character and appearance of the locality.

Trees and Landscape

23. Some of the land has been planted with trees. However, these are young specimens and they do not make a significant contribution to the visual amenities of the locality and the garden curtilage extensions will subsume the land on which the trees stand. None of the trees on the land are of sufficient stature to warrant the protection of a Tree Preservation Order.

Public Right of Way

24. A public right of way runs behind 11 to 16 Maytree Court adjacent to the boundary with the railway line. The garden extensions to the rear of these properties will extend only up to the footpath, not the boundary with the railway line so the footpath will be maintained as existing behind these properties.

Overall Conclusion

25. The proposed change of use of the public open space to the rear of the properties in question will prevent members of the public passing behind the properties on Barn View and Fairview Drive although the public right of way behind 11 to 16 Maytree Court will be maintained as existing. The loss of pedestrian access has to be balanced against the problems retaining this open space would allow to persist so the 'principle' of changing the use of the land is considered acceptable.
26. With regards to impact on the locality, the land does not make a significant contribution to the visual character of the locality hence changing it to garden curtilage would not have a detrimental impact on the character of the estate and the wider locality. There are also no concerns with regards to neighbour amenity as all of the gardens are to be extended together.

27. On balance, it is considered that the change of use of the land from open space to garden curtilage is an acceptable one. It is therefore recommended that planning permission be granted.

Other Matters

Public Consultation

28. Prior to the submission of this application, the proposals for this land have been reported to the Council's Executive Cabinet on 29th March 2012 wherein approval was given for the land to be sold to residents subject to the proposals for the land being advertised. A further report to Executive Cabinet on 21st June 2012 followed this and reported an objection to the change of the land from a local resident. At this meeting, disposal of the land for the stated purposes was approved by Members.

Planning Policies

National Planning Policies:

National Planning Policy Framework (NPPF)

Adopted Chorley Borough Local Plan Review

Policies: GN1 / GN5 / EP9 / LT14

Supplementary Planning Guidance:

- Statement of Community Involvement
- Design Guide

Emerging Chorley Local Plan 2012-2026

Policies: BNE1 / BNE9 / HW2

Planning History

Outline application for the erection of factory with ancillary warehouse, offices, service yard, car park together with site access road and roundabout junction works on Chorley Road – Refused

98/00660/CO4 - Regulation 4 outline application for residential development, associated open space and multi-functional community building - Permitted

01/00120/REM - Reserved matters application for 176 houses, multi-functional community building and five-a-side pitch and all associated works – Permitted

01/00145/FUL - Construction of roundabout and new access off Chorley Road & modification of conditions 21 & 12 of outline permission 9/98/660 to allow the alternative access and to prevent access from The Avenue – Permitted

02/00082/FUL - Construction of new roundabout and new access off Chorley Road and modification of condition 21 of outline permission 9/98/660 (alternative to permission 9/01/145) – Withdrawn

02/00291/ADV - Display of non-illuminated signs – Permitted

02/00523/TPO - Felling of tree T2 (adjacent to Chorley Road) covered by TPO 17 (Adlington) 1991 – Refused

02/01165/FUL - Substitution of house type on plot 358 – Refused

03/00010/TPO - Pruning of T2 (Beech) Tree covered by Tree Preservation Order No. 17 (Adlington) 1991, to reduce by 20% the two main branches over Chorley Road and remove all major deadwood from the tree crown – Permitted

03/00062/FULMAJ - Substitution of houses on plots 88-122, with 26 dwellings instead of 34 dwellings – Permitted

03/00186/FUL - Re-siting of 2 dwellings at plots 147 and 148 – Permitted

03/00643/FUL - Erection of community centre, equipped play area, playing pitch, access road and carparking – Permitted

04/00217/FUL - Amendment of house type to include rear conservatory – Permitted

04/00629/FUL - Revision to Planning Permission 9/98/660/CO4 by modification of condition 4 to change public open space (Area 6) from equipped play space to a landscaped park – Permitted

09/00714/FULMAJ - Erection of 37 affordable dwellings with external amenity space and off street parking at Fairview Farm, Adlington – Permitted

10/00208/DIS - Application to discharge conditions 14, 15 & 28 attached to planning approval 09/00714/FULMAJ

10/00863/DIS - Application to discharge conditions 4, 5, 8, 10, 15, 21, 22, 23 and 28 attached to planning approval 09/00714/FULMAJ

10/00947/DIS - Application to discharge conditions 3, 6, 7, 9, 13, 14, 16, 25, 26 and 27 attached to planning approval 09/00714/FULMAJ

11/00059/FULMAJ - Section 73 application to vary conditions 1 (approved plans), 17 (levels- in respect of plots 8, 9, 10 and 11 to accommodate the drainage requirements) and 24 (approved plans- specifically in respect of the approved landscaping plans) attached to planning approval 09/00714/FULMAJ – Permitted

12/00890/FULMAJ - Application to vary conditions 1 and 24 of planning approval ref: 09/00714/FULMAJ (which was for the erection of 37 affordable dwellings) to allow the following changes: 1) changes to perimeter fencing; 2) addition of 1.2m fences to rear of 111-117 Fairview Drive, 104-110 Fairview Drive, 105-109 Fairview Drive, 119-127 Fairview Drive and 1 -9 Harvest View; 3) narrowing of footpath width near Farm Avenue to avoid semi-mature tree; 4) change from small triangular section of landscaping at junction with Farm Avenue to tarmac to prevent vehicular damage. Please note the works have already taken place – Permitted

Recommendation: Permit Full Planning Permission Conditions

1. The proposed development must be begun not later than three years from the date of this permission. *Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004*

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Title	Drawing Reference	Received date
Location Plan	100018509 2008/01	21 st October 2013

Reason: For the avoidance of doubt and in the interests of proper planning