

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **12TH MAY 2015**

ADDRESS/LOCATION : **1 POPLAR CLOSE**

APPLICATION NO. & WARD : **15/00301/COU
PODSMEAD**

EXPIRY DATE : **1ST MAY 2015**

APPLICANT : **MR FRANK DALLIMORE**

PROPOSAL : **PROPOSED CHANGE OF USE OF AMENITY
LAND TO RESIDENTIAL GARDEN AND
ERECTION OF 1.8 METRE HIGH FENCE.**

REPORT BY : **CAROLINE TOWNLEY**

**NO. OF APPENDICES/
OBJECTIONS** : **1. SITE LOCATION PLAN**

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The application site is a corner plot located at the junction of Poplar Close and Laburnum Road. The estate layout is an open plan 'Radburn' style, with vehicular access and garaging to the rear and access to the front of properties via a footpath network set within large open grassed areas and trees.
- 1.2 The application relates to an end property with a large open grass area to the side which incorporates two mature trees. The existing boundary comprises of an 1800mm high brick wall to the side and rear of the house enclosing the rear garden. The wall is in line with the front of the house, set back from the side elevation by a gate width, continuing in a straight line and lining up with the front of the garage at the rear.
- 1.3 The application seeks planning permission to erect a 1.8 metre timber fence to incorporate an area of the side amenity land into the rear garden. This area is currently grassed and incorporates two trees. The land is currently owned by Persimmon Homes.
- 1.4 The proposed fence would be set in from the back edge of the pavement maintaining an area of grassed verge, ranging in depth from 2 metres at its narrowest to approximately 4 metres. It is proposed that the close boarded fence would be stained a 'Forest Green' colour or similar. This would result in the tree to the front of the site being retained on the outside of the fence with the tree towards the rear being incorporated within the enlarged garden area.

The submitted Planning Statement states that the Applicant would be willing to replace the over-pruned / mis-shaped tree to the front of the site with one or two new trees on the outside of the fence to further soften any impact and enhance appearance when viewed in the streetscene.

- 1.5 The application has been brought to Committee because the applicant is related to a Councillor.

2.0 RELEVANT PLANNING HISTORY

- 2.1 An application was originally submitted in August 2011 (ref. 11/00978/FUL) for the change of use of amenity land into residential garden and the erection of a 1.8 metre high timber fence. This application proposed a fence positioned 1200mm from the back edge of the pavement to the rear, side and front of the property. At the front the proposed new fence was set forward from the existing gate by approximately 3500mm. At the rear the fence was proposed to be in line with the front of the garage for approximately 4000mm and then step back to 1200mm from the back edge of the footpath continuing around the corner and along Laburnum Road. A planting scheme was prepared for the strip of land between the footpath and new fence.

- 2.2 The landscaping scheme submitted with the 2011 application proposed 1200mm planting area between the fence and back edge of the footpath. The Landscape Architect raised concerns regarding the plants indicated as several of the species proposed can grow quite large and included spiky planting (berberis) which is not normally allowed adjacent to a footpath and plants such as Weigela, Amelanchier, Cornus, Cotoneaster, Viburnum, Forsythia which can grow quite tall and potentially spread across the footway. This type of planting has become a maintenance issue in many housing areas across the City. Following concerns raised by Officers this previous application was withdrawn.

- 2.3 A revised application for a change of use of amenity land into residential garden and the erection of a 1.8 metre high timber fence was submitted in February 2012 (ref. 12/00163/FUL). The proposed fence was shown set in from the footpath at the rear by 3 metres reducing to 1.5 metres from the footpath at the side in Laburnum Road and cut in towards the front of the house to a point 2.7 metres back from the existing side gate. The application was reported to Planning Committee on 3rd April 2012 with an Officer recommendation to grant planning permission. However, the Committee resolved to refuse planning permission for the following reason:

“The proposed fence by virtue of its overall height, prominent siting and enclosure of this open area of amenity land would result in an unsatisfactory erosion of the spacious open plan character of the area which would be detrimental to the visual amenity of the area as a whole. The proposal is therefore contrary to Policy BE.19 of the Second Deposit City of Gloucester Local Plan (2002).”

- 2.4 An appeal was subsequently dismissed when the Inspector concluded that in her consideration “*the proposed fence would be prominent in the street scene and the enclosure of this open area would erode the spacious open plan character of the locality. Whilst a similar development at 47 Sycamore Close has been brought to my attention, I consider that this should not be repeated because of the harm caused to the character and appearance of the area. The issue raised about the proposal preventing dogs fouling the area does not alter my conclusion that the appeal proposal would be harmful to the character and appearance of the area.*

I conclude that the proposal conflicts with Policy BE19 of the Second Deposit City of Gloucester Local Plan (2002). Although the Plan has not been adopted, I attach some weight to its policies which have been the subject to consultation and also conflict with the core planning principles of the National Planning Policy Framework which seek to secure high quality design, and enhance and improve the places in which people live their lives.”

3.0 PLANNING POLICIES

- 3.1 The statutory development plan for Gloucester remains the 1983 City of Gloucester Local Plan. Regard is also had to the policies contained within the 2002 Revised Deposit Draft Local Plan which was subject to two comprehensive periods of public consultation and adopted by the Council for development control purposes. The National Planning Policy Framework has been published and is also a material consideration.
- 3.2 For the purposes of making decisions, the National Planning Policy Framework sets out that, policies in a Local Plan should not be considered out of date where they were adopted prior to the publication of the National Planning Policy Framework. In these circumstances due weight should be given to relevant policies in existing plans according to their degree of consistency with the National Planning Policy Framework.
- 3.3 The policies within the 1983 and the 2002 Local Plan remain therefore a material consideration where they are consistent with the National Planning Policy Framework.
- 3.4 From the Second Stage Deposit Plan the following policy is the most relevant:
- Policy BE.19 (Enclosure of Front Gardens on Existing Open Plan Estates) states that enclosure of gardens and unusable strips of land will be allowed on existing open plan estates provided that the land to be enclosed does not adjoin a footpath link and its enclosure does not harm the visual amenity or community safety of the locality.
- 3.5 In terms of the emerging local plan, the Council has prepared a Joint Core Strategy with Cheltenham and Tewkesbury Councils which was submitted to the Planning Inspectorate on 20th November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and are a material consideration. The weight to be attached to them is limited by the

fact that the Plan has not yet been the subject of independent scrutiny and do not have development plan status. In addition to the Joint Core Strategy, the Council is preparing its local City Plan which is taking forward the policy framework contained within the City Council's Local Development Framework Documents which reached Preferred Options stage in 2006.

3.6 On adoption, the Joint Core Strategy and City Plan will provide a revised planning policy framework for the Council. In the interim period, weight can be attached to relevant policies in the emerging plans according to

- The stage of preparation of the emerging plan
- The extent to which there are unresolved objections to relevant policies; and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the National Planning Policy Framework.

3.7 All policies can be viewed at the relevant website address:- Gloucester Local Plan policies – www.gloucester.gov.uk/planning; Gloucestershire Structure Plan policies – www.gloucestershire.gov.uk/index.cfm?articleid=2112 and Department of Community and Local Government planning policies - www.communities.gov.uk/planningandbuilding/planning/.

4.0 CONSULTATIONS

4.1 **Gloucestershire County Council (Highways)** – The Highway Authority did not object to the previous applications and therefore no highway objection is raised.

4.2 **Landscape Officer** – Considers that the proposal represents an acceptable compromise between extending the garden area, whilst retaining visual amenity and the open green feel to the Radburn-style estate. The removal of the over-pruned/mis-shapen tree near the front of the property and replacement with two new trees on the remaining strip of green amenity land would be beneficial; the suggested birch trees would be a suitable species. Would need to know the size and exact locations of the proposed replacements prior to approval.

5.0 PUBLICITY AND REPRESENTATIONS

5.1 The application has been publicised through the display of a site notice. In addition 12 properties have been notified of the application in writing.

5.2 As a result of this publicity two letters of representation have been received, one of which was anonymous. The main issues raised can be summarised as:

- My decision to move to Oaklands Park was due to the open land which children could play on. Believe if the land is fenced off this would remove a safe area for children to play, as unfortunately the nearby fields are not a safe place for younger children to be.

- Oaklands Park was built on the premise of large open spaces of green land.
- Could set a precedent for further development for the remaining green areas to be taken away from public use and affect the general outlook of the area.
- Concerned that one of the applicants is in a position of power at the City Council and would not like to see the application compromised in any way because of this.
- Fence would look unsightly and look out of place compared to the rest of the area. Feel the fence is particularly high.
- Have lived on the estate for 25 years and feel the main attraction of living here are the green open spaces. These spaces should remain in community use.
- Young children enjoy playing on the green open spaces where their parents can see them.
- Do not agree that that the application site has a smaller garden than other houses in that row and do not recognise the argument that extending the garden would make much difference to the family in terms of extra space for the children who are free to make use of the amenity land.
- Concerned that it will result in further physical development to the property which may allow the homeowners to increase the value of their property to the detriment of the general outlook of the area.
- Aware that similar planning applications have been refused in the past and feel the slight alterations to the original application do not go nearly far enough to make it acceptable.
- Aware that planning procedures have been relaxed and it wouldn't be very difficult to extend the property.

5.3 The Planning Agent for the application has submitted a letter addressing the issues raised in the anonymous letter and states that in his view the Planning Committee should give very little weight to comments made anonymously and that many local planning authorities will not entertain them. However, the following responses have been made to the points raised in the objection:

- **Precedent** – each application is determined on its merits. Granting planning permission will not set a precedent. Indeed, the previous Committee and appeal decisions demonstrate this. The current proposal is a substantially different proposal, which addresses the identified concerns arising from the earlier scheme. It should also be noted that the 'precedent' case referred to in the earlier application / appeal (47 Sycamore Close) has now extended its fence up to the edge of the footway.
- **Unsightly** - it is difficult to understand the notion that a retained grassed space, retained (and potentially new) trees and a green stained high quality close boarded fence can be judged 'unsightly.' It is not.
- **Openness** – the current proposal retains a substantial grassed area to ensure that the openness will be maintained (cf 47 Sycamore Close).

- **Link with ‘position of power’** – the applicant’s link with Councillor J. Dallimore was openly disclosed through the application submission. It is understood that Council rules in such circumstances (which are by no means unique) require Planning Committee consideration. The anonymous writer’s implication of some sort of undue influence is quite unfounded.
- **‘Not accepting no for an answer’** – this is a materially different proposal to the earlier refused scheme. The Applicant is entitled to put forward a revised scheme that addresses earlier identified concerns. That does not make a ‘mockery’ of the planning system but it is, actually, a quite normal and healthy process i.e. bringing forward a revised scheme to overcome identified planning concerns.

5.4 The full content of all correspondence on this application can be inspected at Herbert Warehouse, The Docks, Gloucester, or via the following link, prior to the Committee meeting:

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=15/00301/COU>

6.0 OFFICER OPINION

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where 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.
- 6.2 As with the previous application it is considered that the main issue relates to the impact of re-siting the boundary on the visual amenities of the area.
- 6.3 The application property is detached and located on a corner plot, with an open grassed area to the front, side and rear. This open area is near to the entrance to the housing estate and helps create clear lines of site at the junction for vehicles and pedestrians alike. To the front of the properties is an open grassed area with footpaths linking other streets within the estate.
- 6.4 It is apparent that the surrounding area has been carefully planned and is generally well maintained creating an attractive and open environment. The area is characterised by open front gardens and buffers onto the network of public footpaths, with brick walls enclosing the gardens adjacent to the highway. The exception is the property opposite the application site at 47 Sycamore Close which had planning permission to reposition the side boundary in 1984 (ref. 38891/01). While at the time of the previous application in 2012 there was planting positioned between this boundary fence and the back edge of the footpath it is noted that this landscaping has since been removed and the fence has been repositioned to the back edge of the footpath.
- 6.5 In refusing the previous application the Planning Committee expressed concern that the granting of permission would change the open nature of the

estate to the detriment of the character and visual amenities of the area as a whole. The Planning Inspector concluded that the proposed fence would be both prominent in the street scene and the enclosure of the open area would erode the spacious open plan character of the locality and as such the proposal was in conflict with Policy BE.19 of the Second Deposit City of Gloucester Local Plan (2002).

- 6.6 Policy BE.19 has a general presumption in favour of enclosing side strips in open plan areas where the land to be enclosed does not adjoin a footpath link and would not be to the detriment of the visual amenities of the area. Chapter 7 of the National Planning Policy Framework seeks to secure high quality design to enhance and improve the places in which people live their lives.
- 6.7 The current application is materially different to the previous application and has been amended to address the previous reason for refusal and appeal decision. I consider that the most important aspect is to protect the open area to the front which runs between the fronts of properties in Poplar Close and Sycamore Close with its network of footpaths. The area of land to be retained on the public side of the fence has been enlarged and the openness retained to the front with additional tree planting proposed.
- 6.8 I consider that the issues raised by this application are very finely balanced. Whilst it is accepted that an area of the existing green space will still be lost, the current proposal retains the openness to the front and rear together with an increased area to the side. The Highway Authority and Landscape Officer raise no objections to the application.
- 6.9 Overall after careful consideration, taking into account the previous history, Policy BE.19 of the Second Deposit Local Plan and the principles outlined in the NPPF including the presumption in favour of sustainable development, it is recommended that planning permission be granted subject to conditions.

Human Rights

- 6.10 In compiling this recommendation we have given full consideration to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any affected properties. In particular, regard has been had to Article 8 of the ECHR (Right to respect for private and family life, home and correspondence) and the requirement to ensure that any interference with the right in this Article is both in accordance with the law and proportionate. A balance needs to be drawn between the right to develop land in accordance with planning permission and the rights under Article 8 of adjacent occupiers. On assessing the issues raised by the application no particular matters, other than those referred to in this report, warrant any different action to that recommended.

7.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER

That planning permission is granted subject to the following conditions:

Condition 1

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason

Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition 2

The development hereby permitted shall be carried out in accordance with the application forms, site plan, block plan and supporting information received by the Local Planning Authority on 3rd March 2015 and any other conditions attached to this permission.

Reason

To ensure that the development is carried out in accordance with the approved plans and in accordance with policies contained within Second Deposit City of Gloucester Local Plan (2002).

Condition 3

Development shall not take place until a landscaping scheme indicating the replacement trees has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include a scaled drawing and a written specification describing the species, size and location of the proposed trees together with details of any proposed tree surgery to be undertaken to the existing trees and details of any trees to be removed.

Reason

In the interests of the visual amenity of the area in accordance with Policy BE.12 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 4

The landscaping scheme approved under condition 3 above shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the completion of the development. The planting shall be maintained for a period of 5 years. During this time any trees, shrubs or other plants which are removed, die, or are seriously retarded shall be replaced during the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5 year maintenance period.

Reason

To ensure a satisfactory and well planned development and to preserve and enhance the quality of the environment in accordance with policies BE4 and BE.12 of the Second Deposit City of Gloucester Local Plan (2002).

Statement of Positive and Proactive Engagement

In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by

offering pre-application advice, publishing guidance to assist the applicant, and publishing to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.

Decision:

Notes:

.....

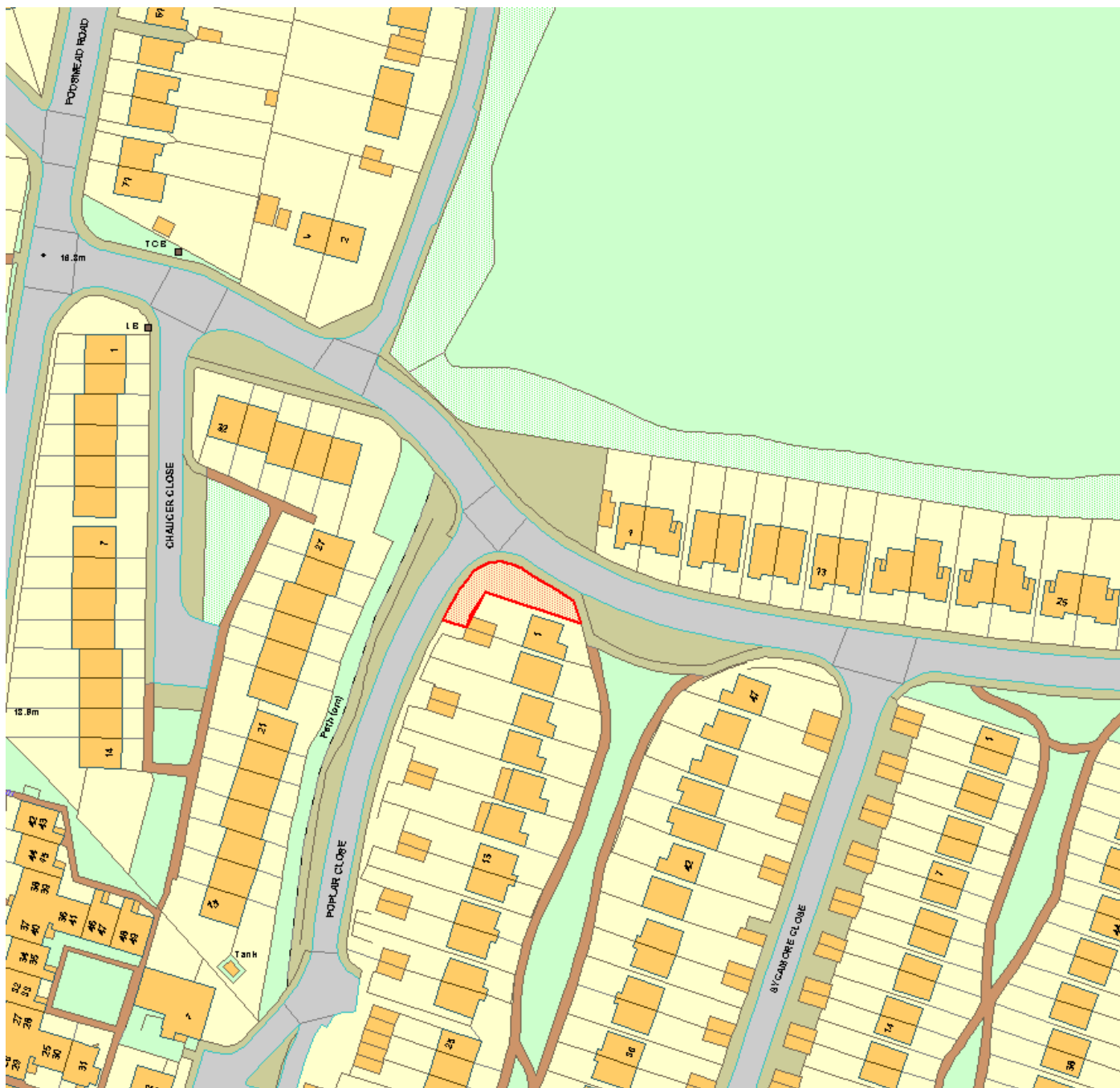
.....

Person to contact: Caroline Townley
(Tel: 396780.)

15/00301/COU

1 Poplar Close
Gloucester
GL1 5TX

Planning Committee 12.05.2015



© Crown copyright and database rights 2011 Ordnance Survey 10019169
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.