

## **Officers Report**

### **Planning Application No: 145222**

**PROPOSAL:** Planning application for change of use of open grassed land to domestic garden land

**LOCATION:** Land west of 19 Waggoners Close Scotter Gainsborough DN21 3RJ

**WARD:** Scotter and Blyton

**WARD MEMBER(S):** Cllr Clews and Cllr Snee

**APPLICANT NAME:** Mr Broom

**TARGET DECISION DATE:** 02/11/2022

**DEVELOPMENT TYPE:** Change of Use

**CASE OFFICER:** Joanne Sizer

**RECOMMENDED DECISION:** Grant permission subject to conditions.

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This application has been referred to the committee following objections from the Parish Council and other 3<sup>rd</sup> parties.

**Description:** The application site is located within an established residential area of Scotter and is surrounded by residential properties and their garden areas.

It consists of a landscaped piece of grass land, containing planting and trees and has an approximately 1.75-metre-high hawthorn hedge running along the North West boundary fronting onto Waggoners Close. It is currently owned and maintained by the Owner/occupier of No 19 Waggoners Close.

The site was earmarked as public open space and landscaped area as part of the development of the residential estate through Outline planning permission M00/P/0745 approved on 13/08/2001 and Reserved Matters Consent M02/P/1192 granted on 24/02/2003.

This application seeks permission to change the use of the parcel of land from an open landscaped area to private residential garden area for No 19 Waggoners Close.

This application has been referred to planning committee due to the material matters raised by the parish council and local community and level of objection received to the proposals.

**Relevant history:**

M00/P/0745 - Outline planning application for residential development – Granted Conditionally 13/08/2001.

Relevant Conditions:

11. No residential development shall be commenced until a scheme for the provision of formal and/or informal recreational land or play space within the site (in accordance with the provisions of West Lindsey Local Plan Policy RC10) shall have been submitted to and approved in writing by the District Planning Authority. The approved scheme shall include details of the treatment and landscaping of the area, provision of play equipment, hard surfacing, seating and where appropriate, fencing and shall be fully implemented in accordance with details and a timetable to be provided as part of the landscape management plan (see Condition No. 14 below).

Reason: 11. To provide an appropriate residential environment in accordance with the requirements of the adopted West Lindsey Local Plan.

14. A landscape management plan for the area of informal recreational land or play space, and the areas of substantial landscape planting, shall be submitted to and approved in writing by the District Planning Authority prior to the commencement of development. The plan shall include the timetable of provision, long term design objectives, management responsibilities and maintenance schedules. The management plan shall be carried out as approved.

Reason: 14. To ensure the provision of a satisfactory scheme of landscaping and the future maintenance thereof, in the interests of the amenities of the locality.

15. When application is made to the District Planning Authority for approval of the "reserved matters", that application shall be accompanied by a scheme of landscaping and tree planting (indicating inter alia, the number, species, heights on planting and positions of all the trees) in respect of the land to which that application relates; and such scheme shall require the approval of the District Planning Authority before any development is commenced. Such scheme as approved by the District Planning Authority shall be carried out in its entirety within the period of 12 months beginning with the date on which development of that land is commenced (or within such longer period as may be agreed in writing with the District Planning Authority). All trees, shrubs and bushes shall be adequately maintained for the period of 5 years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary. All trees, shrubs and bushes shall thereafter be retained.

Reason 15. In the interests of the amenity of the locality.

M02/P/1192 - reserved matters planning application for site layout, roads, drainage and landscaping. (granted outline planning permission, application number M00/P/0745). – Granted Conditionally 14/02/2003

Relevant Condition:

2. The scheme of landscaping and tree planting shown on Drawing No. CMS/1749/02 Rev A received by the District Planning Authority on 19

February 2003 shall be carried out in its entirety within the period of 12 months beginning with the date on which development is commenced (or within such longer period as may be agreed in writing with the District Planning Authority). All trees, shrubs and bushes shall be adequately maintained for the period of 5 years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary. All trees, shrubs and bushes shall thereafter be retained.

2. To safeguard local amenity.

### **Representations:**

#### Scotter Parish Council:

The site plan for the development clearly shows this area was designated to add amenity value to the development in line with NPPF. It is the Parish Council opinion that any change of use for the land would not be in line with the Central Lincolnshire Local Plan policies LP23, LP12 and LP9 and would create a permanent loss of amenity for residents.

The area noted in the application is noted as open grass land, the area is not open as it should be and the Parish Council would encourage WLDC to take enforcement action to have the hedges removed or lowered to no more than 30cm height and access allowed to the area for the benefit of residents.

The application is incorrect as it states no trees or hedges are on the area, which is clearly not the case.

From the evidence produced by other comments on this application it is clear the planning system has failed on more than one occasion to the detriment of the residents of Waggoners Close. The Parish Council would encourage WLDC to pursue the purchase of this land as previously investigated and open conversations with the Parish Council to adopt it for future maintenance and preservation.

#### Local residents:

Objections have been received from:

Ballycroy 8 Waggoners Close

17 Waggoners Close

Chapter House 16 Waggoners Close

Hathaway House 20 Waggoners Close

15 Waggoners Close

Bramble Edge, 13 Waggoners Close

14 Waggoners Close

Green Lawns, 7 Waggoners Close

The Ashes, 12 Waggoners Close

9 Waggoners Close

Rosemary House 18 Waggoners Close

4 Waggoners Close

Concerns relate to the following matters as summarised:

- This space should be used as a green space/park for the children of the area. There is none within the estate and to use it as a private garden would be a loss to the residents.

- Date of display on the site notice and its removal.
- The 1.8 metre high hedge prevents visibility of the landscaping from the street.
- The existing landscaping scheme is not in accordance with those previously proposed or approved.
- The site is not currently open grass land and is already an extension of the garden of number 19 Waggoners Close.
- The estate should have access to open space and for it to be subsumed into a residential garden is not acceptable.
- The land needs to be returned back to being accessible by the residents. If the space becomes garden land then the community lose all chance of using it.
- The land was formed and sold as informal recreation/visual amenity space and it should be retained as this.
- If the granting of planning permission is recommend then long standing restrictive planning conditions should be imposed to prevent any future physical development in or on that land and to ensure it retains its aesthetic appearance as originally intended.
- The provision of the grassed area is consistent with planning policy for new developments similar to that of Waggoners Close. The site contributes to the locality and even if the owner does not permit access to the site it should be retained as is and not become domestic garden.
- The application form does not correctly identify there are trees on the site.
- The hedge and removal of the boundary fence to 19 Waggoners Close demonstrates how the land is enclosed and detracts from the amenity of the locality.
- Enforcement of the original landscaping scheme should be implemented.
- The history behind the land shows that an error in securing the land as open space was made and because of this the community has lost out and an individual has gained. The land should be retained to benefit the community as much as possible.
- The description of the proposals are misleading as they have already been carried out.
- Correspondence relating to the open space and the original planning applications reveal that the Council's view is that the land should be kept open and undeveloped so that it contributes to the visual amenity of the locality. Planning permission for its change of use would unlikely to be granted.
- The site is currently maintained by 19 Waggoners Close so how would its change of use change or secure this? This is not a benefit of the proposed development.
- The applicant indicates that the hedge is within his garden area on the site notice reply form.
- The land should contribute to the amenity of the locality as per the conditions set out in the outline and reserved matters permissions and site plan CMS/1749/02.

- The height of the hedge negatively impacts on the visual amenity of the area.
- No enforcement action has been taken despite numerous reports by residents.
- All the past correspondence indicates that the land should be left open in nature as it represents a visual amenity for the benefit of the estate.
- The removal of the boundary fence at 19 Waggoners Way and the incorporation of the land into his garden area should have been enforced against at the time it was reported.
- There are a number of anomalies in the submitted documents.
- The use of the land as garden area would result in a change as it would allow the applicant to use it and place structures and other domestic paraphernalia within it.
- The change to garden land would allow the applicant to pursue planning permission for further development.
- This green space should be for the benefit of all residents to provide recreational and health benefits to all residents.
- The openness of the site has been reduced over the years and is now enclosed.
- Enforcement action has not been appropriately taken within the relevant timeframes to the detriment of the area and residents.
- Notification of the applications has not been received by all residents.
- The hedge hampers the view around the road and is a safety risk.
- Pruning of the space and hedge impacts upon wildlife.

LCC Highways: Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development is acceptable and accordingly, does not wish to object to this planning application.

Archaeology: None received to date.

Tree Officer: The species of trees and hedging planted within and around the open space amenity land adjacent No.19 are suitable. The current height of the hedge prevents the area from being seen as the landscaped area of amenity that it was meant to be. Prior to the hedge and trees being planted it was an area of mainly grass with very little shrubbery, but it provided a feeling of space and greenery to the street scene. The hedge has been allowed to grow high and it now creates a green barrier so the area of land is no longer visible and cannot be seen as an open space or an area of landscaped amenity. A reduction in hedge height (I suggest to at least 1.3m or lower) should allow views of the site so it becomes an amenity area that surrounding local residents can actually see and appreciate.

Idox Checked: 14/10/22

### **Relevant Planning Policies:**

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Here, the Development Plan comprises the provisions of the Central Lincolnshire Local Plan (adopted in April 2017); the Scotter Neighbourhood Plan (Made June 2015); and the Lincolnshire Minerals and Waste Local Plan (adopted June 2016).

#### Development Plan

- ***Central Lincolnshire Local Plan 2012-2036 (CLLP)***

#### Relevant policies of the CLLP include:

LP1: A Presumption in Favour of Sustainable Development

LP17: Landscape, Townscape and Views

LP24: Creation of New Open Space, Sports and Recreation Facilities

LP26: Design and Amenity

<https://www.n-kesteven.gov.uk/central-lincolnshire/>

- ***Scotter Neighbourhood Plan (NP)***

Relevant policies of the NP include:

Policy D5 Design of New Development

<https://www.west-lindsey.gov.uk/planning-building-control/planning/neighbourhood-planning/all-neighbourhood-plans-west-lindsey/scotter-neighbourhood-plan-made>

- ***Lincolnshire Minerals and Waste Local Plan (LMWLP)***

The site is in a Minerals Safeguarding Area and policy M11 of the Core Strategy applies.

Policy M11 of the Core Strategy sets out exemptions which includes the change of use of land and buildings subject to there being no intensification. The proposed development is therefore considered to be exempt from the provisions of Policy M11 and no further consideration given to it in the determination of this application.

#### National policy & guidance (Material Consideration)

- ***National Planning Policy Framework (NPPF)***

The NPPF sets out the Government's planning policies for England and how these should be applied. It is a material consideration in planning decisions. The most recent iteration of the NPPF was published in July 2021. Paragraph 219 states:

*"Existing [development plan] policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."*

<https://www.gov.uk/government/publications/national-planning-policy-framework-2>

- **National Planning Practice Guidance**
- **National Design Guide (2019)**
- **National Design Code (2021)**

#### Draft Local Plan / Neighbourhood Plan (Material Consideration)

NPPF paragraph 48 states that Local planning authorities may give weight to relevant policies in emerging plans according to:

*(a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*

*(b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*

*(c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

- **Draft Central Lincolnshire Local Plan**

Review of the Central Lincolnshire Local Plan commenced in 2019. The 1st Consultation Draft ("Reg 18") of the Local Plan was published in June 2021, and was subject to public consultation. Following a review of the public response, the Proposed Submission Draft ("Reg 19") of the Local Plan was published in March 2022, and was subject to a further round of consultation. On 8th July 2022, the Local Plan Review was submitted to the Planning Inspectorate in order for it to commence its examination.

The Draft Plan may be a material consideration, where its policies are relevant. Applying paragraph 48 of the NPPF, the decision maker may give some weight to relevant policies within the submitted "Reg 19" Plan, with the weight to be given subject to the extent to which there may still be unresolved objections to those policies (the less significant the unresolved objections, the greater the weight that may be given)

Consultation responses can be found in document STA022 Reg 19 Consultation Responses by policy / STA023 Reg 19 Consultation Responses by respondent.

<https://central-lincs.inconsult.uk/CLLP.Draft.Local.Plan/consultationHome>

Other:

Appeal Ref: APP/N2535/W/22/3291383 relating to the change of use of open space to garden land for application 143522 at 3 Fenton Fields, Fenton, Lincoln LN1 2GE.

**Main issues**

- Principle of Development, history of the site and impact upon visual and residential amenity.

**Assessment:**

Principle of Development, history of the site and impact upon visual and residential amenity.

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

This application seeks planning permission to change the use of a landscaped piece of grass land to residential garden area in connection with 19 Waggoners Close. The site is privately owned and maintained by the Owner/occupier of No 19 Waggoners Close, which shares an open boundary with the site.

The site was however earmarked as public open space and landscaped area as part of the development of the residential estate through Outline planning permission M00/P/0745 approved on 13/08/2001 and Reserved Matters Consent M02/P/1192 granted on 24/02/2003.





Many objections have been received by residents and the parish council in relation to the proposals and its change of use to private garden land resulting in the loss of access to public open space for the residents. However, correspondence relating to Outline permission M00/P/0745 and Reserved Matters Consent M02/P/1192 reveals that this has been an on-going matter of concern over many years. In fact, correspondence dating back to 2010 reveals that the use of the land as public open space, and therefore being publically accessible to residents was investigated in detail at this time; with a legal opinion being sought on this matter. The correspondence reveals that although the site was earmarked to be Public open space and publicly accessible through the granting of Outline permission M00/P/0745 and Reserved Matters Consent M02/P/1192, the approvals did not successfully control/secure this. Consequently, the legal advice received stated that it is not possible for the Local Planning Authority to enforce the land to be publicly accessible to residents. This position therefore must be taken into consideration in the assessment of these proposals and when considering such objections raised by residents.

The Parish Council have also raised that the Local Authority have previously and should again seek to purchase the land to enable public access to be gained. The Parish Council do not state if they have made any attempts of their own to purchase the land. However, the land is not currently for sale and this is not therefore a material consideration that can be considered in the assessment and determination of this application. It is therefore concluded that based upon the evidence and correspondence available through planning records relating to applications M00/P/0745 and M02/P/1192, the loss of the application site as publicly accessible open space for recreational use is not a matter that the Local Planning Authority can reasonably consider in the assessment of the proposals.

The application site is also not identified as either a Local Green Space or Other important Open Space on the policy maps within the Central Lincolnshire Local Plan and consequently the provisions of Policy LP23: Local

Green Space and other Important Open Space of the CLLP in seeking to protect access to open space as well as its character and appearance are not engaged or relevant to this application. Additionally, as the site relates to an existing residential estate and not the growth of an area, Local Plan Policies LP9: Health and Wellbeing and LP12: Infrastructure to support Growth cannot be considered relevant to this application and proposed development.

The application site is also not designated as Protected Open Space (proposals Map 5) or Local Green Space within the Scotter Neighbourhood Plan and Policy DLG14 in restricting development within such location is also not consequently relevant to the proposed development. The site overall cannot therefore be classed as public open space that can be publicly accessible for recreational use and its loss to the community in this regard not a material consideration in the determination of this application.

Nevertheless, what is evident from the correspondence and evidence relating to application records M00/P/0745 and M02/P/1192 is that the application site was also intended as a publicly visible landscaped area for its amenity contribution to the character of the area. The legal advice given also advised that Condition 2 of Reserved matters consent M02/P/1192 was valid in securing the site as a landscaped area and required:

2. The scheme of landscaping and tree planting shown on Drawing No. CMS/1749/02 Rev A received by the District Planning Authority on 19 February 2003 shall be carried out in its entirety within the period of 12 months beginning with the date on which development is commenced (or within such longer period as may be agreed in writing with the District Planning Authority). All trees, shrubs and bushes shall be adequately maintained for the period of 5 years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary. All trees, shrubs and bushes shall thereafter be retained.

Reason: To safeguard local amenity.

The landscaping scheme approved on Plan No CMS/1749/02 Rev A is shown below and noted to consist of:

- Grassed surface
- 1 metre high Copper Beech Hedge running along sections the North West boundary and along Waggoners Way.
- 3 Broom Trees in the North East corner of the site
- A mixed hedge consisting of Pyracantha, Dogrose and Huneysuckle running along the Eastern and southern boundaries
- 2 Sweet Chestnut Trees, 1 Silver Birch and 1 Oak planted in the Wouth East Corner of the site
- 3 Gorse trees planted along the South boundary of the site



Correspondence dated 29th June 2010 and 20<sup>th</sup> December 2010 confirms the opinion of the Local Planning Authority at this time was that the space should be retained as **open space (with public visual amenity value)** and landscaped in accordance with the above noted scheme. It however appears that there is no further written correspondence or evidence which indicates that this landscape scheme was ever implemented thereafter.

The planting of the landscaping currently on the site is also believed to have been started in 2010 and has therefore been established over a 12 year period. The site as existing is laid to lawn and as shown on drawing No 1453.100A now contains 21 trees and a cluster of fruit bushes. The trees consist of a mixture of Apricot, Peach, Pear, Apple, Fir, Mulberry, Cherry and Chestnut and located towards the outer edge/middle of the site. It also has an approximately 1.75-metre-high Hawthorn Hedge running along the North West Boundary and fronting onto Waggoners Close, which has increased in height over the years.



The landscaping of the site as public open space as approved through drawing No CMS/1749/02 Rev A and the approval of M02/P/1192, differs from that currently on site and associated with the land as an open landscaped area. The landscaping on the site has however been established over approximately 12 years. It is therefore a familiar characteristic of the residential estate.

This application and proposed change of use does not include any landscaping changes to those present on the site. Consequently, the assessment of the proposals relates to the acceptability of the site as an open landscaped area with public visual amenity value; and the ability for it to be retained while forming part of the residential garden area of No 19 Waggoners Close.

Local Plan Policy LP17 relates to Landscape, Townscape and Views and relevantly advises that development proposals should maintain and respond positively to natural and man made features within the landscape and townscape which positively contribute to the character of the area. Local Plan Policy LP26 relates to the Design of development and criteria h. of the Design principles states that development should:

*h. provide well designed boundary treatments and hard and soft landscaping that reflect the function and character of the development of the surroundings*

Neighbourhood Plan Policy D5 also relates to the Design of New Development and relevantly advises:

*All new development should deliver good quality design. In order to achieve this all new development should:*

- a) Recognise and reinforce the distinct local character (as detailed in the Scotter Village Character Assessment 2016) in relation to scale, mass, form, density, character, landscape setting and materials.*
- g) create a place with a locally inspired or distinctive character;*
- h) provide buildings, landscaping and planting to create well defined streets and spaces;*

These policies are in accordance with chapters 12 and 15 of the NPPF and full weight therefore afforded to them in the assessment of this application. Paragraph 130 (b) states that Planning policies and decisions should ensure that developments are visually attractive because of good layout and appropriate and effective landscaping.

The application site and surrounding residential development is located within Character Area A of the NHP Character assessment. It relates to compact modern residential areas. These areas are associated with high density housing development, which have minimal spacing between properties and little garden space in comparison to the built footprint of the dwellings. They create enclosed residential environment within which views beyond the immediate townscape are very limited. Garden areas are sparsely planted

and shallow or dominated by parking. Consequently, character area A is associated with a lack of greenery, with built forms and hard surfaces dominating. Waggoners Close is given as an example of this type of development within the Character assessment. The Character assessment also goes on to recognise that some such developments incorporate generous green spaces which open the townscape up and help to create a more spatially, airy environment, whilst providing recreation opportunities. These spaces and the tree planting which they accommodate are noted to represent one of the key qualities of those development that fall within Character Area A and provide important landmarks amongst the otherwise monotone townscapes.

Residents and the Parish Council have also noted the importance of the site as an open landscaped space which should contribute to the character and amenity of the area. Like those noted in the Character Assessment. They have however raised concerns in relation to the change of use of the site and the harmful impact upon the character of it and valuable contribution it should make to the amenity of the area. Some residents have identified the possibility of domestic structures and paraphilia being erected within it and subject to permitted development, planning permission not required for the changes.

Most concerns raised however relate the height of the hedge running along the North West Boundary. Responses state that the space, due to the height of the hedge is no longer open and viewed as a landscape space associated with the visual amenity of the area. Instead, the hedge encloses the space into the garden area of No 19 Waggoners Close. Many have noted that the change of use applied for in this application has therefore in fact already been undertaken with the boundary fence between this property and the site being removed. However, this matter was investigated by planning enforcement in 2015, and it was concluded that no change of use had occurred at that time.

The Local Authorities Tree Officer has also advised that the species of trees and hedging planted within and around the open space amenity land adjacent No.19 are suitable for the residential environment. Nevertheless, the current height of the hedge prevents the area from being viewed as an amenity landscaped area as originally intended. They note that prior to the hedge and trees being planted it was an area of mainly grass with very little shrubbery, but provided a feeling of space and greenery to the street scene. The hedge at its current height now creates a green barrier so the area of land is no longer visible and no longer seen as an open space or an area of landscaped amenity. Consequently, they recommend a reduction in hedge height to at least 1.3m should allow views of the site so it becomes an amenity area that contributes to the character of the area and residents.

The type, number and position of the trees and bushes planted within the site are therefore considered to be an acceptable scheme in providing a landscaped space which adds value to the character and amenity of the area. However, the 1.75 metre height of the hedge does not enable the landscaped space to remain open or offer the same amenity value as intended. A reduction in the height of the hedge to allow the space to become more open

and more visible would therefore benefit the amenity of the area. To enable this, the height of the hedge and retention of the trees could be controlled using appropriate conditions which would secure the future of the open landscaped space and the value it adds to the character and amenity of the area. However, when considering what height reduction would offer an acceptable solution, consideration must be given to the fact that the hedge has formed part of the character of the area for some time now and in more recent years been maintained at a height of over the 1.3 metres recommended by the Tree Officer. Consideration is also given to the height of the trees, future growth and their visibility as part of the landscaped space. The fact the hedge will also become the residential boundary of No 19 Waggoners Close is also a factor and in this regard the height of boundary treatments within the street scene noted to be varied in height. The boundary hedge will also need to provide some screening and separation to the extended garden area of No 19 from the street scene. Although it noted that the trees planted will also do this and that the dwelling has access to an area of garden located immediately to the rear of the dwelling which is set at least 20 metres away from the boundary hedge. Consequently, should the boundary hedge be retained at 1.5-metre-high it would not look out of place with others in the street scene, would be a reasonable height for its function as a residential boundary, while allowing the space to be more open and visible to the surrounding area. It is therefore proposed that with the use of conditions securing the retention of the trees on site and the height of the hedge to be maintained at 1.5 metres, the change of use of the land would enable the landscaped space to contribute to the character and amenity of the area while functioning as garden land associated with 19 Waggoners Close.

The concerns raised in relation to the change of use to garden land and the ability for domestic structures and paraphernalia to be erected in the extended garden area are however, also valid considerations in terms of visual impact. Nevertheless, the future erection of extensions, outbuildings, fences and other means of enclosure can be controlled using conditions and removal of permitted development rights. As can the laying of hard surfaces and creation of access onto the site. In terms of domestic paraphernalia such as washing lines, bin storage, chairs and tables, the host dwelling already has access to a more private amenity area directly to the rear of the property which is already used to host such household items. It is therefore considered more likely that the land would be a more ornamental garden that would not have an adverse impact on the visual amenity value of the it nor that of the surrounding area.

The change of use of the landscaped space into garden area, subject to conditions does not therefore have to result in a negative impact upon the character of it and the contribution it makes to the character and public amenity of the area. The change of use of the land offers the opportunity to control the retention of the trees and height of the boundary hedge so that the site as an open landscaped area retains its public amenity value. In this regard Paragraph 131 of the NPPF recognises the important contribution that trees make to the character and quality of urban environments and guides that appropriate measures should be in place to secure the long-term

maintenance of newly planted trees and the retention of existing trees where possible.

With these factors in mind it is considered that subject to conditions restricting permitted development rights, the height of the hedge and retention of the trees on site, the change of use of the space to garden land would not be harmful to its features or its contribution to the character of the area and public value as amenity space. It is consequently considered that the proposed development is in accordance with Local Plan Policies LP17 and LP26 as well as Neighbourhood Policy D5 and guidance within the NPPF and grant of permission subject to conditions is recommended.

A similar conclusion was reached by Inspector Toyne in the determination of appeal Ref: APP/N2535/W/22/3291383 relating to the change of use of open space to garden land for application 143522 at 3 Fenton Fields, Fenton, Lincoln LN1 2GE. The appeal was determined on 11<sup>th</sup> July 2022 and concluded the appeal site to be a suitable location for a residential garden having regard its public amenity value. Accordingly, and subject to conditions prohibiting the alteration of the extended residential garden area, the change of use of the land was not considered to conflict with the relevant requirements of policies LP17 and LP26 of the adopted Central Lincolnshire Local Plan.

#### Other matters

Site notice – Concerns were raised in relation to the display dates and the time of the site notice. They note that the site notice was displayed on the 27<sup>th</sup> July 2022 but dated the 26<sup>th</sup>. It was also removed/replaced within 5 minutes on the 12<sup>th</sup> August and taken down on 20/08/22. This indicates that the site notice was displayed between 27<sup>th</sup> July and 20<sup>th</sup> August and for a total of 25 days.

The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the requirements in relation to the displaying of site notices and stipulates that the site notice should be in place for no less than 21 days. The displaying of the site notice as noted by a resident therefore meets the requirement set out in the Procedure Order.

#### **Conclusion and Planning Balance:**

The application site is not public open space which is publicly accessible for recreational use nor allocated as a Local Green Space or important green space in the Local Plan or Neighbourhood Plan.

The site is however an open landscape space with public visual amenity value and is owned and maintained by the owner/occupiers of No 19 Waggoners Close. This application is seeking to change the use of this land to garden land but is not proposing any alterations the landscaping of the site.

The Landscaping on site has been established since over a 12-year period. It contains trees and planting that are considered to be appropriate for its

function as a landscape space with public visual amenity value. However, the 1.75 metre high boundary hedge which will form the garden boundary of No 19 Waggoners Close is considered to enclose the site to the detriment of its contribution to the character and amenity of the area. However, with the use of conditions to restrict the height of the boundary hedge to 1.5 metres and to retain the trees and planting on site, it is not considered that the change of use of the land would not be harmful to the landscape contribution it makes to the character and amenity of the area.

Conditions could also be used to remove permitted development rights to the site and consequently the impact that any domestic development may have upon its contribution as an open landscaped space to the character and amenity of the area could also be managed through the planning system.

Consequently, it is considered that subject to conditions restricting permitted development rights, the height of the hedge and retention of the trees on site, the change of use of the space to garden land would not be harmful to its features or its contribution to the character of the area and public value as amenity space. It is consequently considered that the proposed development is in accordance with Local Plan Policies LP17 and LP26 as well as Neighbourhood Policy D5 and guidance within the NPPF and grant of permission subject to the conditions below is recommended:

**Conditions stating the time by which the development must be commenced:**

1. The change of use hereby permitted must take place before the expiration of three years from the date of this permission.

Reason: To conform with Section 91 (1) of the Town and Country Planning Act as (as amended).

**Conditions which apply or require matters to be agreed before the development commenced:**

None.

**Conditions which apply or are to be observed during the course of the development:**

2. Within three months of the garden land hereby permitted first being brought into use, the height of the hawthorn hedge running along the North West boundary of the site and adjacent to the footpath along Waggoners Close as shown on drawing No 1453.100A shall be reduced to 1.5 meters above the existing ground level and retained/maintained as such thereafter.

Reason: To ensure the height of the hedge is reduced as part of the change of use of the land and the site will appropriately contribute to the character and amenity of the area in accordance with Policies LP17, LP26 of the Central



Lincolnshire Local Plan, Policy 5 of the Neighbourhood Plan and guidance within the NPPF.

3. With the exception of the detailed matters referred to by the conditions of this consent, the development hereby approved shall be carried out in accordance with the following drawings:

1453.100 - Site and Site Location Plan received 12 July 2022

1453.100A - Landscaping Plan

The works shall be carried out in accordance with the details shown on the approved plans and in any other approved documents forming part of the application.

Reason: To ensure the development proceeds in accordance with the approved plans and to accord with Policy LP1 and LP26 of the Central Lincolnshire Local Plan 2012-2036.

**Conditions which apply or relate to matters which are to be observed following completion of the development:**

4. The trees shown on Plan No: 1453.100A shall be retained and maintained in perpetuity and any which within a period of 5 years from the change of use taking place, become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure that the existing landscaping scheme is retained and that any losses are overcome, to ensure the landscape space appropriately contributes to character and visual amenity of the area in accordance with Policies LP17 and LP26 of the Central Lincolnshire Local Plan and Policy D5 of the Neighbourhood Plan and guidance within the NPPF.

5. Notwithstanding the provisions of Classes A, E, and F of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (Amendment) Order 2015 (as amended), or any Order revoking and re-enacting that Order, no extensions, buildings or structures shall be erected or hard surfaces installed within the curtilage of the dwelling unless planning permission has first been granted by the Local Planning Authority.

Reason: To enable any such proposals to be assessed and ensure the landscape space appropriately contributes to character and visual amenity of the area in accordance with Policies LP17 and LP26 of the Central Lincolnshire Local Plan and Policy D5 of the Neighbourhood Plan and guidance within the NPPF.

6. Notwithstanding the provisions of Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (Amendments) Order 2015 as amended, or any Order revoking and re-enacting that Order, no gates, walls, fences, other means of enclosure or fuel storage containers shall

be erected within the curtilage of the dwelling unless planning permission has first been granted by the Local Planning Authority.

Reason: To enable any such proposal to be assessed and ensure the landscape space appropriately contributes to character and visual amenity of the area in accordance with Policies LP17 and LP26 of the Central Lincolnshire Local Plan and Policy D5 of the Neighbourhood Plan and guidance within the NPPF.

7. Notwithstanding the provisions of Schedule 2 Part 2 Class B of the Town and Country Planning (General Permitted Development) (Amendments) Order 2015 as amended, or any Order revoking and re-enacting that Order, no formation, layout out and construction of a means of access from the site to a highway shall be carried out unless planning permission has first been granted by the Local Planning Authority.

Reason: To enable any such proposal to be assessed and ensure the landscape space appropriately contributes to character and visual amenity of the area in accordance with Policies LP17 and LP26 of the Central Lincolnshire Local Plan and Policy D5 of the Neighbourhood Plan and guidance within the NPPF.

#### **Human Rights Implications:**

The above objections, considerations and resulting recommendation have had regard to Article 8 and Article 1 of the First Protocol of the European Convention for Human Rights Act 1998. The recommendation will not interfere with the applicant's and/or objector's right to respect for his private and family life, his home and his correspondence.

#### **Legal Implications:**

Although all planning decisions have the ability to be legally challenged it is considered there are no specific legal implications arising from this report

#### **Representors to be notified -**

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**Prepared by:**



**Date: 18/10/22**

**Authorising Office**



**Date: 18/10/2022**

**Decision Level:** Committee