

ITEM 6(b)

Application Number: 20/00787/FUL

Description Change of use of land to residential garden land associated with numbers 44, 46, 48 and 50 Randall Way; 6, 7, 9, 11, 13 and 15 Gomez Close; and 25, 27 and 29 Keel Way.

At Land adjacent to 6 Gomez Close, Oxley Park, Milton Keynes, MK4 4SX

For the occupiers of Nos. 44, 46, 48 and 50 Randall Drive, Oxley Park, Milton Keynes, MK4 4SZ; Nos 6, 7, 9, 11, 13 and 15 Gomez Close Oxley Park, Milton Keynes, MK4 4SX and Nos. 25, 27 and 29 Keel Way Oxley Park, Milton Keynes, MK4 4TZ

Statutory Target: 20th May 2020

Extension of Time: Yes – 30th June 2020

Ward: Tattenhoe Ward

Parish: Shenley Church End

Report Author/Case Officer: Richard Edgington
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1.0 RECOMMENDATION

1.1 It is recommended that permission is refused for the reasons set out at the end of this report.

2.0 INTRODUCTION

The Site

2.1 The application site is designated within Plan:MK as open amenity space, ancillary to the wider development parcel. The parcel of land is subject to a signed Section 106 agreement under 03/01652/OUTEIS, which was, under the agreement, to be transferred to either Milton Keynes Council or the Parks Trust for maintenance as public open space for the lifetime of the development. At the time of granting the outline consent for the wider application site, this provision of open space was deemed to be necessary in order to make the development acceptable. The transaction to transfer the parcel of land in accordance with the Section 106 agreement has not been completed. However, the Council's Legal Department are in receipt of a draft transfer from the developer for approval which includes the

application site. This has not been completed given the status of this planning application.

- 2.2 The land is currently being occupied in part by nearby residents who are using the land as private amenity space. There are a number of low-level fences and hedgerows forming boundaries, with patio areas installed on parts of the land, whilst other parts of the land are laid bare, with no hard boundaries.
- 2.3 To the east of the site are the private driveways associated with the adjacent properties, whilst to the west of the site is a public right of way with Whaddon Chase beyond, which is also designated Open Countryside. The site is within both a Wildlife Corridor and Biodiversity Opportunity Area as defined within Plan:MK (2019).

The Proposal

- 2.4 The application seeks consent for the change of use of the allocated public open space to private amenity garden land associated with the properties 44, 46, 48 and 50 Randall Way; 6, 7, 9, 11, 13 and 15 Gomez Close; and 25, 27 and 29 Keel Way. Due to the associated amenity furniture, landscaping and boundaries having been erected/installed, the application is considered retrospective.

Reason for referral to committee

- 2.5 The application has been referred to committee in accordance with Part 2 of the adopted scheme of delegation which states that no delegated decision shall be made where the development in the opinion of the delegated officer is likely to be of a controversial nature. In this instance it is considered that due to the land being subject to a S106 agreement which officers consider has not been complied with and the balance of public interest, this is deemed by the case officer to be of a controversial nature and therefore appropriate to be determined by Development Control Committee.

Scope of debate/decision

- 2.6 This application proposal is a full planning application and so all matters are to be considered.

3.0 RELEVANT POLICIES

National Policy

- 3.1 National Planning Policy Framework (February 2019) (NPPF)

Section 4 - Decision-making

Section 8 - Promoting healthy and safe communities

Section 12 - Achieving well-designed places

Section 15 - Conserving and enhancing the natural environment

In addition, the Planning Practice Guidance is also a material consideration

The Development Plan

3.2 Neighbourhood Plan

The application site is not located within a designated neighbourhood plan area.

3.3 Plan: MK (March 2019)

Policy L2 - Protection of Open Space and Existing Spaces

Policy L3 - Change of Use of Amenity Open Space

Policy NE1 - Protection of Sites

Policy NE2 - Protected Species and Priority Species and Habitats

Policy NE3 - Biodiversity and Geological Enhancements

Policy NE4 - Green Infrastructure

Policy D1 - Designing a High-Quality Place

Policy D2 - Creating a Positive Character

Policy D5 - Amenity and Street Scene

3.4 Supplementary Planning Documents/Guidance

New Residential Design Guide SPD (2012)

3.5 Human Rights Act 1998

There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

3.6 Equality Act 2010

Due regard, where relevant, has been had to the Milton Keynes Council's equality duty as contained within the Equality Act 2010.

4.0 RELEVANT PLANNING HISTORY

4.1 Application Site

13/00551/DISCON - Discharge of conditions 8 (materials), 9 (adoptable estate roads), 12 (levels), 16 (boundary treatments) and 21 (surface water) attached to 03/01653/OUTEIS. Details Approved 26.04.2013

11/02462/MKPCDC - Discharge of condition 18 (Approval of landscaping scheme for open space and play areas) relating to application 03/01652/OUTEIS for the erection of 583 dwellings, strategic open space, landscaping, services and infrastructure. Details Approved 13.02.2013

11/02461/MKPCDC - Discharge of Condition 12 (Landscaping scheme for open

space and play areas) relating to application 06/02032/MKPC for the erection of 162 dwellings with associated garaging and hard standings. Details Approved 06.02.2015

11/00932/MKPCDC - Discharge of Conditions 8 (Materials) and 13 (Landscaping) relating to 03/01653/OUTEIS for residential led mixed use development comprising up to 720 dwellings, a combined school including all weather playing surface, local centre comprising residential A1, A2 and A3 retail uses, B1 employment and leisure and community uses, associated landscaping and infrastructure. Conditions Discharged 14.06.2011

11/00084/MKPCDC - Discharge of Conditions 3, 4, 5, 6, 7, 8, 12 and 14 relating to application 09/00617/MKPCR for the access, appearance, landscaping, layout and scale of 24 dwellings pursuant to outline permission 03/01652/OUTEIS. Split Decision 22.04.2013

11/00081/MKPCDC - Discharge of Conditions 9, 11, 13, 14 and 17 relating to application 03/01652/OUTEIS for the erection of 583 dwellings, strategic open space, landscaping services and infrastructure. Conditions Discharged 19.12.2011

06/00073/MKPCR - Reserved matters application for the siting, design, external appearance, and landscaping of site 1, Oxley Park east, comprising 167 dwellings and 1800m² of retail floor space (Use Class A1, A2 and A3), associated with outline permission (ref.03/01653/OUTIES) for residential led mixed use development (up to 720 dwellings). Permitted 31.03.2006

05/01970/MKPCR - Reserved matters application for the siting, design and external appearance of Phase 6 (82 dwellings), AT Oxley Park West, associated with outline permission (Reference No. 03/01652/OUTIES) for the erection of 583 dwellings, strategic open space, landscaping, services and infrastructure. Permitted 19.04.2006

05/01888/MKPCR - Strategic infrastructure comprising spine roads, footways, cycleways, traffic calming, infrastructure drainage and associated works. Permitted 13.02.2006

03/01652/OUTEIS - Erection of 583 dwellings, strategic open space, landscaping, services and infrastructure (outline). Permitted 01.04.2004

5.0 CONSULTATIONS AND REPRESENTATIONS

5.1 Shenley Church End Parish Council

Shenley Church End Parish Council neither support or object to this planning application but ask that the views of the neighbours be taken into consideration.

5.2 Cllr Anthony Brown – Tattenhoe Ward (Member of Development Control Committee)

“From correspondence I have had with residents and the balance of objections/support on the portal, I feel this application is sufficiently controversial to be heard by panel. I would like to call it in if it hasn’t already been. I have not made any comment as I need to take some advice around my own personal interest in this as I live on one of the roads involved.”

5.3 Cllr James Lancaster – Tattenhoe Ward (Member of Development Control Committee)

No comments received at the time of writing this report.

5.4 Cllr Gerald Small – Tattenhoe Ward

No comments received at the time of writing this report.

5.5 MKC Landscape Architect

Objection; The development application proposal submitted does not overcome the protections of the greenspace under Plan:MK and national planning policy and should be refused.

However, it would be appropriate to transfer the land into public ownership as set out in the S106.

5.6 MKC Rights of Way Officer

No Objection; Shenley Church End Bridleway 023 abuts the site along its western edge. Before the housing estate was developed the bridleway ran along the edge of a wide, open field, with no physical limitations or restrictions to the useable width of the bridleway. If the land had been adopted as POS, as was the original proposal, the bridleway would have presumably retained those benefits.

As the case is today, the bridleway has been confined to the boundaries now present. There is an ‘alleyway’ effect, with the pre-existing hedge to the west, and the various features including fencing and planting to the east.

The bridleway carries three long-distance promoted routes – The Milton Keynes Boundary Walk, The North Bucks Way which is a 53 km route travelling from Aylesbury, through Milton Keynes, to Whaddon, and the Midshires Way, which is a 370km route travelling from the Chiltern Hills to Greater Manchester. It is therefore a well-used route and is recognised and promoted nationally.

Given the historical unrestricted nature of the bridleway, and the local and national significance of the route, a minimum usable width of 5m must be available for the bridleway throughout. The boundary edge of plot 13, at its southern end in particular may need to be reviewed.

The landowners must ensure that any planting in place along their western boundary does not encroach onto the bridleway. Any close-boarded fencing abutting the bridleway would not be acceptable.

5.7 MKC Strategic Landscape and Countryside Manager

Objection: The applicant should submit the following information prior to determination of the application:

- An assessment of the open space that demonstrates it is surplus to requirements;
- Demonstrate how the development will enhance the open space network as a whole;
- An Ecological Appraisal, carried out by suitably qualified professionals and in line with appropriate survey guidelines;
- Any Phase 2 species surveys identified as required by the Ecological Appraisal;
- A Biodiversity Enhancement Scheme detailing the locations, specifications and ongoing management of enhancements in perpetuity; and

The proposals have the potential to impact Great Crested Newts as there are ponds/waterbodies and suitable habitat within 500m of the development. Therefore, I advise the applicant to contact Andrew Irving (GCN District Licensing Officer) to discuss the options available.

5.8 British Pipeline Agency

The proposed works are in the easement to a high-pressure petroleum pipeline system and BPA wish to ensure that any works in the vicinity of the pipeline are carried out in accordance with our safety requirements (www.linewatch.co.uk). Please find attached our GIS map and Pipeline Crossing Letter in relation to the above application.

When planning works involved in crossing or working within the wayleave, plan of work, drawings, Method Statement and Risk Assessment for the written acceptance of BPA Engineering before works start.

5.9 Neighbour or Third Party Representations

A total of twenty-eight third party representations have been received (one of which from one of the applicants), seventeen of which supporting the application and eleven objecting to the application, a summary of the comments are as follows;

Supporting Material Comments:

- Remaining land/bridleway sufficient for pedestrians
- Well maintained areas which are aesthetically pleasing
- No benefits to change the existing format/layout of the site
- Community benefit
- The land has never been public

Supporting Non-material Comments:

- Builder has falsely sold the properties on the basis that the boundary was incorrect

Objection Comments:

- No justification/reason to change the use of the land to private ownership
- The space should be public land which is not fenced off
- Perception of intrusion on landowners
- Insufficient public open space and should be retained
- Permitting the application will set a damaging precedent within the Borough
- Bridleway not wide enough and would benefit from this land
- The land has high amenity value

Non-material objection comments:

- The site displays incorrect signage informing passers by the land is 'private'

6.0 MAIN ISSUES

Principle of Development
Enforcement/Legal Matters
Ecology
Landscape Character/Character of the Area

7.0 CONSIDERATIONS

Principle of Development

7.1 The application seeks consent for the change of use of the existing land allocated as public open space to private amenity space. Paragraph 97 of the NPPF and Policy L2 of Plan:MK seek to protect open spaces and leisure and community facilities. Part B of Policy L2 states that when considering planning applications which involve the loss of open amenity space, the criteria within Policy L3 will be taken into account.

7.2 The criteria of Policy L3 states that;

A. Planning permission will only be granted for the change of use of amenity open space, including the incorporation of such areas into private garden land, if:

- 1. The land has been subject to an assessment which shows the open space to be surplus to requirements;*
- 2. The land does not fulfil a useful purpose in terms of its appearance, landscaping, recreational use or wildlife value;*
- 3. The land does not host an element of semi-natural habitat useful in creating a stepping stone to another habitat or any other feature of value to wildlife to a greater extent than would be the case if it was planted as a garden. In some*

cases, the continued protection of the land as open, natural garden land and type of enclosure may be regulated by conditions;

4. The loss of amenity open space would not set a precedent for other similar proposals which cumulatively would have an adverse effect on the locality or the environment;

5. The continued maintenance of the land for public amenity purposes would be impractical or unduly onerous; or

6. Open space lost should be replaced by land of equivalent size or greater following an assessment justifying this need.

- 7.3 In order to comply with the criteria as presented above the application is required to comply with at least one of the criteria to be acceptable in principle under Policy L3. In this instance a case has been made by the applicants that the application as submitted complies with Parts A.2, A.3 and A.4 of the criteria. The basis of the case is that a covering letter has been submitted as part of the application providing the justification alongside signed affidavits by each of the interested parties who form the applicants of this application. This declaration states that each parcel of land illustrated within the submitted plan with the associated plot number has been maintained as private amenity land by the respective applicants.

Criteria A.2

- 7.4 In relation to the compliance with criteria A.2 that the land does not fulfil a useful purpose in terms of its appearance, landscaping, recreational use or wildlife value. The applicants consider that because the parcel of land has never been used as public open space forming as part of the linear park, but instead has been amenity space, the land has not served a purpose within criterion A.2 since the occupation of the development, it is therefore the applicant's view that criterion A.2 is satisfied on this basis.
- 7.5 However, the Case Officer considers that the original purpose of the land was to create a wide linear walkway which would have a semi-natural appearance which mitigates the impact of the built development and the adjacent Whaddon Chase and Biodiversity Opportunity Area and Corridor. The requirement for this to be created would have been evidenced within the original consent, thereby forming part of the necessary planning obligations as set out within the S106 agreement. This intention of the land use has also been included within the consultation response from the Landscape Architect who has objected to the change of use to private amenity land.
- 7.6 As such it is considered that the land does have value in terms of its appearance which contributes to the openness of the area. At present, whilst there are no boarded boundary treatments along the site, the separation of the land from the bridleway is considered to impact the bridleway in terms of the width and the original purpose of the land which was designated as a linear park area as part of the approved plans. There is also no evidence within this application submission to justify as to why this obligation is no longer required in accordance with the S106. Subject to the outcome of the planning application, it may be the case that enforcement action is required to deliver the area of land as public open space as previously approved.

7.7 It is also noted that were the land to be formalised as amenity garden land there is a likelihood that the land could be intensified and private amenity functions on the land including the installation of seating areas or clothes drying facilities would have a detrimental impact on the character of the locality, which is considered to be unacceptable. The proposal is therefore considered contrary to Criterion A.2 of the aforementioned criteria.

Criteria A.3

7.8 The applicants have also articulated within their submission that criterion A.3 is satisfied given that, due to the land being maintained as private amenity land, there is no loss of a semi-natural habitat which creates a 'steppingstone' to another habitat.

7.9 The application site is acknowledged to have little ecological value at present given the level of maintenance which has been undertaken on site over a period of time. The maintenance of lawn areas associated with the use of amenity land is not of high ecological value at present given the level of interruption on-site which provides little opportunity for species within the site area.

7.10 However that being acknowledged, the Landscape Architect has objected to the proposals on the basis that the Oxley Park development (the wider site) is required to meet the standards of public open space provision as agreed as part of the S106 obligations attached to the outline consent, the relevant S106 agreement is set out under application 03/01652/OUTEIS. Clause 9.4 states that; 'Not to Occupy the last of the Residential Units without first offering to transfer the Public Open Space to either the Parks Trust or the Council for a consideration of one pound (£1.00) together with a maintenance contribution....'. At present it is the view of the Case Officer that the content of Clause 9.4 of the S106 agreement has not been complied with, despite the developer having agreed with the principal planning lawyer at the end of last year that the developer would resolve the encroachment issue and transfer the land identified under the S106 as public open space, to the Council. As such the fact that the encroachment has not been resolved provides part of the reasoning as to why the current situation has arisen. The residents continue to encroach on the land which is designated as public open space under the S106 agreement and is required to be transferred to the Council.

7.11 The Case Officer also considers that the failure to meet this obligation of the S106 does result in a detrimental impact on the wildlife corridor given that the semi-natural landscape, designed to form a semi-natural barrier between the development and wildlife corridor/open countryside, the loss of this parcel of land would result in the loss of a semi-natural landscape buffer from the built development to open countryside. The proposal is therefore contrary to criterion A.3 on this basis.

7.12 It is also considered that the granting of planning permission prior to the conclusion of the legal discussions around the S106 would be premature. It is currently proposed that the developer will grant a long lease to the Parks Trust of the land identified under the S106 agreement as public open space simultaneously with the

transfer of the freehold to the Council. An opportunity needs to be provided to the Parks Trust to consider if it will still wish to take a lease of a smaller area of land if planning permission is granted, as there is land in addition to the application site where the ownership is yet to be transferred. In the event that the Parks Trust does not take the lease, the possibility is that the land will remain with MKC who will then have to take on the management and upkeep of the land. As such given the absence of evidence that the legal obligations have been met, granting such permission, which could in effect supersede part of the previous consent, is deemed premature until the legal discussions and investigations are complete.

Criteria A.4

- 7.13 The predominant case put forward by the applicants as part of the application submission is compliance with A.4 on the basis that there are 'exceptional circumstances' in this case to make the change of use acceptable. This case has been made on the basis that the purchasers of the plots/properties have been under the knowledge that the land to the front of their properties was within their ownership. Whilst this may have been the case, this would be a legal matter between the property owners and the developer, as knowingly selling the land designated as public open space as private amenity land would be unlawful.
- 7.14 It is acknowledged that this gives rise to an unusual situation, given that the S106 has not been complied with. As the land was never transferred to, or offered to be transferred to, either the Council or the Parks Trust as per the agreement there has been no opportunity for the land to be maintained as approved. The view of the Local Planning Authority is that this transfer should be completed in accordance with the S106 agreement.
- 7.15 Were permission for the change of use of the land granted, there is concern that this could set a precedent for further changes of use of amenity land across the site. When referring to the approved open space land designated within the S106 the part of land within the application site forms part of a larger band of landscaping which runs adjacent to dwellings. There is therefore a likelihood that this could set a precedent for further changes of use within the locality, were other occupants minded to adopt areas of public open space adjacent to their properties.
- 7.16 There is also concern that granting permission would also set a precedent within the Borough. In granting consent for the change of use, it would be a case whereby planning permission would be granted on a parcel of land which forms a planning obligation, which has been secured to make the development acceptable when originally granted. The provision of public open space is a requirement for all schemes across the borough which meet the threshold as part of the S106, a reduction of provision would therefore be unacceptable.
- 7.17 It is also noted that since the completion of the development in 2009, based on the details submitted within this application, and available GIS mapping and Aerial photographs. The installation of boundary treatments around the land has evolved to include low-level hedgerows, roped fencing alongside garden furniture/patio areas. The Case Officer therefore believes that there has been an erosion of the public open space over a period of time as more boundary treatments have been installed.

- 7.18 It is therefore concluded that the use of designated open space, which was defined within the S106, for use as private amenity land would set an undesirable precedent within the area given the number of properties to the north and south of the site which adjoin the same shaded band of public open space included within the S106 agreement. The proposal is deemed likely to set an unacceptable precedent for the encroachment of amenity land onto public open space within the area, thereby not meeting the requirements of criterion A.4.

Enforcement/Legal Matters

- 7.19 As stated above, Paragraph 9.4 of the S106 agreement states that the last of the residential dwellings shall not be occupied 'without first offering to transfer the Public Open Space to either the Parks Trust or the Council for a consideration of one pound (£1.00) together with a maintenance contribution'.
- 7.20 At the time of writing this report, this transaction has not been completed in accordance with the S106 agreement. This is despite the developer having agreed with the principal planning lawyer at the end of last year that the developer would resolve the encroachment issue and transfer the land identified under the S106 as the public open space to the Council. A draft transfer and plan, which includes the application site, was subsequently submitted to the Council's legal department for approval, however the matter is complicated by the encroachment issue.
- 7.21 With regards existing planning enforcement action on-site, the Planning Enforcement Manager has noted that there were enforcement queries raised in 2011 at No's. 6 and 7 Gomez Close for the change of use of the amenity open land, although it is understood that these queries were closed as at the time there was not breach of control, there has been no further enforcement cases registered since this time. However, should the agreement not be reached and the land not be transferred to the Council or the Parks Trust in accordance with the above S106 agreement, the Council will have an option to undertake separate enforcement action in relation to the breach of the S106 agreement against the developer.

Ecology

- 7.22 In respect of ecological considerations, it is noted that both the Council's Landscape Architect and Strategic Landscape and Countryside Manager have objected to the proposals in part due to the potential impact on protected species. Both consultees have suggested that a Preliminary Ecological Assessment (PEA) is required.
- 7.23 Paragraph 170 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites with ecological value. In addition, Policies NE1 and NE2 of Plan:MK also requires applications to demonstrate that development proposals would not result in loss of biodiversity on-site.
- 7.24 The site is both within a biodiversity opportunity area and adjacent to Whaddon Chase, it is noted that no PEA has been submitted with this application. Whilst the

Case Officer acknowledges that the land as existing is not likely to be of a high ecological value given the existing use of the site with the level of maintenance and amenity activity. Weight has been given to the fact that the land was allocated within the S106 to off-set the loss of ecology resultant of the development of the wider site which was formerly farmland, which would have likely had more ecological value.

- 7.25 Whilst a PEA was not requested by the Case Officer as part of this application, it is considered that given the land has not been laid out as semi-natural open-space as approved the ecological value of the site cannot be quantified and as such the assessment would be entirely speculative.
- 7.26 It would however have been beneficial if an assessment had been made on the land to justify that the change of use to amenity land from the public open space would have not led to an unacceptable level of harm on ecological species. However, given such information has not been provided, this assessment cannot be made on this application.
- 7.27 Based on the information submitted however, it is considered that the change of use of the land to private amenity space has a likelihood to have a detrimental impact on biodiversity within the ecologically sensitive location.
- 7.28 As such, when examining the existing application, it is considered that there is a likely overall loss of biodiversity on the site over the approved scheme being implemented in accordance with the previously approved plans and S106 agreement. Given that no substantive details have been provided within this application to justify that there is not a detrimental impact on ecology on-site the application is considered to be contrary to Policy NE2 of Plan:MK (2019).

Landscaping

- 7.29 Within the consultation response, consultees have also referred to Policy NE4 of Plan:MK which states that the green infrastructure of Milton Keynes will be protected, extended and enhanced for its biodiversity, recreational, accessibility, health and landscape value for the contribution it makes towards combating climate change.
- 7.30 In this case the change of use of the land results in a loss of allocated public open space and green infrastructure which was allocated to create a semi-natural linear park intended to form a natural buffer between the built environment and Whaddon Chase to the west of the application site. The space provision was required as part of the original application for the wider site as part of the S106 agreement. The linear park was intended to be along the bridleway route given that the route is nationally recognised and well used to create an open walkway along this route. Whilst the Footpath Officer has not objected to the application, concerns have been raised that the enclosure of the right of way would be harmful, and it would remain more desirable to have the area of land open.
- 7.31 The Landscape Architect considers that the loss of the space would result in unacceptable harm to the locality. The assessment undertaken by the Case Officer

in this case considers that there would be an unacceptable loss of green infrastructure which was originally envisaged for the area, which is contrary to Policy NE4. Within the supporting text to the policy Paragraph 12.26 of Plan:MK states that the Local Planning Authority has a requirement to ensure that the size and location of Green Infrastructure for the function it is intended to fulfil. It is considered in this case that the loss of the land included within the application site reduces the proportion of open space which was required as part of the application, and given there is no justification within the application to support the loss in terms of the loss of green infrastructure, the application is considered to contravene Policy NE4 for this reason.

8.0 CONCLUSIONS

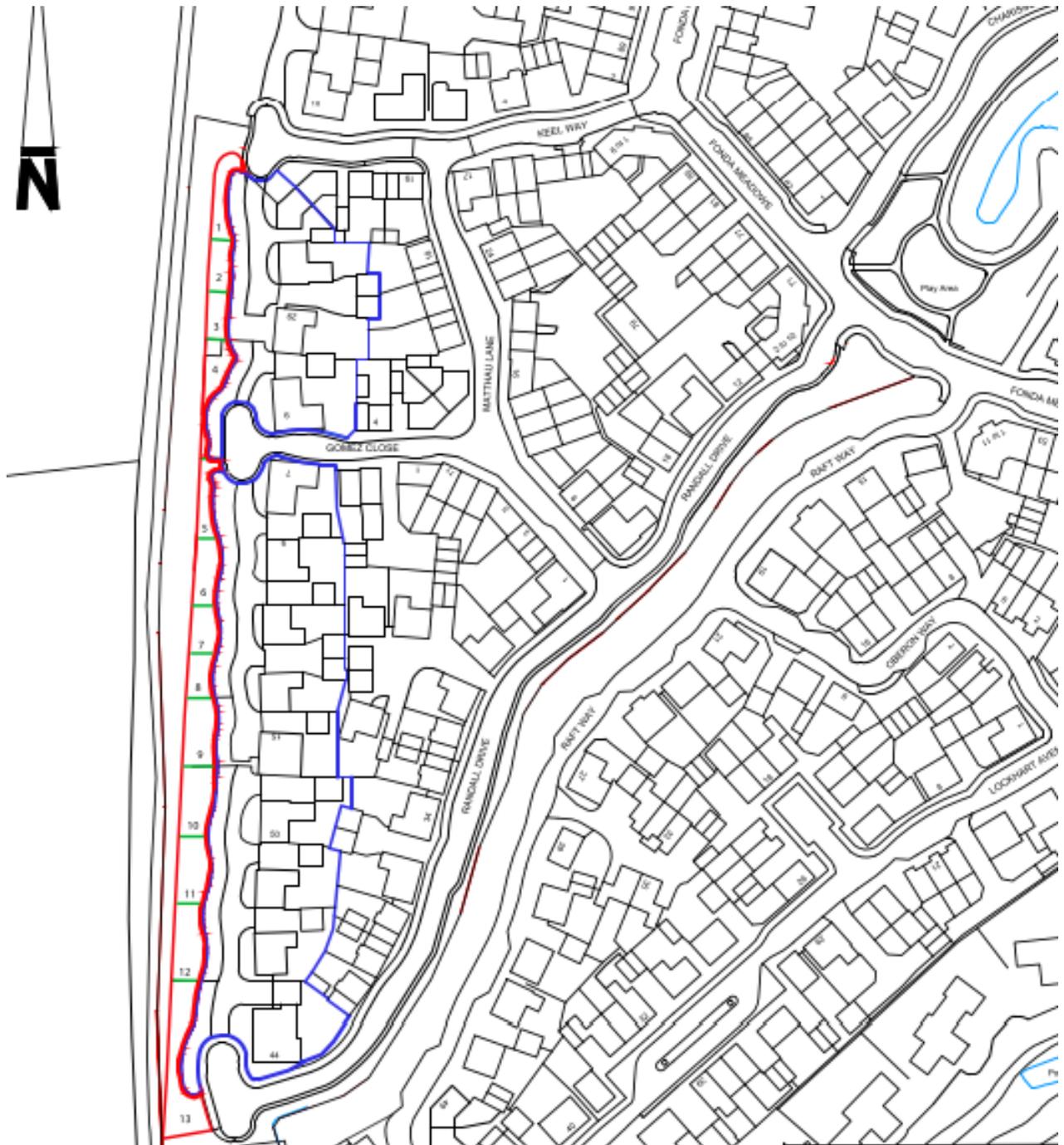
- 8.1 In conclusion, based on the information submitted by the applicants to justify the change of use against the criteria of Policy L3 is considered to be unacceptable. As submitted, the change of use would give rise to the further intensification of the land with uses associated with private amenity space which would significantly alter the character and appearance of the area in terms of its appearance and openness.
- 8.2 In addition, the change of use of the land would also result in harm to wildlife within the biodiversity opportunity area and, given that the land in accordance with the S106 attached to 03/01652/OUTEIS has not been transferred, the harm caused as a result of this development results in a sub-standard provision of natural habitat land within the western boundary of the site.
- 8.3 The case made that there are exceptional circumstances in this instance are not considered to be justification in itself to permit the change of use given that the boundary treatments and use of the land has developed over a period of time since the first occupation of the development. It is therefore concluded that the use of designated open space which was defined within the S106 for use as private amenity land would set an undesirable precedent within the area given the number of properties to the north and south of the site which adjoin the same band of public open space included within the legal agreement. The development is therefore deemed contrary to Policy L3 for these reasons.
- 8.4 Notwithstanding the principle criteria, the proposed development results in a loss of green infrastructure regarded as part of the verdant character of Milton Keynes in conjunction with the lack of detail provided within the application as to the impact on nearby wildlife within the ecologically sensitive location the development is considered to be contrary to Policies D1, NE2 and NE4 of Plan:MK (2019).

9.0 REASONS FOR REFUSAL

1. As submitted, the change of use as proposed results in an unacceptable loss of public open space which would have a detrimental impact on the character, openness and amenity provision for visitors to the area and residents of the wider estate. Thereby contravening Policy L3 of Plan:MK (2019) and Paragraph 97 of the National Planning Policy Framework (2019).

2. The development would result in a non-provision of designated green infrastructure defined within Plan:MK, which also results in an erosion of the openness of the nationally recognised bridleway, also causing detriment to the allocated wildlife corridor. The application therefore contravenes Policies D1, NE2 and NE4 of Plan:MK (2019).

Proposed Site Plan



Public Open Space Plan – Forming the S106 attached to 03/01652/OUTEIS



A1.0 FULL CONSULTATIONS AND REPRESENTATIONS

A1.1 Shenley Church End Parish Council

Shenley Church End Parish Council neither support or object to this planning application but ask that the views of the neighbours be taken into consideration.

A1.2 Cllr Anthony Brown – Tattenhoe Ward (Member of Development Control Committee)

From correspondence I have had with residents and the balance of objections/support on the portal, I feel this application is sufficiently controversial to be heard by panel. I would like to call it in if it hasn't already been. I have not made any comment as I need to take some advice around my own personal interest in this as I live on one of the roads involved.

A1.3 Cllr James Lancaster – Tattenhoe Ward (Member of Development Control Committee)

No comments received at the time of writing this report.

A1.4 Cllr Gerald Small – Tattenhoe Ward

No comments received at the time of writing this report.

A1.5 MKC Landscape Architect

Objection; Oxley Park development is required to meet the standards of public open space provision set out in Policy and as agreed within the S106 obligations attached to outline consent.

The relevant S106 Agreement (03/01652/OUTEIS Oxley Park Land N of Childs Way Childs Way V1 To Oxley Park Roundabout) states at clause 9.4: "Not to Occupy the last of the Residential Units without first offering to transfer the Public Open Space to either the Parks Trust or the Council for a consideration of one pound (£1.00) together with a maintenance contribution...." Thereby, the land is held as public open space within the s106 agreement which legally requires the land to be transferred to the Council, or if elected to the Parks Trust.

In addition, the land is designated as recreation and open space on the Plan:MK (2012) policies map. The recreation and open space is protected under policy L2. Recreational open space is defined in Plan:MK as all open land which is in a leisure or recreation use, whether publicly or privately owned. Residents assuming ownership by occupying the land for private leisure use isn't sufficient justification for granting permission to allow the land to be conveyed into their private ownership when the land is required to be set aside as open space for public benefit as part of the public open space land budget for the housing development granted under outline permission.

Policy L2 Protection of Open Space and Existing Facilities says planning permission will be refused for proposals involving the loss of public open space, unless the criteria set out in policy are met.

The NPPF 2019 says (para 96) 'Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision are needed, which plans should then seek to accommodate.'

NPPF 2019 (para 97) 'Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.'

The land was assessed as part of the MK open space assessment and forms part of the evidence base for Plan:MK. The open space assessment was consulted on with the final round taking place in May 2018. The final revised open space assessment concluded to include this site as open space and designated it as a green access link. Therefore, it can be determined that the land is not identified by the MK open space assessment as 'surplus to requirements' and the proposal would not be compliant with NPPF 2019 or Plan:MK policy L2 (or if assessing against policy L3 where the same key requirement of open space assessment applies).

Furthermore, the proposal would:

- Result in a significant reduction in public open space approved as part of the original land budget calculations attached to the outline consent, bearing in mind that a large proportion of the open space in Oxley Park i.e. the Oxley Mead SSSI is protected and not accessible to the public
- Harm the multi-purpose functions of the linear park along the west edge of Oxley Park which is intended to fulfil a useful purpose as a landscape buffer of semi-natural character (not manicured) between housing development and the special landscape of Whaddon Chase in the adjoining local authority, as a leisure route / designated wildlife corridor along the North Bucks Way and the edge of the houses, and to safeguard the high pressure oil pipelines by placing the land which includes the easement in public ownership
- Result in a layout which hems in public access to a much narrower space between a hedge and a mismatch of private boundary treatments and manicured land of the application site which is inappropriate in character and undermines the design intent for a continuous, wide public open space corridor along the west edge of Oxley Park of semi-natural appearance

- Set a precedent and encourage other similar proposals which cumulatively would have an adverse effect on the locality or the environment
- Remove the opportunity to secure long-term maintenance and management of the land in a manner that would be appropriate to the landscape character of area, enhance biodiversity and improve public access to the countryside and North Bucks Way
- Would not deliver any public benefit to compensate for the loss of public open space; a relatively small number of residents would gain property at the expense of the wider public who would otherwise benefit from the transfer of the land into public ownership
- Contravene policy NE4 Green Infrastructure which says that ‘the network of green infrastructure throughout the Borough will be protected, extended and enhanced for its biodiversity, recreational, accessibility, health and landscape value and for the contribution it makes towards combating climate change

The development application proposal submitted does not overcome the protection of the greenspace under Plan:MK and national planning policy and should be refused. The designation of the land as recreation and open space ‘green access link’ is based on a robust and up-to-date assessment of the need for open space; the assessment has clearly shown the open space is not surplus to requirements.

A1.6 British Pipeline Agency

The proposed works are in the easement to a high-pressure petroleum pipeline system and BPA wish to ensure that any works in the vicinity of the pipeline are carried out in accordance with our safety requirements (www.linewatch.co.uk). Please find attached our GIS map and Pipeline Crossing Letter in relation to the above application.

When planning works involved in crossing or working within the wayleave, plan of work, drawings, Method Statement and Risk Assessment for the written acceptance of BPA Engineering before works start.

A1.7 MKC Footpath Officer

No Objection; Shenley Church End Bridleway 023 abuts the site along its western edge. Before the housing estate was developed the bridleway ran along the edge of a wide, open field, with no physical limitations or restrictions to the useable width of the bridleway. If the land had been adopted as POS, as was the original proposal, the bridleway would have presumably retained those benefits.

As the case is today, the bridleway has been confined to the boundaries now present. There is an ‘alleyway’ effect, with the pre-existing hedge to the west, and the various features including fencing and planting to the east.

The bridleway carries three long-distance promoted routes – The Milton Keynes Boundary Walk, The North Bucks Way which is a 53 km route travelling from Aylesbury, through Milton Keynes, to Whaddon, and the Midshires Way, which is a 370km route travelling from the Chiltern Hills to Greater Manchester. It is therefore a well-used route and is recognised and promoted nationally.

Given the historical unrestricted nature of the bridleway, and the local and national significance of the route, a minimum usable width of 5m must be available for the bridleway throughout. The boundary edge of plot 13, at its southern end in particular may need to be reviewed.

The landowners must ensure that any planting in place along their western boundary does not encroach onto the bridleway. Any close-boarded fencing abutting the bridleway would not be acceptable.

A1.8 MKC Strategic Landscape and Countryside Officer

Objection: The S106 Agreement (03/01652/OUTEIS Oxley Park Land N of Childs Way Childs Way V1 To Oxley Park Roundabout) states at clause 9.4:

“Not to Occupy the last of the Residential Units without first offering to transfer the Public Open Space to either the Parks Trust or the Council for a consideration of one pound (£1.00) together with a maintenance contribution....”

The land in question is held as public open space within the s106 agreement and held as public open space in the Council's designations map in our local Plan – Plan:MK

The Council requires the land to be transferred to the Council or if elected to the Parks Trust, along with the other areas of land being transferred as such – as set out in the s106 agreement.

The land is designated as recreation and open space on the Plan:MK (2012) policies map. The recreation and open space is protected under policy L2. Recreational open space is defined in Plan:MK.

Policy L2 Protection of Open Space and Existing Facilities says planning permission will be refused for proposals involving the loss of public open space, unless the criteria set out in policy are met. It details the need for an assessment to have taken place that clearly shows the open space to be surplus to requirements (L2 – A1 & L3- A1) and its loss would have no detrimental effect on the wider network. Alternatively the development will significantly enhance the network. No evidence of this work has been submitted.

The NPPF 2019 says (para 96) ‘Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision are needed, which plans should then seek to accommodate.’

NPPF 2019 (para 97) ‘Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.'

The proposals will:

- Harm the multi-purpose functions of the linear park along the west edge of Oxley Park which is intended to fulfil a useful purpose as a landscape buffer of semi-natural character (not manicured) between housing development and the special landscape of Whaddon Chase in the adjoining local authority, as a leisure route / designated wildlife corridor along the North Bucks Way and the edge of the houses.
- Restrict public access to a narrower corridor between a hedge and a mismatch of private boundary treatments of the application site - As the route is a bridleway such restrictions may bring users in to conflict
- Set a precedent and encourage other similar proposals which cumulatively would have an adverse effect on the locality or the environment
- Contravene policy NE4 Green Infrastructure which says that 'the network of green infrastructure throughout the Borough will be protected, extended and enhanced for its biodiversity, recreational, accessibility, health and landscape value and for the contribution it makes towards combating climate change

The proposals do not overcome the protection of the greenspace under Plan:MK and national planning policy and should be refused. The designation of the land as recreation and open space 'green access link' is based on a robust and up-to-date assessment of the need for open space; the assessment has clearly shown the open space is not surplus to requirements.

Ecology/Biodiversity:

No ecological information has been submitted in support of the application. An Ecological Appraisal is required prior to determination of the application.

Policy NE1 – Protection of Sites

If the proposals have the potential to affect a LWS (as the paragraph under NE2 suggests) then policy NE1 applies. If so, I suggest discussing it separately. Something like this:

The proposals are close to Oakhill Wood LWS, which is also classified as a Priority Habitat and ancient woodland...

Are there likely to be effects on the LWS? What are they? No Ecological Appraisal has been submitted, therefore you can refer it back to the applicant, saying that they need to consider the potential effects on the LWS as part of the appraisal.

Policy NE2 – Protected Species and Priority Species & Habitats.

The proposals have the potential to affect protected species. Therefore, the applicant needs to carry out an Ecological Appraisal, which should be submitted prior to determination.

The proposals are within a red risk zone under the great crested newt district licence. Advise that the applicant contacts Andrew for further advice on the options re: GCN.

Any application for development/change of use of this site must provide sufficient evidence to demonstrate that the proposed will not have a detrimental effect on flora, fauna or habitats on or nearby the application site. The application lacks an appraisal of the sites ecology and the impact the development will have.

NPPF 2019 (para 170) Planning policies and decisions should contribute to and enhance the natural and local environment by: protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)

Furthermore, the proposal would:

- The linear park along the west edge of Oxley Park is designed for a multi-purposes; as a landscape buffer of semi-natural character between the housing development and the special landscape of Whaddon Chase, as a leisure route along the North Bucks Way and a designated wildlife corridor
- Set a precedent and encourage other similar proposals which cumulatively would have an adverse effect on the locality or the environment
- Contravene policy NE4; Green Infrastructure, ‘the network of green infrastructure throughout the Borough will be protected, extended and enhanced for its biodiversity, recreational, accessibility, health and landscape value and for the contribution it makes towards combating climate change’

A1.9 Neighbour/ Third Party Representations

A total of twenty-eight third party representations have been received (one of which from one of the applicants), seventeen of which supporting the application and eleven objecting to the application, a summary of the comments are as follows;

Supporting Comments:

- Remaining land/bridleway sufficient for pedestrians
- Well maintained areas which are aesthetically pleasing
- No benefits to change the existing format/layout of the site
- Community benefit
- The land has never been public
- Builder has falsely sold the properties on the basis that the boundary was incorrect

Objection Comments:

- No justification/reason to change the use of the land to private ownership
- The site displays incorrect signage informing passers by the land is ‘private’
- The space should be public land which is not fenced off
- Perception of intrusion on landowners
- Insufficient public open space and should be retained
- Permitting the application will set a damaging precedent within the Borough
- Bridleway not wide enough and would benefit from this land
- The land has high amenity value