

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

6 February 2013

AUTHOR/S: Planning and New Communities Director

S/0090/12/VC - MELBOURN

**Removal of conditions 7 and 8 of Planning reference SC/1216/72 at Land Adjacent 2
The Lawns Close, Melbourn for Mr David John Jones**

Recommendation: Approval

Date for Determination: 13th February 2012

Notes:

This Application has been reported to the Planning Committee for determination, as the Officer recommendation is contrary to the response of Melbourn Parish Council.

Site and Proposal

1. The site is located in the village of Melbourn, designated as a Minor Rural Village. It is inside the Village Framework and outside of the designated Conservation Area. The application site is an area of overgrown open space of approximately 0.055 hectares and surrounded by timber close boarded fencing that is overgrown with ivy and creepers. There are no vehicular access points to the site that lead onto the main estate or the neighbouring road. A pedestrian access once existed from The Lawns Close but this has been closed for some years. It is bound by dwellings to the north east and west and by Back Lane BOAT (Byway Open to All Traffic) to the south. It is predominately hidden from view by the existing surrounding development when viewed from within The Lawns Close and from Back Lane due to overgrown boundary treatment.
2. As part of The Lawns Close development in the 1970's it was an area originally set aside as a play area. However, it was never formally secured as such and it would appear that it has not been used as such or for informal recreation over the last 10 years, the applicant has confirmed that the site is in now private ownership. The application dated 18 July 2011 requests removal of conditions 7 and 8 of SC/1216/72 which secure open space as part of a wider residential development.

Planning History

3. There are no planning applications that refer specifically to this site alone, however it was included in the application for the development of 13 dwellings under planning reference SC/1216/72 that refers to the land as 'open space' under conditions 7 and 8 of the decision notice. The conditions inform that a S52 Agreement was to be entered into and this was completed 1st July 1974. There is no evidence or conclusion to suggest that the land was ever transferred to the Parish Council in the 1970's.

Planning Policy

4. National Planning Policy Framework

- Local Development Framework Core Strategy 2007 - **ST/5** Minor Rural Centres,
5. Local Development Framework Development Control Policies 2007 - **DP/1** Sustainable Development, **DP/7** Development Frameworks, **SF/9** Protection of Existing Recreation Areas, **NE/6** Biodiversity
6. **South Cambridgeshire LDF Supplementary Planning Documents (SPD):**
Open Space in New Developments SPD 2009
Trees and Development Sites SPD 2009
District Design Guide SPD 2010
Biodiversity SPD July 2009
Landscape in New Development March 2010

Consultations

7. **Melbourn Parish Council** – Recommends refusal. Comments are as follows:
- Considerable opposition from adjacent residents who are entitled to access in terms of their deeds, most of whom have used the area at some time as a result. The Planning Committee felt there were no justifiable reasons to allow the removal of the conditions requested in light of the above and that there appears to still be occasional usage. The applicant presents no defined reasons for this request.

Representations

8. There have been 6 representations, 5 of which are objections from local residents. Concern is raised with regard to the following issues:
- This land is intended as a communal space for the houses in The Lawns Close. It has been used as such in the past and continues to be used as such today.
 - Lost amenity land
 - Residents believed this was a protected area
 - Devaluation of property
 - This application has provided impetus to make better use of the land
 - My chickens currently use the land
 - Do not believe its underuse provides reason to remove the right to access that has existed and would have influenced many house purchasers over the years.
 - The land is part of my deeds
 - Has been used by local children
 - Lack of notification from the Local Planning Authority.
9. The applicant in light of the objections received officers sought legal advice with regard to examine the title to the properties at The Lawns Close, Melbourn, in particular with reference to the area of land in question. Full details are available on the application as part of the background papers.

Planning Comments

10. The key issue with regard to this application is what harm the loss of this open space will have on the local community and the character of the area.

Principle of the development

11. The loss of amenity land is not supported by the Local Development Framework Development Control Policies under policy SF/9. Recent examples of appeal decisions, specifically in Melbourn have indicated that regardless of its formality, amenity space should be reserved as such. However, each site is assessed individually on its merits and whilst every effort has been considered with regard to retaining this land insofar as SF/9 requires, the merits are in favour of the applicant.
12. The application is for the removal of conditions 7 and 8 under planning reference S/1216/72. Whilst it is not part of this application it is likely that the removal of these conditions will lead to a request for development of the site at a later date for whatever the applicant/owner wishes to use it for. Future proposals are not the subject of discussion here.
13. The principle of removing the conditions means the loss of an area that was originally allocated as play area when the site was developed in the 70's. It is clear that the properties that were built as part of this site have links to the area in question through deeds. Evidence has been provided by legal representatives on behalf of the applicant and verified by the Council that although there is a link in the deeds the actual specific rights over the land of the neighbouring units is very limited. The actual findings suggest that each owner has an 'obligation to contribute to the maintenance'. No evidence has been forthcoming to suggest that money has ever been sought from the occupiers of The Lawns for its maintenance and there is no clear evidence that any maintenance has ever taken place on site. Anecdotal evidence from the residents of how this land has been used over the years has not been forthcoming and it is confirmed by the Parish Council that it is unlikely that any evidence will be provided.
14. The use of the land for open space was offered at the time of development to the Parish. It was not taken. Approximately 40 years on the land still remains predominately unused and uncared for. The NPPF core principles aim to encourage the effective use of land by reusing land that has not been previously developed providing it is not of high environmental value and no evidence has been provided to suggest it has any.

Impact on the character of the area

15. This site has not been used as open play space for many years and its unkempt appearance simply blends into the surroundings. It is not accessible to anyone and therefore the character can only be assessed externally. From Back Lane only the overgrown close-boarded fence can be seen and the trees on the site poke above it. From The Lawns Close the site is not visible and again the trees within it sit above the boundary treatment. These create a soft edge to the immediate surroundings but there are no trees on site of any great value and the primarily self seeded plot is overgrown and unused. It is understood that a neighbour has kept chickens on it in the past, albeit without the owner's permissions.

Conclusion

16. The use of this site as 'open space' has essentially already been lost through lack of maintenance and through subsequent sale to the current owner. The site has not been used as such for considerable time, it was never taken by the then Parish

Council and the opportunity for the current Parish Council to reclaim it could be legally difficult and expensive and not relevant to planning. This piece of land, on the balance of probability, would be very difficult legally to retain as open space given the history of the site. The grant of planning permission to remove the conditions will not prevent any future such claims, but by the same token refusing permission will not secure its provision as originally intended in the 1970's.

Recommendation

17. Approve removal of the conditions.

Background Papers: the following background papers were used in the preparation of this report:

South Cambridgeshire Local Development Framework (LDF) 2007
Circular 05/2005 – Planning Obligations
Circular 11/95 – The Use of Conditions in Planning Permissions
Planning application references: S/0090/12/VC

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