

Agenda Item A8	Committee Date 19 September 2011	Application Number 11/00613/VCN
Application Site Land At Mossgate Park Mossgate Park Heysham Lancashire		Proposal Variation of Conditions 7, 8, 10 and 11 and removal of Condition 9 on approved application 95/00398/REM for the landscaping of former proposed play area
Name of Applicant MAC (NW) Ltd.		Name of Agent Charles Aspden
Decision Target Date 3 October 2011		Reason For Delay N/A
Case Officer		Mr Andrew Drummond
Departure		No
Summary of Recommendation		Approval

1.0 The Site and its Surroundings

- 1.1 The application site falls within an area of Heysham known as Mossgate. It is a relatively new residential development comprising bungalows and houses set along Meldon Road and a series of cul-de-sacs stemming off this artery road. The private residences are occasionally broken up by landscaped areas with a swathe of scrubland along the eastern, southern and south-western boundaries.
- 1.2 The land falls to the west of the Heysham-Morecambe railway line, elevated above the flat landscape to the east, affording views of the Bowland Fells, Lancaster and the Lune Valley. The area to the north and west are established residential areas, with land to the south gradually being developed into further residential areas.
- 1.3 The application site is not designated within the Lancaster District Local Plan. On the eastern side of the railway line lies Heysham Moss, which is a Site of Special Scientific Interest (SSSI). This is also part of the wider Countryside Area that covers much of the District. There is a Tree Preservation Order covering the amenity area on the south and south west boundary and another covering the northern part of the landscaped area off Highdale.

2.0 The Proposal

- 2.1 The application seeks to remove condition 9 and vary conditions 7, 8, 10 and 11 on the planning permission 95/00398/REM. These currently state:

Condition 7 - The proposed landscaped amenity areas lying along the east, south and south west sides of the site shall be securely fenced off, prepared and tree planted in accordance with the approved plan during the planting season 1996/97 to the reasonable satisfaction of the local planning authority.

Condition 8 - Before any of the dwellings hereby approved are first occupied, detailed schemes for the layout and equipment of the play areas specified on the approved plan shall be submitted to and approved in writing by the local planning authority.

Condition 9 - Before any development is commenced on site appropriate signs indicating the location of the proposed play areas shall be displayed on site and maintained to the satisfaction of the local planning authority until the completion of those areas.

Condition 10 - The approved landscaping scheme including the provision of landscaped amenity areas, footpaths with lighting, bridleways, play areas and kickabout/recreation areas shall be implemented in phases related to the construction of the proposed dwellings which shall be submitted to and agreed in writing by the local planning authority before any of the dwellings hereby approved are first occupied. All such areas and facilities shall be completed in phases in accordance with the approved scheme to the reasonable satisfaction of the local planning authority before any of the adjacent houses are first occupied.

Condition 11 - Unless otherwise agreed with the local planning authority, by a suitable agreement for adoption and maintenance, all landscaped amenity areas, play areas and kickabout/recreation areas and their associated footpaths not adopted by the Highway Authority shall be maintained to the satisfaction of the local planning authority for a period of 10 years. This maintenance shall include the replacement of any tree or shrub which is removed or dies, or is seriously damaged or becomes seriously diseased, by a species of similar type and size to that originally planted, the repair or replacement of any defective play equipment, fencing or gates in accordance with the approved scheme, the maintenance of footpaths in a safe condition in materials of the type originally used for their construction and the maintenance of amenity grassland.

- 2.2 The application has been submitted further to discussions between the Council's Environmental Services Department, the Council's Regeneration and Policy section and the developer (MAC) to reflect past occurrences and the present situation.

3.0 Site History

- 3.1 The wider area in this part of Heysham, known as Mossgate, has been party to numerous planning applications over the last 2 decades, predominantly for residential development. The only application pertinent to the pending submission is 95/00398/REM and its associated outline application:

Application Number	Proposal	Decision
95/00398/REM	Reserved matters application for 146 houses and bungalows, roads layouts and landscaped areas	Approved
93/01139/OUT	Outline application for residential development of 45 hectares including a sports complex, pub and shops	Approved

4.0 Consultation Responses

- 4.1 The following responses have been received from statutory and internal consultees:

Consultee	Response
Tree Protection Officer	<p>No objections to the new landscape proposal subject to submission of the identified information:</p> <p>A new landscape scheme has been proposed affecting the former proposed play area. The existing elder/hawthorn hedgerow is proposed for retention with a total of 12 new trees - 6 field grown apple trees and 6 rowan, size 10-12cm girth at planting. The number or trees, species, size at planting and their location are all satisfactory. A maintenance regime is required for a minimum period of 10 years post planting and must be agreed in writing. In addition the planting period must also be agreed in writing. A regime must also be agreed for the maintenance and management of the grass area.</p>

5.0 Neighbour Representations

5.1 One 'neutral' letter has been received, providing the following comments but neither supporting or objecting to the application:

1. If hedgerow and paths are to be adopted then could MAC please do an asset transfer to the council or provide a sum to pay for the continued maintenance of the land.
2. MAC has failed to maintain the tree line on the footpath "Drovers Walk" (covered by Tree Preservation Order 402), for a number of years and therefore a commuted sum to be used to improve this pathway which has fallen into disrepair through this neglect should be secured.
3. Please can the railings surrounding the proposed Play Area 2 be removed and donated to another local community group for reuse?
4. Can MAC please be required to provide a complete register of all land which it holds/manages in the areas of Mossgate & Windermere Parks for the purpose of identification?
5. Can neighbouring properties be consulted on whether they want more or less lighting in the area around Play Area 2?
6. MAC Construction should actively engage with the planning department to fulfill its prior and current commitments.

2 other pieces of correspondence have been received - one supporting the proposal and the other simply raising a query regarding the play area.

6.0 Principal Development Plan Policies

6.1 National Planning Policy Statements (PPS) and Guidance notes (PPG)

PPS1 (Delivering Sustainable Development) - provides generic advice for all new built development. Sites should be capable of optimising the full site boundary and should deliver an appropriate mix of uses, green and other public spaces, safe and accessible environments and visually pleasing architecture. A high level of protection should be given to most valued townscapes and landscapes, wildlife habitats and natural resources, conserving and enhancing wildlife species and habitats and the promotion of biodiversity.

PPG17 (Open Space, Sport and Recreation) - advises local authorities to avoid any erosion of recreational function and maintain/enhance the character of open spaces. Authorities should also protect and enhance those parts of the rights of way network that might benefit open space, and consider the impact of any development on biodiversity and nature conservation.

6.2 Lancaster District Core Strategy - adopted July 2008

Policy **SC8** (Recreation and Open Space) - new residential development will make appropriate provision for formal and informal sports provision in line with needs identified in the Open Space and Recreation Study.

Policy **E1** (Environmental Capital) - development should protect and enhance nature conservation sites and greenspaces, minimise the use of land and non-renewable energy, make places safer, protect habitats and the diversity of wildlife species, and conserve and enhance landscapes.

7.0 Comment and Analysis

7.1 This application has arisen because the developer (MAC) has provided amenity areas within their residential development scheme and then maintained them for over 10 years. Whilst they have not implemented 2 equipped play areas as per the requirements of their consent, they have provided and then maintained the other green spaces for a lot longer than the required 12-month period (as set out in the legal agreement attached to their consent). The developer is therefore now looking to

transfer these parcels of amenity land to the Council with a commuted sum for their future maintenance. This is in line with the legal agreement that is attached to the 95/00398/REM planning permission, albeit at a later date than originally envisaged. This delay has had a cost implication on the developer, not the Council, due to the ongoing maintenance of the green spaces during this prolonged period.

7.2 There are 6 main areas of amenity land within the development:

- Green space around the Kingsway roundabout and adjacent to Drovers Walk;
- Kickabout area adjacent to Farriers Fold;
- 3 landscaped areas by Highdale, Longmeadow Lane and to the rear of Nos. 1-5 The Spinney;
- Amenity area along the eastern, southern and south-western boundaries of the site.

7.3 These amenity areas provide a range of benefits. The amenity area along 3 of the site boundaries provides a 'buffer' zone with the eastern section creating a natural green screen to the Morecambe-Heysham railway line. The "bridleway" through this area is nothing more than a narrow footpath, most of which is defined merely by an earth-trodden track, though some stretches have the benefit of a hard surface made up of broken stone. This path does not join any defined bridleway network or footpaths, but appears to be used by a few dog walkers. The vegetation along its route should be cut back to provide a clear and safe path (rather than bridleway) for future users as part of the maintenance regime.

7.4 There are 3 equipped play areas within an easy walking distance of this site - Kingsway, Windermere Park (Plover Drive) and Douglas Park. There are no requirements for the creation of 2 small play areas within this development, either from the Council or arising from the District's PPG17 study on the supply and demand for such open space and recreational facilities. Therefore this element of the approved scheme should be removed subject to a satisfactory replacement scheme being implemented. Play Area 1, situated in the north east corner of the site, is already landscaped with an established grass surface under the canopy of mature trees. Play Area 2 situated between Thistle Break and Farriers Fold is currently defined on the ground by a low metal fence with 2 small gates. It is proposed to cut back (though retain) the shrubs along its western edge, weed the site and provide it with a grass surface. 12 trees will be planted within this area - 6 apple and 6 rowan. This landscaping proposal, submitted with this application, is agreeable to the Local Planning Authority, and should be implemented at the first available opportunity. Condition 8 should be varied to accommodate this.

7.5 The signage, as required by condition 9, is now superfluous as the signage was required to direct new and neighbouring residents to the equipped play areas whilst the remainder of the development was built out. As the development is now complete and the equipped play areas are no longer required, this condition can be removed. References to equipped play areas on the other conditions should also be removed.

8.0 Planning Obligations

8.1 The s106 agreement attached to the 95/00398/REM permission requires the developer to maintain the amenity land for a period of 12 months and then to pay the Council a sum of £68,061.62 towards future maintenance of the amenity land on the date of legal transfer of the land. The Local Planning Authority is advised by the Council's Environmental Services department that this sum of money, despite being agreed back in 1996, may be less than originally stated due to improvements to technology (e.g. grass cutting machinery now undertakes the same job in half the time). A vernal update will be provided to Members on this financial sum.

8.2 The legal agreement has a plan appended to it showing the areas for transfer. However, it also needs updating as various minor amendments to the original layout have been agreed and implemented in the intervening years.

8.3 As with the conditions, references to equipped children's play areas need to be removed. A Deed of Variation to the original s106 agreement can deal with these 3 issues.

9.0 Conclusions

- 9.1 For the reasons set out above, the application is recommended for approval subject to a Deed of Variation being signed and completed.

Recommendation

That, subject to a Deed of Variation being signed and completed, Condition 9 **BE REMOVED** and Conditions 7, 8, 10 and 11 of planning permission 95/00398/REM **BE VARIED** to state:

7. The proposed amenity areas lying along the east, south and south west sides of the site shall be prepared and tree planted in accordance with the approved plan during the planting season 1996/97 to the reasonable satisfaction of the local planning authority.
8. The approved landscaping plan for Play Area 2 shall be fully implemented in the first planting season following the granting of this permission.
10. The development's landscaped areas, kickabout area and Play Area 1, and their associated footpaths, shall be implemented in phases related to the construction of the proposed dwellings which shall be submitted to and agreed in writing by the local planning authority before any of the dwellings hereby approved are first occupied. All such areas and facilities shall be completed in phases in accordance with the approved scheme to the reasonable satisfaction of the local planning authority before any of the adjacent houses are first occupied.
11. Unless otherwise agreed with the local planning authority by a suitable agreement for adoption and maintenance, all amenity areas, landscaped areas, play areas and the kickabout area and their associated footpaths not adopted by the Highway Authority shall be maintained by the developer until transferred to the Council. Once transferred, the Council shall maintain these areas for a period of 10 years. This maintenance shall include the replacement of any tree or shrub which is removed or dies, or is seriously damaged or becomes seriously diseased, by a species of similar type and size to that originally planted, the repair or replacement of any defective fencing or gates in accordance with the approved scheme, the maintenance of footpaths in a safe condition in materials of the type originally used for their construction and the maintenance of amenity grassland.

Human Rights Act

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

Background Papers

None.