

Reference: 10/00899/COU
Date Submitted: 22.11.2010
Applicant: Mr And Mrs Duncan
Location: 4C Nether End, Great Dalby, Melton Mowbray, LE14 2EY
Proposal: Retention of use of part of paddock area as residential garden.



Introduction:-

This application seeks retrospective planning permission for the continued use of part of a paddock as a residential garden

The proposed use of land relates to an area of land at the rear of the property, a modern dwelling erected quite recently. The land concerned is situated between the 'approved' area of the residential curtilage and an open paddock area beyond. The land concerned is an 'arc' shaped area that has been utilised to create shallow "steps" up to the higher paddock area, and it is grassed with a child's wooden play-fort situated on it. The garden area now forms a curved boundary with the paddock, instead of the straight former boundary, which was drawn at an angle from the remainder of the rear garden. It is demarked with a post and rail fence to match the surrounding boundaries.

It is considered that the main issues relating to the proposal are:

- **Whether the garden extension beyond the village limit is acceptable in terms of Policy OS2 and the Supplementary Planning Guidance for garden extensions and,**
- **Whether the appearance is acceptable in view of the Conservation Area status and the rural character.**
- **Impact on the privacy of adjoining properties**

The application is presented to the Committee because the recommendation for approval is outside of the village development limits and contrary to the previously approved boundary.

Relevant History:-

04/00445/FUL – Erection of two Dwellings – Approved 18/08/05

06/00063/CON – Demolish farm Buildings – Approved 08/03/06

08/00291/FUL – Amended layout for 2 dwellings – Approved 20.05.08

Planning Policies:-

PPS5 ‘Planning for the Historic Environment’ outlines the Government's policies for effective protection of all aspects of the historic environment. Planning has a central role to play in conserving our heritage assets and utilising the historic environment in creating sustainable places. The Government’s overarching aim is that the historic environment and its heritage assets should be conserved and enjoyed for the quality of life they bring to this and future generations. To achieve this, the Government’s objectives for planning for the historic environment seek to recognise that heritage assets are a non-renewable resource, recognise that intelligently managed change may sometimes be necessary if heritage assets are to be maintained for the long term and wherever possible, heritage assets are put to an appropriate and viable use that is consistent with their conservation.

PPS7 ‘Sustainable Development in Rural Areas’ - paragraph 1 notes that “All development in rural areas should be well designed and inclusive, in keeping and scale with its location, and sensitive to the character of the countryside and local distinctiveness.” PPS7 also states in the key principles (paragraph 1) that the Government’s aim is to protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and so it may be enjoyed by all.

Melton Local Plan (saved policies):

Policies OS2 and BE1:-

- Restricts development outside village envelopes to uses appropriate to the countryside
- Seeks to resist encroachment and harmful development in the countryside
- the form, character and appearance of the settlement are not adversely affected;
- the form, size, scale, mass, materials and architectural detailing of the development is in keeping with the character of the locality;
- the development would not cause undue loss of residential privacy, outlook and amenities as enjoyed by occupants of existing dwellings in the vicinity; and,
- satisfactory access and parking provision can be made available.

Melton LDF Core Strategy: The countryside shall be protected for its own sake. Development in the countryside will therefore be limited to homes essential for agriculture or forestry needs amongst other things.

Adopted Supplementary Planning Guidance on Garden Extensions (2003) explains how the above policies will be implemented in respect of garden extensions into open countryside and supports garden extensions which relate well to the built form of the settlement and that it can be demonstrated that there will be no impact on the character of the countryside.

Consultations:-

Consultation reply	Assessment of Head of Regulatory Services
<p>Conservation Officer – No objections or concerns</p>	<p>The site is to the rear of the applicants dwelling and not visible from public vantage points. The dwelling itself is set back appreciably from the highway and the area of land forms part of a large paddock. As the land area concerned is very minor, the use as ‘garden’ will have no appreciable impact on the character of the Conservation area. The character would therefore be ‘preserved’.</p> <p>The proposal would preserve the character and appearance of the Conservation Area.</p>
<p>Burton and Dalby Parish Council</p> <p>The Parish Councillors have commented that they are unable to properly assess this application due to the lack of information regarding the size of the proposed retention of use of the paddock as a garden. If permitted on the basis of the drawing provided it would allow the applicant carte blanche to use whatever amount of paddock they desired.</p> <p>In principle Parish Council opposes the application on the grounds of use of a green field site but if MBC are minded otherwise then we strongly advise that the area be precisely defined.</p> <p>Burton and Dalby Parish Council note that the area of incursion into the paddock has been increased in the amendment, this opinion is a visual perception as the area is still undefined in dimensional terms.</p> <p>Councillors wish to ensure that this application does not become the thin end of the wedge as a result of its lack of clarity. The dimensions, properly described, are the least we expect. Even though the plan has been sent electronically it is doubtful that the originals would enhance the situation in terms of that definition.</p> <p>Councillors object to the application on the grounds that insufficient information is available in the application, and that it breaches the village envelope. The village envelope has been and will continue to be staunchly defended by the Parish Council against attempts to erode its boundaries.</p>	<p>As stated above, the land area concerned relates to a very minor area of the large paddock land to the south of the applicants dwelling.</p> <p>The use of the land as an extension of the garden and can be seen as is a logical ‘rounding-off’ as supported by the SPG for garden extensions.</p> <p>The amended plan submitted shows the area of land concerned, it is considered that the proposal will have a minimal impact on the overall size of the paddock, and therefore will have a very limited visual impact.</p> <p>The area of land is shown on the submitted plans and is enclosed by a boundary fence.</p> <p>The fact that the garden extension is situated beyond the village envelope is not in itself grounds to refuse planning permission. The gardens of the existing dwelling and that of the surrounding dwellings are also outside of the village envelope and it is not considered that there is a logical line for the boundaries, possibly derived from the farmyard that existed before the modern houses were erected.</p>

Representations:

A press notice and site notice have been posted and neighbouring properties consulted. As a result 3 letters of objection from 2 households raising the following points:-

<p>Impact on the character of the area</p> <p>The proposed extension of the garden would take it outside of the current village envelope. This would involve re-designating what is current green belt land into brown belt land. As a consequence, further planning applications for future building development could be sought which would not currently be allowable on green belt land but which could be allowable if it were re-designated as brown belt land.</p>	<p>The existing garden and surrounding properties are already outside of the village envelope. Under new changes to PPS 3, garden land is greenfield and no longer classed as 'brownfield' and this application would not change that designation.</p> <p>Any future 'building' application would need to be considered on its merits</p>
<p>Conservation Area</p> <p>The paddock is in a conservation area and currently the land in question is set aside for agriculture/grazing purposes. Great Dalby is primarily a farming area and thus conserving the permitted use of the land for its existing purposes would be compatible with that.</p>	<p>The paddock is not within the conservation area, and only a modest part of the new garden area falls within the Conservation Area.</p> <p>As there would not be a significant intrusion, the Conservation Officer has raised no objection. It is not considered that the change of use would have an impact on the character of the Conservation Area.</p>
<p>Privacy</p> <p>The elevation of the land behind our house rises quite steeply. As a consequence the proposed garden extension is level in height with our 1st floor bedroom and bathroom windows. The applicant has already erected a play fort in this unauthorised extended area which from the top platform actually looks down into our daughter's bedroom resulting in a total loss of her basic privacy. Consequently her bedroom curtains are now permanently drawn shut.</p>	<p>The play-fort is a modest structure which is positioned further from the neighbouring property than existing windows within the host property. Therefore due to the distances involved it is considered that there would be no appreciable loss of privacy that would warrant a refusal of permission.</p> <p>The paddock area is also elevated above the surrounding area and would allow for similar lines of sight..</p>
<p>Planning History</p> <p>The original planning for the development site which contains 4c and 4d was permitted in 2004. The houses that were subsequently built did not comply with that planning permission so new planning permission was sought and approved in 2008 to make them retrospectively legal. We did not oppose the 2008 planning proposal because it complied with the existing village envelope and did not seem to affect the conservation nor character of the surrounding area. Since then the owners have expanded their garden beyond the village envelope into the paddock area. This seems to be the normal method of developing the site next door - i.e. make an unauthorised change and then legalise it with a retrospective planning approval.</p>	<p>The 'history' is well documented and the setting-out error was dealt with by virtue of the appropriate applications. The original 2004 approval allowed for development beyond the village envelope and the 2008 permission, whilst changing the position of the dwellings, did not change the curtilage position.</p> <p>The history of the site is not relevant to the current application, which is to be assessed on its merits and considered against current Policy, and the SPG allows for modest extensions to gardens outside of village envelopes.</p> <p>The Town and Country Planning Act 1990 allows for retrospective planning applications.</p>

<p>Plans</p> <p>The ground plan that is attached to the new submission is not even in line with the actual layout of the changes that have already been implemented in their extended garden. They have erected a post and rail fence and a raised planting border supported by a new dwarf wall (using wooden sleepers) which runs from the other neighbour's fence at number 4d Nether End on the eastern side of their garden. Initially it runs parallel to the rear of their house in the correct location, following the line of the village envelope . However it is then supposed to follow a line in a NW direction to intercept with our fence at point D in line with a straight line taken from the rear elevation of their house (this again would have followed the line of the current village envelope). Unfortunately the line of the fence is completely in the wrong direction by about 10 meters including some newly erected ornamental steps and the playfort. This effectively makes the garden into a rectangular shape and increases it's overall size by about 30% at the expense of the paddock. It also means that part of the garden is now behind our house at a much higher elevation which affects the privacy in our daughter's 1st floor rear bedroom and the bathroom as mentioned above.</p> <p>If this new planning application is permitted it will still be at variance to what is already actually there and as a consequence we would still have to make a complaint in order for there to be compliance.</p>	<p>The 'angled' line referred to by the objector is not in fact the line of the village envelope, but appears to be the original line of the farmyard which was subsequently redeveloped for the current housing development that now occupies the site.</p> <p>Much of the existing rear garden of the dwelling is already outside of the village envelope (and was approved with the 2008 approval for the dwellings).</p> <p>There is some confusion with regards to the 'approved' line of the curtilage of the dwellings (which is at an angle as described) from the 2004 and 2008 approvals, with the line of the village envelope , which runs straight across the site.</p> <p>The steps and playfort referred to by the objector, are within an 'extended' area of garden and the subject of this application.</p> <p>The area of garden is a modest increase and somewhat less than the 100% increase supported by the SPG.</p> <p>Whilst the new 'garden' area is slightly elevated, it is not considered to constitute a significant loss of privacy.</p> <p>The revised plan is considered to be an accurate representation of the situation that exists on the ground.</p>
<p>Trees</p> <p>The proposal states that there are no trees or hedges on or adjacent to the proposed development site. This is not true as the applicant have planted a row of leylandii trees along the whole length of the southern boundary right next to and beyond the proposed garden extension. These trees are already at a height of 2.3 metres. In July 2010 it was requested to keep them within the 2m maximum permitted height, a request which they have so far ignored.</p>	<p>The issue of the height of an existing Leylandii Cypressus hedge is a separate matter that would be dealt with by the Council's enforcement team under 'high-hedge' legislation if no local agreement is reached, although the hedge does offer some degree of privacy for the adjoining properties.</p>
<p>Green Belt</p> <p>Concerned that, if accepted, the proposal would effectively change the designation of land which is currently 'green belt' into 'brown belt' land. If this were to happen, then this would open up the possibility that the applicants would, at a future date, seek support towards further building developments on this land.</p>	<p>There is no 'green-belt' in the locality, and garden land is not 'brownfield', see above.</p> <p>Changing the use of the land to a 'garden' does not grant any 'permitted development' rights to erect buildings as this relates to the original curtilage of the dwelling and not any new garden area.</p> <p>Any future application would be dealt with on its merits.</p>

Conclusion

It is considered that the main issue for the Committee is to balance the impact of this garden extension in relation to the village envelope and encroachment in to the countryside and the impact on the conservation area and any privacy issues. **The development proposed relates to a very modest garden extension that is supported by the SPG on Garden Extensions and it is not considered to impact on the character of the conservation area. The proposal will not result in any significant encroachment in to the countryside beyond the development limits and is not considered to unduly impact on the amenities of the neighbouring property.**

RECOMMENDATION:- Approve subject to the following conditions/reasons:-

1. The proposed development shall be carried out strictly in accordance with the amended plans deposited with the Local Planning Authority on 24.01.2011
2. Notwithstanding the provisions of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 1995 as amended (or any Order revoking and re-enacting that Order) in respect of the garden extension, hereby permitted no development as specified in Class A - relating to the erection of walls or fences - shall be carried out unless planning permission has first been granted by the Local Planning Authority.

Reasons;

1. For the avoidance of doubt; the initial proposals being considered unsatisfactory.
2. To enable the Local Planning Authority to retain control over future walls/fences in view of the development proposed and the open and rural character of the locality.

Contact: Mr Rob Forrester

7 March 2011