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PLANNING STATEMENT



PROPOSAL : **CERTIFICATE OF LAWFULNESS FOR THE USE OF LAND AS A DOMESTIC GARDEN IN ASSOCIATION WITH THE DWELLING AT FOX'S CROFT**

ADDRESS : **FOX'S CROFT, ANKORS LANE, THORNCLIFFE, LEEK, ST13 7LP**

APPLICANT : **MR E FOX**

DATE : **SEPTEMBER 2016** **JOB No. : 2016-2180**

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1.0 INTRODUCTION

1.1 Sammons Architectural Ltd have been appointed by Mr E Fox to prepare and submit an application for a Lawful Development Certificate to Staffordshire Moorlands District Council to confirm use of land as domestic garden. This statement has been prepared to accompany the application under s191 (1)(a) of the Town and Country Planning Act 1990 (As Amended).

1.2 The area of land subject of this application is the land directly to the south of the dwelling and that. This Planning Statement and the associated documents seek to demonstrate beyond reasonable doubt, evidence that supports the case and that the area of domestic garden is lawful and therefore immune from enforcement action by the Local Authority.

2.0 SITE

2.1 The application site comprises a detached dormer bungalow that is located within the open countryside. The front elevation of the property faces north and the highway and the rear of the property faces south. It is within the area to the rear / south of the property that this application mainly relates, as it is the rear garden that was extended over 10 years ago.

3.0 PROPOSAL

3.1 This Lawful Development Certificate seeks confirmation that:

- The land and buildings identified in the site edge red has been used continuously for domestic purposes and as domestic garden in connection with the main dwelling 'Fox's Croft' and has been completed for a period in excess of 10 years and as such is lawful by virtue of time.

4.0 SUMMARY

4.1 Section 191(2) of the Act says that the use will be lawful if no enforcement action can be taken against it, and provided it does not contravene the requirements of any enforcement notice that is in force. Where an LDC is sought, the burden of proving relevant facts rests with the applicant.

4.2 Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.

4.3 For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this application. Accordingly, it is necessary to consider whether, on the balance of probability, the land has been used as a garden for a continuous period of ten years or more prior to the date of the application. In order to justify the certificate sought by the applicant, this application aims to prove that the use of the land started ten years or more before the date of the certificate application and continued during that period. The standard of proof required is the balance of probability.

4.4 It is also an accepted legal principle that if the Council have no evidence of their own, or from others, to contradict or otherwise make the appellant's version of events less than probable that lawfulness should be presumed provided the appellant's evidence alone is sufficiently precise and unambiguous to demonstrate this is the case on the balance of probability.

4.5 This submission seeks to demonstrate that the land identified on the site edged red were substantially completed more than 10 years ago and therefore are now lawful in the context of paragraph 171B of the Town and Country Planning Act 1990 (As Amended). The application is accompanied by the following evidence:

1. Photographs dated 24th June 2005 by Tesco.

2. Aerial Photographs dated 31/12/2013; 31/12/2006 and 04/06/2013.

4.4 The facts surrounding the application are that land has been continuously used in connection with the dwelling as garden land. This statement is supported by the aerial photographs and the photographs.

Figure 1. Aerial Photograph of Site (31st December 2013) – Google Earth



Figure 2. Aerial Photograph of Site (31st December 2006) – Google Earth



Figure 3. Aerial Photograph of Site (4th June 2013) – Google Earth



4.5 The images in Figures 1 to 3 have been obtained from Google Earth, which confirms the date when the photographs were taken. It is evident that the garden area associated with the 'Fox's Croft' has been established at least since 31st December 2013 as shown in Figure 1. The photographs in Figures 2 & 3 show that boundaries that were established have been maintained up until the latest image was taken on 4th June 2013.

4.6 The photographs located in Appendix A of this document are dated 24th June 2005 by Tesco who developed the film. These clearly show the garden area when a scheme of landscaping was undertook by the applicant.

5.0 CONCLUSION

5.1 Section 171B(3) of the Act provides that in the case of any breach of planning control other than those specified in sections 171B(1) and (2), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It is considered that all of the evidence provided currently demonstrates that on the balance of probability, the breach of planning control in using the land as garden land in association with the dwelling at 'Fox's Croft' has continued uninterrupted for more than ten years, such that enforcement action may no longer be taken. Furthermore, it should be noted that no enforcement notice is currently in force. The lawfulness of the use can therefore be established by reference to the provisions of section 191(2) of the Act, set out previously.

5.2 The evidence provided to support this application is consistent and it is therefore with due respect that the Local Planning Authority is politely requested to grant a Lawful Development Certificate for Existing Development in this regard.