DELEGATED DECISION REPORT

SMD/2017/0124 **Valid 27/02/2017**	**UPPER FERNYHILL FARM** **BASFORD GREEN ROAD** **BASFORD** **LEEK**	**RETENTION OF DOMESTIC GARDEN (RESUBMISSION OF SMD/2016/0055)** **(FULL - MINOR)**

MAIN ISSUES

- The impact on the character and appearance of the area including the rural landscape.
- The impact on residential amenity.

DESCRIPTION OF SITE

The site is in the open countryside about a mile to the east of Cheddleton village. It comprises a detached recently built replacement dwelling with rear garden. Access is via a long access driveway off Basford Green Road, a country road which is a considerable distance to the north and west of the dwelling. There are other dwellings to the north (front) and east and west sides of the dwelling but other than that the surrounding land is open fields including to the south where land slopes downwards towards a large pond within the same property. A public footpath crosses through the field to the east of the property.

PROPOSAL

The application is for the retrospective change of use from agricultural land to an extension of the residential curtilage. When the replacement dwelling was built, a large Italianate raised garden structure with stone supporting walls, stairs and balustrading was also built which encroached beyond the southern boundary of the application site by 8.0 metres onto former agricultural open land. An application to gain retrospective approval for the extension of the residential curtilage was refused on the grounds of the visual impact on the garden structure considered to be out of keeping with the rural character and appearance of the area. However, a subsequent application for a Certificate of Lawfulness for the structure was approved when it was demonstrated that the structure was built more than four years ago (and hence would be immune from planning enforcement action). This resubmitted application for retrospective approval of the garden area again seeks to authorise the change of use of part of the field to part of the domestic garden/extended curtilage which comprises a large part of the raised garden structure and a smaller area of land/garden at ground level to the west of the supporting walls and next to the western boundary of the property.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Core Strategy Development Plan Document (Adopted 2014)

S01 Spatial Objectives
SS1 Development Principles
SS1a Presumption in Favour of Sustainable Development

DC1 Design Considerations
SS6c – Other Rural Areas Strategy
SS7 – Churnet Valley Strategy
R2 – Rural Housing
DC3 – Landscape and Settlement Setting

National Planning Policy Framework

Section 7 (Design)

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SMD/2016/0055: Retention of extension to domestic garden. Refused. 23.3.16.
SMD/2016/0386: Certificate of Lawfulness for construction of raised terrace garden and steps. Granted. 12.2.17.

CONSULTATIONS

Publicity

Site Notice expiry date: 13.4.17
Neighbour consultation period ends: 12.4.17
Press Advert: N/A

Public Comments

None.

Town / Parish Comments

None.

OFFICER COMMENTS

The application specifically seeks retrospective approval for the change of use of part of a field into part of the rear garden/residential curtilage. The principle of this is not unacceptable providing the character and appearance of the rural area is not harmed. Most of the extended garden area comprises a raised garden structure which despite being refused permission previously is now lawful as it was built more than four years before the relevant Certificate of Lawfulness application was submitted. However, the specific change of use from field to garden has not been authorised (as this also requires planning permission and it is not lawful as the immunity period for the change of use is 10 years, as opposed to the 4 years for the operational development to construct the walls) and this is the purpose of this new application. Although there were earlier concerns about the garden extension due to its impact on the countryside, the refusal of this application would be unreasonable because the structure causing the harm is now lawful and a refusal would not require its removal. The remaining part of the site comprises a small area of land (once used as part of a track to the pond in the fields to the south) which is very well screened from the public realm (partly by the lawful raised structure).

The use of the enlarged curtilage area as a domestic garden would not significantly further harm the character and amenities of the area and in any case the parts of the garden which were approved under the replacement dwelling permission are much closer to neighbouring residential properties than the unauthorised part of the rear garden. Due to the earlier certificate of lawfulness for the raised structure, I also consider that a refusal of permission for the actual change of use to part of a domestic garden would also be unenforceable.

However, I consider it appropriate that a condition is applied to remove the permitted development rights which would otherwise allow the erection of curtilage structures and outbuildings without needing permission at some stage in the future. This is to further protect the rural character and appearance of the area and the landscape. I also consider it appropriate to attach a condition requiring additional planting and soft landscaping to provide additional screening of the new curtilage and raised garden structure in the interests of the character and appearance of the area.

CONCLUSION / PLANNING BALANCE

To conclude, the construction of the walls and raised area has had a significantly harmful effect on the character and appearance of the countryside and this resulted in a previous application for the retention of these works and change of use of the land concerned to garden area being refused. However, a Certificate of Lawful Existing Development has now been issued which confirms that the harmful raised area and walls are lawful by virtue of having been in place for over 4 years. The change of use of the land however, remains unlawful as the relevant immunity period for a change of use is 10 years. This application seeks to regularize the change of use. The harmful aspect of this development is the operational works to create the walls and raised area but this has now been established to be lawful. The retrospective granting of approval for the use of the extended garden area/residential curtilage would not in itself harm the rural character and appearance of the area or the landscape with the safeguard of conditions.

OFFICER RECOMMENDATION: APPROVE

Case Officer: Chris Johnston
Recommendation Date: 18.4.17

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council