Introduction

Documentation herewith is for the request 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 of the Town and Country Planning Act 1990 as amended.

The area of land that is the subject of this application is situated to the North West of the dwelling and that (edged red). 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 by the Local Authority.

Site

The site comprises a semi-detached brick built house built around 1900 which is located within the open countryside. The building faces the southwest with the rear of the building towards the northeast. The extended garden that this application mainly relates is situated along the long straight side of the semi-detached house, facing the North West. This extended garden was completed over 10 years ago.

Proposal

Confirmation is sought to confirm that the land and buildings identified in the site, edged red, has been used continuously for domestic purposes and as domestic garden in connection with the main dwelling that is Fairholme and has been completed for a period in excess of 10 years and as such is lawful by virtue of time.

Summary

Section 191 of the Town and Country Planning Act states that the use will be lawful if no enforcement action can be taken against it, provided it does not contravene any enforcement notice currently in force. And that the proving of the relevant facts rests with the applicant when applying for an LDC.

The Act also indicates that upon application if the local authority are provided with information satisfying them that the use or operations described was lawful at the time of application that they will issue a certificate to that affect. And in any other case a refusal will result.

That means, for the avoidance of doubt, that any planning merits of the proposed development are not relevant to this application. It will be necessary to prove on the balance of probability that the land has been used for a continuous period of ten years or more prior to the date of application. The applicant via the associated documents will aim to prove that the land use of domestic garden did start ten years or more, and with continuation up until the date of application. The standard of proof required being the balance of probability.

The accepted legal principle being that if the Councils Planning Department have no contradictory evidence of their own or gathered from others to make the appellant's version of events less than probable, and with the balance of all probability that the displayed events happened as shown, then lawfulness will be presumed and a Certificate of Lawfulness will thereby be granted.

This application demonstrates that the land edged red on the site were completed more than 10 years ago and are therefore now lawful in the context of the Town & Country Planning Act:

Image 1. Aerial photograph. Dated 2000. This displays the current extended garden area.

Image 2. Google Earth. Dated 31st December 2003. This displays the current extended garden area.

Image 3. Approved and completed Planning Application, showing Building Control's conditional approval 04/01155BC. Dated 2004. The building plans contain a Site Plan View. This is as was drawn and highlighted in red at that point in time by Sammons Architectural. This displays the current extended garden area.

Image 4. Google Earth. Dated 31st December 2006. This displays the current extended garden area.

Image 5. Google Earth. Dated 4th June 2013. This displays the current extended garden area.

Postal. Digital photographs 1 – 32 showing continuous use of current extended garden area, through years 2002 – 2017.

Conclusion

It is considered that the evidence provided demonstrates that on the balance of probability that any breach of planning control caused whilst using the land as domestic garden at Fairholme has been continuous and far exceeds the requirement of 10 years and as such no enforcement action should be taken. Please note that no enforcement action is currently in place or has been at any point. Therefore we respectfully request that a Certificate of Lawful Development be issued in respect of this.

Please note: If required further evidence could be made available.