Rob Duncan
Planning
Consultancy

PLANNING STATEMENT

WETLEY ABBEY COTTAGE
WETLEY ROCKS

OCTOBER 2018

Site Address:
Wetley Abbey Cottage, Abbey Road, Wetley Rocks, ST9 0AS

Applicant:
Mr. G. Thomas

Proposal:
Certificate of Lawfulness for Existing Use:
Use of land as residential garden

Planning Statement:
Date Issued: 9th October 2018
Job Reference: RDP/2018/064

Report Prepared By:
Rob Duncan BSc(Hons) MA MRTPI
Rob Duncan Planning Consultancy Ltd

Contact Details:
Rob Duncan Planning Consultancy Ltd.
70 Ferndale Road, Lichfield, Staffordshire, WS13 7DL
Email: rob@robduncanplanning.co.uk
Tel. 07779 783521

1 Introduction

1.1 Rob Duncan Planning Consultancy Ltd. has been instructed by Mr. G. Thomas submit an application under s191 of the Town and Country Planning Act (1990) to seek confirmation that a parcel of land to the southwest of Wetley Abbey Cottage has been used as a residential garden for a period in excess of 10 years and is therefore lawful.

1.2 The application represents a resubmission following the refusal of application SMD/2018/0126, which was refused on the following grounds:

1. *The way in which "the Use" is described and set out in the application does not appear to be an accurate description of either the use of "the Land" that was taking place on the date of the application or was most recent before the applicant's purchase. Specifically, a large stable building and a paved area with garden furniture, introduced without planning permission, are indicative that the land has been or is used to keep or stable horses and as a patio. These operational developments are not accounted for in the description of "the Use" or explained in the planning history or evidence. These uses intervene within the planning history and are likely to have resulted in a new material change of use, without planning permission that is not immune from enforcement action.*

2. *The submitted evidence lacks precision and clarity it does not detail exactly when the material change of use occurred; the nature and scope of the resulting uses; or attest to the continuity and regularity of those uses over a specified period of time. Rather the evidence appears to present an assumed understanding of particular terminology and included uses that might normally be associated with land that is within the curtilage or planning unit of a dwellinghouse. "The Land" is not within the*

curtilage or the planning unit of a dwellinghouse and those associations cannot be relied upon to demonstrate an immunity from enforcement action.

3. *"The Land" can be lawfully used for the purposes of agriculture because by virtue of s.55(2)(e) this is a use of land that shall not be taken for the purposes of "the Act" to involve development, this would include the 'gardening' of the land as an agricultural or horticultural activity. The evidence does not demonstrate that the lawful use of the land is for anything other than those agricultural purposes which are, in any event, exempt from the meaning of development for the purposes of "the Act".*

1.3 The revised submission seeks to address the previous reasons for refusal, and presents a comprehensive suite of evidence to demonstrate that the land in question has been used for a period in excess of 10 years as a residential garden.

1.4 The extent of the submitted application site differs from that considered under the previous application in order to take account of the stable block that was erected on part of the site in December 2015. This is now excluded from the application site. A separate application seeking consent to retain the stables is to be submitted imminently.

1.5 The National Planning Practice Guidance confirms that an applicant is responsible for providing sufficient information to support an application for a Lawful Development Certificate to be granted, and that an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. This Planning Statement sets out the applicant's case for the Lawful Development Certificate to be granted in light of the above requirements.

2 Site & Surroundings

2.1 The application site comprises a parcel of land that extends to approximately 0.1 hectares in area, and which is broadly rectangular in shape. It lies to the southwest of the applicant's property, connected to it by a pathway that runs from the northeast corner of the site. The site is generally enclosed by hedgerows, with occasional trees scattered within, and has a vehicular access / parking area at its southernmost end. A stable block is located to the southwest of the site.

3 The Proposal

3.1 This Lawful Development Certificate seeks confirmation that:

1) The land outlined red on the enclosed Site Location Plan has been used for a period in excess of ten years as a residential garden, and is therefore lawful and immune from enforcement action by the Local Authority.

4 Planning Assessment

4.1 Paragraph 006 of the Planning Practice Guidance relates to Lawful Development Certificates and confirms that an applicant is responsible for providing sufficient information to support an application. It goes on to state that if a local planning authority has no evidence itself, or from others, to contradict or otherwise make the applicant's version of events *less than probable*, then there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

4.2 The provisions of section 171B of the Town and Country Planning Act 1990 (As Amended) dictate that where there has been a breach of planning control consisting of the change of use of land then no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach.

4.3 In this particular case there has been a material change of use of the land from agricultural use to residential use, and this use has taken place for a period in excess of ten years. The application is accompanied by the following evidence in support of this contention:

- Statutory Declaration of Mr. Keiron Humphreys
- Statutory Declaration of Mrs. Sam Reddy
- Statutory Declaration of Mrs. Roxanne Mason
- Statutory Declaration of Miss. R. Davies
- Statutory Declaration of Ian George

4.4 The statutory declaration prepared by Keiron Humphreys (Appendix A) confirms that he and his wife owned Wetley Abbey Cottage between the period 14th October 2005 and 5th June 2009, and that they used the site as their garden. The statutory declaration confirms that they maintained the land as garden and used it exclusively for socialising with friends and family, summer parties, BBQs and ball games with their children. They also used part of the land as a kitchen garden, installing a vegetable patch, and planting fruit trees. The parking area at the southern end of the site was also created during the period they owned the site (January 2006). The statutory declaration goes on to confirm that the existing shed on the site was already in situ when they purchased the property, and that they did not use the land

for any purpose other than as a garden during the time they occupied Wetley Abbey Cottage.

4.5 The subsequent owner of the property, Sam Reddy, confirms in her statutory declaration (Appendix B) that she occupied the property from May 2009 until July 2015, and that during the time she lived at the property she utilised the land as her garden. She goes on to confirm that they maintained the land as a garden during her ownership of the property, mowing the grass regularly and keeping the hedges in order. She also notes the presence of raised beds and fruit trees on the site, as well as the driveway and shed identified by Keiron Humphreys in his declaration. Sam Reddy furthermore confirms that the land was not used for used for any other purposes other than as a garden during the time she occupied the property.

4.6 The property was sold in July 2015 to Roxanna Mason and her husband Andrew Mason, who occupied the property until September 2016. The statutory declaration completed by Roxanne Mason (Appendix C) confirms that they also used the land as their garden, and that they used it for a wide variety of 'residential' purposes, including BBQ's, relaxing, children playing, ball games, playing with their dogs. They also confirm that they employed a gardener to maintain the garden, hedges and flowerbeds throughout the year. A selection of photographs are appended to the statutory declaration showing her child playing on a trampoline with a children's slide in the foreground. These photographs were taken during their time living at Wetley Abbey Cottage and corroborate the statements made within the statutory declaration.

4.7 Since September 2016 the property has been occupied by the applicant and his partner (Rhian Davies). The statutory declaration completed by Rhian Davies (Appendix D) confirms that they have also used the land as garden

since they purchased the property, including using it for socialising, BBQ's, and picnics. The statutory declaration also confirms that the applicants children regularly play in the garden, with reference made to a swing, trampoline, paddling pool, football, building snowmen, children's gardening and riding a bike. Reference is also made to the parking of vehicles, and the undertaking of general gardening such as mowing the lawn, maintaining the hedges, tending to flowers etc. A selection of photographs are appended to the statutory declaration which show the applicants children using the site in a manner which can only be described as normal residential activity.

4.8 The statutory declarations completed by Keiron Humphreys, Sam Reddy, Roxanne Mason and Rhian Davies are considered to be worthy of substantial weight in consideration of this application, given that they have each owned the site and are therefore best placed to certify the facts of the situation. Collectively their statutory declarations present a chain of evidence to demonstrate that the use of the land as a domestic garden has taken place for a period in excess of ten years.

4.9 The evidence presented by the previous and current owners of the site is also independently corroborated by the statutory declaration prepared by Ian George (Appendix E). Ian George occupies Wetley Abbey Farm, which lies to the immediate east of the site, and his statutory declaration confirms that he has resided there since 2006. The statutory declaration confirms that his rear garden sits alongside the garden of Wetley Abbey Cottage and that he has communicated with the owners of the site over the years. It goes on to confirm that the site was utilised as a residential garden from 2006 to present day by the previous occupiers, whom he lists, and that during this period he observed the land being used for gardening, including regular lawn mowing, tidying borders, trees, hedges and weeding, and well as family fireworks, al fresco dining/entertaining, and children playing. The statutory declaration

concludes by stating that the land has only ever been used as a residential garden and stabling in the time he has lived at Wetley Abbey Farm.

4.10 The evidence presented by Ian George serves to independently corroborate the statutory declarations prepared by the previous owners of the site, and is considered to be worthy of significant weight. The substance of his evidence, coupled with that of the other statutory declarations is substantial, and along with the historic aerial photographs of the site (2006 and 2017) serves to demonstrate beyond the balance of probability that the land has been used as a residential garden for a period in excess of 10 years, and is therefore lawful and immune from enforcement action by the Local Authority.

4.11 The previous application had suggested that the land had been used for nothing other than 'agricultural use', but the evidence submitted demonstrates otherwise. Similarly, there has not been a change of use of the land back to a previous use since the land was utilised for residential use by Keiron Humphreys, and as such it is considered that the application has served to address the previous reasons for refusal, and that a lawful development certificate should be issued.

5 Conclusion

5.1 The totality of evidence presented in this application demonstrates beyond the balance of probability that the site has been used as a residential garden for a period in excess of ten years and that as a consequence it is now lawful in the context of section 171B of the Town and Country Planning Act 1990 (As Amended).

5.2 The Local Authority is therefore respectfully requested to grant a Lawful Development Certificate for Existing Use to confirm the same.