

DELEGATED DECISION REPORT

SMD/2022/0043
Valid 10/02/2022

39 SEVERN CLOSE
BIDDULPH

**LAWFUL DEVELOPMENT
CERTIFICATE FOR AN
EXISTING PORCH
EXTENSION AND TARMAC
AND BLOCK PAVING DRIVE**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

Whether or not a front porch and hard-surfacing of the front garden were provided at a residential property over four years.

DESCRIPTION OF SITE

The site is within the development boundary of the Biddulph and lies on a modern housing estate to the north-east of the town centre, built under a 1980 planning permission. It comprises a two-storey terraced dwelling in the middle of a row of four which face a parking courtyard to the north, off Severn Close to the east.

PROPOSAL

This is a Certificate of Existing Lawful Use application which seeks a certificate to confirm that the above works were carried out over four years ago and hence would be deemed to be lawful. There is no record of any planning permission being granted for the works and therefore the works would be deemed to be unauthorised as planning permission would have been required (for example the porch exceeds a footprint of 3 sq.m, one of the limits a porch can be added under permitted development without needing planning permission in accordance with the Town and Country Planning (General Permitted Development) Order 2015 (as amended)). However, Section 171B of the Town and Country Planning Act (as amended) states that unauthorised works existing for more than four years are immune from Enforcement Action. Therefore the use and works would become lawful.

The onus is on the applicant to demonstrate/give evidence of the works having been provided over four years from the date the certificate application being submitted. If the Council does not have any evidence of its own to dispute the applicant's evidence, then, on the balance of probabilities if the Council considers the current use has continued uninterrupted for this period, the current use becomes lawful and a Certificate can be granted on that basis.

The relevant evidence provided by the applicant includes a customer order form from a from builder for a porch and drive which match what has been provided and which

is dated 26.10.16, undated photographs of the front of the property before and after the works and a Council householder planning enquiry for the works submitted in late October 2016 and an email response from the Planning Officer in November 2016 which considers the driveway does not need planning permission.

The applicant claims in the application form that the works were completed on 20.1.2017.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

N/A

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

No relevant previous applications.

CONSULTATIONS

Publicity

Site Notice expiry date: 24.3.22

Neighbour consultation period ends: 24.3.22

Press Advert: N/A

Public Comments

None.

Town / Parish Comments

None.

Local Highways Authority

No objection.

OFFICER COMMENTS

In order to achieve a certificate of lawfulness for the works, the applicant must demonstrate they were completed over four years ago. If the Council has no evidence of its own to refute the applicant's evidence then if it considers on the balance of probabilities the works were provided over four years ago, without the intervention of enforcement action where it was possible to do so, then the certificate of lawful use should be issued. This is because Section 171B of the Town and Country Planning Act (as amended) states that unauthorised works being completed more than four years ago are immune from Enforcement Action.

The evidence provided by the applicant, described near the start of this report does not sufficiently demonstrate that the works were completed over four years ago from the date of the application submission. The builder's forms are customer order forms rather than an invoice normally given on completion of the works. The photographs provided also have no dates on them. As the date on the order form is 26.10.16, it is probable that the works were commenced and completed by 27.1.2018 (four years ago from the date the application was submitted) and the application forms state the works were completed on 20.1.17.

However, the Council does not have any evidence to dispute that the works were not completed until after 27.1.2018. Furthermore, aerial photo's on the Council's "Statmap" system dated "2015 – 2018" also show the porch and tarmac driveway clearly in place. It is also noted that despite neighbour consultation, no comments have been received to dispute the applicants contention. Moreover, a check of the Councils enforcement records do not show that any complaints or investigations have been carried out at the property. In addition there are no building control records to indicate that consent was required, as part of building control regulations.

As stated previously, the Council must decide on the "balance of probabilities" and despite the applicant's own evidence deemed to being insufficient, the Council has sufficient evidence that on the balance of probabilities the works were completed more than four years ago from the date of the certificate application.

CONCLUSION / PLANNING BALANCE

As on the balance of probabilities the unauthorised porch and driveway were provided more than four years ago and without any enforcement proceedings, the Planning legislation would deem the works to now be lawful and therefore a "Certificate of an Existing Lawful Use" can therefore be granted for the porch and driveway.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Chris Johnston

Recommendation Date: 7.4.22

X 

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council

