Rob Duncan
Planning
Consultancy

PLANNING STATEMENT

22 SORREL AVENUE
UPPER TEAN

SEPTEMBER 2023

Site Address:
22 Sorrel Avenue, Upper Tean, Staffordshire, ST10 4LY

Applicant:
Mr. & Mrs. Burgess-Mason

Proposal:
Lawful Development Certificate for Existing Use:
Use of land for residential purposes

Planning Statement:
Date Issued: 21st September 2023
Job Reference: RDP/2023/090

Report Prepared By:
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1 Introduction

1.1 Rob Duncan Planning Consultancy Ltd. has been instructed by Mr. & Mrs. Burgess-Mason to submit an application pursuant to s191 of the Town and Country Planning Act 1990 (As Amended) to seek confirmation that the use of a parcel of land to the southwest of 22 Sorrel Avenue for residential purposes has taken place for a period in excess of 10 years and is therefore lawful.

1.2 The parcel of land extends to approximately 780 square metres, and lies to the southwest of the existing dwellinghouse on the site. The extent of the land to which this lawful development certificate relates is shown outlined in red on the submitted Location Plan.

1.3 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.

1.4 This Planning Statement sets out the applicant's case for the Lawful Development Certificate to be granted in light of the above requirements and should be read in conjunction with the following suite of evidence:

- Statutory Declaration of Mr. I. Gee
- Statutory Declaration of Mr. & Mrs. Burgess-Mason
- Historic Aerial Photographs

2 Site & Surroundings

2.1 The application site is located to the southwest of the existing dwellinghouse and comprises a parcel of formerly agricultural land that has been used since 2006 as part of the garden to the existing dwelling.

2.2 The parcel of land extends to approximately 780 square metres in area, and stretches out to the west, southwest, and southeast of the existing dwellinghouse. The parcel of land is enclosed by a mixture of fencing and hedgerows. The land is laid to a lawn and has a few ornamental trees planted within.

2.3 Residential development is located to the north, northwest and northeast of the site, with open fields extending to the northwest, southwest and southeast.

3 The Proposal

3.1 This Lawful Development Certificate seeks confirmation that:

1) The use of the land for residential purposes is lawful and therefore immune from enforcement action by the Local Authority.

4 Planning Assessment

4.1 Section 171B of the Town and Country Planning Act 1990 (As Amended) dictates that where there has been a breach of planning control involving the change of use of land, no enforcement action may be taken after the end of a period of 10 years beginning with the date of the breach.

4.2 Section 191(1) of the Act confirms that if a person wishes to ascertain whether any existing use of a building or other land is lawful, they may make an application to the Local Planning Authority specifying the land and describing the use (known as a Lawful Development Certificate).

4.3 Section 191(2) goes on to confirm that the use of land is lawful if no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

4.4 The Planning Practice Guidance confirms that an applicant is responsible for providing sufficient information to support an application for a lawful development certificate. 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.

4.5 To demonstrate that the use of this parcel of land for residential purposes is lawful has occurred for a period of more than 10 years, the following suite of evidence has been submitted to accompany the application:

- Statutory Declaration of Mr. I. Gee
- Statutory Declaration of Mr. & Mrs. Burgess-Mason
- Historic Aerial Photographs

4.6 The statutory declaration prepared by Mr. I. Gee confirms that he and his wife were the previous owners of 22 Sorrel Avenue, having purchased the property in December 1996. The declaration confirms that on the 6th April 2006 they purchased a parcel of land from a Ms. Ball and Mr. Goodger who owned the nearby Daisy Bank Farm. The land was in agricultural use at the time of purchase.

4.7 The Statutory Declaration goes on to confirm that in May 2006 a series of works were undertaken, including the following:

- Removal of the hedgerow that enclosed the southwestern boundary of the existing property.
- Installation of decking
- Planting of new hedgerow along the southwestern site boundary of the parcel of land
- Erection of wooden fences to the eastern and western boundaries of the parcel of land
- Application of lawn seed to the land and planting of fruit trees and ornamental trees
- Commencement of residential use of the parcel of land by using it as part of their garden

4.8 It is also confirmed within the Statutory Declaration that they thereafter maintained the land by mowing it regularly along with the rest of their lawned areas, and since it was incorporated into their garden, their family has always used and maintained the land as part of their garden.

4.9 The Statutory Declaration also confirms that as part of their ongoing use of the land as part of their garden it was used at varying points of time for children's goalposts, trampolines, paddling pools and BBQs. It is also confirmed that the land has never been used for any other purpose during that time.

4.10 A number of photographs of the parcel of land are enclosed with Mr. Gee's Statutory Declaration which are summarised below:

- Photograph 1 – this image dates from 20th July 2018 and shows the previous owner of the site (the owner prior to Mr. Gee) with his grandson and son-in-law. The existing patio area can be seen in the foreground, with a paddling pool in the background. The well maintained lawn can also be observed.

- Photograph 2 – this image dates from 6th May 2020 and is taken from the patio area on the site, looking out across the parcel of land. A children's trampoline can be observed in the background with the well maintained lawn also observable.

- Photograph 3 – this image dates from 2nd September 2019 and shows an image of their child's trampoline which they were selling at the time via Facebook. The ornamental tree at the western end of the site can be seen in the background, as can the backs of the neighbouring houses. The well maintained lawn is also observable.

- Photograph 4 – the image date for this photograph is not known but is confirmed by Mr. Gee to post-date 2017. It shows Mr. Gee's grandson using a slide on the parcel of land, with the boundary fencing and ornamental tree located in the background. The well maintained lawn is also observable.

- Photograph 5 – this image dates from 5th May 2017 and shows Mr. Gee's grandson walking across the site. The patio area can be observed in the background, along with a swing and slide. The well maintained lawn, extending all the way down to the western site boundary can also be observed.

4.11 The first breach of planning control occurred more than 10 years ago (May 2006) and the previous owner confirms within his Statutory Declaration that they used and maintained the land as a garden up until the point the property was sold to Mr. & Mrs. Burgess-Mason in July 2023.

4.12 The Statutory Declaration of Mr. & Mrs. Burgess-Mason serves to confirm that they have owned the site since July 2023, and that on each occasion they viewed the property prior to purchase, they were able to observe the parcel of land in use as part of the garden.

4.13 Mr. & Mrs. Burgess-Mason also confirm within their Statutory Declaration that the sales particulars also showed the parcel of land being used as part of the garden, and that since purchasing the property they have continued to use the land as part of their garden and intend to continue doing so.

4.14 The accounts of Mr. Gee and Mr. & Mrs. Burgess-Mason, as set out in their respective Statutory Declarations are, in themselves, pieces of evidence that carry substantial weight in the assessment of this Lawful Development Certificate application. As the owners and users of the land from April 2006 until the present day, they are best positioned to confirm the facts of the matter, and their evidence alone is sufficiently precise and unambiguous as to demonstrate beyond the balance of probability that the use of the land for residential purposes has been taking place on the site for a period well in excess of 10 years. There is no known evidence to the contrary.

4.15 The statements set out by Mr. Gee and Mr. & Mrs. Burgess-Mason are nevertheless independently corroborated by historic aerial photographs of the site. The aerial photographs submitted cover the years 2006, 2011, 2013, 2015, 2017, 2018, and 2021. I draw attention in particular to the following observations:

- 2006 Aerial Photograph: This image clearly shows the delineation of the site and a well mowed area of lawn. A patio area to the southwest of the dwelling and a paddling pool can be observed. The small ornamental tree in the far northwest corner of the site can also be seen.

- 2011 Aerial Photograph: This image clearly shows the delineation of the site and the well maintained area of lawn. The patio area (albeit a bit blurry) can be observed to the southwest of the dwelling. The ornamental tree in the far northwest corner of the site can be observed, as can other trees towards the southeastern boundary.

- 2013 Aerial Photograph: This image also clearly shows the delineation of the site and the well maintained area of lawn. Mowed lines can be readily observed. The patio area is clearly distinguishable as are the various trees within the site. The mowed lawn contrasts with the agricultural fields adjacent.

- Aerial Photograph 2015: This image, whilst a bit blurry, nevertheless clearly shows the delineation of the site and a well maintained area of lawn. The ornamental tree in the far northwest corner of the site can also be observed.

- Aerial Photograph 2017: This image clearly shows the delineation of the site and the well maintained nature of the land can also be observed, with

mowed lines notable. The various ornamental trees within the site can also be observed, as can the patio area.

- Aerial Photograph 2018: This image also clearly shows the delineation of the site and in addition to showing a well maintained lawn area, also shows a paddling pool and other play equipment adjacent. The enlarged patio area is also observable as referred to within paragraph 13 of the Statutory Declaration of Mr. Gee.

- Aerial Photograph 2021: This image clearly shows the delineation of the site and in addition to showing a well maintained lawn, also shows the enlarged patio area, various pieces of play equipment as well as the ornamental trees.

4.16 These historic aerial photographs provide independent corroboration of the facts set out within the Statutory Declaration of Mr. Gee and consequently add further weight in support of the Lawful Development Certificate being granted. A clear and unambiguous suite of evidence has been presented to demonstrate well beyond the balance of probability that the use of the land for residential purposes is now lawful.

5 Conclusion

5.1 The evidence presented in this application is sufficiently precise and unambiguous and demonstrates beyond the balance of probability that the land in question has been continuously used for residential purposes since the first breach of planning control occurred in 2006.

5.2 The use has consequently persisted for a period in excess of 10 years and continues to be used for such purposes to the present day. The use of the land is therefore now immune from enforcement action, and as such there is a compelling case for the Lawful Development Certificate to be granted.