

DELEGATED REPORT

FILE REFERENCE: SMD/2014/0042

MAIN ISSUES:

Whether it has been demonstrated to the reasonable satisfaction of the Council and on the balance of probabilities that the land in question has been used as a domestic garden ancillary to 94 New Street, Biddulph Moor in excess of 10 years.

PUBLICITY/REPRESENTATIONS:

Neighbours: none.

Biddulph Town Council: awaited.

CASE OFFICER ASSESSMENT:

Mr Craig Doorbar is seeking a Certificate of Existing Lawful Use from the Council in relation to an area of land shown edged red on the plan attached to the application for use as residential garden land. In summary, the claim is made that the use began more than 10 years ago and the application is supported by two statements in the form of statutory declarations. One has been made by Mr Craig Doorbar and one by his father William Norman Alan Doorbar.

The key issue is whether it has been demonstrated to the reasonable satisfaction of the Council and on the balance of probabilities that the land in question has been used as a domestic garden ancillary to 94 New Street, Biddulph Moor in excess of 10 years.

Of note, the proposed garden area is quite large and of a strange shape. The statement by the father suggests that much of this was originally in agricultural use before being separated by means of a wall.

Fundamentally, the Council does not have any evidence of its own (either from local residents who have given a contrary account of the way in which the land has been used or from information already contained on Council files) in relation to the sought use as a garden area - excluding the land edged yellow as explained below. The refused certificate ref. 13/00644/CL_PRO for a proposed garage principally concerned a dispute in relation to the curtilage boundary and evident encroachment into the farmers field to the east - this has been rectified in respect of the current proposed certificate.

The one area of concern relates to the yellow land which was in use by others until 2007. The claim seems to be made that this area was originally converted from agricultural use to a lawned area before it was then used by the individuals concerned primarily for the growing of vegetables in two areas. It is assumed that the vegetables were grown for their own use and not in connection with some sort of horticultural business. Also, they were apparently required to maintain the rest of the area shown edged yellow as lawn. Importantly, there is no evidence from those who used the yellow land until 2007 which confirms precisely what the nature of the use was. The suggestion made in the declarations which accompany the application is that this was also a domestic/garden use.

Importantly, the Certificate cannot however link the use of the yellow land as garden to the Doorbar's property because it has not been used as such for more than 10 years as that use has only taken place since 2007. In relation to the remainder of the land, a Certificate can be issued on the basis that the land shown on the attached plan (excluding the yellow area) has for a period in excess of 10 years been used as a domestic garden ancillary to 94 New Street Biddulph Moor in use as a dwelling house under use class C3.

This would mean a partial refusal in the sense that a Certificate cannot be issued in relation to the yellow land, as it has not been demonstrated to the reasonable satisfaction of the Council and on the balance of probabilities that it has been used as a domestic garden ancillary to 94 New Street Biddulph Moor in excess of 10 years. Up to 2007 the land was used by a third party unconnected with 94 New Street Biddulph and therefore there is uncertainty as to the lawful use of the yellow land. In these respects, the applicant may need to take his own advice and this would need to focus on how the yellow land was used prior to 2007 in order to see what use had become established.

Accordingly, it is recommended that a part approval certificate be issued on this basis.

RECOMMENDATION: PART APPROVAL (EXCLUDING THE YELLOW LAND)

Date 08/04/2014

Signed _____
Rachael Simpkin

DEVELOPMENT CONTROL MANAGER COMMENTS:

Date

Signed _____