



Our Ref: MJT/JMT/AP143-15

11th January 2016

Kirklees MDC.,
Planning Services,
PO Box B93,
Civic Centre III,
Huddersfield,
HD1 2JR.

Dear Sir / Madam,

**RE: APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE – GARDEN LAND AT 5
COACHGATES, FLOCKTON, WAKEFIELD, WF4 4TT –
MR A HARRIS**

Please find enclosed the abovementioned application, together with statutory declarations and site plans. I confirm that the applicant will pay the planning fee over the telephone directly to the Council.

The application is supported by the following information:-

- (i) Plan identifying the subject garden land – SPB Architects;
- (ii) Statutory declarations from the following parties:-
 - (a) Mr A Harris, 5 Coachgates, Flockton (owner).
 - (b) Mr J Kaye, 42 Lord Drive, Pocklington, York (previous owner).
 - (c) Mr R Butler, 121 Sandy Lane, Middlestown (gardener).
 - (d) Mr R Sowerby, Parkhouse Farm, 27 Common End Lane, Flockton (original gardener).

Please note that the original signed copies of the statutory declarations have been posted to the Council.

Should the Council require any further witness statements these can be provided. However, it is considered that more than sufficient evidence is provided in the form of the statements listed above.

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In support of the application and to provide the Council with full background information, I would comment as follows:-

Background

The subject site forms part of the “Coachgates” development located towards the centre of the village of Flockton. The subject dwelling is, like the other properties, served via a private driveway. The property is at the head of the driveway and has garden areas to front side and rear which are located wholly within the defined settlement.

Adjacent to the property to the north is an area of garden land (within the green belt) which incorporates a stable building. From examination of the form and character of the land, it is clearly domestic and forms part of the domestic gardens to the host property. It is understood from the previous owner, and the gardeners who have been employed to maintain the garden area, that this was laid out as garden in 2003 and used as such since that time. The applicant purchased the property in July 2015 and has continued to utilise the land for garden purposes since then. There has been continuous use of the land for a period in excess of 10 years.

In support of the application and to provide the Council with background information, I would comment as follows:-

1. The subject application is made to regularise the lawful use of the land as garden land. Evidence is provided which establishes that the use of the land as garden as described in the submission has been continuous for a period in excess of 10 years (the “ten year rule”).
2. Section 171B provides that in the case of any breach of planning control other than the carrying out of operations or making a change of use of a building to a single dwelling house, no enforcement action may be taken after the end of period of 10 years beginning with the date of the breach.
3. Section 191(2) provides that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may be taken in respect of them (whether because they do not involve development, require planning permission or because the timeframe for enforcement has expired or for any other reason) and they do not constitute a contravention of the requirement of any enforcement notice then enforced.
4. Section 191(4) provides that if on any application under this section the Planning Authority is provided with information satisfying them of the lawfulness, at the time of application of the use, they shall issue a certificate to that effect.

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5. Annex 8 to circular 10/97, which includes guidance on Certificates of Lawfulness, makes it clear that the relevant test is “the balance of probability”. The Circular goes on to state that if the evidence submitted by the applicant is sufficiently precise and unambiguous to justify a grant of a certificate “on the balance of probability” and that the local Planning Authority has no evidence to make that version events less probable, there is no reason to refuse an application.

It is considered that the information submitted with this application, which includes statutory declarations from the applicants and third party witnesses, clearly demonstrates that the land has been utilised for garden continuously over the requisite 10 year period.

The applicant is willing to provide any further information, including further witness statutory declarations or clarification the Council require. Should any matters arise, please do not hesitate to contact me. In any event, I would be grateful if you would contact me prior to drafting up your recommendation for determination.

Yours faithfully,

Michael Townsend BA (Hons) MRTPI
Chartered Town Planner

Encs