

DELEGATED REPORT

Report by Sam Summers	Date of report: 13/10/2023	Ref: 69910/LDCE
Registration: 23/08/2023	LDFC:	Expiry Date: 18/10/2023
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area:	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for existing change of use to change open land at the rear of the property to a direct extension of the garden.

Location: 17 Beryl Avenue, Tottington, Bury, BL8 3NF

Description

An Application under Section 191 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawful Development the existing change of use to change open land at the rear of the property to a direct extension of the garden.

The application has been made on the basis that the land has been used as residential garden for a period of 10 years or more, thus rendering the use of the land immune from planning enforcement action in accordance with the time limits set under Section 171B(3) of The Town and Country Planning Act 1990

Relevant Planning History

57819 - Two/single storey extension at rear and external works at rear - Approve with Conditions 10/09/2014

Publicity

None

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Unitary Development Plan and Policies

Issues and Analysis

The onus is on the applicant to show by way of evidence that the building to which the application relates has been in place for 10 years or more making it immune from planning enforcement action, thus making the building lawful. The legal test for evidence is on the "balance of probabilities" which in practice means that unless the authority has in its possession evidence that is clearly contrary to that submitted it must grant a certificate. Evidence submitted does not need to be corroborated by third parties.

The council has access to aerial views of the property from 2005, 2009 & 2016. All three of the aerial views show the land clearly separated from the fields at the rear and clearly in use as residential garden. The applicant has provided a booklet from Weale & Hitchen from 2013 which shows the land in question clearly in use as a residential garden. Based on the aerial views it would seem that every property has been using some land at the rear of the properties as residential garden for some time.

This would therefore render the use of land as residential garden immune from planning enforcement action in accordance with the time limits set under Section 171B(3) of The Town and Country Planning Act 1990.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The use described in the First Schedule is deemed to be established and not liable to enforcement action under Section 172 of the Town & Country Planning Act 1990 (as amended) by reason of it existing on site on a continuing basis for four years or more.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
SS	13/10/2023	DM	16/10/23