

REDDITCH BOROUGH COUNCIL

Mr & Ms S & A Gregory & Johnson
C/O Mr Kevin Fellows
The General Architecture Company
5 Laburnum Road
Bournville
Birmingham
B30 1NE
United Kingdom

Approval of Certificate of Lawfulness for an Existing Use or Development

APPLICATION REFERENCE: 23/01237/CPE

FIRST SCHEDULE: Lawful development application for the residential curtilage as outlined on the accompanying drawings for residential use, C3 - dwelling houses.

SECOND SCHEDULE: 6 Moors Lane, Feckenham, Worcestershire, B96 6JH

DECISION DATE: 1st May 2024

Redditch Borough Council **HEREBY CERTIFIES** that on **10th November 2023** the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 as amended, for the following reason:

The certificate relates to the residential garden at No. 6 Moors Lane, Feckenham.

This certificate seeks confirmation for the lawful use of the land as garden serving No. 6, for in excess of 10 years before the date of this application.

The onus remains on the applicant to demonstrate, that on the balance of probabilities, the use began more than 10 years before the date of the application (which was the 10th November 2023). To this end, the following information was submitted:

- Signed Declaration from Amy Johnson and Sott Gregory (current owners of No. 6 Moors Lane) stating the area of land has been garden since they lived in the property from 2015
- Transfer of title deeds and Plan (dated 2021)
- Land Registry Documentation

During the initial consultation an objection was received from Feckenham Parish Council outlining insufficient evidence has been put forward to demonstrate the existing use.

Contradictory evidence was submitted through the public consultation which included the following;

- Signed Declaration from Wendy Powell (owner of No. 4 Moors Lane) stating since her ownership of the property in 2017 the land was overgrown and not used as garden.
- Signed declaration from Alan Smith of 2 Mill Lane Feckenham stating that in his professional duties as a Chartered Architect he visited the site in 2017 and the land was not used as garden.

In response to this the applicants submitted further evidence in support of the application;

- A letter from Mr and Mrs Morris (the previous owners and landlords of Nos. 2,4, and 6 Moors Lane) accounting the land as garden space for sixty years.
- A property timeline of evidence and events/ownership at the site
- Applicant response to the concerns raised by the Parish Council

Feckenham Parish Council have subsequently removed their objection. Further comments were raised by Ms Powell outlining they are not convinced the land has been used as garden since 2015 however no further evidence has supported this claim. The comments mostly referred to an outbuilding which has been constructed on the site however this outbuilding is not subject to the current application.

The Applicants' document, titled "Property Timeline" (page 1), shows a copy of the 1931-1933 Land Utilisation Survey. This diagram clearly shows that all the land up to the western border with the Priory Barn field was used as a garden. Page 5 of this document shows aerial photographs of the same land around 2009. Again, this clearly shows it was a domestic garden at that time. This is also corroborated by the long-term witness accounts from Mr and Mrs Morris and various photographs.

The disputed evidence from Mr Smith and Ms Powell is noted. However, this evidence starts from 2017, and as for the evidence provided by the applicant, the use has been long established by this point. The applicants have accounted for this period within the evidence when the garden was left to overgrow due to personal circumstances. This would not amount to a change of use of land and as such does not result in the loss of the lands status as residential garden.

Overall, from the information that has been provided it is considered that on the balance of probabilities, the land does appear to have been garden serving No. 6 Moors Lane for a continuous period of 10 years. On that basis the certificate is Granted.

Further comments have been received relating to an outbuilding on the site. This matter is being considered separately and now the garden area has been determined, a building can be erected in this position subject to size utilising Class E permitted development rights.



Ruth Bamford
Head of Planning, Regeneration and Leisure Services

Notes

- 1) This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
- 2) It certifies that the use/operations/matter specified in the First Schedule taking place on the land described in the Second Schedule was/were lawful, on the specified date and, thus, was not/were not liable to enforcement action under section 172 of the 1990 Act on that date.
- 3) This certificate applies only to the extent of the use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is/are materially different from that/those described or which relate/s to other land may render the owner or occupier liable to enforcement action.
- 4) The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

Land edged in red referred to under this certificate

