

Report of	Meeting	Date
Director of Partnerships, Planning & Policy	Development Control Committee	9 March 2010

ENFORCEMENT ITEM

TITLE: Change of Use of Land adjacent to 7 Well Lane Brinscall Chorley PR6 8QX.

PURPOSE OF REPORT

1. To consider whether it is expedient to take enforcement action to secure cessation of the use of land adjacent to 7 Well Lane, Brinscall, Chorley, PR6 8QX as residential curtilage.

RECOMMENDATION(S)

2. That it is not expedient to pursue enforcement action to cease the use of the land as residential curtilage as the Council are of the opinion that on the balance of probabilities the land has been used as residential curtilage for a period in excess of 10 years and has therefore become immune from enforcement action.

EXECUTIVE SUMMARY OF REPORT

3. The issues for consideration in this case are whether on the balance of probabilities the land has been used for a period of ten or more years as residential curtilage.

Reasons for Recommendations

4. That based on site visits, information from the landowner and complainant, officers reports when conducting site visits for the consideration of planning applications, plans attached to conveyance documents, and Ariel photographs, that on the balance of probabilities the land has been used as residential curtilage for a period in excess of ten years and that there has been no differing intervening use(s). No substantive evidence has been provided by the complainant that contradicts the Councils assessment.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. The Council considered whether it would be expedient to restrict development of the land by seeking an Article 4 (1) Direction, The Town & Country Planning (General Permitted Development) Order 1995 (as amended). Such a Direction can only be approved by the Secretary of State and seeks to remove permitted development rights from the land. In this instance the property is not a Listed Building nor is it within a designated Conservation Area albeit the adjacent land is within the designated Green Belt. The Government's general approach to the making of Article 4 Directions is that permitted development rights should be withdrawn only in exceptional circumstances, where there is a real and specific threat of development being carried out which would damage an interest of acknowledged importance.



The use of this parcel of land as residential curtilage would not cause such damage as the scope for any permitted development on the land is very limited given the relatively small area of land. Any proposals for development of the land that requires planning permission would be subject to Green Belt Policy.

CORPORATE PRIORITIES

6. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	X
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	

BACKGROUND

7. The Council have a duty under PPG18, Enforcing Planning Control, that when considering any enforcement action the decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
8. This end of terrace property is the last in a terrace of four properties that sit to the South of the junction of Butterworth Brow and Well Lane and is within the settlement area of Brinscall. South of 7 Well Lane is the boundary with the designated Green Belt. The parcel of land subject of this report is immediately to the south of the property and within the designated Green Belt. For ease of reference a block plan of the area is attached to this report.
9. The property was, until 1995 in the ownership of United Utilities, a property that they rented out. Upon the death of the previous occupant the property remained vacant for some time, eventually being sold by United Utilities to the present occupant in March 1995. There is no definitive record of the period that the property remained empty. The Land Registry Title Plan clearly records the adjacent parcel of land as being within the title of the property. Additionally, a copy of the conveyance document from United Utilities has been obtained and within that document the description of 7 Well Lane included, "The messuage or dwelling house known as 7 Well Lane". Messuage is defined as a dwelling house with outbuildings and land assigned to its use. The defined boundary of the plan accompanying that document included the parcel of land subject of this report.
10. The owner of the property has stated that on purchasing the property from United Utilities the boundary was clearly defined by old fencing, two large sheds were upon the land, and fruit trees had been planted as well as fruit bushes and other ornamental plants. A section of the land had also been used for vegetable growing. There were also old vans and rubbish on the land. Site inspections of the land have been carried out where it was seen that terraced planting beds which suggest domestic use of the land.
11. The complainant has been requested, on two separate occasions, to provide some evidence to contradict the use of the land as residential curtilage. In correspondence received from

the complainant he stated that he was unable at this present time to find any photographic evidence but was willing to swear on oath to the fact that no cultivation of the land had taken place within the last 19 years. In that same correspondence the Council are informed that the previous tenant of the land who died some years ago was quite elderly and limited in ability when he, the complainant, moved to the area, although the complainant was told that when he was younger the previous tenant may have tended the land but had not done so whilst the complainant occupied his property. It is of relevance to note that the land in question sits at a lower level than the surrounding properties on Butterworth Brow, it is acknowledged that the site and its use may affect the outlook of those properties however Members will be aware that outlook and view are not material planning considerations.

12. Additionally, the complainant has spoken with the Development Control Manager and during conversation informed him that the occupant of number 5 Well Lane used the land in the 1960's when there were garages on the land, vans parked on the land and a herb garden. Such a use indicates use as residential curtilage.
13. Since occupation of the property in 1995 the current occupier has submitted two separate planning applications to the Council. Application 04/01167/Ful considered a rear ground and first floor extension and front porch which was granted planning permission on 10 December 2004. Within the body of the Officers report that considered the proposed development it is stated that, "There is a small yard area and garden area located to the side of the property". Planning application 06/00882/Ful for a two storey extension to the rear and front porch was approved on 30 October 2006 and within the body of that Officers report it is stated, "The rear yard area of the applicants property is very small, there is additional side garden area located to the south of the applicants property".
14. It may well be that there has, as the complainant states, been a period of inactivity of use of the land as domestic curtilage this being confirmed by the present occupier who during his 15 year occupation did not tend the land for about 10 years but has now tidied the land to continue using it as his residential curtilage. During this dormancy in use there was no intervening differing use.
15. Having regard to the Councils duty and with regards to the available evidence that must be assessed under the balance of probabilities there has been no breach of planning control having regard to the current use of the land as garden curtilage.

ALTERNATIVE REQUIREMENTS

16. Discussed at 5.

IMPLICATIONS OF REPORT

17. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance		Customer Services	X
Human Resources		Equality and Diversity	
Legal		No significant implications in this area	

Lesley-Ann Fenton
 Director of Partnerships, Planning & Policy

Report Author	Ext	Date	Doc ID
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