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Mrs Helen Leggett
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Your Ref: 15-049:HL/GS
Our Ref: APP/W4223/X/16/3143392

04 August 2016

Dear Mrs Helen Leggett,

Town and Country Planning Act 1990

Appeal by Mr J Jaskolka

Site Address: Land rear of 748 Ripponden Road, Oldham , Lancashire , OL4 2LP

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Kelly Frost

Kelly Frost

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - <https://www.gov.uk/appeal-planning-inspectorate>



Appeal Decision

Site visit made on 4 July 2016

by **C Sherratt DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2016

Appeal Ref: APP/W4223/X/16/3143392

748 Ripponden Road, Oldham, Lancashire OL4 2LP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Jaskolka against the decision of Oldham Metropolitan Borough Council.
 - The application Ref CL/336820/15, dated 9 April 2015, was refused by notice dated 11 August 2015.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is garden land (C3).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr J Jaskolka against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Reasons

3. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. Accordingly, it is necessary to consider whether, on the balance of probability, the land has been used as a garden for a continuous period of ten years or more prior to the date of the application.
4. The onus is on the appellant to demonstrate that, on the balance of probability, the land has been used as a garden for a continuous period of 10 years. The Council does not provide evidence to contradict the evidence provided by the

appellant. Rather, the Council considers that the evidence provided is not sufficient to demonstrate the continuous use of the land.

5. The evidence submitted to support the application includes two sworn affidavits, photographs taken in 1998 and 2002 and google earth images taken in 2000 and 2005.
6. The sworn affidavits confirm that the appellant purchased the property in 1987 together with the adjacent field. Shortly after purchasing the land it was ploughed, levelled and seeded. Some trees were planted and there was no formal separation between the garden associated with the dwelling and the adjacent land. The affidavits state that the land has been used for purposes incidental to the enjoyment of the dwelling since 1987 and been mowed throughout the growing season.
7. The affidavits are rather limited but nevertheless clearly explain how the land in question has been maintained and used as a garden since 1987. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may be ordered to pay significant fines or sentenced to time in jail, I give these significant weight.
8. Although the affidavits suggest other people could confirm the use of the land during this time, no further statements or affidavits are submitted. The aerial images provide further support at least in so far as they reflect the circumstances of the particular dates the images were taken. There is no explanation as to how the appellant recalls the year that the photographs were taken which reduces the weight that can be afforded to them but they nevertheless offer further support.
9. Whilst I agree with the Council that both the aerial images and photographs do not demonstrate a continuous use of the land, when considered in the round alongside the sworn affidavits and in the absence of any evidence to the contrary, I consider the appellant has discharged the onus of proof, on the balance of probability, incumbent upon him.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of garden land (C3) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Claire Sherratt

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 April 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the land has been used as a garden for a continuous period of 10 years or more.

Signed

Claire Sherratt

Inspector

Date 4 August 2016

Reference: APP/W4223/X/16/3143392

First Schedule

Garden area

Second Schedule

Land at 748 Ripponden Road, Oldham OL4 2LP

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

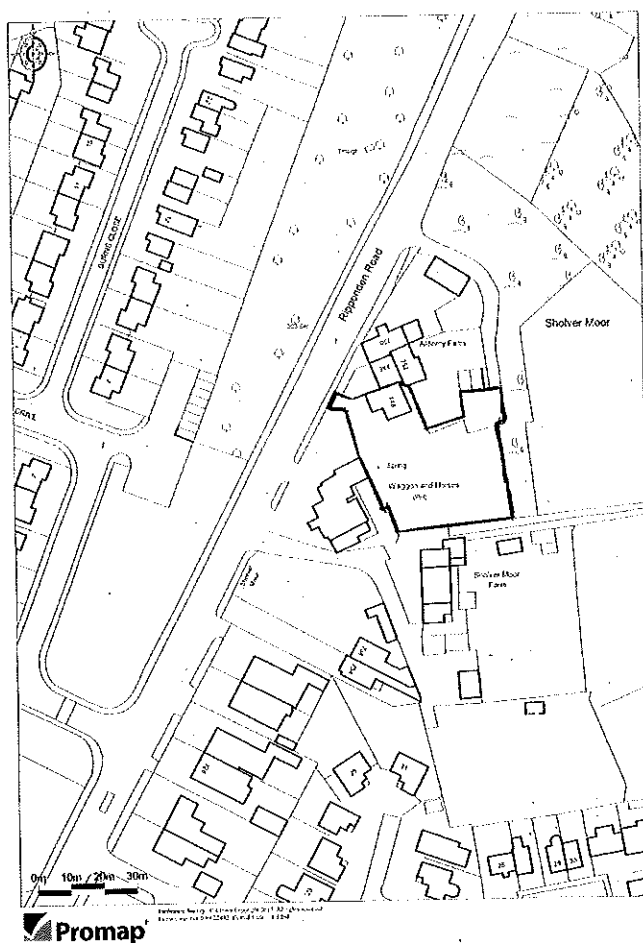
This is the plan referred to in the Lawful Development Certificate dated: 4 August 2016

by **C Sherratt DipURP MRTPI**

Land at: 748 Ripponden Road, Oldham OL4 2LP

Reference: APP/W4223/X/16/3143392

Scale: Not to scale



Costs Decision

by **C Sherratt DipURP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2016

**Costs application in relation to Appeal Ref: APP/W4223/X/16/3143392
Land rear of 748 Ripponden Road, Oldham, Lancashire OL4 2LP**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Jaskolka for a full award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as garden area.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The case of the applicant is made in writing and there is therefore no need to repeat it here. No response was received from the Council.
3. In submitting an application for a certificate of lawfulness the onus is firmly on the applicant to demonstrate that the use is lawful, on the balance of probability. Like the Council I take the view that the aerial images and photographs are simply a snap-shot in time and fail to demonstrate any continuous use of the site. There is no explanation to clarify the dates of the photographs. Whilst the affidavits claim many people could confirm the use of the site over the years, no additional statements were submitted. The application and subsequent appeal therefore turns primarily on the affidavits to demonstrate a continuous use.
4. The Council's statement does not refer to the statutory declarations. The delegated report only refers to the statutory declarations briefly. The Council are entitled to make a judgement about whether they considered the affidavits to be sufficient to demonstrate a continuous use, even in the absence of any contradictory evidence. However, it is not clear to me how the Council assessed the statutory declarations other than to acknowledge they formed part of the evidence.
5. In my view the Council has failed to substantiate its reason for not issuing a certificate looking at the evidence as a whole. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the

Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

6. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Oldham Metropolitan Borough Council shall pay to Mr J Jaskolka, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to Oldham Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Claire Sherratt

Inspector