

DELEGATED DECISION REPORT

HPK/2023/0470
Valid 03/11/2023

CROFT BARN ECCLES
ROAD
CHAPEL-EN-LE-FRITH

APPLICATION FOR LAWFUL
DEVELOPMENT CERTIFICATE
FOR "EXISTING USE FOR THE
PURPOSES OF
HORTICULTURE AND
DOMESTIC USES THAT IS
LIMITED TO THE
CULTIVATION, PLANTING OR
GROWING OF GRASS, TREES,
SEEDS, VEGETABLES, FRUIT,
PLANTS, SHRUBS, BUSHES
OR FLOWERS; AND THE
TENDING TO AND
ENJOYMENT OF SUCH LAND
BY PERSONS WHO HAVE A
PRIVATE RIGHT OF ACCESS
AND ENTER THE LAND
(‘ENJOYMENT’ IN THESE
RESPECTS INCLUDES
SITTING, WALKING,
ROAMING, RUNNING AND
PLAY THAT DOES NOT
INVOLVE THE USE OF
INSTALLED OR FIXED
APPARATUS OR
EQUIPMENT)."
(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

- Whether the use comprises development having regard to the definition of development under Section 55 of the Town and Country Planning Act 1990, and thus whether the use as described requires planning permission

DESCRIPTION OF SITE

The application relates to a relatively small irregular parcel of land that lies within proximity to a cluster of dwellinghouses immediately north of Eccles Road, a short distance west of Chapel-en-le-Frith.

The applicant resides and owns a property called Croft Barn, the most western detached dwelling within the cluster of former agricultural buildings. Separated by a shared access and area of hard standing, are two semi-detached properties; 'Lydgate Barn' being the most northern property with 'Cowhey Barn' situated to the south.

The area of land in question is situated immediately to the south of the domestic curtilage associated with Cowhey Barn, bounded by the public highway to the south, and a large agricultural field to the east, also owned by the applicant.

As documented within the supporting Planning Statement the wider site was subject to a planning application under HPK/0003/6391 that granted permission to convert a redundant barn (Cowhey Barn).

The opposite barn to the west which became Croft Barn was originally the subject of planning permission under HPK/2005/0003 for the conversion of the redundant barn to a holiday cottage. Subsequently, planning permission was granted for the removal of a condition restricting the use of the property as holiday let accommodation under HPK/2009/0107 allowing the property to be residing as a permanent residence ('Croft Barn').

The area of land subject to this application extends eastwards from the shared driveway, immediately south of the southern boundary of domestic curtilage associated with Cowhey Barn (secured by way of the granting of a Certificate of Lawful Development under HPK/2021/0619 in June 2022), providing a narrow access to an open agricultural field, that has a western boundary that is shared with the rear gardens of Cowhey Barn and Lydgate Barn. The eastern boundary of this site terminates at the entrance to this agricultural land, where the Planning Statement states that at one time there was an access gate which has now been removed.

A site visit has confirmed that the site comprises an area of hard standing before laterally becoming well maintained grassland which extends into the field beyond a small fence.

The Planning Statement notes that the site contains physical structures in the form of a water storage tank serving Croft Barn, which was covered by a timber shed structure in 2014 due to maintenance issues. In addition, the Statement identifies a single storey Summer Outhouse building located within the site that was erected in 2020.

These aspects of development were verified by way of a site visit. In addition to these two physical permanent structures, other paraphernalia on site includes a picnic table and child swing.

Photographs of the site as inspected at the time of a site visit are shown below.



Above and Left: Photographs of area of land subject of application showing hard standing, grass, physical structures and domestic paraphilia



PROPOSAL

The application as submitted sought a Certificate of Lawful Development for an Existing Use described as “*Use of land for residential purposes*”

The application acknowledges that planning permission is required for both physical structures on site, and that the site has been in use for “residential amenity” (paragraph 6.1) for over 30 years in the form of “garden and car parking” (paragraph 6.3).

The application is supported by various forms of evidence that are appended to the Planning Statement, as follows:

Appendix A
Appendix B

Location Plan
Photographic Evidence 1965

	<i>Plan 1 - 1988</i>
<i>Appendix C</i>	<i>Plan 2 - 1988</i> <i>Photographic Evidence</i> <i>Septic Tank Technical Details</i>
<i>Appendix D</i>	<i>Site Plan – 2010</i> <i>Photographic Evidence</i>
<i>Appendix E</i>	<i>Site Plan – 2010</i>
<i>Appendix F</i>	<i>Site Plan – 2023</i>
<i>Appendix G</i>	<i>Letter from Tanking Services Ltd</i>

The application is also supported by a Statutory Declaration signed by the applicant and occupiers of Croft Barn.

The Planning Statement submits the following in support of their case that the use of the site as described is lawful:

- From as early as 1988, the land in the immediate vicinity of the barns, that includes the site has been utilised as residential amenity space in the form of a garden and vehicle parking
- The garden to Lydgate Barn went through three phases as it was subdivided and sold with individual properties
- The site being the retained area of garden and car parking for Croft Barn has essentially not changed in shape since its initial development as a garden to Lydgate Barn
- Whilst several changes have been made to boundaries associated with properties, the boundary line along Fence D as shown on Plan 5 Appendix F has not changed since 1989.
- Beyond the balance of probability, the site has been in use for residential amenity continuously beyond the period of 10 years, and that in doing so, any breach of planning control specific to the use of the land for residential amenity is now immune from enforcement action.

OFFICER COMMENTS

Whether the use comprises development having regard to the definition of development under Section 55 of the Town and Country Planning Act 1990, and thus whether the use as described requires planning permission

Section 55 of the Town and Country Planning Act 1990 sets out the definition of 'development' and states the following:

- (1) *Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

Section 191 of the Town and Country Planning Act 1990 relates specifically to Certificate of Lawfulness of Existing Use or Development, and states the following:

- (1) *If any person wishes to ascertain whether—*
- (a) *any existing use of buildings or other land is lawful;*
 - (b) *any operations which have been carried out in, on, over or under land are lawful; or*
 - (c) *any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

The online Planning Practice Guidance (PPG) contains further guidance for assessing and determining applications for Certificate of Lawful Development and includes the following:

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Paragraph: 009 Reference ID: 17c-009-20140306
Revision date: 06 03 2014

This application seeks a Certificate to confirm that the use of the land for residential purposes is lawful.

Beginning with the area of hard standing immediately adjacent to the shared driveway, this is consistent with the approved plans approved in 2005 and 2009 for parking

allocated with Croft Barn, which was formally a holiday let and now a permanent residence. As such, this part of the site is clearly associated with the residential property known as Croft Barn and is lawfully used in connection with it.

It is clear from a review of the photographs contained within the Planning Statement that historically, the site formed part of a wider field that extended eastwards from the (now converted) barn, which was then separated from the nearest converted property by a timber fence.

Beyond the area of hard standing lawfully allocated for off-street parking, the site is characterised by well maintained grassland that is home to two permanent buildings, and domestic paraphilia.

This application relates to an enforcement complaint that alleges a breach of planning control with regards to the use of the land in question, and the physical structures upon it.

The applicant acknowledges that the two buildings on site (shed covering the water tank and summerhouse) require planning permission in their own right. Putting to one side these permanent structures, the use of the land as described is discussed below.

There is a very distinct difference between the use of land as curtilage and garden land.

It is clear from a site visit that the eastern part of the site nearest to the agricultural field in the vicinity of the (unauthorised) summerhouse has been used for horticultural purposes. Such uses do not amount to development under Section 55 of the Act and as such, a Certificate is able to be granted to reflect this use.

I turn then to whether there are other existing uses of the application site, outside of those recognised to be horticulture, that amounted to a material change of use and have been continuous for 10 years prior to the date of the application. There is also some evidence of use of the land for other purposes incidental to the enjoyment of the dwellinghouse, in the form of a picnic table, swing set, and basketball hoop. These items however, although remaining in situ, are small very portable with limited physical impact – they would have been used occasionally or intermittently. I am unable to determine that these activities or uses amounted to an act of development, they again would in my assessment be inconsequential in land use and planning terms – de minimis or at most ancillary or part of people enjoying and spending time in an area of pleasant cultivated land used primarily for horticulture.

I am unable to determine that this is anything other than those with private access to the land enjoying it as such. The limited presence of persons enjoying the land as a garden or pleasant open ground is simply part of or ancillary to that horticultural use.

It is also of note that if other activities or uses were to result from material change of use the General Permitted Development Order permits land to be used temporarily for 28 days in a calendar year without a planning permission being required.

In the interests of accuracy and for the avoidance of doubt, a revised description of development has been agreed with the applicant's agent as follows:

"Existing use for the purposes of horticulture or as a 'garden' to the extent that is limited to the cultivation, planting or growing of grass, trees, seeds, vegetables, fruit, plant, shrubs, bushes or flowers; and the tending to and enjoyment of such land by persons who have a private right to access and enter the land ('enjoyment' in these respects includes sitting, walking, roaming, running and play that does not involve the use of installed or fixed apparatus or equipment)."

This revised description makes clear that the use of the site for incidental purposes does not, as a consequence, mean that the site amount to residential curtilage associated with Croft Barn, that benefits from any Permitted Development rights.

For the avoidance of doubt, due to the specific characteristics of the site and its isolated relationship with the main dwellinghouse, Officers are of the view that this site, other than the area of hard standing lawfully allocated as domestic parking, does not comprise domestic curtilage, and therefore does not benefit from any permitted development rights.

As such, both the shed that covers the water tank, and the detached summerhouse, will require full retrospective planning permission and be subject to all relevant Local Development Plan policies and national policies contained within the National Planning Policy Framework, which include those relating to the Protection of the Green Belt.

However, the fact that the physical structures on site do not benefit from planning permission and are unauthorised does not preclude this Certificate being issued having regard to the agreed revised description.

As such, based on the fact that the revised description does not amount to development having regard to Section 55 of the Act, and having regard to the specific characteristics and evidence on site, it is recommended that the existing use as per the revised description does not require planning permission, is lawful, and thus allows a positive Certificate to be issued.

OFFICER RECOMMENDATION : Grant Certificate

Case Officer: James Stannard

Recommendation Date: 20th February 2024

X 

Signed by: Ben Haywood

On behalf of High Peak Borough Council

