

**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 191**

APPLICATION FOR CERTIFICATE OF LAWFUL EXISTING USE

**CROFT BARN
ECCLES ROAD
CHAPEL-EN-LE-FRITH
SK23 9RS**

SUPPORTING STATEMENT

**PRDS
Estate Office
4 Myrtle Street
BOLTON
BL1 3AH**



1. INTRODUCTION

- 1.1 We are instructed by Mr. John O'Malley and Mrs. Marilyn O'Malley in relation to land in their ownership at Croft Barn, Eccles Road, Chapel-en-le-Frith.
- 1.2 This statement is submitted in support of an application for a Certificate of Lawful Existing Use for the use of land for residential purposes in association with Croft Barn. The application relates to the area of land shown edged red on the location plan submitted with this application. It is our submission that the subject land has been used for this stated purpose for a period well in excess of ten years and therefore the use is a lawful use of the land.
- 1.3 A previous application for a Certificate of Lawful Existing Use for the use of this land for residential purposes was submitted on 3rd November 2023 (Application HPK/2023/0470). At some point during the consideration of this application, our clients' agent agreed to change the description of the use from that stated on the original submission. A Certificate of Lawfulness was issued on 20th February 2024 for the following use of the land:

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).

- 1.4 It is our view that the use as described above is vague and is clearly not specific in exactly what activities can be legally conducted on the land. It is certainly confusing and in our opinion there is absolutely no difference in the activities described to those activities which would commonly take place in any private garden.
- 1.5 Following further consideration of the matter, our client is now seeking absolute clarity on the lawful use of the land and therefore this application seeks confirmation that the lawful use of the land is as residential curtilage in association with Croft Barn.
- 1.6 In addition to this Supporting Statement, some of the documentation that was submitted with the previous application is also included in this application as it remains relevant to the issue as to whether the use is lawful.

2. CONSIDERATION OF THE PREVIOUS APPLICATION HPK/2023/0470 BY THE LOCAL PLANNING AUTHORITY

- 2.1 In the report on the previous application, it is noted that the planning officer made the following observations with our comments in brackets:

- *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. [Common characteristics of any private garden area associated with a dwellinghouse]*
- *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. 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. [Why is there no reference to the parking area in the description of the use which has been certified as lawful?]*
- *Beyond the area of land lawfully allocated for off-street parking, the site is characterised by well maintained grassland that is home to two permanent buildings and domestic paraphilia (sic). [Exactly what you would expect to see in a domestic curtilage]*
- *There is a very distinct difference between the use of land a curtilage and garden land. [We discuss this in detail later in this statement]*
- *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 that would have been used occasionally or intermittently. [It is reasonable to point out that these are exactly the sort of items that feature in the garden areas of most dwellings. It is also likely that use of these would be more likely to be intermittent rather than on a strict daily basis throughout the year]*
- *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 horticultural use. [This is a remarkable statement given that the officer has absolutely no evidence to support his contention that the use is limited or otherwise. On the other hand, evidence was submitted by the applicant in the previous application to demonstrate that the land had been used for residential purposes for many years].*
- *There is reference to section 191 of the Town and Country Planning Act 1990 and Planning Practice Guidance (PPG). [It is noted however, that the officer does not mention paragraph 006 of the section of the PPG that deals with Lawful Development Certificates that states:*

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to

contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

- 2.2 In summary, it is our submission that the applicant's evidence submitted in relation to Application HPK/2023/0470 was sufficiently precise and unambiguous to justify the grant of a certificate for what was originally applied for. We have seen no evidence put forward by either the local planning authority or others to contradict or otherwise make the applicant's version of events less probable.

3. FURTHER JUSTIFICATION FOR THE GRANT OF A CERTIFICATE OF LAWFULNESS

- 3.1 It is our position that the use of the site for residential purposes clearly lawful not just by the passage of the requisite period of time but primarily due to the fact that planning permission has been granted on at least two occasions for developments that included the subject land within the curtilage of a dwellinghouse.
- 3.2 In August 1997, planning permission was granted for the change of use of barn to a dwelling at Lydgate Barn, Eccles Road, Chapel-en-le-Frith (Application No. HPK/0003/6391). This permission was implemented and became Cowhey Barn. The site edged red approved under this application included all of the land that is the subject of the current application. A copy of the approved plan is submitted with this statement as Document A.
- 3.3 It is noted that Condition 3 of the planning permission required the laying out of 3 no. parking spaces within the curtilage of the barn. It is also noted that Condition 6 removed the permitted development rights in relation to gates fences, extensions, garages etc.
- 3.4 The permission was implemented by our clients, Mr. & Mrs. O'Malley and they lived in the property and used the full extent of the approved curtilage for residential purposes between 2000 and 2011. The photograph below was taken in 2010 and illustrates clearly that the land was used for residential purposes in association with Cowhey Barn.



- 3.5 In February 2005, planning permission was granted for the change of use of a redundant barn to a four-bedroom holiday cottage. (Application No. HPK/2005/0003). This permission was implemented and became Croft Barn. The site edged red approved under this application included all of the land that is the subject of the current application. A copy of the approved plan is submitted with this statement as Document B.
- 3.5 It is noted that Condition 3 of the planning permission restricted the use of the premises to a short term holiday let stating that the property should not be occupied as a permanent dwelling and should not be occupied by any one person for a period exceeding 28 days in any calendar year.
- 3.6 In May 2009, permission was granted (Application HPK/2009/0107) for the removal of condition no.3 on application HPK/2005/0003 such that the holiday cottage could be used as a permanent dwelling. Again the site edged red which was the land subject of that application included all of the land that is the subject of the current application.
- 3.7 The holiday cottage permission was implemented by our clients Mr. & Mrs. O'Malley and they have lived in the property since 2011 to the present date. During that time, they have used and continue to make full use of the approved curtilage for residential purposes.

- 3.8 It is accepted that the curtilage land originally approved with Cowhey Barn under application HPK/0003/6391 did not enjoy any permitted development rights due to the inclusion of Condition no. 6 of that permission. However, no condition removing permitted development rights was attached to either of the relevant permissions for Croft Barn. As such, and on the basis that the current application site is clearly curtilage land, then the summer house building would be permitted development notwithstanding any previous statement made by or on behalf of the applicant in that regard.
- 3.9 Turning now to the issue of what is curtilage land and the planning officer's contention, in dealing with the previous application, that there is a very distinct difference between the use of land as curtilage and garden land. The officer does not expand on this in the report but we understand that other officers have expressed the view that the subject land cannot form part of the curtilage of Croft Barn because there is a right of way between the dwelling and the land.
- 3.10 In terms of case law the most recent case which attempts to clarify the correct approach is *Hiley v The Secretary of State for Levelling Up, Housing and Communities & Anor* [2022] EWHC 1289 (Admin). While this case related to industrial curtilage, the basic principles arising from the case are equally relevant to a residential situation. In quashing the appeal decision, the judge confirmed that the correct approach in determining curtilage is that set out by the Court of Appeal in the decision of *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2022] QB 103. Namely, the test being that for 'one hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter'. This 'part and parcel' test being a matter of fact and degree for the decision-maker.
- 3.11 The judge in Hiley, Mr. Justice Julian Knowles, also highlighted some key relevant considerations and non-relevant considerations to the 'part and parcel' test:
- Relevant but not determinative nor exhaustive will be (i) the physical layout of the premises; (ii) their ownership (past and present) and (iii) their use or function (past and present)
 - Functional equivalence or functional interdependence is irrelevant
 - The test is not whether the building and land fall within a single enclosure
 - 'Smallness' is not inherent in curtilage; there is no test that a curtilage must be 'small', but that does not mean that relative size is an irrelevant consideration
 - The 'curtilage' of a building is a different concept from 'the planning unit'. The land does not have to be 'ancillary' to the building in order to

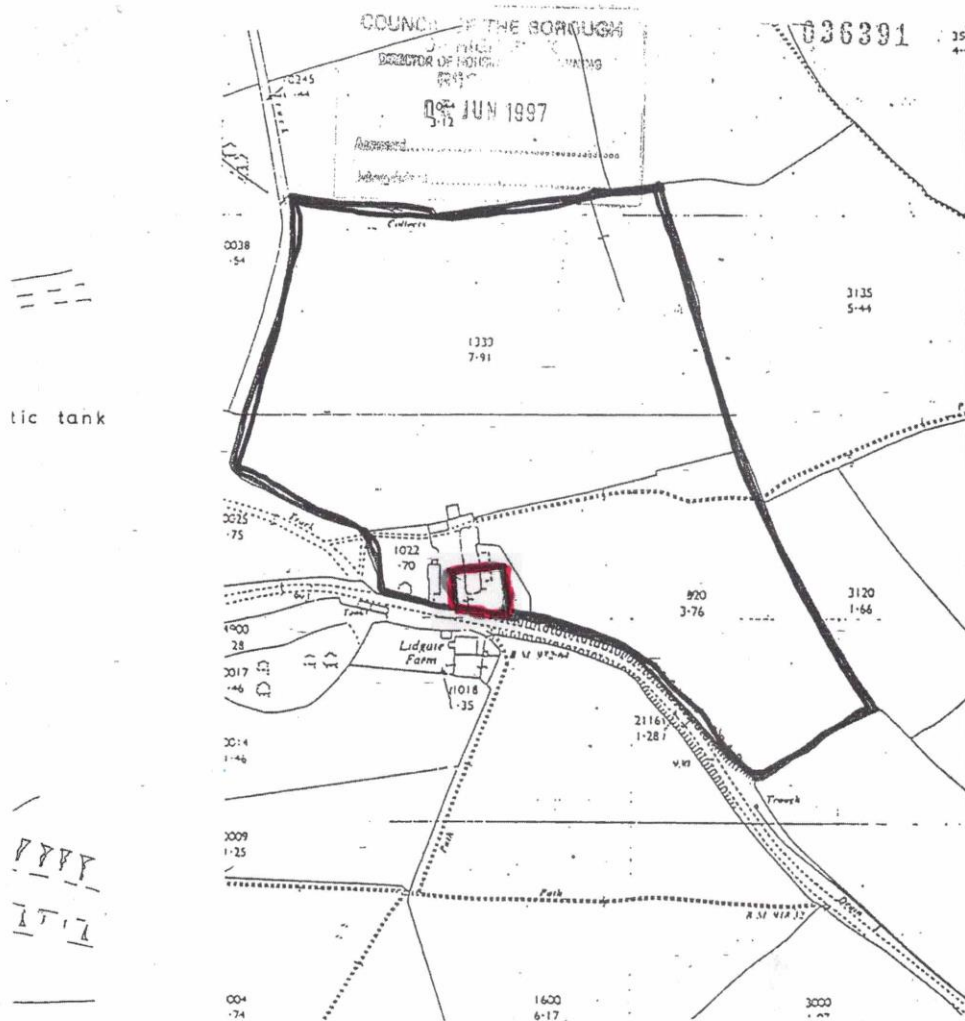
fall within its curtilage, although whether it is ancillary is relevant and may be highly relevant

- 3.12 Applying the above criteria to the land that is the subject of this application, it is clear that a strong argument can be made for the land to be considered as curtilage notwithstanding the fact that it already has planning permission as curtilage as set out in earlier paragraphs. Simply looking at the first criteria listed above, the subject land is clearly not definitively physically unconnected with Croft Barn, ownership (past and present) has always been with the applicants and the use and function (past and present) has been as residential curtilage. The law clearly indicates that the relevant test is not whether the building and land fall within a single enclosure so the fact that there is a right of way between Croft Barn and the subject land is irrelevant.

4 CONCLUSION

- 4.1 The issue of a Certificate of Lawful Use depends entirely on factual evidence about the history and planning status of the land that is the subject of this application. The planning merits of the development are irrelevant. The onus is on the applicant to prove that the use has been carried on continuously for a period of at least 10 years. If the local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 4.2 It is our submission that we have demonstrated both in this document and in the documents that were submitted with the previous application (and which also for part of this application) that it is indisputable that the subject land has been used as residential curtilage since at least 2000 i.e. for nearly 25 years.
- 4.3 That being the case it is our firm view that a Certificate of Lawful Existing Use should be issued for the use of the subject land for residential purposes in association with the dwelling known as Croft Barn.

DOCUMENT A



500

LOCATION PLAN

scale 1:2500

PROPOSED CHANGE OF USE OF
BARN TO DWELLING AT

LYDGATE BARN ECCLES ROAD
CHAPEL EN LE FRITH FOR

MR. & MRS. J. O'MALLEY

drg no JOM /1

date 5/97

PRDS
250325