

DELEGATED DECISION REPORT

HPK/2025/0128
Valid 31/03/2025

**CROFT BARN ECCLES
ROAD
CHAPEL-EN-LE-FRITH**

**CERTIFICATE OF
LAWFULNESS FOR EXISTING
USE OF LAND FOR
PURPOSES INCIDENTAL TO
THE ENJOYMENT OF THE
DWELLINGHOUSE CROFT
BARN AS PART OF ITS
ASSOCIATED RESIDENTIAL
CURTILAGE**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

- Whether, based on the specific facts of the case, the existing use as described is lawful as a matter of planning judgement, having regard to Section 191 of the Town and Country Planning Act 1990

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.

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 the rear garden which is situated within the 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).

The extent of this area of land provides 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.

A site visit has confirmed that the site comprises an area of hard standing used partially for off-street parking provision, before laterally becoming well maintained grassland which extends into the field beyond a small fence.

The site contains two main structures, in addition to other temporary paraphernalia including a picnic table and child swing. The first is a shed type structure that covers the water tank associated with the main property Croft Barn, which was the subject of retrospective planning permission granted under HPK/2024/0208. The second is a domestic 'Summer House' situated towards the eastern boundary of the site, which does not benefit from any planning permission and has been subject to an enforcement complaint and investigation.



Above and Left: Photographs of area of land subject of application showing hard standing, grass, physical structures (Water Tank and Summer House) and domestic paraphilia

PROPOSAL

The application seeks to establish the lawful use of the site by way of a Certificate of Lawful Development for Existing Use under Section 191 of the Town and Country Planning Act 1990.

As per paragraph 1.5 of the Planning Statement, the purpose of this application is to establish that the land in question is incidental to the enjoyment of Croft Barn and as a consequence forms part of its domestic curtilage.

The description of development as set out on the Application Form states the following:

“Use of land for residential purposes in associated with Croft Barn”.

However, in light of verbal and communications with the applicant's agent, it has been agreed that a more appropriate description of development, which better reflects what the applicant is seeking to establish as being lawful reads as follows:

“Existing use of land for purposes incidental to the enjoyment of the dwellinghouse Croft Barn as part of its associated residential curtilage”

The application is accompanied by a Location Plan which shows a red edge consistent with that subject to a determination under HPK/2023/0470, and a Planning Statement with supporting appendices. A copy of the Planning Statement submitted by the previous agent under HPK/2023/0470 also forms part of the application.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2005/0003	Conversion Of Redundant Barn Into Four Bedroomed Holiday Cottage (Approved 25 th February 2005)
HPK/2009/0107	Removal Of Condition No 3 (HPK/2005/0003) - Holiday Cottage to be used as a Permanent Dwelling (Approved 12 th May 2009)
HPK/2022/0045	Lawful Development Certificate for Existing Use for use of land for residential purposes (Refused 22 nd May 2023)
HPK/2023/0470	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 entre 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 (Granted 20 th February 2024).

HPK/2024/0208 Retrospective planning permission for the erection of an outbuilding to cover the access hatch to the water supply tank to the property (Approved 17th September 2024)

CONSULTATION COMMENTS

Neighbours and General Public

1no representation has been made in relation to this application from an immediate neighbour who makes the following comments:

- Previous application HPK/2023/0470 specified the lawful use of the site as per a revised description agreed with the previous planning agent
- Questions whether this application seeks clarification on the lawful use of the site or applying for a Certificate to certify that the land falls within the residential curtilage (this judgement was already made under HPK/2023/0470)
- Land in question is not private garden. A private garden for Croft Barn already exists and is to the west of and behind the property
- The land is not domestic curtilage.
- The only time the land in question was domestic curtilage is when it belonged to Lydgate Barn/Cowhey barn when the land was all one single parcel, prior to Croft Barn being converted
- Application appears to assert that the Summer House on this land is permitted by virtue of it falling with the domestic curtilage
- Comparing industrial curtilage and domestic curtilage is in our view completely unrealistic especially considering the very rural nature of these four properties
- The only reason this strip of land in question was retained by the applicant originally was to allow the applicant access to the field to the east of Cowhey Barn
- Fixed swing previously removed from the field behind as it was fixed equipment when HPK/2022/0045 was refused has now been re-erected on the land in question even though the Statement associated with HPK/2023/0470 reads “running and play that does not involve the use of installed or fixed apparatus or equipment.”
- Should the land be granted residential status (curtilage), that it is already stated in the report associated with HPK/2023/0470 that retrospective planning permission for the unlawfully erected Summer House building will need to be sought.

- Our concern is this will then set a precedent for further development of the site and pave a clear way for any future planning application (either by the applicant or by any future owners of Croft Barn) for more permanent residential dwellings, either on the existing footprint of the unauthorised buildings, or elsewhere on the site.
- Draws attention to conclusions made under HPK/2022/0045:

“Whilst the land in question is owned by the applicant, it does not appear to have a close functional link with his dwelling by reason of its distant separation, it has its own access from and appears to effectively operate as a separate planning unit.”

OFFICER COMMENTS

Whether, based on the specific facts of the case, the existing use as described is lawful as a matter of planning judgement, having regard to Section 191 of the Town and Country Planning Act 1990

As agreed with the applicant’s agent, this application seeks a Certificate of Lawful Development for the Existing Use of the land in question as described below:

“Existing use of land for purposes incidental to the enjoyment of the dwellinghouse Croft Barn as part of its associated residential curtilage”

The Planning Statement contains a section which responds to analysis within the Delegated Report that informed the recommendation including a revised description of development and subsequent issuing of a positive Certificate under HPK/2023/0470.

In summary, the agent contends that the supporting information that accompanied HPK/2023/0470 was sufficient to allow the LPA to grant a Certificate for the description of development as submitted, which read as *“Use of land for residential purposes”*.

Section 3.0 of the Statement sets out the case for how the use as described is lawful, which can be summarised as follows:

- The site for residential purposes is clearly lawful not just by the passage of time 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 the dwellinghouse:
- HPK/0003/6391 – change of use of barn to dwellinghouse (Cowhey Barn) included land within red edge (Document A appended to Planning Statement)
- Permission was implemented and the applicant’s (who now live in Croft Barn), lived in the property and used the full extent of the approved curtilage for

residential purposes between 2000 and 2011 – evidenced by photograph taken in 2010 below



- Croft Barn became a short term holiday let following planning permission granted under HPK/2005/0003. The site edged red under this application included all land that is subject to the current application (Document B appended to the Planning Statement)
- The applicant has occupied Croft Barn since 2011, after planning permission was granted in May 2009 (HPK/2009/0107) to remove the condition restricting the use of the property as a permanent dwelling. The site edged red under this application included all land that is subject to this current application
- The land has been in continual residential use since 2011 until the present date
- On the basis that this site forms part of the domestic curtilage of Croft Barn, the Summer House would be Permitted Development
- It is understood that Officers have previously affirmed that the land in question does not amount to residential curtilage owing to the fact that there is a public right of way between the dwellinghouse and the land.
- Reference to case law and the correct approach to assessing what constitutes curtilage is under R (Hampshire County Council) v Sec of State for Environment, Food and Rural Affairs [2002] 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”. The ‘part and parcel’ test being a matter of face and degree for the decision maker.”

- Identifies key relevant and non-relevant considerations regarding the “part and parcel” test:
 - Relevant but not determinative nor exhaustive will be:
 - The physical layout of the premises;
 - Their ownership (past and present) and
 - Their use or function (past and present)
 - Functional equivalence or functional interdependence is irrelevant
 - 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

In assessing this application, having regard to the agreed change to the description of the existing use, Officers must consider two questions:

- 1) *Is the parcel of land capable of being lawfully used for purposes incidental to the enjoyment of the dwellinghouse?*
- 2) *Does the land in question fall within the residential curtilage of the main dwellinghouse (Croft Barn) as a matter of planning judgement?*

Is the parcel of land capable of being lawfully used for purposes incidental to the enjoyment of the dwellinghouse?

Section 55 of the Town and Country Planning Act 190 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, minor 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, or, 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 land has recently been subject to a Certificate of Lawful Development application which in its original form sought to establish the lawful use of the land as “*Use of land for residential purposes*”.

In assessing this recent application, Officers accepted that the land in question has been used for horticultural purposes, and that there is 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; items which are small, portable, and have limited physical impact, which are used occasionally or intermittently.

Officers went on to determine that these activities or uses do not amount to an act of development having regard to S55 of the Act, and would be inconsequential to the land use in planning terms (i.e. de minimis or at most ancillary or part of people enjoying spending time in an area of a pleasant cultivated land primarily used for horticulture).

It is somewhat bizarre and bemusing to note that the supporting Statement chooses to label the amended description subject of a positive Certificate issued under HPK/2023/0470 is vague and imprecise:

“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).”

Indeed, the description of development under HPK/2023/0470 was amended precisely in order for the LPA to grant a positive Certificate to confirm the specific uses and activities that are incidental to the enjoyment of the dwellinghouse, given that the term “residential uses” is vague and unambiguous.

As per the previous conclusions under HPK/2023/0470, there is no doubt that the land is used for purposes incidental to the enjoyment of the dwellinghouse.

However, it does not automatically follow that as a consequence, the land in question falls within the curtilage of the main dwellinghouse Croft Barn (thereby benefiting from Permitted Development rights).

The question as to whether the land in question falls within the curtilage of the main dwellinghouse Croft Barn (the second part of the amended description agreed with the applicant) is a matter of planning judgement, as held in case law.

Does the land in question fall within the residential curtilage of the main dwellinghouse (Croft Barn) as a matter of planning judgement?

The question of 'curtilage' has been debated at length in the courts. Whilst every judgement relating to the question of curtilage is different with regards to the specific facts of the case, the constant 'theme' is that in all cases, it turns on a planning judgment for the decision maker, as a matter of 'fact and degree'.

In *Dyer v Dorset CC* (1988), it held that the curtilage is a small area forming part and parcel of the house or building which it contained or to which it was attached.

McAlpine v SSE (1995) indicated amongst other things that curtilage is a small area about a building, that the curtilage must be intimately associated with the building, and that the size of the area of ground is a matter of fact and degree.

More recently '*Blackbushe Airport Ltd v Hampshire County Council R* (On Application of) & Ors (2021) EWCA Civ 398 has considered matters of curtilage.

The case concerned 115 acres of land which was registered with Hampshire County Council ('HCC') as common land. The Appellant, Blackbushe Airport Ltd, are owners of the airport and made an application for the land to be deregistered in which a public inquiry was held and the Inspector subsequently allowed deregistration of the land.

The Inspector's decision was quashed by the Court at first instance and the question before the Court of Appeal was whether the operational part of an airport was 'within the curtilage' of a two storey terminal building, which serves as the airport's operational hub.

The Court held that 'curtilage' is to be given its ordinary and natural meaning and that 'the curtilage of a building' requires the land in question to be part and parcel of the building to which it relates. The Inspector had applied the wrong test in asking whether the land and building formed an integral part of the same unit when should have instead considered whether the land was 'part and parcel of the building'.

The Court considered there to be a common sense conclusion in that an extensive area of operational airfield cannot be described as falling within the curtilage of a relatively small terminal building and therefore the land should not have been deregistered.

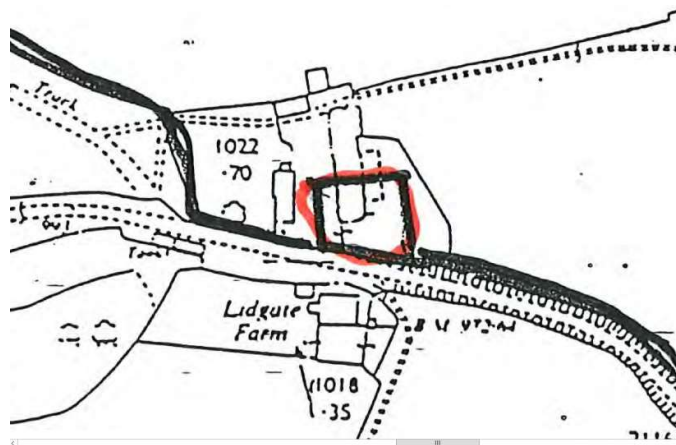
The Court held that the phrase 'the curtilage of a building' in the 2006 Act requires the land in question to form part and parcel of the building to which it is related. The correct question is whether the land falls within the curtilage of the building, not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, or whether the building forms part and parcel of some unit which includes that land. The land must form part and parcel *of* the building, not part and parcel *with* the building.

The parcel of land subject to this application relates to a former agricultural unit Lydgate Farm, whereby the two storey detached farmhouse lies south of the public highway, and a cluster of barns with associated agricultural land situated to the north. One building has a long rectangular forms east of a courtyard, with a second smaller building located west of the courtyard closer to the public highway.

The first conversion implemented in relation to these former agricultural buildings was the most northern part of the larger building, which became Lydgate Barn following permission granted in July 1988 under HPK/0002/6739. The curtilage associated with the resultant dwellinghouse includes a rear garden, that terminates where it borders a large neighbouring field.

The second phase of conversion relates to the southern part of the larger agricultural building, which further to being granted permission in August 1997 under HPK/0003/6391, became Cowhey Barn.

A screenshot of the Location Plan that accompanied this application is provided at Document A within the Planning Statement, and presented below:



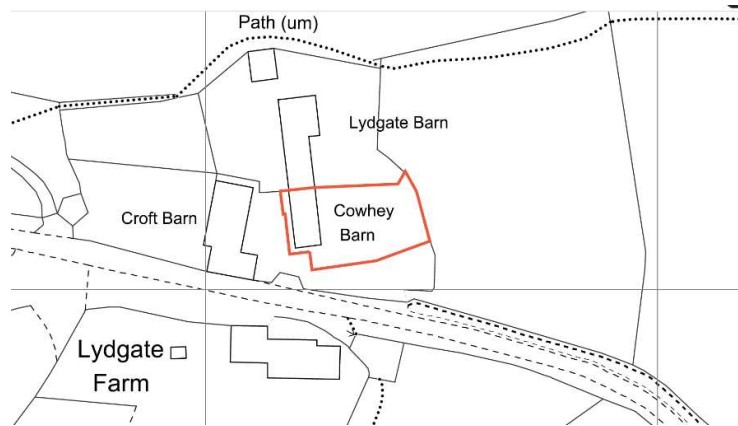
Above: Screenshot of site boundary as defined on Location Plan associated with original conversion of southern part of the barn to create Cowhey Barn under HPK/0003/6391

Whilst these boundaries of the site are somewhat vague given the scale and hand drawn outline, it is possible to note that the area of land subject to this application was originally part of Cowhey Barn.

This resultant dwellinghouse has been subject to an approved planning application for a domestic extension under HPK/2012/0237. A Certificate of Lawful Development relating to this property has also been granted under HPK/2021/0619 for existing development described as follows:

“Certificate of Lawful Existing Use to confirm that the land identified at Cowhey Barn is in lawful residential use as part of curtilage of the dwelling”

The site boundary defined by a red line on the Location Plan relating to the 2012 and 2021 applications at Cowhey Barn are consistent, as per the screenshot below.



Above: Screenshot of site boundary as defined on Location Plan associated with HPK/2012/0237 and HPK/2021/0619

A review of all documentation associated with the 2021 application confirms that the timber fence that defines and separates the northern part of the land subject to this application from the garden associated with Cowhey Barn, was introduced prior to 2011 when the property was sold, presumably in order to ensure that an access to the large agricultural field to the east could be maintained.

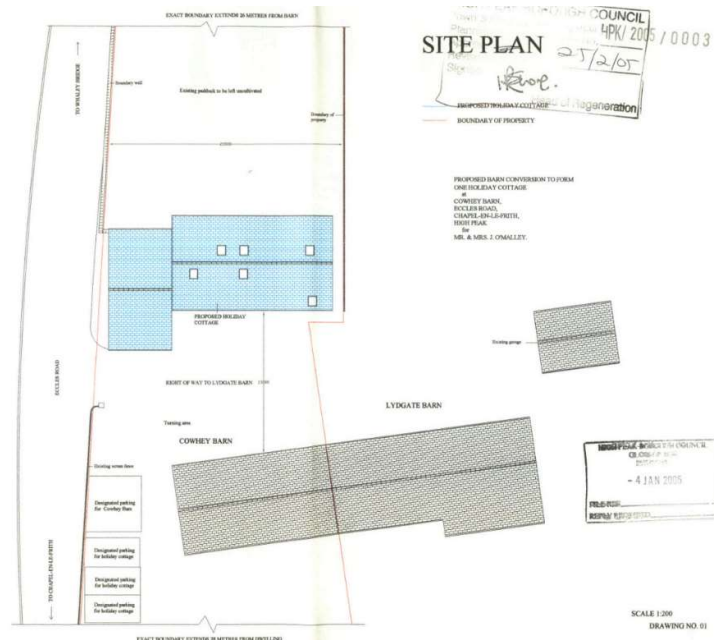
Based on the above facts, it is possible to conclude that the area of land subject of this application owing to modest footprint, its intimate spatial and visual relationship and that it formed part and parcel of the main building, did at one time form part of the curtilage of Cowhey Barn.

However, as a consequence of a timber fence being erected circa 2011, and a change in ownership, the land became detached and uncoupled from the parent building and became an isolated parcel of land that bears no obvious spatial or visual relationship to or with any parent building.

The last building to be converted to a residential unit was the building that sits west of the shared courtyard and vehicular access. The first permission under HPK/2005/0003 granted the change of use of the former barn to a holiday let in February 2005.

It is noted that the Location Plan that relates to this application includes land to the west of what is now known as Croft Barn, in addition to the residential dwelling Cowhey Barn, its rear garden, and the area of land that relates to this application.

The Site Plan which has a red line consistent with the Location Plan, shows provision of off-street parking for occupants of the permanent residential dwellinghouse (Cowhey Barn) and newly created holiday let (Croft Barn).



Above: Screenshot of Site Plan approved under HPK/2005/0003

In 2009, the Council granted permission to remove an occupancy condition specifying that Croft Barn must only be used for holiday let and not for permanent residence, under HPK/2009/0107.

The boundary as shown on the Site Plan predates the sub-division of the land that led to the sale of Cowhey Barn circa 2011, and the creation of a strong physical boundary in the form of a timber fence, that detaches the area of land subject of this application from Cowhey Barn.

It is not disputed that the area of land subject to this application is within the ownership of the occupants of Croft Barn, and that (as per the previously granted Certificate under HPK/2023/0470 and set out above) is used for purposes incidental to the enjoyment of the dwellinghouse, as specified on the Decision Notice.

However, as a consequence of the sale of Cowhey Barn and the introduction of a strong physical boundary in the form of a timber fence along the northern boundary, it is considered that as a matter of planning judgement ('fact and degree') having regard to the relevant tests for assessing the extent of curtilage contained within relevant court judgements, the area of land in question (with the exception of the area at its far western edge designated for off-street parking) is no longer affiliated or intimately associated with any building, and has little in the way of a spatial and visual relationship with Croft Barn.

In granting retrospective planning permission for the erection of an outbuilding to cover a water tank, to cover the access hatch to the water supply tank to the property under HPK/2024/0208, Officers made clear that this structure, situated immediately east of the small area of hard standing allocated for off-street parking, does not fall within the residential curtilage of Croft Barn.

As a matter of planning judgement based on the specific characteristics of the site and facts of the case, Officers are of the view that the curtilage associated with Croft Barn is limited to the domestic garden situated west (rear) of the building, the courtyard area forward of the eastern elevation, and the small area of hard standing designated for off-street parking provision, and does not extend further east of that parking area.

As such, whilst the Council agree with the applicant's assertion that the land is used for purposes incidental to the enjoyment of the dwellinghouse (Croft Barn), it is not accepted that as a matter of planning judgement, the land in question forms part of its residential curtilage.

Other Matters

The application has been subject of comments from a neighbour which have been comprehensively summarised within the report.

The main contention asserted by the neighbour is that this land does not fall within the residential curtilage of Croft Barn, and does not benefit from Permitted Development rights for domestic structures.

Depending on the nature of an existing use that is the subject of a Certificate of Lawful Development application under Section 191 of the Act 1990, it is necessary for the Council to consider any counter evidence submitted by an objector as well as evidence provided by the applicant, and apply the "*balance of probability*" test as established in the courts.

However, with regards this application, such a test is not necessary. The uses that are incidental to the enjoyment of a dwellinghouse, as per the description of development specified on the Certificate issued under HPK/2023/0470 do not amount to development, having regard to Section 55 of the Act 1990, and therefore there is no evidence to consider in this regard.

The matter of whether the site falls within the residential curtilage of the residential property known as Croft Barn, is one of a planning judgement (fact and degree), based on the particular characteristics of the site and its spatial, visual and functional relationship with that property.

CONCLUSIONS AND RECOMMENDATIONS

In light of the detailed analysis contained within this report, it is concluded that whilst the Council fully accept that the area of land subject to this application as defined by the red line on the Location Plan is lawfully used for purposes that are incidental to the enjoyment of the dwellinghouse (Croft Barn), it does not in its entirety, fall within the curtilage of Croft Barn as a matter of planning judgement, having regard to the specific facts of the case. As such, it is recommended that the Certificate be refused.

OFFICER RECOMMENDATION: **Refuse**

Case Officer: James Stannard

Recommendation Date: 18th June 2025

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council