

APPLICATION NO: 24/00434/CLU **CASE OFFICER:** Reece Black

WARD: Whiston & Cronton **PARISH:** Cronton Parish Council

LOCATION: Dragon House Farm, 370 Cronton Road, Cronton

PROPOSAL: CERTIFICATE OF LAWFUL USE OF THE LAND EDGED BLUE AND GREEN ON DRAWING '02' AS RESIDENTIAL GARDEN ANCILLARY TO DRAGON HOUSE, 370 CRONTON ROAD, CRONTON

1.0 Application

- 1.1 Application 24/00434/CLU ('Application') is made pursuant to s.191 of the Town & Country Planning Act 1990.
- 1.2 The Application relates to property known as 'Dragon House', 370 Cronton Road, Cronton, Knowsley ('Property') shown edged red on the location plan which accompanied the Application.
- 1.3 The Application is dated 14/08/2024 ('the Relevant Date') and is made on behalf of Mr and Mrs D Taylor who are identified on the Application as the owners of the Property.
- 1.4 The use alleged to be lawful in the Application is "use of the subject land – as identified in both blue and green on the plan included in the covering letter - as forming part and parcel of the residential garden and domestic curtilage of Dragon House". It is claimed that the use began more than 10 years before the date of the Application on 28/06/2006.
- 1.5 The Application is accompanied a red line plan, the covering letter and a document prepared by Revival Architecture which includes satellite images of the Property and witness statements.

2.0 Site Description

- 2.1 The Property is situated to the south side of Cronton Road, Cronton and consists of a modern 5-bed detached dwelling ('Dragon House') with separate garage and associated grounds extending to approximately ha in total. The applicants state that the Blue Land and the Green Land are in the same ownership.
- 2.2 The land edged blue ('Blue Land') on the plan referred to the in the Application (Agent's Plan') immediately surrounds the dwelling is approximately 0.17 ha including the buildings. The Blue Land has a lawful

residential use pursuant to planning permission 06/0033/FUL and certificate of lawfulness 22/00582/CLU.

- 2.3 The land edged green ('Green Land') on the Agent's Plan is located comprises approximately 0.47ha of land immediately to the east and south of Dragon House. It is an expansive, grassed area which also contains trees and a retained dam/pond and is bounded by hedging and fencing. To the eastern boundary is a Public Right of Way. To the south and south-west of Dragon House are residential dwellings created from farm buildings of the former Dragon House Farm.
- 2.4 There is no physical boundary between the Blue Land and the Green Land.
- 2.5 The Property (including the Green Land) is located within the Green Belt.

3.0 Consultations and Representations

- 3.1 None. There is no statutory requirement to consult third parties including parish councils or neighbours for an application such as this. (Planning Practice Guidance: Lawful Development Certificates – Paragraph 008).
- 3.2 Legal –The Council's Legal Team were consulted on the contents of the Application and have provided advice to assist in the determination of the Application.

4.0 Planning History

APP. NO:	K/APP/15173
PROPOSAL:	ERECTION OF 1 NO DETACHED DWELLING AND DOUBLE GARAGE WITH PEDESTRIAN ACCESS
DECISION:	GRANTED
DECISION DATE:	27 October 1993
APP. NO:	97/00552/APP
PROPOSAL:	OUTLINE APPLICATION FOR THE PROPOSED ERECTION OF DWELLING
DECISION:	GRANTED
DECISION DATE:	12 February 1998
APP. NO:	98/00343/APP
PROPOSAL:	RENEWAL OF PLANNING PERMISSION K/APP/151573 FOR THE ERECTION OF 1 NO DETACHED DWELLING AND DOUBLE GARAGE WITH PEDESTRIAN ACCESS
DECISION:	GRANTED
DECISION DATE:	19 November 1998
APP. NO:	02/00097/FUL

PROPOSAL: ERECTION OF 1 NO. TWO STOREY DETACHED HOUSE WITH ATTACHED DOUBLE GARAGE. (REVISION TO PLANNING PERMISSION APP/98/00343)

DECISION: GRANTED

DECISION DATE: 2 April 2002

APP. NO: 03/00288/FUL

PROPOSAL: ERECTION OF 1 NO. 5 BEDROOM DETACHED HOUSE.

DECISION: GRANTED

DECISION DATE: 10 September 2003

APP. NO: 03/00800/FUL

PROPOSAL: RETENTION OF GROUND IRRIGATION SYSTEM AND RETAINING DAM/POND

DECISION: REFUSED

DECISION DATE: 22 December 2003

APP. NO: 06/00333/FUL

PROPOSAL: ERECTION OF 1 NO. FIVE BEDROOMED DETACHED DWELLING AND DETACHED GARAGE (REVISION TO PREVIOUSLY APPROVED APPLICATION NO. 03/00288/FUL)

DECISION: PER

DECISION DATE: 30 June 2006

APP. NO: 22/00582/CLU

PROPOSAL: CERTIFICATE OF LAWFULNESS FOR USE OF LAND AS GARDEN ANCILLARY TO RESIDENTIAL DWELLING, 370 CRONTON ROAD

DECISION: SPLIT DECISION (PART GRANTED / PART REFUSED)

DECISION DATE: 25 October 2022

- 4.1 The Property has an extensive planning history.
- 4.2 In September 2003 planning permission 03/00288/FUL granted consent for a 5-bed detached dwelling on land known as Dragon House Farm.
- 4.3 In 2003, retrospective planning permission was refused for the retention of a ground irrigation system and retaining dam/pond (Ref:03/00800/FUL). At a site visit in March 2003, it was noted by officers that the approved garden area boundary had been expanded. The Council's Enforcement Officer contacted the landowner to inform them that the garden should correspond with the approved plans. The applicant / occupant during 2003 had communicated that the garden area was not expanded as it was understood the surrounding area was not recognised garden curtilage.
- 4.4 In May 2006 application 06/00333/FUL was submitted. The report for application 06/00333/FUL indicates that in 2006 the dwelling was nearing completion but had not been constructed in accordance with the plans approved in 2003. Permission 06/00333/FUL granted consent for the dwelling

'as built' together with a detached garage (not included in the scheme approved under 03/00288/FUL) towards the eastern site boundary at the end of the existing drive together with adjustments to the curtilage of the dwelling to accommodate the garage.

The application site boundary relating to 06/00333/FUL is shown on approved drawing 1052/11 dated 4th September 2007 (see below)

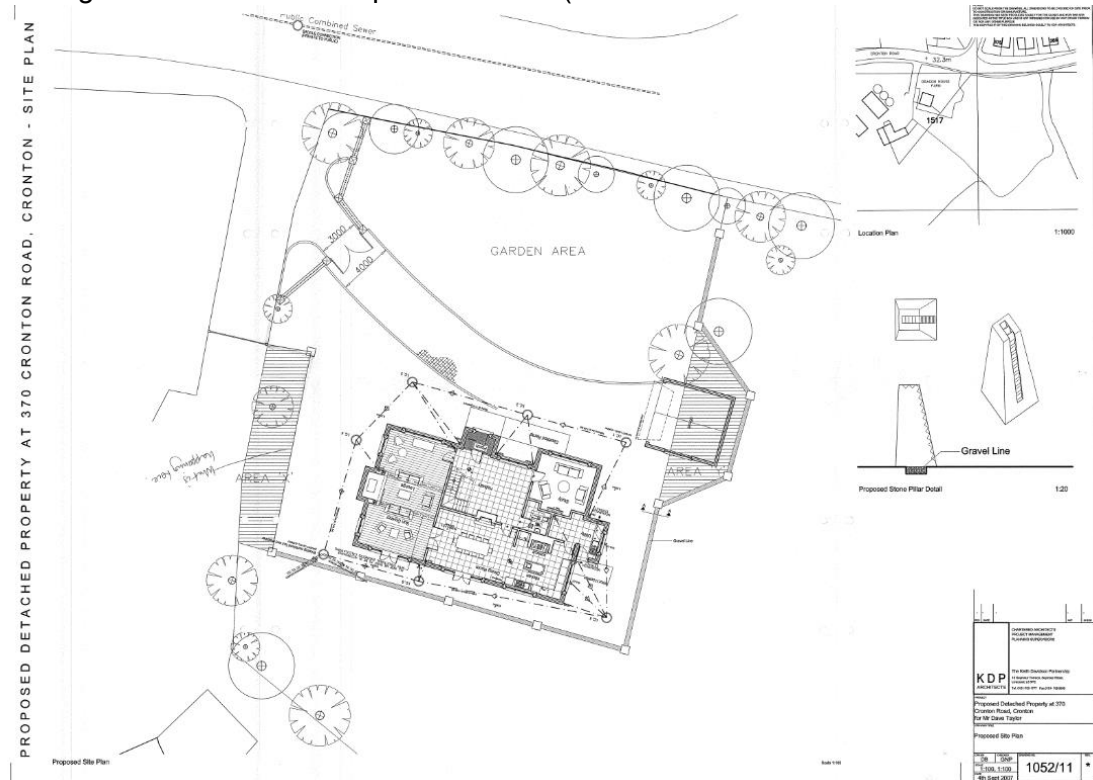


Figure 01: Submitted Layout Plan, Scale 1:200, received 05 May 2006 for application ref: 06/00333/FUL.

- 4.5 In 2007 the Council concluded that there was sufficient evidence to show that the dam / pond had been in-situ for over 4 years and was therefore immune from enforcement action.
- 4.6 In October 2023 the Council determined certificate of lawfulness application Ref:22/00582/CLU. The decision for this application was 'part approval and part refusal'.
- 4.7 The Certificate concluded that the use of land edged blue on the drawing as garden ancillary to the residential dwelling was lawful in accordance with section 191 of the Town and Country Planning Act 1990 (as amended) on the basis that the time taking enforcement action against such use had expired (s.191(2)(a) TCPA 1990).



Figure 02 (not to scale) contained within the Decision Notice for app ref: 22/00582/CLU.

- 4.8 The evidence submitted in support of 22/00582/CLU demonstrated that the Blue Land - which included an area which was outside the extended residential garden permitted by 06/00333/FUL - contained a paved patio area, garden building and clothesline had been in use as residential garden associated with Dragon House since before March 2012 and such use was therefore lawful though passage of time.
- 4.9 A Certificate was not granted with respect to the residential use of the Green Land because:
- “(a) insufficient clear, precise and unambiguous evidence has been submitted to demonstrate that a material change of use of this land to garden ancillary to a residential dwelling 370 Cronton Road has taken place;*
- (b) and any use of the land that may have taken place in connection with the use of 370 Cronton Road appears to have been de minimis and not a material change of use.”*

5.0 The Planning Unit

- 5.1 In order determine whether a material change of use has taken place the Local Planning Authority must verify what the relevant planning unit is. The planning unit generally should be within the same ownership or occupation, unless and until a smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

- 5.2 The Application states that applicants purchased the site of Dragon House and the field to the east (together 'the Premises') in 2006. Although the 'red line plan' for the 2006 planning permission for Dragon House clearly granted permission for the residential use of a much smaller area of land, there is no indication of physical separation (e.g. fences or hedges) nor active functional separation (e.g. another active use such as business use or agricultural use) within the Premises.
- 5.3 In the circumstances, it is reasonable to conclude that the planning unit for the purpose of this application is the entirety of the Premises. **Note:** for the reasons explained below the planning unit and the curtilage of a building that stands within that planning unit are not necessarily synonymous.

6.0 Relevant Law

- 6.1 The Application has been submitted under s191(1)(a) of the Town and Country Planning Act (the 'Act').
- 6.2 For the purposes of the Act uses and operations are lawful at any time if-
- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- 6.3 S171B(3) of the Act sets out a time limit for unauthorised uses of land for taking enforcement action of ten years.
- 6.4 Where an applicant's case is that the time for enforcement action has expired, they must demonstrate a continuous breach of planning control for at least, in this case, 10 years (*SoSE & Holding v Thurrock BC* [2002] Court of Appeal). It must have been possible for the LPA to have taken enforcement action against the breach for the entire 10-year period i.e. the use cannot have been dormant for long periods of time. Immunity under the 10-year rule only arises if enforcement action could have been taken at any time during the 10 years.
- 6.5 Planning Practice Guidance (PPG) stipulates that an LPA must only consider whether, on the facts of the case and relevant planning law, the particular matter is or would be lawful. Planning merits do not have any involvement or consideration in this type of application or appeal process.
- 6.6 PPG states that burden of proof is on the applicant to provide sufficient information to support an application, and that the standard of proof is 'the balance of probabilities'. If the LPA 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, so long as the application is sufficiently explicit and unambiguous to substantiate the grant of a certificate on the balance of probability.
- 6.7 s.57(1) TCPA 1990 states that planning permission is required for the development of land and s.55 states:

"Meaning of "development"

(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...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.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –

(d) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;

- 6.8 The 'curtilage' (or the 'residential curtilage') of a property is not a use of land for planning purposes. Instead, for planning purposes, it is a term for determining the area within which certain development may be carried out. For this reason, it is not possible to change the use of land to use 'as residential curtilage' and it is not possible to grant a Lawful Development Certificate that will confirm that part (or the whole) of a particular piece of land is within the curtilage of a dwelling as such.
- 6.8 Section 191(4) of the Act empowers LPAs to substitute a description of a different use from that described in the application form, provided the authority is satisfied, on the balance of probability, that the evidence demonstrates that the use as substituted had been carried out for the requisite period.
- 6.9 Whether a material change of use of land has occurred is a matter of fact and degree and will depend on the individual facts of the case, for this reason it is difficult to rely on other planning appeal decisions however the case of *O'Flynn v Secretary of State for Communities and Local Government [2016]* does provide useful guidance as to how applications such as this should be considered. The judge in *O'Flynn* stated that
- i. it was incorrect to conclude that a homeowner's gardening activities should not be taken into account in assessing incidental residential use because such activities "is quintessentially an activity carried out by homeowners incidentally to the residential use of the dwelling-house"; and
 - ii. although it will depend on the facts in the particular case "*just walking around on [the land] and enjoying it for its appearance sake either from the dwelling or when on the land*" could be "*sufficient*" to amount to a residential use or activity incidental to a residential use.
 - iii. the fact that the land in question was kept available for use by the Claimant and his family at all times and had no other use supported the case that the land was in a continuing residential use, even if that use was not constant.

7.0 What the Applicant must prove

- 7.1 The application seeks a certificate which confirms that the lawful use of the entirety of the Property is "residential garden and domestic curtilage of Dragon House".
- 7.2 For the reasons given in paragraph 6.8 above the LPA exercises its powers under s.191(4) and substitutes the description of development to "use of the land edged blue and green on drawing 'Figure 02' as "residential garden

ancillary to Dragon House, 379 Cronton Road, Cronton”.

- 7.3 The applicant must therefore provide clear, precise and unambiguous evidence that, on the balance of probabilities, that the land has been used as garden ancillary to the residential use of Dragon House for a period of at least 10 years prior to the date of the application. The Relevant Date is 14.08.2024 and therefore the ‘Operative Date’ (i.e.10 years prior to the date of the Application) is 13.08.2014.

8.0 Evidence submitted

The following documents have been submitted in support of the application:

- A. Covering Letter – prepared by Roman Summer dated 14/08/2024 received 18/08/2024.
- B. Location Plan – drawing no. 000 titled (‘Location Plan’) (Scale 1:1250) date received 14/08/2024.
- C. Supporting Document and Confirmation Statements prepared by Revival Architecture (Rev A) dated 18/08/2024 received 21/08/2024.
 - This contains:
 - (0.1) Introduction
 - (0.2) Google Earth Images
 - (0.3) Witness Statements
 - (0.4) Family Photographs

8.1 Planning statement/letter from Agent

This document provides a summary of the supporting information. It also submits an objection to the previous decision by the Council that any activities which were carried out on the Green Land are ‘de minimis’. The letter states that landscaping has occurred since September 2007 and assert this clearly shows the full extent of the Property was laid out to be enjoyed as garden and has been so used since 2007.

8.2 Google Earth Images

The Google Earth satellite imagery included within the Supporting Document show aerial images of the Green Land dating between 2005 and 2024. Google earth imagery, insofar as images are clear, is considered to be good-quality, independent evidence which should be afforded considerable weight.

8.2.1 December 2005

The Green Land appears as grassland with considerable tree coverage and a partial hedgerow. The retaining dam/pond is shown.

8.2.2 December 2009

The image shows that many trees and the hedgerow have been removed from the Green Land and the area apparently down to grass. Two sets of goal posts sited approximately 50-55m to the south-east of the dwelling and a trampoline to the north-east of the dwelling. No other physical evidence of any use. This image was taken more than 4 years before the Operative Date and must therefore be afforded only limited weight

8.2.3 March 2012

A garden structure (summerhouse) can be seen to the rear (south) of Dragon House at the edge of a paved patio area together with a small structure approximately 15.5m to the north-east of the corner of the detached garage.

8.2.4 April 2015

Goal posts and trampoline have been removed although one item (not identifiable) is situated to the southeast of the garage and another to the northeast of the garage. The grass appears to be mowed and there is no physical boundary between the Green Land and the Blue Land. No sign of other forms of cultivation,

8.2.5 April 2021

No substantive change to the Green Land other than the small structure to the northeast of the garage, and goal posts appear to have been removed.

8.2.6 June 2024

Grass appears to be mown, possibly with a mown path or worn track running northeast from the southern side of the garage. Trees and dam/pond remain on site. No other structures or goal posts appear to be present.

8.3 Witness Statements

8.3.1 Nine unsworn statements, provided by both owners, their children, family friends and landscape contractors have been submitted. These statements state that the applicants have owned Dragon House and the Green Land for the past 18 years. Dragon House was partially constructed when they purchased it. The easterly portion of the land had suffered with fly-tipping, unauthorised access and anti-social behaviour. A civil engineering company and a landscaper to clear and regrade the Green Land 'to procure the garden' now situated there. The landscaper regularly attends to maintain garden. Works include grass mowing, pruning, hedge trimming and leaf sweeping in autumn. The perimeter of the Premises was fenced in 2009. The pond was a focal point 'for friends and visitors when the garden was in use' and was used by his children for fishing and wading. The Green Land is not separated from the remainder of the Premises and the Premises is fully open and accessible as one large garden. A lawn tractor was purchased in 2008 to mow the grass.

8.3.2 Although these statements are all unsworn and may therefore only be afforded limited weight, they provide clear and unambiguous evidence which is not contradicted by any other evidence available to the Council.

8.4 Family Photographs

8.4.1 The photographs submitted within the Supporting Document range from 2006-2024. These show what is believed to be the family throughout the years and appear to correspond with the written statements provided and the description of the Green Land from 2006 until 2024.

8.4.2 The photos show the regrading of the Green Land and the presence of the pond feature in 2006/7. Photographs from 2008 show a child playing in the pond and manicured grass in the background. A tent is shown near to the pond in August 20012, a striped lawn in June 2016 and a man sitting on a ride-on mower in September with goalposts and the pond in the background.

A photograph from April 2020 shows people playing badminton. Two photographs from 2024 show a striped lawn at the Property.

8.5 Other evidence available to the LPA

- 8.5.1 Planning records include the following photographs of the site taken in September 2007 which clearly show that the Green Land was cleared and substantially regraded shortly before that date.





9.0 Analysis

- 9.1 Planning permission 06/00333/FUL and certificate of lawfulness 22/00582/CLU have between them established that the use of the Blue Land for residential purposes ancillary to Dragon House is lawful
- 9.2 The photographic evidence (Google satellite images, family photographs and photographs taken by Council officers) all indicate that
 - a) prior to 2006 the Green Land was uncultivated
 - b) in or about 2007 the Green Land was subject to extensive clearance and re-grading
 - c) since at least 2009 the Green Land has consisted of well-manicured grass, some trees and a pond with a small wooden bridge over it
 - d) the Green Land has housed football goal posts and, for a time, a trampoline
 - e) there is no physical barrier between the Blue Land and the Green Land
 - f) the occupants of Dragon House and their guests used the Green Land for recreational purposes
- 9.3 The unsworn statements do not contradict each other and support the photographic evidence provided by the applicant. It is clear that although the actual use of the Green Land may not have been extensive it has been well

cared for, has been kept available for use by the applicants and their family since 2007, and has had no other use since that time.

- 9.4 the LPA is not in receipt of any evidence which contradicts the above.

Conclusion

That a certificate of lawfulness should be granted for the use of the land edged green (together with the previously approved land edged blue) shown on drawing 02 as residential garden ancillary to the dwelling known as Dragon House, 370 Cronton Road, Cronton.

Recommendation

That a certificate of lawfulness should be granted in amended terms for the use of the land edged green (together with the previously approved land edged blue) shown on drawing 02, included as an appendix within this report and was contained within the Decision Notice for 22/00582/CLU, as residential garden ancillary to the dwelling known as Dragon House, 370 Cronton Road, Cronton.

Signed Case Officer¹: **Reece Black**

**Signed Authorising
Officer²:** **K Foster**

Date: **13 December 2024**

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

Informatives

Condition 05 of planning permission 06/00333/FUL removed Permitted Development Rights for Dragon House (including for curtilage structures). The Condition states that,

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification)

- (i) No external alterations shall be carried out to the dwelling
- (ii) No extensions shall be carried out to the dwelling
- (iii) No garages or carports shall be erected within the curtilage of the dwelling
- (iv) No buildings, gates, walls, fences or other structures shall be erected within the curtilage of the dwelling

Other than those expressly authorised by this permission, unless planning permission for such development has been granted by the Local Planning Authority.

Reason: To protect the residential and visual amenities of the area and to safeguard the character of this residential development.

 Green area is 'the Land' planning unit

 Blue area is 'the House' planning unit



Not to scale

Drawing 02