
<u>APPLICATION NO:</u>	22/00582/CLU	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Whiston & Cronton	<u>PARISH:</u>	Cronton Parish Council
<u>LOCATION:</u>	370 Cronton Road, Cronton, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR USE OF LAND AS GARDEN ANCILLARY TO RESIDENTIAL DWELLING, 370 CRONTON ROAD		

KNOWSLEY LOCAL PLAN ALLOCATION –

Green Belt

Site Description

The application site ('the Land') consists approximately 0.64 ha of land immediately to the east and south of the dwelling known as 370 Cronton Road, Cronton ('the House'), a large, detached dwelling with a detached garage. The Land and the House (with its curtilage) are in the same ownership. The Land is a large, grassed area with trees and a retaining dam/pond, it is bounded to the north, east and south by hedging and fencing. Adjacent to the eastern boundary is a Public Right of Way. There is no physical boundary between the Land and the House.

The Land is located within the Green Belt.

Proposal

The application under consideration is dated 22 September 2022 and seeks a certificate of existing lawful use of the land at 370 Cronton Road, Cronton as shown on Drawing No: 000 entitled "Location Plan" (scale 1:1250) ('the Location Plan') as an extended residential curtilage in relation to the property known as Dragon House, 370 Cronton Road, Cronton. The use is claimed to be lawful because it has been ongoing for a continuous 10 year period prior to the date of the application.

Consultations

Cronton Parish Council – No Comments Received.

None other required.

Representations

The application is for a Certificate of Lawfulness and as such there is no requirement within planning law or the Council's Statement of Community Involvement to publicise the application to neighbours.

Relevant 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: Refused
DECISION DATE: 12 February 1998

APP. NO: 98/00343/APP
PROPOSAL: RENEWAL OF PLANNING PERMISSION K/APP/15173 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
DECISION: Granted
DECISION DATE: 28 June 2006

Background

Planning permission referenced 06/00333/FUL granted consent for the erection of a 5 bedroom detached dwelling and detached garage on land known as Dragon House Farm.

Dragon House Farm has a long history of planning permissions for the erection a dwelling; the first permission dates back to 1979 when planning permission was granted for the erection of a two-storey dwelling. In 2003 planning permission was granted for a 5-bed detached dwelling and associated residential garden (Ref: 03/00288/FUL).

In 2003, planning permission was also refused for the retention of ground irrigation system and retaining dam/pond (Ref: 03/00800/FUL). At the time, a number of visits were made to the site by Council officers. Following one such visit, in March 2003, it was noted by officers that the approved garden area boundary had been extended. A letter was sent by the Council's Enforcement Officer advising the garden curtilage should be as on the approved plans; followed by a telephone call from the applicant

(Mr. Taylor) who confirmed that he had not extended the garden as he knew the surrounding area is not to be used as garden curtilage.

The dwelling granted permission was not constructed in accordance with the plans approved under the 2003 permission. A subsequent application to regularize this, together with the addition of a detached garage, was made under planning reference 06/00333/FUL and granted in 2006 the resulting dwelling is 'the House'.

The application site boundary relating to the House (Ref: 06/00333/FUL) excludes the land which is the subject of this current application. Condition 3 of that permission required details relating to screen walls and / or fences, the method for the enclosure of Dragon House to be submitted to and approved by the LPA. There are no planning records available to show that this condition was discharged.

Condition 8 of permission 06/00333/FUL states:

The residential curtilage for the dwelling hereby permitted shall be restricted to the area of land edged red on the submitted 1:200 scale layout plan received on 05 May 2006 and shall not encroach outside of this area.

Reason: For the avoidance of doubt and to clearly define the residential curtilage of the approved dwelling and to comply with Policy G1 of the Knowsley Replacement Unitary Development Plan, adopted June 2006.

In 2007 the Council carried out an investigation into the dam/pond on the site which considered that there was sufficient evidence to suggest that the dam / pond had been in-situ for over 4 years and was therefore immune from enforcement action. It appears that although a landscaping and boundary treatment scheme was submitted in accordance with conditions 3 and 4 of permission 06/00333/FUL the approved boundary treatments have not been installed. No enforcement notices appear to have been issued with respect to this breach of planning control.

Relevant Policy

N/A

Article 35 Statement

N/A

LEGAL CONTEXT OF THE APPLICATION

This application has been submitted under s191(1)(a) of The Town and Country Planning Act ('the Act') to determine whether the use of the Land is 'residential curtilage' is lawful.

For the purposes of the Act uses are lawful at any time if, no enforcement action may be taken in respect of them whether because it did not involve development or require planning permission or because the time for enforcement action has expired for any other reason (s.191(2)(a)).

S171B(3) of the Act sets out a time limit of ten years for unauthorised uses of land.

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.

For there to have been a material change of use (meaning it would have been possible at some point for the LPA to have taken enforcement action) there should be some physical evidence that land is actually being used for domestic garden purposes.

Planning Practice Guidance (PPG) states that an LPA must only consider whether, on the facts of 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. Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it.

PPG advises that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if an 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, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate grant on the balance of probability.

Description of claimed development

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 is lawful.

The application seeks a certificate confirming the lawfulness for existing use of land as residential curtilage. In law, the term "curtilage" defines an area of land in relation to a building as opposed to a use of land. "Use of land as residential curtilage" cannot therefore be the subject of an LDC. A more legitimate description is in the form of wording which has been agreed with the applicant's agent – "Use of land as garden ancillary to a residential dwelling, 370 Cronton Road".

What must be proved

The application is dated 22 September 2022. In order for the application to be granted in the terms applied for the applicant must demonstrate, on a balance of probabilities, that there has been a material change of use the Land to residential use incidental to the use of the House for a continuous period of at least 10 years prior to the date of the application (s.171B(3)) that is, since at least 22 September 2012.

Evidence Submitted

The following documents have been submitted with the application:

- Location Plan Drawing No: 000 entitled 'Location Plan' edged red (scale 1:1250).
- Planning Statement prepared by Baltic Planning and Development dated September 2022 with appendices:

Appendix 1 – Sworn Statement from Mr and Mrs David Taylor.

Appendix 2 – Correspondence from KMBC dated July 2007.

Appendix 3 – Family Photographs showing use of extended residential curtilage.

Appendix 4 – Aerial Photographs of application site since 2009.

- On 5 June 2023 the following were received:
 - A sworn statement dated 02 June 2023.
 - An aerial photograph dated 2017.
 - A photograph dated 13 July 2008.

Planning records include the following photographs of the site taken in September 2007.





Assessment

The Planning Unit

To establish whether a material change of use has taken place the LPA must determine what the relevant planning unit is. The general rule is that the planning unit the whole of the area in the same ownership or the same occupation, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

Drawing 1052/11 (dated 4th September 2007) shows the area of land granted planning permission for residential use pursuant to 06/00333/FUL. At the time 06/00333/FUL was implemented, this area was a 'planning unit', separate from the Land even if both were in the same ownership and no physical boundaries had been constructed between the two areas. The Land will only form part of the same planning unit as the House only if sufficient evidence is produced to demonstrate that it is in lawful use for residential purposes in connection with the House.

Assessment of Evidence

The application is supported by the following information:

Statutory Declarations

The submitted Statutory Declaration of Mr and Mrs D Taylor covers four points as below:

1. *"That our family has occupied the application property continuously since ____"*

The date was originally left blank at point 1 and therefore offered no detail. However, the updated sworn statement is in the same terms but states that the applicants have occupied the property since August 2006.

2. *"That since the grant of approval for the application property in June 2006 (ref: 06/00333/FUL), no further planning application have been advanced for the change of use of land outside of the application site as delineated under that permission."*

The comment made at point 2 offers no information that is not already known to the Local Planning Authority.

3. *"The land delineated under this application for a Lawful Development Certificate falls under our ownership and has since ____"*

At point 3 again, the detail was missing and left blank and did not identify the time of ownership. However, the updated sworn statement is in the same terms and states that the applicants have owned the property since February 2006.

4. *"The evidence submitted as part of this application is accurate and truly represents the use of the application site, insofar as it demonstrates that the land in question is and has been in use as residential gardens, connected with the application property, for a continuous period of more than 10 years."*

This sentence is peculiarly drafted in that, apart from the photographs, no evidence has been submitted to demonstrate the land has been used as residential gardens for more than 10 years. The applicants do not expressly state that they used the land, how they used it, how often, how it was maintained etc. For these reasons it is considered that the Statutory Declaration carries limited evidential weight in support of the application.

Aerial Photographs

The aerial photographs (Google Earth) included within the Planning Statement show aerial shots of the land dating between 2009 until 2021.

December 2009

Identified in the submitted Planning Statement as 12/2009 but image states Imagery Date: 1/1/2009. The aerial photograph shows the land to the east of the dwelling as a single parcel of grassland with trees bordered by hedgerow to the boundary with Cronton Road; the public right of way bordering the site and to the western boundary. Several trees are located around the site and a retaining dam/pond. Grass is maintained. No physical evidence of any use. Goal posts sited approximately 50 – 55 m to the south east of the dwelling.

March 2012

A garden structure (shed/summerhouse) has appeared to the rear of the dwelling at the edge of a paved patio area together with a small structure approximately 15.5 m to the north east of the corner of the detached garage.

March 2013, April 2015, June 2016, April 2017

No noticeable change to the site other than small structure to the north east of the garage and goal posts appear to have been removed after 2015.

June 2018

Appears as above.

September 2019, June 2020, April 2021

As above.

Photographs

1. Showing fence, goal post and skyline

The photograph does not clearly show any part of the land the subject of the application, it merely shows a fence in the background and a goal post.

2. Showing person with grassed area in background

This photograph shows a person posing for a photograph leaning on what appears to be the edge of a wooden seat with a grassed area in the background.

3. Showing a grassed area with mown stripes

Aerial photographs indicate that the grass is maintained but there is no evidence to show that the site is manicured lawn as indicated in one of the photographs submitted with the application. This photograph does not appear to show the grassed area as seen in photograph 2.

4. Showing pond in foreground with three people, one wearing waders and two seated. The photograph is dated 13 July 2008.

This photograph indicates that on the date the photograph was taken, the grass shown was mowed and a wooden bench had been placed under a tree. It appears that this bench has been placed on some paving slabs which have been set into the grass.

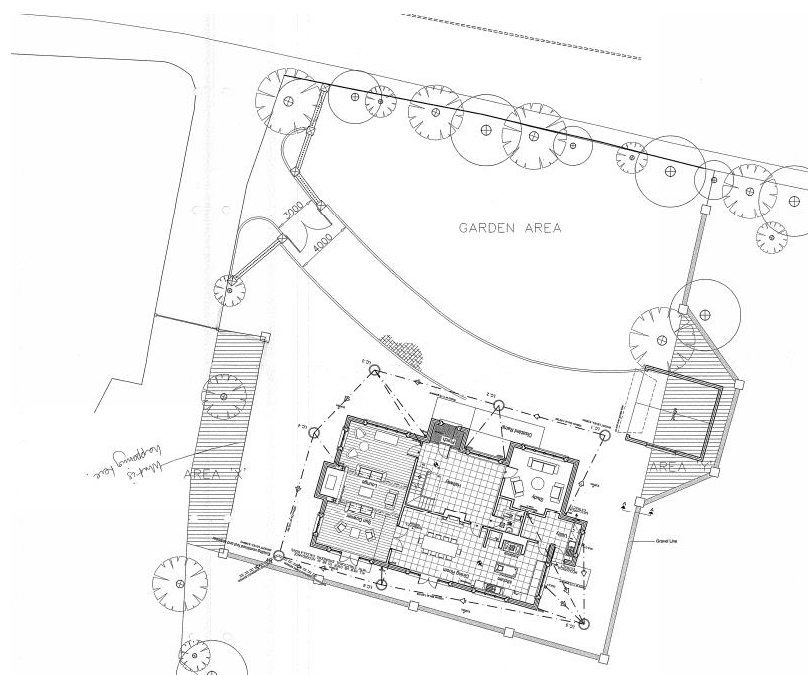
The aerial photographs supporting the application dating between 2009 – 2021 show the site much the same across the timeframe.

Analysis of the case.

Whether there has been a material change of use of land excluded from the curtilage approved under 03/0288/FUL is a matter of fact and degree. There must be some

physical evidence that the land is actually being used for domestic garden purposes. Common ownership and the lack of a boundary are not sufficient.

The boundary to the rear of the dwelling, as approved, extends approximately 2.5 m beyond the rear elevation of the dwelling. The land to the rear shown on the red edged plan accompanying this application measures between approximately 15.5 m and 23 m. An area to the rear of the dwelling has been laid out as a patio area with an outbuilding. This area extends approximately 10 m beyond the rear elevation of the dwelling and has been laid out as such since at least December 2009.



Approved layout 06/00333/FUL



The submitted evidence indicates that the area to the south of the dwelling which contains a paved patio area, garden building and clothes line. This is sufficient evidence to demonstrate that this part of the Land has been in use as residential garden associated with the House since before March 2012 and is therefore lawful. It is reasonable to conclude that areas of grass immediately surrounding these areas were similarly used and are also lawful.

The aerial and other photographs show that the land to the south and east of the house was laid to grass and mown. Mowing grass is not of itself a use of land which requires planning permission. The photographs do not provide clear, precise and unambiguous evidence of a level of use which would indicate that a material change of use of the remainder of the Land to residential garden has taken place continuously for a period of more than 10 years before the date of the application. Any residential use which may have taken place in connection with the use of the House appears to have been de minimis.

There is evidence that a bench was placed on part of the land in July 2008 on top of what appears to be some concrete slabs. On its own, this is de minimis. Although football goals are seen in some photographs, the grass does not appear to have been disturbed around them so as to indicate frequent use. Other than mowing of the grass there is little physical evidence that the land has actually been used for domestic garden purposes for in excess of 10 years.

The sworn statement from the applicants gives evidence of the dates from which they have owned and occupied the property, and confirms that the evidence submitted is accurate, but it does not give any further information which support a material change use of the land.

Conclusion

The aerial photographs provide evidence that the area of land occupied in connection with the House exceeded that authorised by planning permission 06/00333/FUL because paved areas, a garden building and rotary washing line can be seen. It is reasonable to conclude that occupants of the House used areas of grass immediately adjacent to these structures.

The aerial photographs and other evidence submitted with the application do not provide clear, precise and unambiguous evidence that a material change of use of the remainder of the Land, as garden ancillary to the House, has taken place. It appears that any use which may have taken place was de minimis.

Recommendation

It is recommended that a split decision is issued.

1. That a certificate of lawfulness should be granted for the use of the land edged blue on Drawing 01 as garden ancillary to a residential dwelling, 370 Cronton Road because the time for taking enforcement action against such use has expired (s.191(2)(a) TCPA 1990).
2. That the application with respect to the land edged green on Drawing 01 is refused 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; and
 - b. 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.

Signed Case Officer¹: **M Wishart**

Signed Authorising Officer²: **Alan Kilroe**

Date: 24 October 2023

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

-  Green area is 'the Land' planning unit
-  Blue area is 'the House' planning unit



Not to Scale

Drawing 01