



Planning Statement

**Certificate of Lawfulness for the Existing Use and Development (CLEUD)
Creation of Extended Garden Curtilage**

**Dragon House,
370 Cronton Road,
Cronton,
Knowsley,
WA8 5QD**

September 2022

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1.0 Introduction

- 1.1 This statement has been prepared on behalf of the Applicant, Mr and Mrs Taylor ("the Applicant") to support a Certificate of Lawfulness application for existing use and development at Dragon House, 370 Cronton Road, Cronton, Knowsley, WA8 9QE ("the site").
- 1.2 This Certificate application seeks to demonstrate the lawfulness of the existing use and development associated with the creation of an extended residential curtilage. This application is supported with sworn statements from the applicants and other documentary evidence, including historic aerial photographs and correspondence with the Local Planning Authority.
- 1.3 This Certificate seeks to demonstrate that the works associated with the formal change of use of land from agricultural land to extended residential curtilage (garden) took place in excess of ten years ago.
- 1.4 The following sections of this report will apply the requirements of Section 191 of the Town and Country Planning Act 1990, to demonstrate the lawfulness of the existing use and arrangements on site.
- 1.5 The description of development to be applied is therefore as follows:

"Certificate of Lawfulness for the Existing Use and Development associated with the creation of an extended residential curtilage at the property known as Dragon House, 370 Cronton Road, Cronton, Knowsley, WA8 9QE."

2.0 Site Context and Existing Use

Site Context

- 2.1 Dragon House is a large detached two storey dwellinghouse located within the open countryside (Green Belt) on the western edge of the settlement of Cronton, Knowsley.
- 2.2 The application site is located on the edge of a residential area, with a mix of dwelling types.
- 2.3 The site is served with pedestrian and vehicular access from Cronton Road.
- 2.4 The site is well located for access to key local services and facilities including primary school, public house and places of worship, as well as public transport connections with bus stops available within walking distance of the property.

Site History

- 2.5 The site historically formed part of a larger farmstead and has therefore been the subject of a number of planning applications over the last 40/50 years. However, in view of the content of this Certificate application, specific attention is drawn to the most recent approval for the dwelling now in situ, and to which the extended residential curtilage relates, namely:

Application Reference: 06/00333/FUL

Description of Development: Erection of 1 no. five bedroom detached dwelling and detached garage

Decision: Approved

Date of Decision: 30th June 2006

- 2.7 Whilst related to neighbouring land, it is noted that there have been a number of recent planning applications and approvals for development within the immediate vicinity of the site. These applications would have necessitated attendance by the Council planning team to the neighbouring land as part of the assessment of the proposals. During these visits it could have been possible to view the extended neighbouring residential curtilage at Dragon House. In addition, it is understood that there is a public right of way along the boundary of the extended curtilage, all of which have allowed open and unrestricted views of the development subject of this Certificate.

Existing Use

- 2.7 As shown on the submission plan, the site comprises of a large, detached dwelling with outbuilding (serving as a garage), and a large established residential curtilage. The residential curtilage now extends beyond that set out for the original approval for the dwelling as approved in 2006 (application reference 06/00333/FUL). The site has been in such uninterrupted use for a period of at least 10 years, and the residential curtilage as now in situ and subject of this Certificate application, is therefore lawful by the passage of time.

3.0 Section 191 of the Town and Country Planning Act 1990

- 3.1 Certificates of Lawfulness for existing use or development are to be determined in line with the provisions of Section 191 of the Town and Country Planning Act 1990 which reads as follows:

“191Certificate of lawfulness of existing use or development.

- (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.*
- (2) *For the purposes of this 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.*

- (3) *For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—*
 - (a) *the time for taking enforcement action in respect of the failure has then expired; and*
 - (b) *it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.*
- (3A) *In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—*
 - (a) *the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,*
 - (b) *an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or*
 - (c) *a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]*
- (4) *If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*
- (5) *A certificate under this section shall—*
 - (a) *specify the land to which it relates;*
 - (b) *describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*

- (c) *give the reasons for determining the use, operations or other matter to be lawful; and*
- (d) *specify the date of the application for the certificate.*
- (6) *The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.*
- (7) *A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—*
 - (a) *section 3(3) of the M1Caravan Sites and Control of Development Act 1960 [F4or section 7(1) of the Mobile Homes (Wales) Act 2013;]*
 - (b) *section 5(2) of the M2Control of Pollution Act 1974; and*
 - (c) *section 36(2)(a) of the M3Environmental Protection Act 1990.]”*

3.2 In the determination of Certificates of Lawfulness, it is accepted that the onus of proof is on the applicant to demonstrate that the use or development being applied for is lawful on the date of the application. It is noted that the standard of proof in respect of a certificate is on the balance of probability. Furthermore, it was held in *F. W. Gabbittas v Secretary of State and Newham London Borough Council* [1985] J.P.L 630 that an applicant’s own evidence does not require to be corroborated by independent evidence in order to be accepted.

3.3 Further, if the local planning authority or an Inspector have no evidence of their own or from third parties to contradict or otherwise dispute the applicant’s version of events, rendering them less than probable, then 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 the certificate on the balance of probability.

3.4 Given that this Certificate application has been submitted with extensive evidence to demonstrate the continuous and uninterrupted use of the extended curtilage associated with the dwelling as established garden area, including some evidence collated from documentation produced by the Council, there is an expectation that this Certificate of Lawfulness for existing use will be granted in line with the provisions of the Act.

4.0 Documentary Evidence

- 4.1 Subsection (5) of section 191 provides for certain matters a Lawful Development Certificate (LDC) must contain. The LDC is particularly valuable because its effect is like a grant of planning permission. It is therefore vital that the certificate precisely indicates the area of land to which it relates (normally by means of an attached, scaled site-plan); precise details of what use, operations, or failure to comply with a condition are found to be lawful, why, and when. For example, if a certificate is for a use of land - unless the use falls within one of the "use classes" specified in the Use Classes Order current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers lawfulness on the use, it is important for it to state the limits of the use at a particular date.
- 4.2 These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). An LDC must therefore be precisely drafted in all respects.
- 4.3 By virtue of section 191(5)(b), an LDC must include a description of the use, operations, or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", an LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously.
- 4.4 This Certificate application has been unambiguously described within this supporting statement. Further, the application is supported by numerous documents including:
- Sworn Statement from Mr and Mrs David Taylor (Appendix 1);
 - Correspondence from Knowsley Council dated 27th July 2007 (Appendix 2);
 - Family photographs showing the use of the area of land subject of this application in use as residential curtilage (Appendix 3); and
 - Aerial Photographs showing the use of the residential curtilage associated with Dragon House for in excess of 10 years (Appendix 4).

- 4.5 Paragraph 006 of the National Planning Practice Guidance on Lawful Development Certificates confirms as follows in relation to evidence:

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.”

- 4.6 In this case, it is considered that the use of the additional land at Dragon House as defined residential curtilage following works undertaken to create the extended garden area more than 10 years ago, is lawful. The residential curtilage as now established has been in use as residential curtilage continuously (and uninterrupted) since 2007, far more than the ten years required to demonstrate lawfulness. The change of use of land and works to create the extended curtilage on site have not been hidden from the local authority who are understood from the correspondence included at Appendix 2 to have visited the site in 2007 as part of an investigation into other works on site and were therefore clearly aware of the works. The site is also visible from local vantage points, neighbouring property and a public right of way and has not therefore been concealed from view. It is therefore clear that the creation of the extended residential curtilage at Dragon House Far, 370 Cronton Road, Cronton is lawful following the passage of time, and the site is deemed to be lawful.

- 4.7 Furthermore, the evidence submitted with this Certificate application demonstrates such a conclusion beyond the balance of probability, and in this regard we would kindly request that the Council issue the Certificate without delay.

5.0 Conclusions

- 5.1 Subsection (6) of section 191 provides that the lawfulness of any matter for which a certificate is in force under this section shall be conclusively presumed because, once an LDC is issued, it is important that nobody should be able to "look behind" it to question whether what appears on its face is valid. The statement in a LDC of what is lawful relates only to the state of affairs on the land at the date of the certificate application.
- 5.2 Based on the evidence submitted in support of this Certificate application, it is clear that the lawful use of the land edged in red is as residential curtilage.
- 5.3 The applicants are therefore of the view that the lawful use of the site subject of the Certificate application is clear beyond the balance of probability, and we would therefore request that the local planning authority issue a Certificate of Lawfulness for the existing use and associated development relating to the use of the land in question as residential curtilage associated with Dragon House, 370 Cronton Road, Cronton at their earliest convenience.

Appendix 1

SWORN STATEMENT SUPPLIED SEPARATELY

Appendix 2

Dave Taylor
Dragon House Farm
370 Cronton Road
Cronton
Widness
WA8 5QD

Our Ref: PS/DL/

Date: 27th July 2007

Dear Mr Taylor

**TOWN AND COUNTRY PLANNING ACT(S)
UNAUTHORISED GROUND IRRIGATION SYSTEM AT DRAGON HOUSE FARM, 370
CRONTON ROAD, CRONTON**

I am writing further to my previous correspondence to you with regard to condition 3 of the approved planning permission ref: 06/00333/FUL which, as previously advised, required a scheme to be submitted and implemented in order to enclose the application site and define the residential curtilage of the property from the surrounding agricultural land.

I have received your letter dated 17th May 2007 in which you advised that your agent, Mr Graham Powell at KDP Architects was dealing with this matter and would be submitting a scheme on your behalf. A telephone call was received from Mr Graham Powell in which he confirmed with the Planning Officer that he was dealing with this matter, however I am aware that to date there has still not been a scheme submitted and the breach of condition remains.

I would ask that you now ensure that the relevant details are submitted within the next 21 days in order to avoid any further enforcement action being taken against you. In addition I would be grateful if you could confirm what the current position is with regard to the unauthorised dam / ground irrigation system which remains in situ.

If you require any further information please, do not hesitate to contact me on 0151 443 2305.

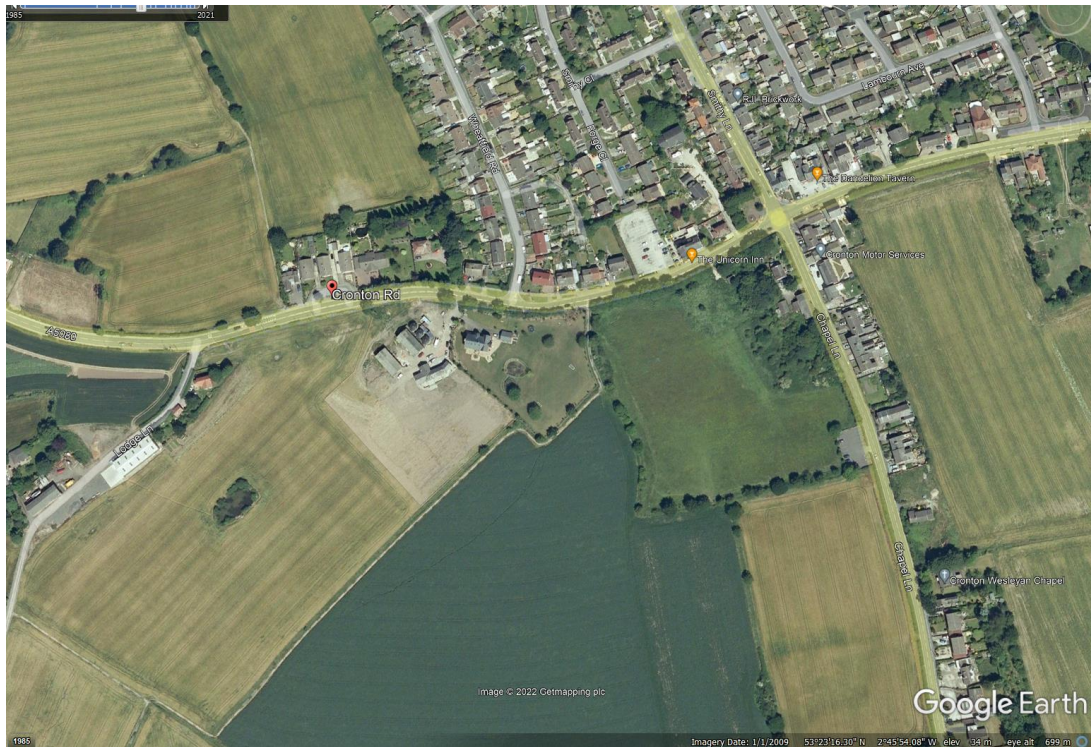
Yours sincerely



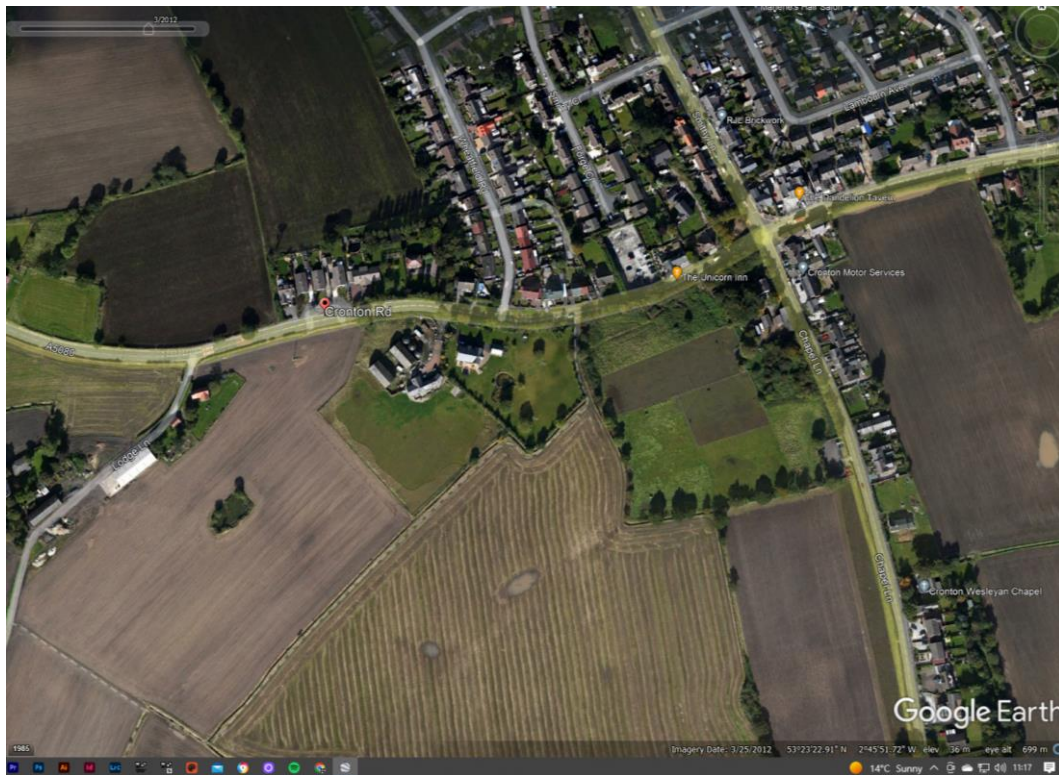
Appendix 3- Family Photos



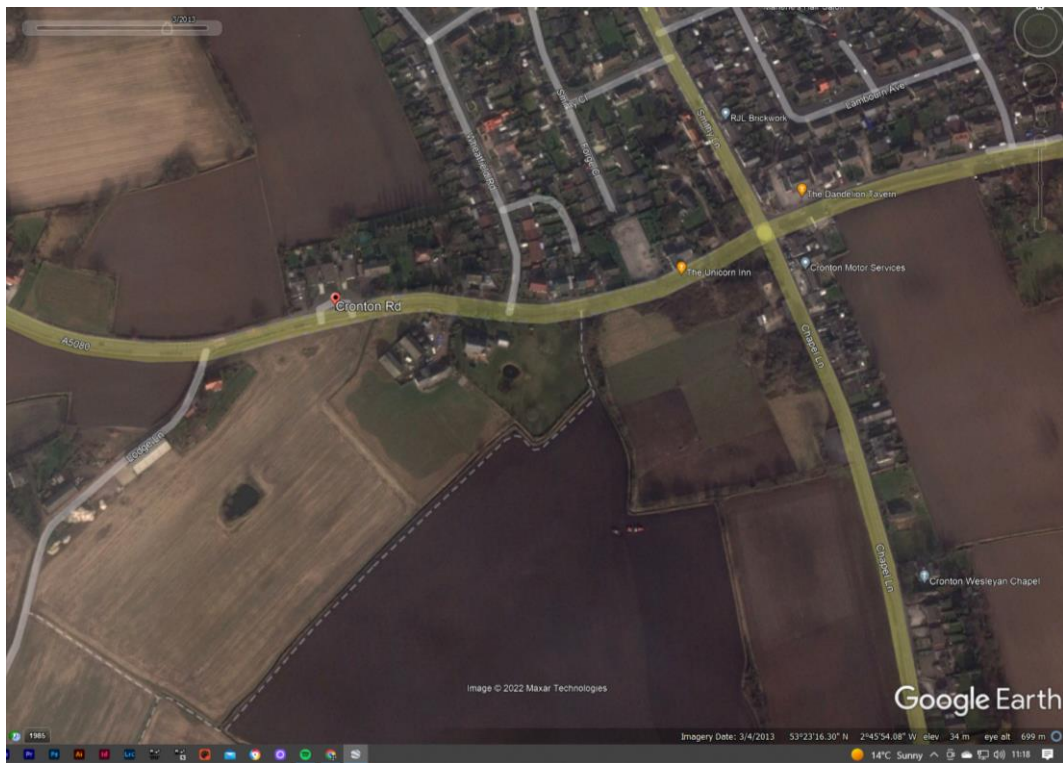
Appendix 4- Google Earth Aerial Shots of Site



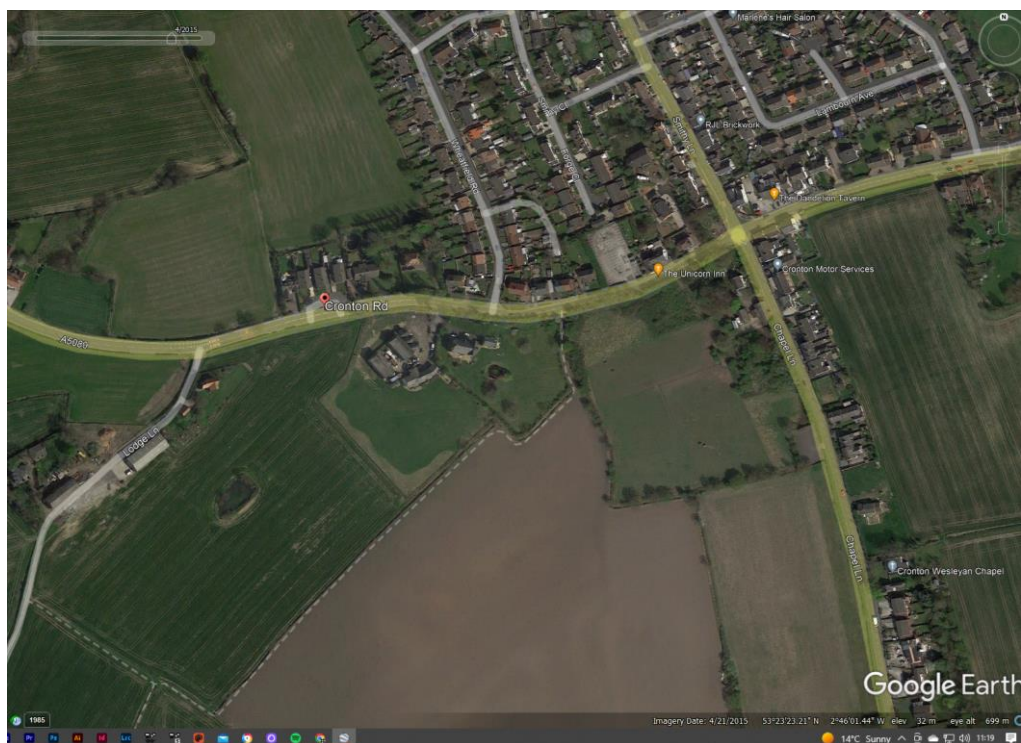
Google Earth Aerial shot of site dated 12/2009



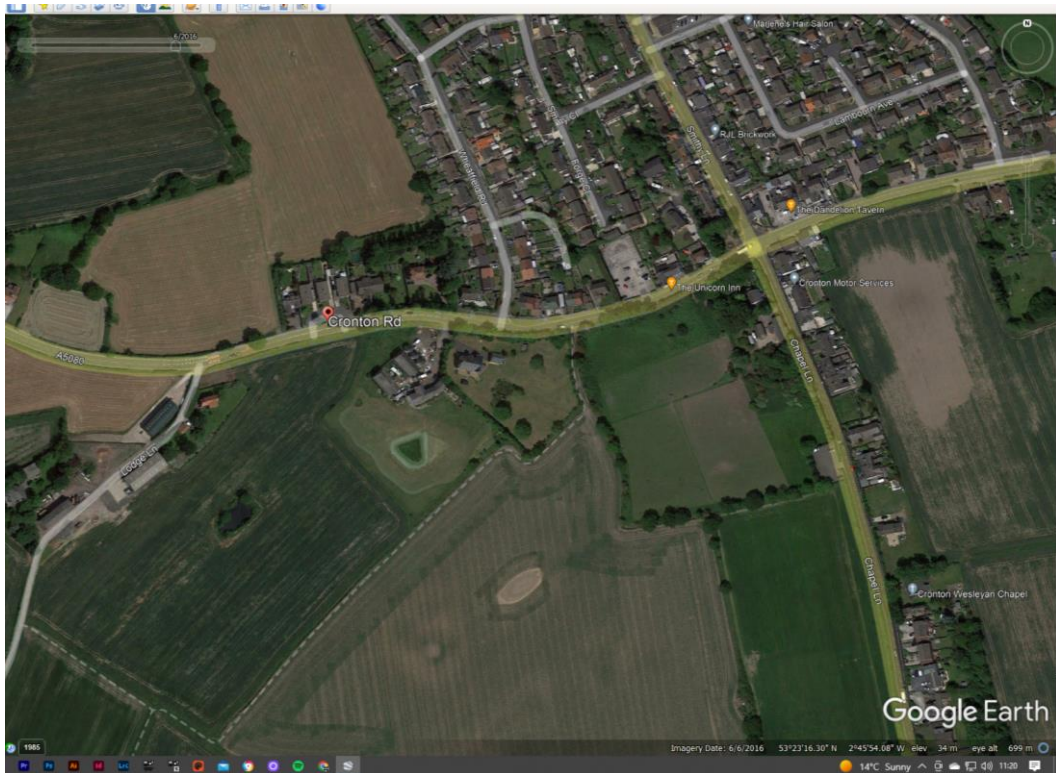
Google Earth Aerial shot of site dated 25th March 2012



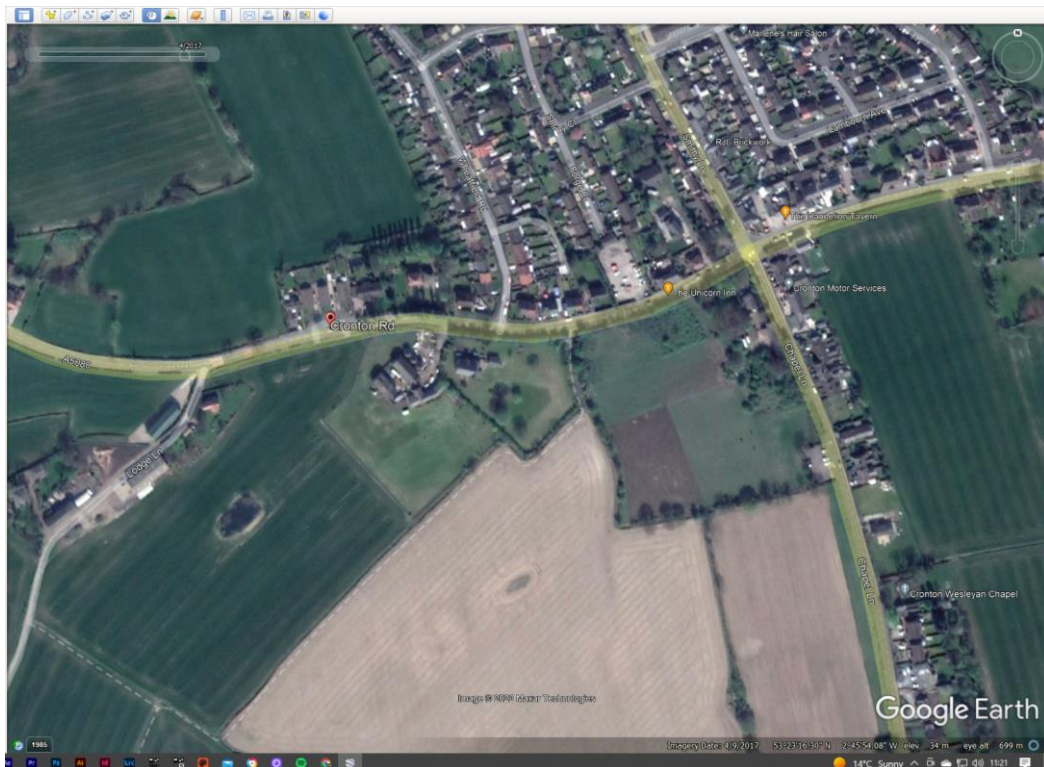
Google Earth Aerial shot of site dated 4th March 2013



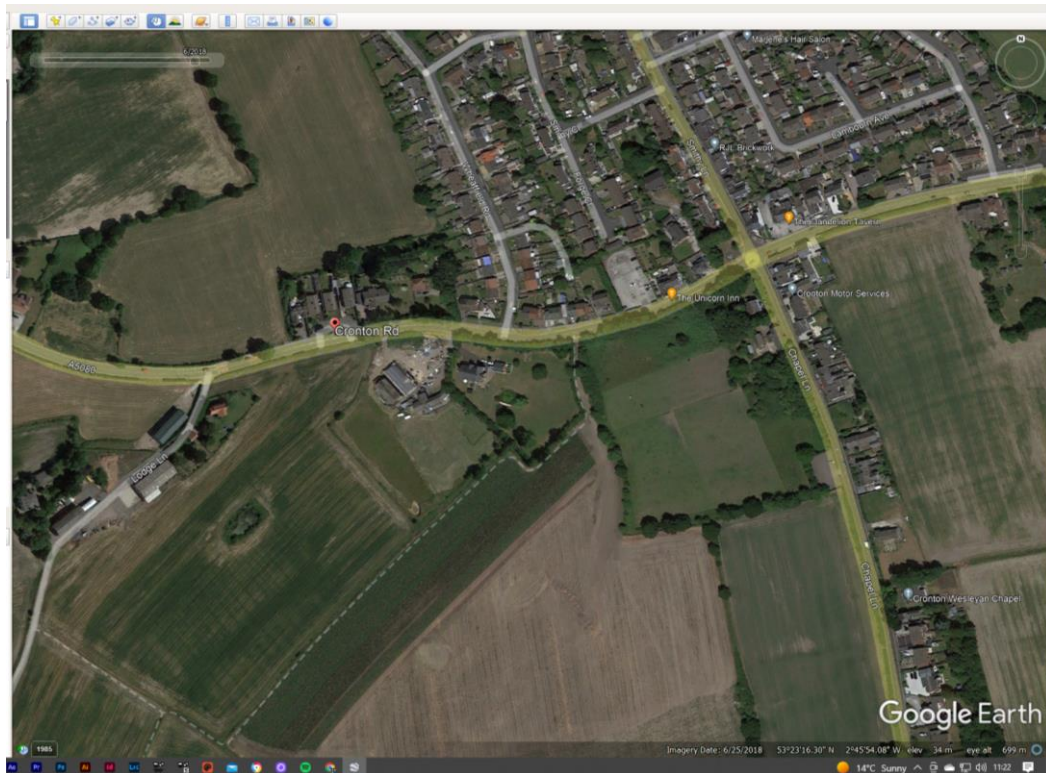
Google Earth Aerial shot of site dated 21st April 2015



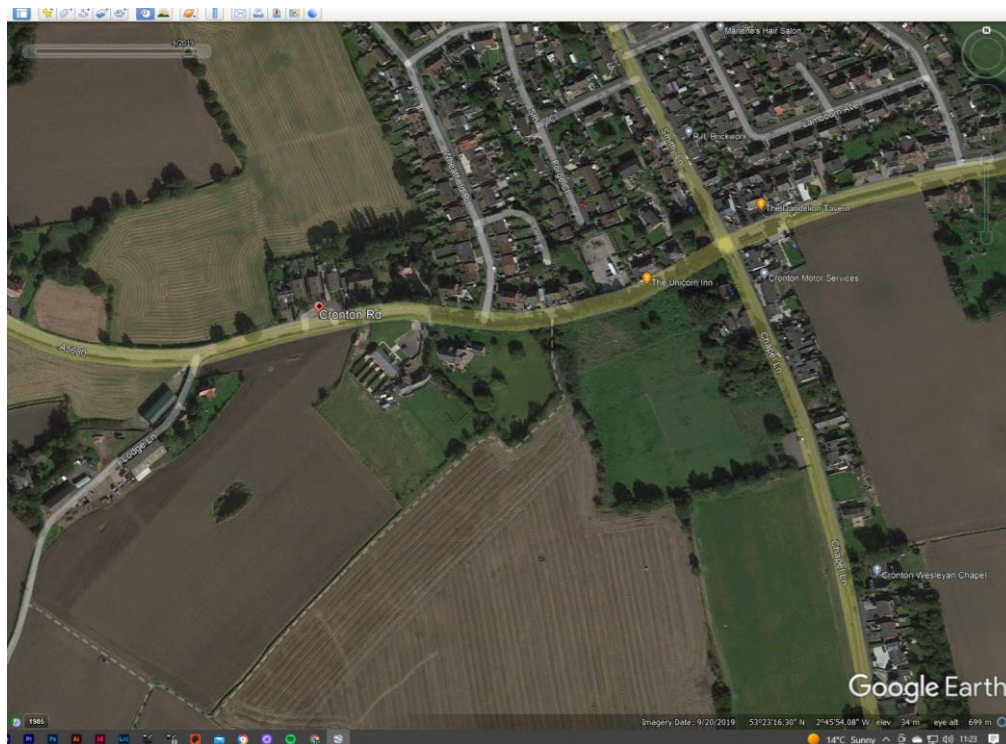
Google Earth Aerial shot of site dated 6th June 2016



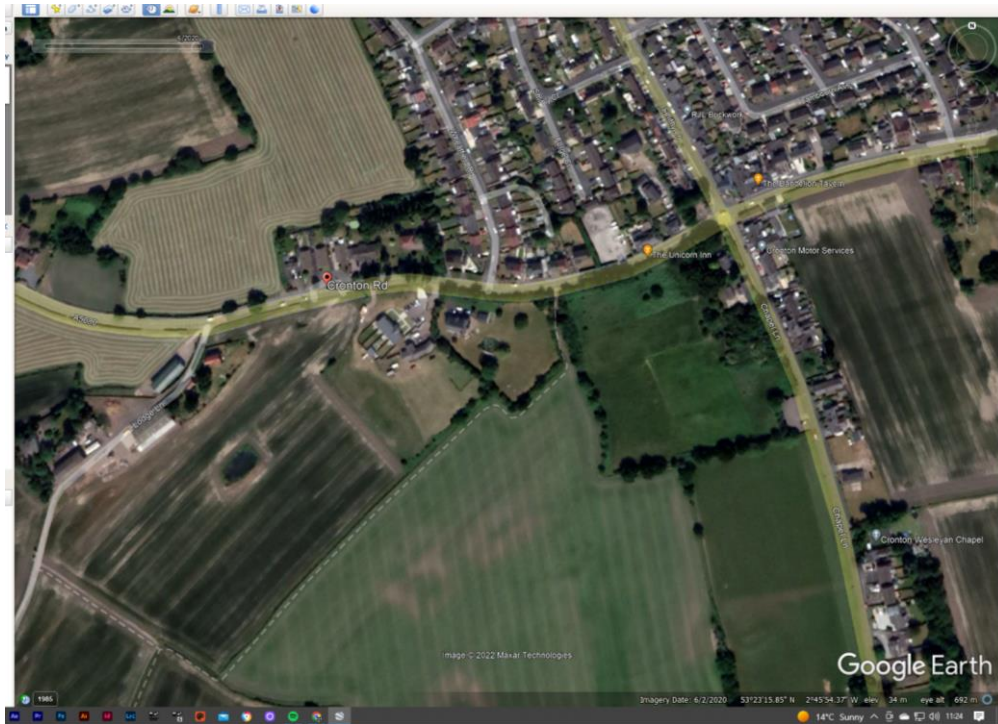
Google Earth Aerial shot of site dated 9th April 2017



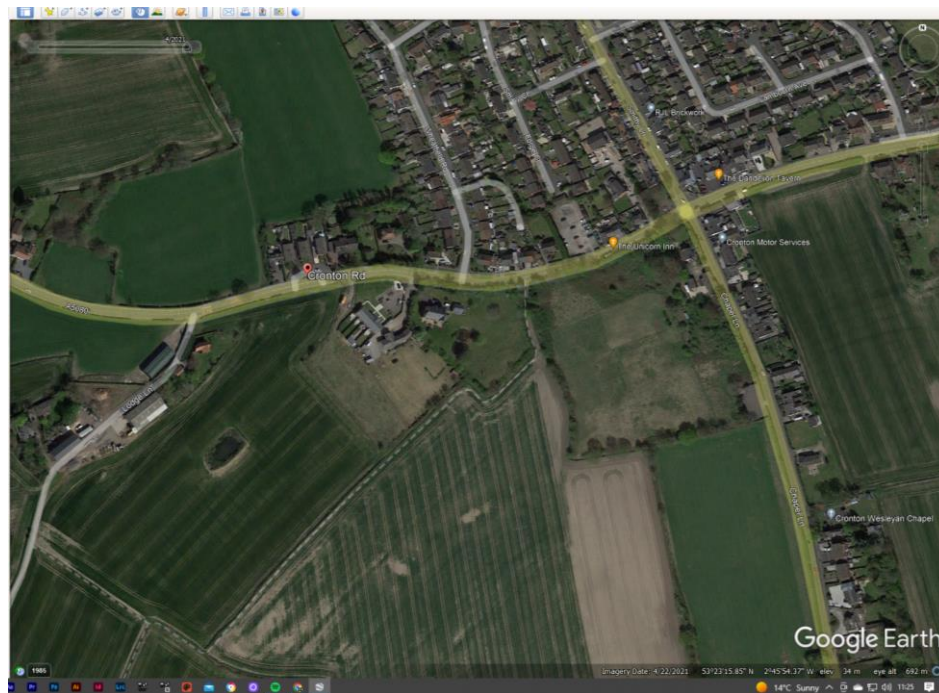
Google Earth Aerial shot of site dated 25th June 2018



Google Earth Aerial shot of site dated 20th September 2019



Google Earth Aerial shot of site dated 2nd June 2020



Google Earth Aerial shot of site dated 22nd April 2021