

<u>APPLICATION NO:</u>	23/00971/CLU	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Whiston & Cronton	<u>PARISH:</u>	Cronton Parish Council
<u>LOCATION:</u>	103 Hall Lane, Cronton, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR THE RETENTION OF A SINGLE STOREY OUTBUILDING AND A SINGLE STOREY REAR EXTENSION (ORANGERY)		

Site Description

The application relates to a semi-detached converted barn and detached single storey building, known as 103 Hall Lane with vehicular access off Penny Lane, Cronton. The property is attached to another dwelling, No. 101 Hall Lane and is located on the edge of Cronton Village. The site is surrounded by agricultural land to the north, south and west with other residential properties located on the opposite side of Hall Lane.

Proposal

The application has been submitted under S191 of the Town and Country Planning Act 1990 (the 1990 Act).

The grounds that the application for a Lawful Development Certificate is being sought is that the building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.

The applicant contends that the existing outbuilding (used as ancillary to main dwelling house) and an existing orangery built under permitted development.

Consultations

Cronton Parish Council – object to the proposal on the basis of:

- a) The conversion of the out building being changed to a residential dwelling without permission as we objected to 7 years ago.
- b) The outbuilding is part of the planning application.
- c) It was a double garage, garden store and 2 stables, as it was originally.
- d) Lawful use of single-story outbuilding stated as a garage when this is accommodation. The outbuilding as it is now is accommodation.
- e) The single rear extension (Orangery) is a flat roof storage extension for the kitchen as shown on pictures from the selling agent Rightmove.
- f) Property is on green belt and a conservation area and we should not be allowing the conversion of the stables into a dwelling therefore we object to the certificate of lawfulness.

In terms of the points raised above, this application is for a Certificate of Lawful Development and is not a matter of considering the planning merits of the scheme. Instead, it is a legal determination based upon the facts and evidence presented by the applicant as to whether the stated operational development is lawful. In this case, lawfulness is sought to establish that the outbuilding and extension are immune from enforcement due to the passage of time (4 years).

Representations

There is no statutory requirement to consult third parties including parish councils or neighbours.

Planning History

APP. NO:	K/APP/6283 (74/06115/HIST)
PROPOSAL:	PROPOSED CONVERSION OF BARN TO DWELLING
DECISION:	Granted
DECISION DATE:	1 December 1981
APP. NO:	K/APP/9672 (74/09749/HIST)
PROPOSAL:	CONVERSION OF DERELICT BARN TO FORM RESTAURANT WITH RESIDENTIAL ACCOMMODATION
DECISION:	Refused
DECISION DATE:	24 September 1986
APP. NO:	K/APP/10045 (74/10113/HIST)
PROPOSAL:	CONVERSION OF BARN TO FORM 2 DWELLINGS AND FORMATION OF NEW VEHICULAR AND PEDESTRIAN ACCESSES
DECISION:	Granted
DECISION DATE:	27 April 1987
APP. NO:	K/APP/10055 (74/10123/HIST)
PROPOSAL:	CONVERSION OF BARN INTO RESIDENTIAL DWELLING
DECISION:	Granted
DECISION DATE:	16 April 1987
APP. NO:	K/APP/10330 (74/10401/HIST)
PROPOSAL:	ERECTION OF DETACHED DOUBLE GARAGE AND NEW VEHICULAR AND PEDESTRIAN ACCESSES
DECISION:	Granted
DECISION DATE:	24 September 1987
APP. NO:	K/APP/11795 (74/12050/HIST)
PROPOSAL:	ERECTION OF GARAGE AND STABLES
DECISION:	Refused
DECISION DATE:	12 October 1989
APP. NO:	03/01104/FUL
PROPOSAL:	ERECTION OF TWO STOREY EXTENSION TO SIDE OF DWELLING
DECISION:	Refused
DECISION DATE:	20 January 2004
APP. NO:	17/00660/CLU

PROPOSAL: RETENTION OF CONVERTED GARAGE BEING USED AS
STANDALONE HABITABLE BUILDING TO REAR OF
EXISTING DWELLING

DECISION: Refused

DECISION DATE: 16 March 2018

APP. NO: 18/00432/CLU

PROPOSAL: RETENTION OF CONVERTED GARAGE BEING USED AS
STANDALONE HABITABLE BUILDING TO REAR OF
EXISTING DWELLING

DECISION: Refused

DECISION DATE: 13 August 2018

Background

Planning permission was granted consent in April 1987 for the conversion of a barn to form 2 dwellings and formation of new vehicular and pedestrian accesses on land known at the time as Town End Farmhouse, 104 Hall Lane, Cronton.

The application under consideration relates to one of those dwellings, which is known as 103 Hall Lane, Cronton.

The property has a long history of planning decisions, most recently, in 2017 and 2018 relating to two applications for certificates of Lawfulness for the retention of converted garage being used as standalone habitable building to rear of existing dwelling both of which were refused.

“Permitted development rights”, that is in relation to types of work that can be carried out without the need for planning permission, were not removed by conditions attached to the planning permission granted for the conversion of the barn to residential dwellings (K/APP/10045). The site is in the Town End Conservation Area but is not covered by an Article 4 Direction.

In regard to the refusal of the latter of these two applications, whilst at the time it was acknowledged that the evidence supporting that application demonstrated that the conversion of the outbuilding to residential accommodation took place in 2004 and that the structure had been used for residential accommodation for various unspecified periods since then, it was not demonstrated, on the basis of all probability, that the use had continued as such continually for a ten year period, nor that it had been in use as a standalone dwelling. A Certificate of Lawful Use was not granted because precise and unambiguous evidence was not submitted to demonstrate that the use as a habitable building had been ongoing on a continuous basis for a period of 10 years.

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 an existing outbuilding (used ancillary to the dwelling) and an existing orangery is lawful.

Section 191 Certificate of lawfulness of existing use or development sets out that:

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.

The application contends that both structures were built under permitted development and have been in situ for more than 4 years.

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)).

Development or other activity on land is lawful for planning purposes if it falls within one of a number of categories including:-

1. The time for taking enforcement action has expired

The time limits for taking enforcement action in respect of a breach of planning control are specified in Section 171 B of the Town and Country Planning Act as follows:-

- (i) S171 B (1) - For operational development, the period of four years from the date operations were substantially completed;
- (ii) S171 B (2) - For change of use of any building to use as a single dwelling house, the period of four years beginning with the date of breach;
- (iii) S171 (2A) – No restriction of when enforcement action may take place in respect of relevant demolition;
- (iii) S171 B (3) - In the case of any other breach of planning control, the period of ten years beginning with the date of breach.

Planning Policy 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 development, 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 on the balance of probability.

Claimed Development

A certificate of lawfulness is sought in respect of building works which the application claims were constructed more than 4 years before the date of this application

identified on:

- Drawing No. C. F. 01 – *Proposed Garage / Stable (approved plan for the purposes of the Building Regulations dated 15 July 1991).*
- Drawings [Orangery]103 Hall Lane, Drawn by Jordan Van Flute, scale 1:64 dated 30 March 2023.

What must be proved / Evidence submitted

The decision is based on the 'balance of probability' and rests on the evidence submitted, the facts of the case, and on relevant planning law and takes account of the facts presented both in support of the application and against but is not assessed in relation to its principle or compliance with current planning policies.

The application is made on the basis that the building (operational development) was substantially completed more than four years before the date of this application and that, even so, the development is 'permitted development'.

The application relates to two parts:

- 1) the erection of an outbuilding; and
- 2) the erection of an extension to the dwelling (orangery)

In regard to evidence which has been submitted by the Applicant to the Local Planning Authority this amounts to:-

Outbuilding

- Drawing C.F. 01 dated August 1990 and stamped Approved Plan for the Purposes of Building Regulations Date 15 July 1991 (Building Regulations Ref: 91/0418/S)
- Google Imagery [aerial] undated.
- Google Imagery [aerial] dated 8/18/12 [8 August 2012]

Extension (Orangery)

- Drawings [Orangery]103 Hall Lane, Drawn by Jordan Van Flute, scale 1:64 dated 30 March 2023.
- Google Imagery [aerial] undated.
- Google Imagery [aerial] dated 8/18/12 [8 August 2012]
- Screenshot of photograph dated 8 June 2014.

OFFICER APPRAISAL

Assessment of Evidence

In regard to the evidence submitted for the detached outbuilding, the plan does not evidence when the building was constructed and the aerial Google Imagery is not clear and in one case not dated. The applicant's submission in this regard does not provide conclusive evidence.

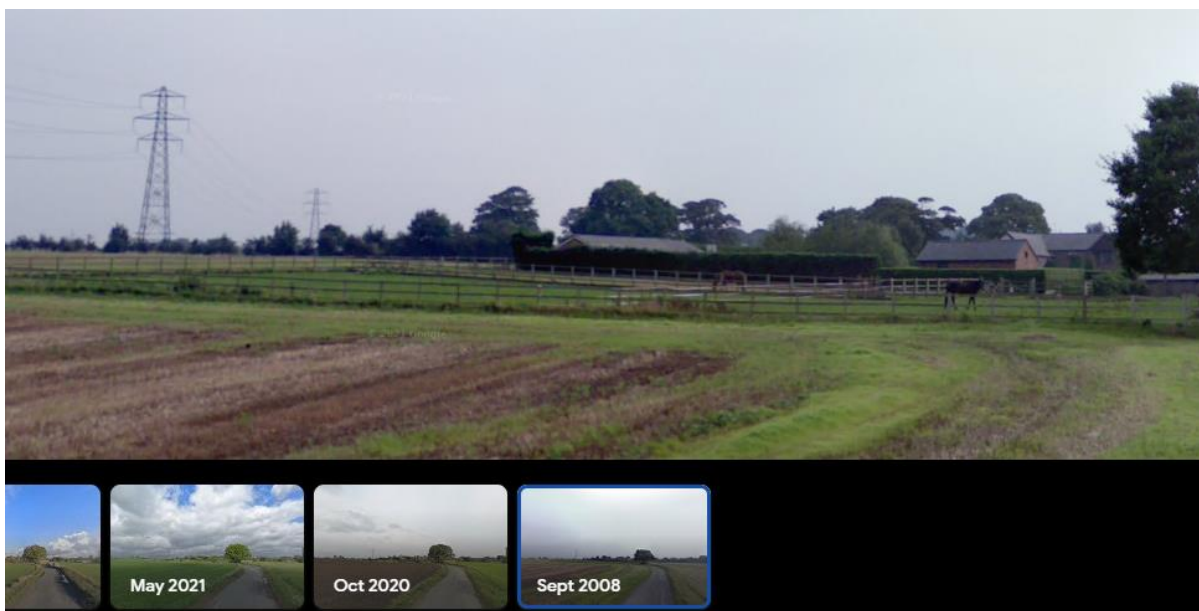
The Local Planning Authority has evidence of Building Regulations records which indicate that Building Regulations was approved under reference S91/00418(5) for

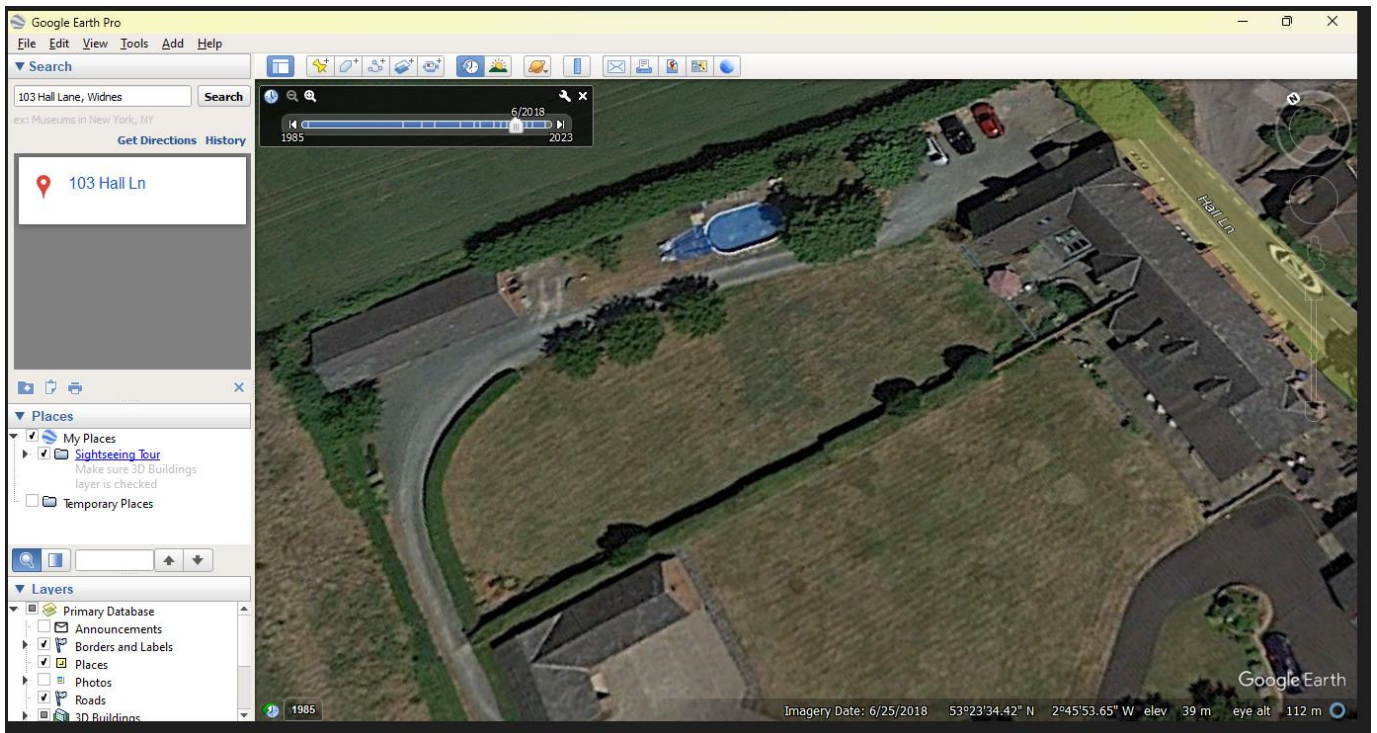
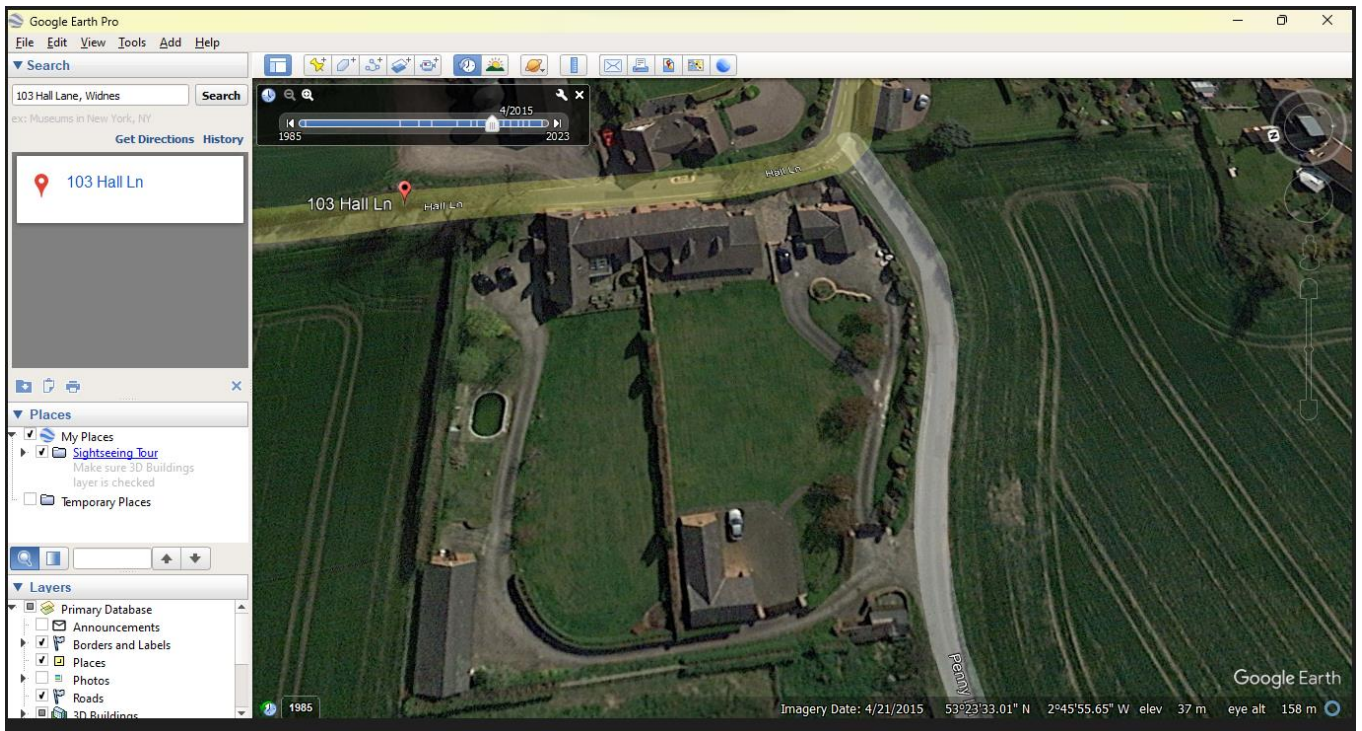
the detached building comprising double garage, gardening store; and stable in July 1991. Unfortunately, Council records are not available to establish from that application whether the development was commenced and / or substantially completed.

However, it is relevant to note that, the planning history indicates that the detached building was the subject of an enforcement enquiry which initially arose from a complaint relating to a new vehicular access which dates back to 2017. Enforcement records indicate that at that time, the detached building, and its use as ancillary living accommodation, were discussed with the applicant at that time. Council records therefore, identify that the building was in existence at the time.

This is further substantiated in the applications 17/00660/CLU and 18/00432/CLU for the retention of converted garage being used as standalone habitable building to rear of existing dwelling.

Furthermore, it is also relevant to note that the building appears on Google Earth imagery / aerial images dating back to 2015 and on Google Street View in 2008





To conclude, in respect of the detached building, it is considered that, on the balance of probability, the information available is compelling and sufficiently proves that the operational development comprising of the construction of the detached building as identified on the plan titled Drawing C.F. 01 dated August 1990 and stamped Approved Plan for the Purposes of Building Regulations Date 15 July 1991 and shown within the red line boundary on the submitted Location Plan referenced A2A-17.803_001, was substantially completed in excess of 4 years before the date of this application.

As the development would be immune from enforcement action, it is not necessary to consider further whether the structure as built is permitted development.

Turning to the extension, the evidence submitted by the applicant of Google Imagery does not clearly show the extension and in one case is not dated, the screenshot of a photograph taken by the applicant does not reasonably conclude that the photograph relates inconclusively to the extension the subject of the application.

Whilst the applicant's submission does not provide conclusive evidence, it is relevant to note that Google Earth imagery accessed by officers clearly shows that the extension was in place at the very least by April 2015.

Evidence available to the LPA, lead officers to conclude that they are entirely satisfied that in regard to the extension to the rear of the property to provide a kitchen extension (orangery) on the balance of probability, the information available is compelling and sufficiently proves that the operational development comprising of the construction of the extension was substantially completed in excess of 4 years before the date of this application.

As the development would be immune from enforcement action, it is not necessary to consider further whether the structure is permitted development.

Conclusion

The Local Planning Authority has no evidence to contradict the applicant's evidence and has additional evidence available from aerial Google Earth images.

Having reviewed the evidence available and in the absence of conflicting evidence, it is considered that on the balance of probability the lawfulness of the identified operational development comprising the erection of a detached building and a rear extension (orangery) within the curtilage of 103 Hall Lane outlined red on the Location Plan (scale 1:1250) Ref: A2A. 17.803_001 submitted on 23 May 2023 with this application for the identified period of 4 years are lawful. The evidence is considered to be sufficiently precise and unambiguous to allow the granting of a lawful development certificate.

Recommendation

That a certificate of lawfulness be granted in respect of the detached building and rear extension relating to a residential dwelling, 103 Hall Lane, shown within the land edged red on the Location Plan referenced A2A-17-803_001, because there is clear, precise and unambiguous evidence to establish on the balance of probability that the time for taking enforcement action against such operational development has expired (s.191(2)(a) TCPA 1990).

SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
23/05/2023	A2A-17-803_001	-	LOCATION PLAN

Informative

1. In granting this Lawful Development Certificate no permission is given in respect of the use of the detached building as an independent unit of accommodation. The certificate is strictly limited to that of the operational development and does not confer approval for any change of use of the building.

Signed Case Officer¹: **M Wishart**

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

Date: **6 July 2023**

Contd.....

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

Appendix 1 – Site Photographs



Google Imagery@2023



Google Imagery @2023

