



JUDITH DOUGLAS TOWN PLANNING LIMITED

Application for a certificate of lawfulness for an existing use of land as garden and domestic curtilage and erection of buildings for domestic purposes ancillary to the domestic use of the residential dwelling

Higher Moorside Cottage, Whalley Old Road, Billington
Lancashire BB7 9JF

Supporting Planning Statement

JDTPL0214

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STATEMENT IN SUPPORT OF AN APPLICATION FOR A LAWFUL USE CERTIFICATE FOR THE USE OF LAND AS A GARDEN AND DOMESTIC CURTILAGE AND ERECTION OF BUILDINGS FOR DOMESTIC PURPOSES ANCILLARY TO THE DOMESTIC USE OF THE RESIDENTIAL DWELLING HIGHER MOORSIDE COTTAGE, WHALLEY OLD ROAD, BILLINGTON BB7 9FJ

1 INTRODUCTION

- 1.1 This application is made under section 191(1) (a) of the Town and Country Planning Act 1990, on the basis that the land has been used and is still in use as domestic gardens as part of the domestic curtilage of the dwelling for a period in excess of ten years and that it has been used continually as such without any break in this period. A greenhouse and shed have been situated on the same land for more than four years and used for domestic purposes in connection with the use of land as garden.
- 1.2 This application is made by Mr Cowburn. This statement should be read in conjunction with the:
Statutory declaration dated 7th August 2019;
Location plan edged red scale 1:1250;
Site Plan Higher Moorside Cottage; and
Appendices 1-12

2. HISTORY OF THE USE OF LAND AS GARDEN AND DOMESTIC CURTILAGE AND THE ERECTION OF BUILDINGS

- 2.1 In order to determine if all the land edged green on the site plan is lawfully being used as garden and domestic curtilage it is necessary to look at the planning history of the site and the history of how the land has been used for the last 10 years. To determine whether the garden buildings are lawful it is necessary to ascertain when they were constructed, and what they are used for.

Relevant planning history.

- 2.2 3/2001/0344. Change of use of agricultural land to domestic curtilage application withdrawn 18/06/2001

Description of the creation and use of the land as garden and the erection of garden buildings and structures.

- 2.3 Mr Cowburn has provided the following description of the purchase and use of the land and buildings the subject of this application. Please refer to Appendix 1 Photographs pre-2019, Appendix 2 planting plan key and Appendix 3 tree and shrub list.

“We moved into Higher Moorside Cottage in July 1997 at that time the property had along its rear perimeter a large retaining wall, approximately 1.5m high with a soil infill providing a flat grass area. A greenhouse was located in the western corner of the original garden. (see photos 1,2 and 3 showing the old greenhouse and retaining wall).

As a result of persistent and heavy rain at the end of 2000 combined with blocked land drains in the built up grass area the retaining wall collapsed (see photos 4 and 5)

In July 2001, having considered the viability of rebuilding the wall with the inherent possibility that in the future it may once again collapse we took the decision to purchase the area of land which is subject to this application. This facilitated the removal of the collapsed wall, enabled the building of a more substantial but smaller retaining wall and patio which would protect the house by preventing any land movement. We remodelled the remaining land to facilitate the creation of a manageable garden bound by a perimeter stock proof fence and access gate. (See photo 6 & 7)

In February 2002 we commenced tree planting (see attached planting scheme) and planted a mixed hedge along the new perimeter fence. During April and May of 2002 we created a pond in the bog area bordering the lower boundary, installed land drains across the whole site and further graded the land rotavating in 20 ton of horticultural sand and seeding with grass (see photo 8). At the same time, we created shingle paths to provide access to the pond and anticipated seating areas. We started to plant a shrubbery to the right of the path as it slopped downhill (see photo 9) By December 2004 photos 10,11 and 12 show how the trees and shrubs are becoming established.

In the spring of 2003 we undertook marginal planting around the pond and further planting of shrubs both around the pond and interspersed near the perimeter fencing and by 2006 the pond area was well developed (see photo 14 showing pond). In the summer of 2005 we created two seating areas one below the site of the original greenhouse and one overlooking the pond. We also created a log pile for wildlife by the first seating area and installed an old sink to provide a tadpole nursery. (see photo 18)

The following summer (2006) we prepared a site on the steep slope running parallel with the original terraced borders with flag stone steps, flat flagged area and terraced raised beds for 3 fruit cages, compost bins and erected a new greenhouse. (see photo 13 and 19) By the summer of 2007 planting of marginals and shrubs around the pond area had become well established (see photos 15, 16 & 17). In the autumn of 2007 the fruit cages were erected and fruit bushes planted. In the summer of 2010 a new shed was installed next to the greenhouse to house garden tools and equipment.

Since 2007 the original planting has matured and further planting over the years has enhanced the flowering period and provided improved habitat for bees, birds and other wildlife. (for example see photos 20, 21 & 22 as well as additional photos showing the garden in 2019 and identified on the attached plan)

The area subject to the application has over the years provided us with our main hobby of gardening which has taken up much of our spare time particularly in the spring and summer. It has also nurtured our interest in wildlife and informed how we have developed the area to create an environment that provides a habitat to support a range of wildlife. Hedge laying and pruning provides dense hedging which encourages nesting birds as well as the laurel, conifers and yew. A variety of flowering plants, shrubs and trees throughout the growing season encourages bees and when the hips and berries appear in the autumn and winter they provide food for birds. The woodpile provides a winter refuge for hedgehogs and garden debris offers a refuge for other small creatures and insects. The pond has brought dragon and damselflies, newts, frogs and toads into the garden and the nursery sink houses spawn and tadpoles that would otherwise perish when the pond is too full of spawn. Over the years we have seen a marked increase in the number and variety of birds visiting the garden including Bullfinches, Water hens and the Greater Spotted Woodpecker.

The area also provides us with pleasant places to sit overlooking the valley or by the pond where we take tea, read, talk with friends or play with our grandchildren. The open grass areas we use to exercise and train our working springer spaniels.

We have also benefited from growing and harvesting fruit and vegetables in the area and the greenhouse has been used to sow seeds, propagate plants and vegetables, take soft and hardwood cuttings and grow tomatoes. The shed has been used to store garden tools and equipment and products to feed plants. Garden waste is recycled into compost in the compost bin and used as a mulch in the spring and autumn. We also have an area above the fruit

cages where we burn off hard wood material generated from pruning and cutting back dead wood.”

3 ASSESSMENT

- 3.1 The main issue in the assessment of this application is whether the land the subject of the application has been lawfully used as residential curtilage for a period in excess of 10 years and whether the buildings the subject of the application have been in place for a period in excess of four years beginning with the date of the application. Section 191 (4) of the Town and Country Planning Act states *“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”*
- 3.2 It is clear from the description given above and the statement given in the statutory declaration that Mr Cowburn and Ms Noquet have lived at Higher Moorside Cottage since 1997 and that they have extended the original garden into surrounding land, erected buildings on it and used the land as garden in connection with their cottage. In 2001 they bought agricultural land adjacent to their property and fenced it off from the field. They repaired the retaining wall and patio, remodelled the existing and recently purchased land. In 2002 they began planting the extended garden with trees and shrubs and created a pond and path. They began using the land marked green on the site plan as part of the garden to the cottage from June 2002. Further planting was carried out in 2003 and in 2005 a seating area and log pile were created and a sink for a tadpole nursey was installed. The area to the south west of the original garden was provided with steps, a flagged area, terraced raised beds and a greenhouse in 2006. Fruit cages were constructed in this area in 2007. They began tending the land as one garden with the original garden in 2002 and by 2007 the garden as it is today was in place with all the major planting and structural work complete. The land has been tended as a garden continually since that date.
- 3.3 Gardening is a recreational past time and it is clear that Mr Cowburn and Ms Noquet are keen and expert gardeners and gardening is for them a major recreational pastime. As well as gardening they obviously enjoy time relaxing in their garden and watching the wildlife that visits. The photographs of the garden taken in 2019 show that the garden is clearly mature and well established see appendix 4 Photographs of garden 2019 and Appendix 5 Tree and shrub key/ 2019 photo key. The planting of the garden started in 2002. It is clear that by 2007

the garden was established to the extent it is today. The new use as garden has continued uninterrupted since 2002 and continues. This uninterrupted period is in excess of 10 years. The use of the land edged green on the site plan as garden and domestic curtilage in connection with the dwelling Higher Moorside Cottage is now lawful.

3.4 The greenhouse was erected in 2006 along with the steps, flagged area and terraced planting areas. The shed was constructed in 2010. These operational developments and all other hard surfaces and structures on the land the subject of this application were in place by 2010 which is in excess of 4 years. The construction of the greenhouse and shed on the land is now lawful.

4. EVIDENCE TO SUPPORT THE CLAIM THAT THE LAND HAS BEEN USED AS GARDEN AS PART OF THE DOMESTIC CURTILAGE OF HIGHER MOORSIDE COTTAGE FOR MORE THAN TEN YEARS.

4.1 In addition to the description provided by the applicant above the following documentary evidence supports the claim that the use of the land as garden and the erection of the building is now lawful.

4.2 Higher Moorside Cottage is a traditional 18th century stone cottage built close to Whalley Old Road. An old undated deed plan shows the historic extent of the curtilage of the dwelling. Appendix 6 Undated deed plan. The sales particulars for the house in 1995 describe the house as having substantial gardens to the front, side and rear, being mainly lawn with stone walled borders and patio. The garden has a greenhouse. Appendix 7 Entwistle Green Sale details August 1995. This shows that the area referred to as the original garden was in used as the domestic curtilage to the dwelling at that date. This is corroborated by photographs 1-5 in appendix 1.

4.3 The collapse of the garden retaining wall lead to the purchase of the land the subject of this application. Evidence of the purchase of the land at this time includes Appendix 8 19th February 2001 letter Barlow Rowland showing extent of land intended to be purchased. Appendix 9 6th September 2001 Land registry title LA896042 additional land at Higher Moorside. Note that the purchase included land to the rear of Higher Collier's Cottage.

4.4 The intention to use the additional garden is shown in the planning application 3/2001/0344. "Change of use of agricultural land to domestic curtilage" the application was withdrawn 18/06/2001.

4.5 The sale of the land to the rear of Higher Collier's Cottage to neighbour Barrie and Maureen Nicholson in 2002 indicates the extent of the land at Higher Moorside Cottage at that date. Appendix 10 Land Registry for Higher Colliers Cottage.

4.6 Mr Cowburn and Ms Noquet are keen gardeners. This is evidenced in the thought and skill that they have put into the creation of the extended garden, their knowledge of plants and the care of plants hedging trees and shrubs. The planting plan and key in appendix 2 and 3 was largely in place by 2007. The trees that were planted are reaching maturity some of which are now 7 meters in height. The lawns in the extended garden were not merely a mown field. The ground had been specially prepared and seeded. See statement above and photograph 8. The applicants have prepared a summary of a typical garden year to describe the level of activity in the garden. This activity has been annually at this level since 2007. Appendix 11 Typical Garden Year 2007-2019.

5 EVIDENCE TO SUPPORT THE CLAIM THAT THE GREENHOUSE AND SHED LOCATED IN THE EXTENDED GARDEN FOR MORE THAN FOUR YEARS.

5.1 The greenhouse now standing in the garden was purchased and erected in 2006. The receipt for the greenhouse lists Mr Cowburn as the purchaser and the delivery address as Higher Moorside Cottage. See Appendix 12 Greenhouse receipt. This has been on the site for in excess of four years.

5.2 The google earth image of 21/3/2013 is of poor quality taken on an overcast day. See image below. The greenhouse is clearly seen and the fruit cages above and a dark roof where the shed is located.

5.3 Clearly a garden of this size requires somewhere to store tools in a location which is convenient to access from all areas of the garden and close to the greenhouse. As the shed was erected in 2010 it has been in place for more than four years.



Google earth image 21-3-2013

6. CONCLUSIONS

- 6.1 The information submitted with this application including the statutory declaration from the applicant and supporting documents including photographic records demonstrates that on the balance of probability, the land marked green on the site plan has been used along with (and forms part of) the land edge red on the location plan, as garden and domestic curtilage ancillary to the dwelling Higher Moorside Cottage for more than 10 years and is now lawful. The greenhouse erected in 2006 and the shed erected in 2010 in the positions shown on the site plan have been in place for more than 4 years and are now lawful.

APPENDICES

Appendix 1 Photographs pre-2019

Appendix 2 Planting plan key

Appendix 3 Tree and shrub list

Appendix 4 Photographs of garden 2019

Appendix 5 Tree and shrub key 2019

Appendix 6 Undated deed plan

Appendix 7 Entwistle Green Sale details August 1995.

Appendix 8 Letter Barlow Rowland 19 Feb 2001

Appendix 9 Land Registry for Higher Moorside Cottage

Appendix 10 Land Registry for Higher Colliers Cottage.

Appendix 11 Typical Garden Year 2007 to 2019

Appendix 12 Greenhouse receipt