

The Town and Country Planning Act 1990 (As Amended)
Section 191

Application for a Certificate of Lawfulness (Existing) to Establish that Identified Land has been used as Residential Garden Land in association with “Calderdale” for a Continuous Period in Excess of 10 Years.

“Calderdale”
7 Portfield Bar
Whalley
Lancashire
BB7 9DL

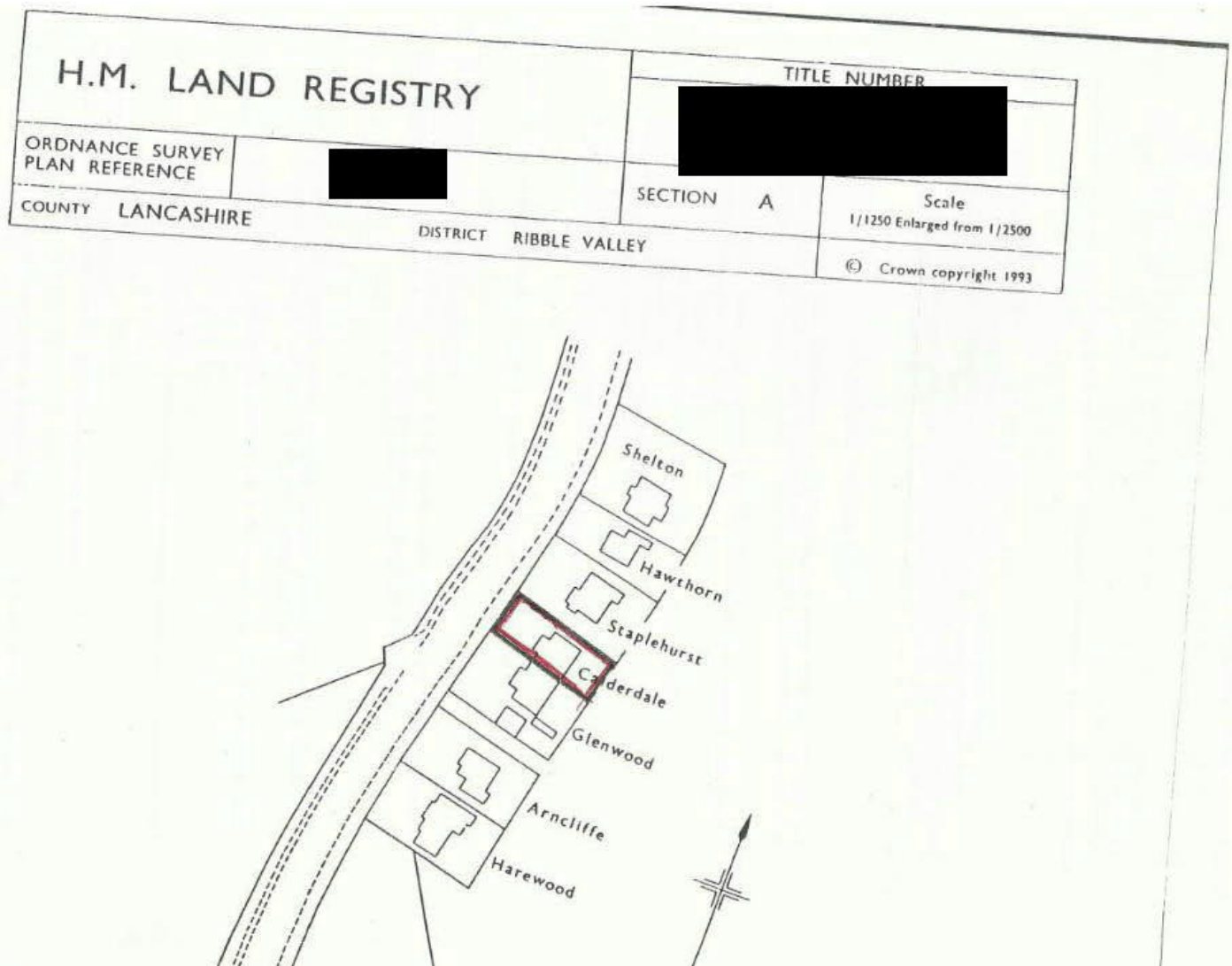


1. Introduction

- 1.1 This application for a Certificate of Lawfulness (existing) is submitted by the owners of the property, Mr & Mrs Sword who wish to confirm the lawfulness of the identified associated land at the rear of their property known as "Calderdale".**
- 1.2 It is contended that the identified land has been in use as residential garden land, for a continuous period in excess of ten years.**
- 1.3 Within this statement a history of the land will be provided which proves the use of the land. Accordingly it can be demonstrated that the use is "lawful" and that a Certificate of Lawfulness under section 191 of the Town and Country Planning Act 1990 should be issued.**
- 1.4 The remainder of this statement will cover:**
 - Application Site**
 - Legal Background**
 - Evidence of Use**
 - Conclusion**

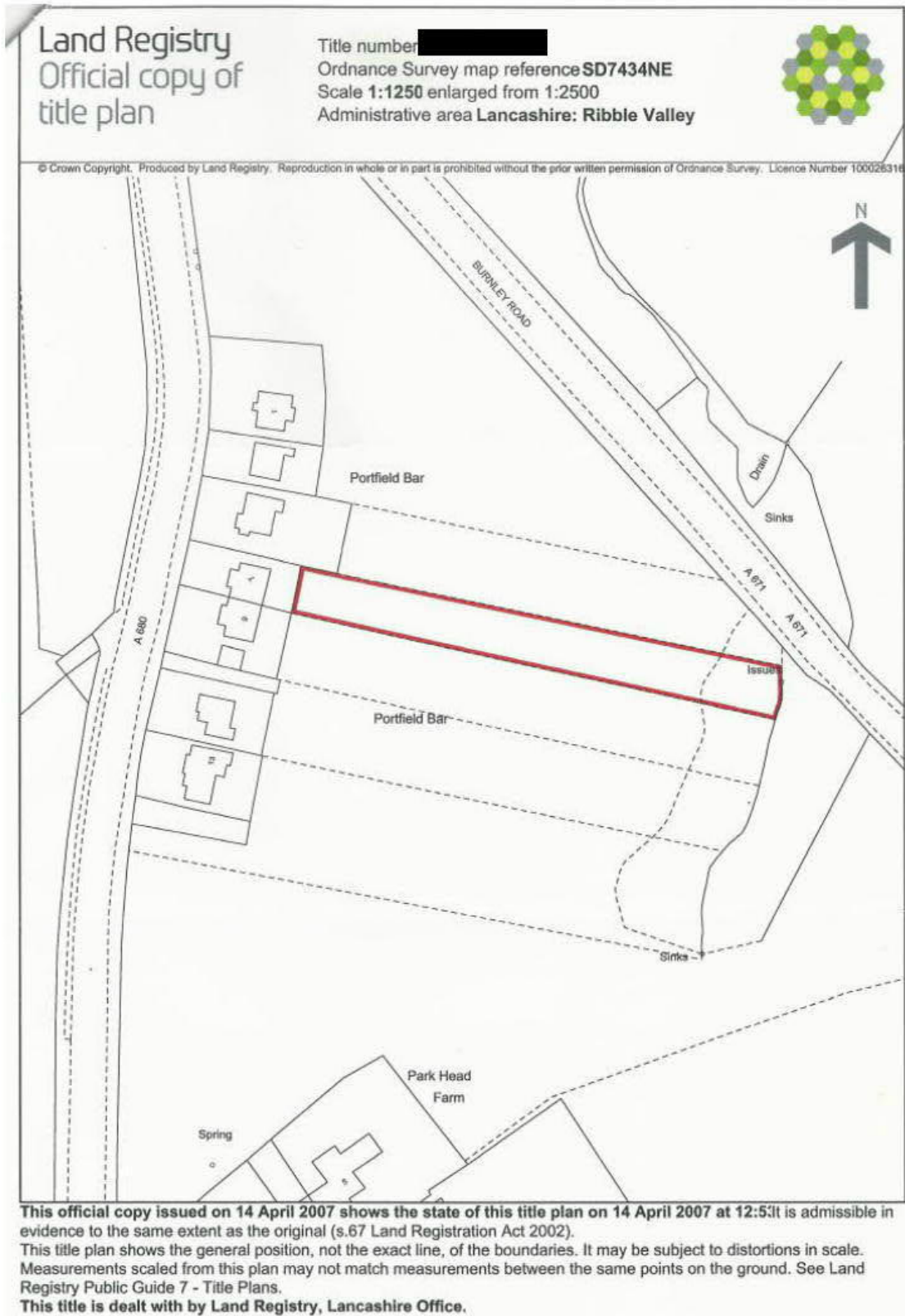
2. Application Site

2.1 The application is located to the rear of the residential property "Calderdale", which is situated between the A680 Accrington Road and the A671 Burnley Road.



Calderdale Curtilage

2.2 The area of land for within which a Certificate of Lawfulness is sought:



More specifically only a section of this land is identified as an area that has been in use as a residential garden for longer than 10 years and this application for a Certificate of Lawfulness relates to this section only – Identified by the red outline in this aerial view and at a distance of thirty eight metres from the original “Calderdale” curtilage.



Identified Proposed Residential Garden Land (outlined in Red)



Distance of 38 metres from the original curtilage.

3. Legal Background

3.1 The use of agricultural land for residential garden purposes constitutes a material change of use.

3.2 Section 191 of the Town and Country Planning Act 1990 (Certificate of Lawfulness of existing use or development) states that:

(1) If any person wishes to ascertain whether—

any existing use of buildings or other land is lawful;

any operations which have been carried out in, on, over or under land are lawful; or

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.

3.3 It goes on to say that:

(2) For the purposes of this Act uses and operations are lawful at any time if—

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

they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

3.4 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.

3.5 The time limits for enforcement are set out under Section 171B, the most relevant of which for the determination of this Certificate application is:

In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of **ten years** beginning with the date of the breach.

3.6 Evidence is provided in support of this application, in order to meet the criteria of Sections 171B and 191 of the Town and Country Planning Act 1990. The evidence is provided with the aim of establishing the following facts:

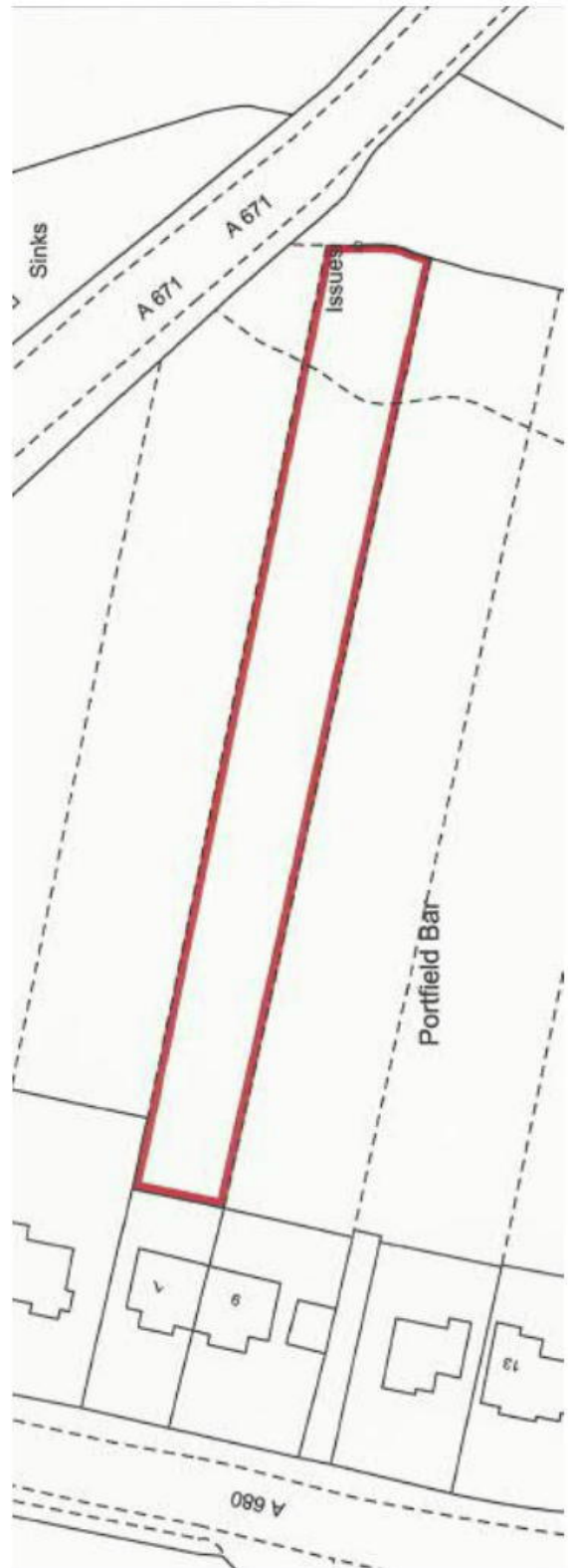
- The land identified has been used as part of “Calderdale’s” residential garden for a continuous period in excess of ten years prior to the date of this application.
- Any immunity required has accrued under section 171B (3) of the Town and Country Planning Act 1990.

4. Evidence of Use

Google Earth Images at Specific Dates to Demonstrate Use:



Google earth image, taken in December 2005 when the land as highlighted was used as agricultural land.



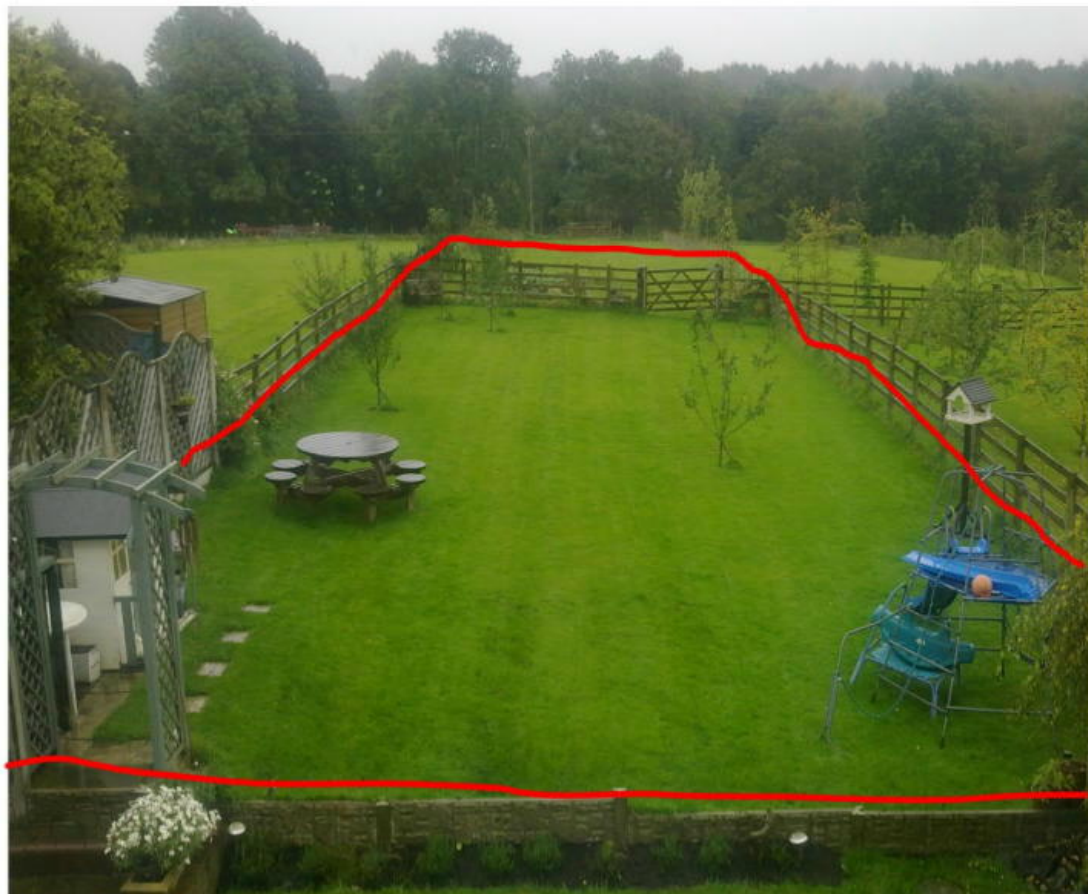
Boundary of land purchased by Mr & Mrs Sword in April 2007.



Google earth image, taken in April 2011. Despite the poor resolution, the change of use to "garden" can be seen, whereby shed, paths, children play equipment, fruit trees are in place up to 38 metres from the original Calderdale curtilage.

Clearer Google earth image, taken in March 2013.

Google earth image, taken in April 2020 demonstrating continued use.



A digital photograph taken in October 2010. Taken from the rear of "Calderdale".



A digital photograph taken in March 2010. Looking back to the rear of "Calderdale".

File info

Filename
P8291619

Date taken
29 August 2007
15 07

Size
899.3 KB

Dimensions
2272 x 1704

Shot
1/320 sec. f/4 8.02 mm

ISO
64

Device
u-miniD,Stylus V

Folder path



A digital photograph taken in August 2007 taken from the rear of Calderdale looking out onto the land used as garden.

5. CONCLUSION

5.1 In light of the evidence produced to support this application, we consider that the identified land has been used for residential purposes in connection with, and incidental to the enjoyment of the main dwelling house. There have been no significant breaks in continuity of this residential use.

5.2 Article 39(9) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 states that a local planning authority *"may require the applicant to provide such further information as may be specified to enable them to deal with the application"*. We are keen to ensure that you as the local planning authority has accurate and complete information, and you are welcome to seek clarification on any points raised, or request any further information.

5.3 We trust that the detailing and documents presented with this application provides unequivocal evidence of the residential use of the identified land and respectfully request that unless the Council has evidence to the contrary, a Certificate of Lawfulness should be issued under Section 191 of the Town and Country Planning Act 1990.