

Application for a Certificate of Lawfulness for
existing use of an outbuilding within the curtilage
of the dwellinghouse for purposes incidental to
the enjoyment of the dwellinghouse (Class C3)

Rock House, 24 Church Street, Clitheroe

Supporting Statement

May 2023

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1 Introduction

- 1.1 This Supporting Statement has been prepared by Smith & Love Planning Consultants Ltd on behalf of our clients Mr and Mrs Bailey in support of their application for a Certificate of Lawful Existing Use (CLEUD) for use of the outbuilding within the curtilage of their home at Rock House, Church Street, Clitheroe for purposes incidental to their occupation and enjoyment of their property as a private dwellinghouse (Class C3).
- 1.2 This application seeks confirmation that the continued use of the outbuilding (shown edged red on the submitted Location Plan) for purposes incidental to the use and occupation of Rock House as a private dwellinghouse, is lawful.
- 1.3 The Town and Country Planning Act 1990, as amended by The Planning and Compensation Act 1991, under Section 191(2), states that any use or operation for which planning permission has not been expressly granted, is lawful if the time for enforcement action in respect of a breach of planning control has expired. Section 191(4) states that if a local planning authority is provided with information satisfying it of the lawfulness of such a breach, it must issue a certificate to that effect.
- 1.4 Section 171B of TCPA 1990 provides relevant immunity periods for when development becomes lawful. In this circumstance, the relevant section is 171B(3):
- (3) 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.
- 1.5 In accordance with the legislation, the purpose of this Supporting Statement is to expand upon the information provided, to demonstrate that the outbuilding which is the subject of this application, has been used for a variety of purposes incidental to the use and occupation of Rock House as a Class C3 private dwellinghouse, for a period in excess of ten years before the date of this application. And therefore, its use for this purpose(s) is immune from enforcement action and is lawful.

Supporting information

- 1.6 This Statement should be read in conjunction with the following supporting documents submitted with this application;
- Application form
 - Location plan
 - Block plan
 - Existing floor plans and elevations
 - Statutory Declaration by S Bailey
 - Statutory Declaration by V Carter

2 Site and surroundings

- 2.1 Rock House is located within the historic core of Clitheroe, close to the junction with York Street and Church Street. The main house faces Church Street but the outbuilding is accessed from York Street to the rear. To the south west of the outbuilding lies St Mary's Centre, to the south and east lie residential properties on York Street, to the north is a former Coach House which is now a private dwelling. The outbuilding which is the subject of this application is a two storey stone building. Rock House is a Grade II listed building and it is understood that the outbuilding is considered to be a listed curtilage structure.



Figure 1: Aerial photograph of Rock House curtilage (the white circle marks the outbuilding)

- 2.2 It is assumed that the outbuilding was originally erected as a coach house for Rock House. Rock House does not have vehicular access from Church Street but rear vehicular access is provided to the outbuilding from York Street. The building shows evidence of substantial openings on the ground floor with accommodation above. Historic maps have been consulted and the building is evident on the Ordnance Survey Plan from 1844, so is likely to have been built contemporaneously with Rock House or soon after.



Figure 2: Extract from the 1844 Ordnance Survey Plan. Source: www.oldmapsonline.org

- 2.3 It is unclear whether the outbuilding has previously been occupied as a separate independent dwellinghouse to Rock House. It has previously been described in the property sales particulars as a cottage with garage below. Nevertheless, since acquiring Rock House in [REDACTED] the current owners have used the outbuilding for a variety of domestic purposes incidental to the occupation and enjoyment of the dwellinghouse. Evidence from nearby residents has been obtained to confirm that the outbuilding has been used for over 10 years consistently for Class C3 purposes incidental to the use and enjoyment of Rock House.

Relevant planning history

- 2.4 The following table provides a brief summary of the relevant planning history.

Application no.	Description of development
3/2018/0775	Rebuilding of collapsed garden wall to rear
3/2020/0266	Application for tree works within a Conservation Area
3/2022/0433	Repairs and alterations to convert existing outbuilding to a two bedroom dwelling with new front porch addition.

- 2.5 It is noted that application 3/2018/0775, submitted by the former owners of Rock House, included the outbuilding within the red edge denoting the curtilage. Similarly application 3/2020/0266, submitted by our clients showed the outbuilding within the red edge denoting the curtilage of Rock House.
- 2.6 Application 3/2022/0433 sought Listed Building Consent for renovations to the outbuilding to convert it to a two bedroom dwelling. At the time of the application our clients were under the impression that the outbuilding had previously been used as a dwelling at some point in the past and were unaware that planning permission would be required to reinstate such a use. Therefore the application was submitted for listed building consent only.
- 2.7 It is noteworthy that the case officer's report describes the existing building and associated attached lean-to garage as being 'within the curtilage of Rock House, Clitheroe'. The report also identifies that at the time of the officer's site visit the building was primarily utilised for domestic storage in association with Rock House with the garage also being utilised as such albeit, it had previously been used for parking vehicles.

3 Relevant legislation

3.1 Section 191 of the Town and Country Planning Act 1990 explains that:

(1) If any person wishes to ascertain whether

- a) Any existing use of buildings or 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 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 uses and operations are 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 or breach of condition notice in force.*

(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.*

3.2 In relation to the time for taking enforcement action, Section 171B of the Act specifies that:

1. *Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
2. *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*
3. *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.*

3.3 In accordance with the legislation, this application provides the information required by Part 5 (a) - (d) and demonstrates that the use of the outbuilding at Rock House for domestic purposes incidental to the main dwelling is lawful through the passage of time as it has existed as an uninterrupted use in excess of 10 years.

3.4 The relevant test is the 'balance of probability' and a local planning authority is advised that if it has no evidence to contradict or undermine the applicant's claim, a certificate must be granted, provided that an applicant's evidence is sufficiently precise and unambiguous to justify the grant.

4 Statement of Case

- 4.1 Our clients [REDACTED] Bailey purchased the property known as Rock House on [REDACTED] and occupy it as a single private dwellinghouse.
- 4.2 At the time of purchase, our clients were advised by the previous owners, [REDACTED] that the subject outbuilding had been used for various domestic purposes during their ownership of Rock House. The lower floor had been used for domestic storage and garaging, and the upper floor as a hobbies room and pottery studio.
- 4.3 The sales particulars from Savills, which are submitted as part of this application, indicate that at the time the site was purchased by our clients, the property was marketed as a 5 bedroom Georgian Townhouse with an outbuilding. The outbuilding is clearly shown on the submitted floorplans as a garage and store on the ground floor with two rooms above.
- 4.4 Part of the ground floor of the outbuilding has historically been used for garaging in association with Rock House as there is no off street car parking available on Church Street. Occupiers of Rock House are able to park their vehicles in the garage on the ground floor of the outbuilding, use an internal staircase within the building and exit at first floor level into the rear garden of the property. The relationship between this curtilage building and Rock House is made clear by the presence of the rear door.
- 4.5 The outbuilding has power, light and water and is fitted with a wood burning stove at ground floor level. The upper floor has windows to both front and rear and is well lit and ventilated. Whilst the outbuilding may have formerly been used as a coach house or cottage, during the last 10 years it has been used for incidental purposes in association with the occupation Rock House as a private dwellinghouse.
- 4.6 Our clients have used the outbuilding for a variety of purposes. During the Covid 19 lockdown period, the first floor was used as a home gymnasium and hobbies room. The owners [REDACTED] have also used the upper floor for quiet study space and as a 'den' for 'camping out' and sleepovers. Most recently, the first floor has been used for storage of furniture during renovations to the main house.
- 4.7 The ground floor is currently used for storage of vehicles and bicycles and there is a fridge and freezer in the garage as it is also used by the owners' [REDACTED] as a social space for friends. The photographs in Appendix A demonstrate the current use for domestic storage. Our clients have provided a statutory declaration to explain how the outbuilding has been used by their family since they purchased the property.
- 4.8 As it is a requirement to demonstrate that the outbuilding has been used for domestic purposes for a period in excess of 10 years, a statutory declaration is also provided by [REDACTED] who lives [REDACTED]

- 4.9 [REDACTED] lives in close proximity to the outbuilding; has been well acquainted with the previous residents of Rock House and is well placed to confirm the use of the outbuilding over the required period. The statutory declaration provides the required evidence that the outbuilding has been in continuous use over the last 10 year period for a variety of domestic purposes incidental to and in association with the occupation of Rock House as a private dwellinghouse.

5 Summary and Conclusion

- 5.1 This application seeks a Certificate of Lawfulness for the use of the outbuilding within the curtilage of Rock House for purposes incidental to the occupation and enjoyment of the dwellinghouse.
- 5.2 The submission is precise and unambiguous. Our clients and their neighbour confirm that the outbuilding, as identified on the submitted site plan, has been used for no other purposes during the last 10 years other than that incidental to the occupation and enjoyment of Rock House.
- 5.3 National Planning Practice Guidance (ID: 17c-006- 20140306) indicates that, in the case of applications made to confirm an existing use, if a local planning authority has no evidence itself, nor any from qualifying third parties, 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.
- 5.4 Our client therefore requests that a Certificate of Lawfulness for Existing Use is issued on the terms applied for.

Appendix

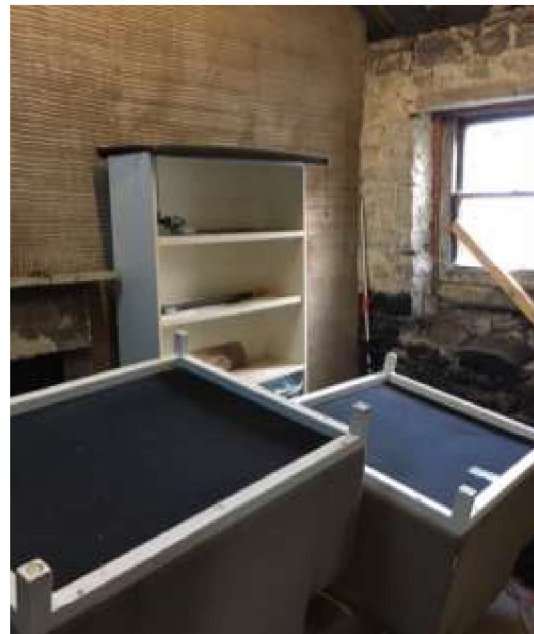
Photographs taken in December 2022

Showing the use of the outbuilding for domestic purposes incidental to the occupation and enjoyment of Rock House.

Ground floor



First Floor





Prepared by

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