

Peter Hitchen Architects

Peter Hitchen Architects Ltd
Marathon House
The Sidings Business Park
Whalley
Lancashire
BB7 9SE
3 June 2024

DESIGN STATEMENT
PROPOSED REGULARISATION OF THE RESIDENTIAL CURTILAGE/ACCESS
AT
BRIGADOON, SACCARY LANE, MELLOR



View of the property from the macadam access track (annex location concealed by the dwelling)

INTRODUCTION

This statement of case is made in support of an application for the grant of a Lawful Development Certificate made in accordance with the provisions of section 190 of The Town and Country Planning Act 1990 as amended. The application is with regard to providing evidence that the full ownership boundary to the plot has been in domestic use for 10 plus years. *This statement forms part of, and must be read in conjunction with plans/photographs, other specific documents and statements from third parties.*



View of the site location for the building looking towards the rear of the dwelling

LOCATION

The house is a traditional former barn conversion which was approved in 2004 and the conversion completed in 2012. The garden area has been claimed from a former agricultural use as the plot included large buildings for the working farm. It is located along a macadam track heading south west off Saccary Lane which serves three other dwellings. The house sits within a large residential plot (to be regularized) with a gravel forecourt and landscaped garden area. The nearest property is located to the western side (Birley Fold Farm) which has been the subject of its own residential alterations over recent years.

The property sits in a designated area of open countryside in the RVBC districtwide local plan document.

1 Background to this Application

- 1.1 In summary the applicant purchased the property in early 2024 on the basis of the title plan included in this application and this submission has arisen following the withdrawal of a planning application (ref – 3/2024/0110) to construct a new garage/gym on land that was sold as, and has always been used as residential curtilage since the conversion of the barn into a dwelling in 2012. This application is submitted acting on advice of the case officer to withdraw the application and initially submit a Lawful Development application providing irrefutable evidence that the red edge which was submitted on the plans amounts to residential curtilage prior to a potential resubmission for the garage/gym building.

2 Current Legislation

- 2.1 The relevant sections of the Town and Country Planning Act 1990 (the Act) are considered to be as set out below. For the purposes of this application, section 190 is the most relevant.

Certificate of lawfulness of existing use or development.

Section 191 Town and Country Planning Act 1990

(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.

[F3(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.

Section 192 Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(3) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use or operations 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 or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.]

3 The Development Plan

- 3.1 In the interests of clarity and transparency, the Development Plan and policies contained therein are not considered relevant nor material considerations in this application. It is the applicant's case that the use of the area for domestic use always formed part of their residential curtilage for more than 10 years as evidenced by the historic photographs which accompany this application.

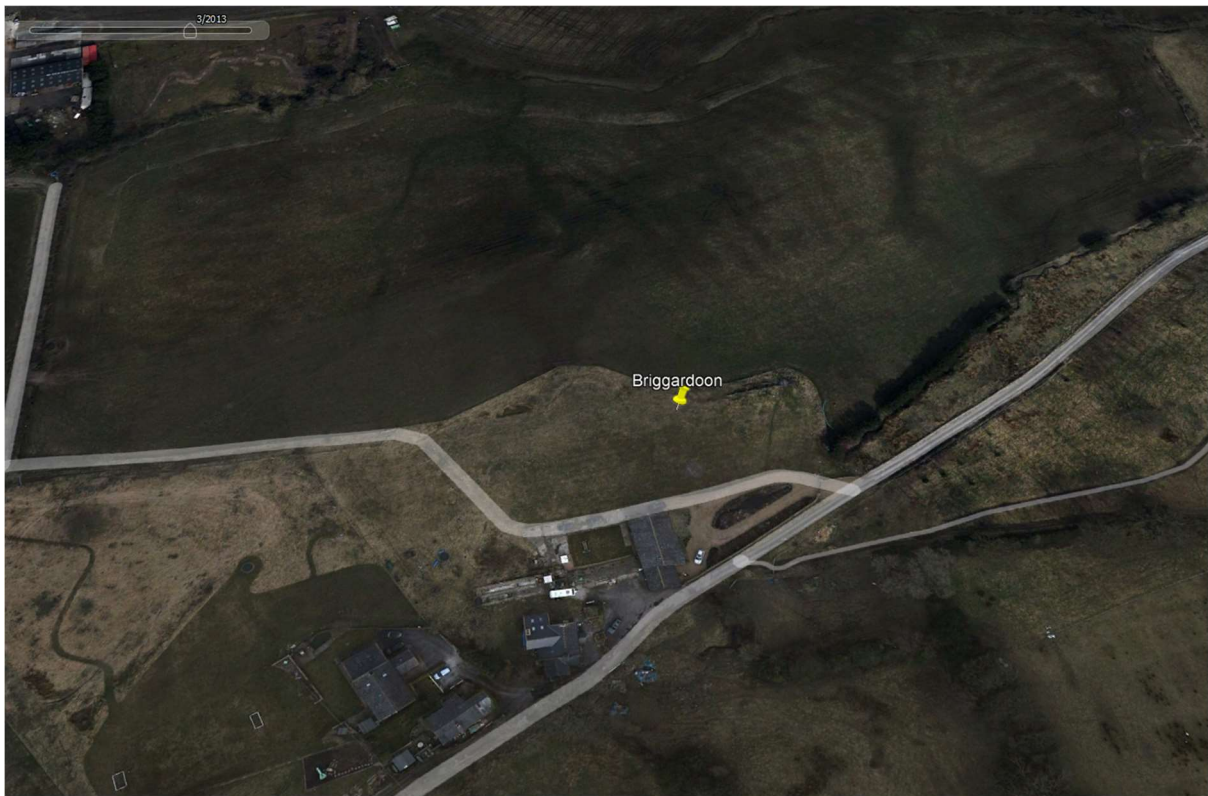
The following is a summary of the detailed evidence as presented by the applicant in the attached document/s.

4 Conclusion

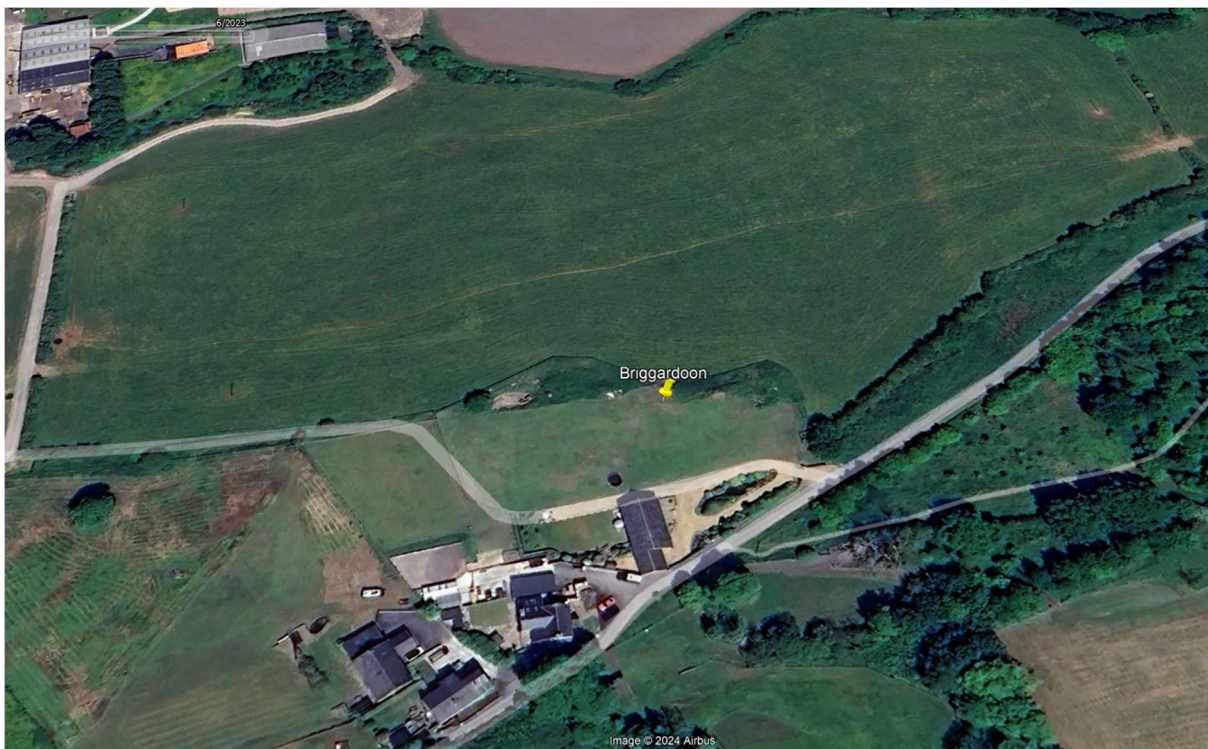
- 4.1 Turing to the issue of whether a continuous 10 year period of domestic garden use can be demonstrated, the Planning Practice Guidance indicates that, if a planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's presented information less than 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.
- 4.2 The applicant's evidence is precise and unambiguous and on the balance of probabilities, it is respectfully requested that a certificate of lawful development is granted.



Aerial view of the farm buildings from 2009 and showing the current site access



Aerial view of the plot in March 2013 following the residential conversion of the barn



Aerial view from June 2023 showing the current situation of the house and garden plot