

The Croft, Eaves Hall Lane, West Bradford, Clitheroe BB7 3JG.

Application for a Certificate of Lawfulness for the construction of outbuildings and use as incidental residential accommodation to a Class C3 (dwellinghouse) and construction of a concrete yard and use as residential curtilage.

Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991. Town and Country Planning (Development Management Procedure) (England) Order 2015.

Planning Statement JDTPL0544 October 2024

Judith Douglas BSc (Hons), Dip TP, MRTPI



8 Southfield Drive, West Bradford, Clitheroe Lancashire,
BB7 4TU

1 INTRODUCTION

- 1.1 This application is submitted under the provision of Section 191 (1) (a) and (b) of the Town and Country Planning act 1990 (as amended) for the purpose of seeking a certificate of lawful use or development for the construction of outbuildings and use as incidental residential accommodation to a Class C3 dwellinghouse and the construction of a concrete yard and its use as residential curtilage.
- 1.2 The application is made on the basis that the outbuildings at The Croft were constructed more than 4 years before the 25th of April 2024 and they have been used continually as incidental residential accommodation to The Croft for more than 10 years. The area of concrete yard at The Croft has been used as residential curtilage for the parking and turning of vehicles and to gain access to the outbuilding from the dwelling for more than 10 years.
- 1.3 The application is made on behalf of Mr and Mrs Richard Hubbard the owners The Croft. The application should be read in conjunction with the following documents:
- Location plan 1:1250
 - Existing Floor Plans and Elevations PHA/937 A2.1 October 2024
 - Existing Site Plan PHA/937 A1.1 October 2024
 - Statutory Declaration by Mr Richard Hubbard Appendix 1
- 1.4 The Town and County Planning Act 1990 Section 191 provides for any person to apply to the local planning authority specifying the land and describing the use, operations or other matter 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.
- 1.5 For the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken against them because the time for enforcement action has expired and no enforcement notice is in place. The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulation 2024 made changes to the enforcement system. The amendments made by section 115 (time limits for enforcement) do not apply where-
- “(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (5) (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred before the day on which that section comes into force.”

- 1.6 A lawful development certificate relates just to a snapshot in time and seeks to determine the lawful use of the land or buildings on the date of the application. The application is decided solely on the basis of the evidence submitted, as a matter of fact and degree, on the balance of probabilities. Planning policy is not relevant. The National Planning Practice Guidance states where the application is for existing use, *“if the local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is not 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”*. Paragraph 006 reference ID:17c-006-20140306

2 SITE AND SURROUNDING AREA

- 2.1 The site comprises a single storey detached bungalow with a garden to the west and to the north, single storey outbuildings to the northeast. To the north east of the bungalow, between the bungalow and the outbuildings is an area of concrete yard. To the east of The Croft is an agricultural field approximately 0.83 h and to the south of the garden is another small area of agricultural land approximately 0.21h, part of which is used as a vegetable plot. Both these pieces of land are in the applicants’ ownership. The field is rented to a local famer.
- 2.2 Vehicle access to The Croft is from Eaves Hall Lane along a short section of joint access with the properties to the north and then along a surfaced driveway which leads directly into the concrete yard. There are gates from the concrete yard into the field and the agricultural land.
- 2.3 The outbuildings are single storey and split into five sections. The two sections at the western end are constructed out of timber with a mineral felt roof, the middle section is finished in timber with a corrugated sheet roof, the fourth section is constructed in blockwork with a corrugated sheet roof and the eastern most section is timber with a corrugated sheet roof.
- 2.4 The outbuildings are used for domestic storage including refuse bins, storage of garden tools and the storage of firewood within the western three sections marked bin store, garden store wood store on the existing floor plan. The easterly two sections of the outbuildings marked storage have occasionally been used for agricultural purposes. There is a plant stand in front of the garden store.
- 2.5 The concrete yard is fenced off from the field and the land to the south.

3 BACKGROUND AND HISTORY

3.1 The planning application history of the site is shown in the table below.

Reference	Proposal	Decision
BO1419	Removal of agricultural occupancy condition (Resubmission)	Approved
BO1442	Farm worker's bungalow and garage (Reserved Matters)	Approved
3/1984/0605	Removal of agricultural occupancy condition No. 4 imposed on the outline planning permission dated 25 th March 1969 and granted by Bowland Rural District Council (Ref. BO1419)	Refused
3/2005/0230	Removal of an agricultural occupancy condition relating to planning permission 3/1984/0605	Withdrawn
3/2005/0815	Removal of agricultural occupancy condition (Resubmission)	Approved
3/2024/0386	Certificate of Lawfulness for proposed demolition of existing outbuildings and construction of single-storey bin store, car port, workshop and maintenance store.	Refused

3.2 Mrs and Mrs Hubbard have owned The Croft and the adjacent land since the 21st of September 2011.

4 EVIDENCE IN SUPPORT OF THE CERTIFICATE.

Evidence for the construction of the outbuildings and concrete yard

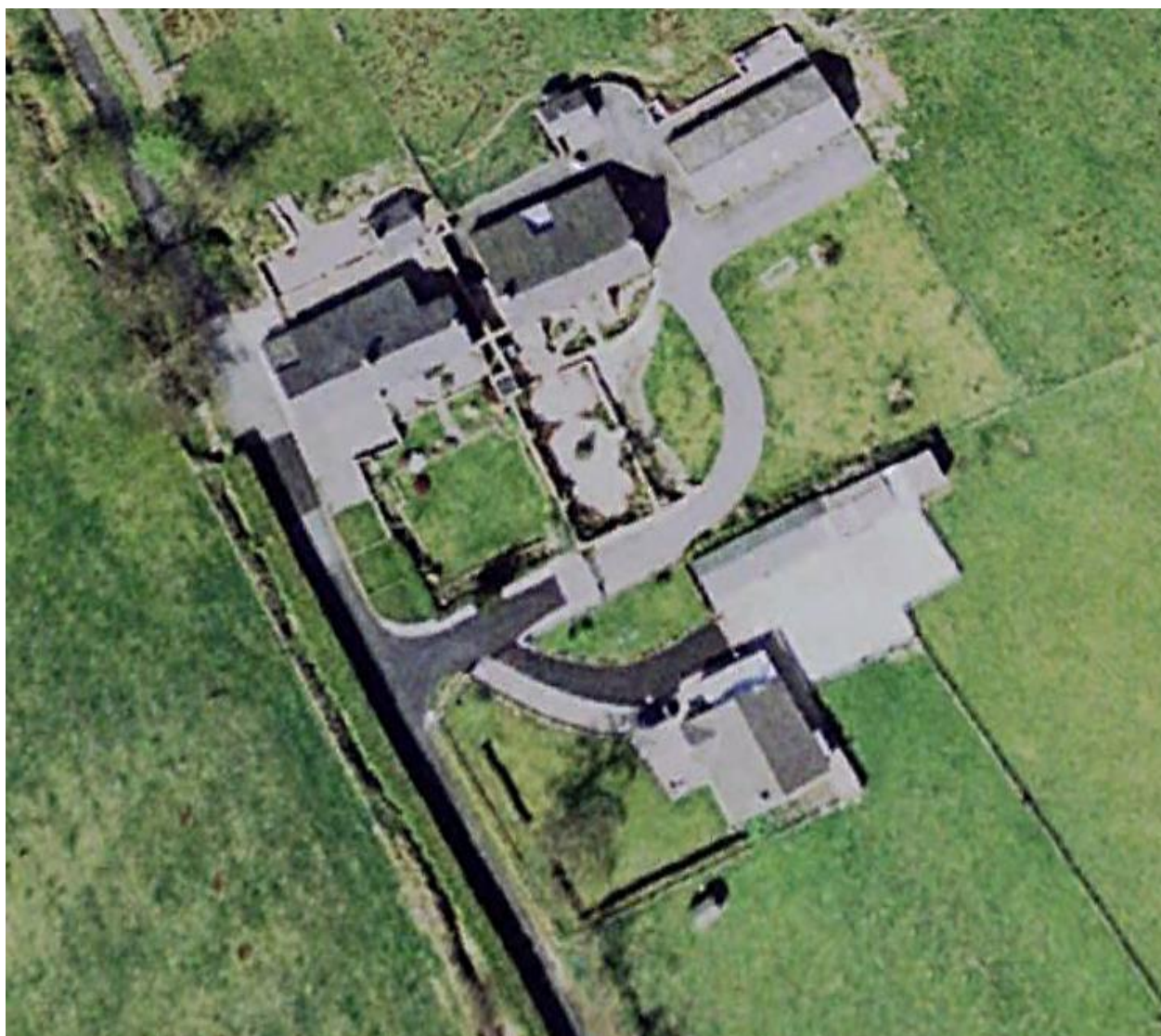
4.1 The Google Earth images below indicate that the outbuildings and concrete yard area have existed on the site since at least January 2003. The Planning Officer in his report to the application 3/2024/0386 *comments "Historic aerial imagery shows the yard area and outbuildings (presumed to be the existing outbuildings on site) as being present on site for a period in excess of 20 years..."*

Evidence for the use of the outbuildings as incidental residential accommodation to a Class C3 dwelling.

4.2 The planning history shows that the bungalow at The Croft was granted planning permission and was constructed and occupied as a dwelling. The applicants bought the property on the 21st of September 2011 and have lived at The Croft since late October/early November 2011. They have used the timber section of the outbuildings for storage of domestic items such as refuse bins, storage boxes, work bench, wheelbarrow, plant propagation trays, plant pots, gardening tools, ladders, continually since 2011 and for the storage chopped firewood

continually since 2013. The two attached outbuildings on the eastern side have not been used as incidental residential accommodation. They have been used occasionally for agricultural purposes. The applicants have provided a statutory declaration to confirm their use of the outbuildings as incidental residential accommodation.

Google Earth Image January 2003





Google Earth image March 2013



Google Earth Image April 2015

Evidence for the use of the outbuildings and concrete yard as part of the curtilage of the dwelling.

- 4.3 The applicants started to use the outbuildings marked bin store and garden store immediately when they moved into the bungalow. They have used the outbuilding marked bin store, which is an unsecured shed, to store refuse bins, a compost bin and other household items. They have used the tool bench left behind by the previous owner for DIY projects and gardening materials e.g. compost and plant pots. It has been used to store garden tables and chairs, to store fencing materials and to store a clothes rotary dryer in winter. The outbuilding marked garden store which is secured shed has been used to store household items including bicycles, patio heater, garden tools and equipment (e.g. strimmer). It was also used to store cardboard moving-in boxes. These outbuildings have been and continue to be used in this way since the applicants moved into The Croft in late October/early November 2011. See appendix 2 Photographs 1 and 2.
- 4.4 The outbuilding marked wood store has been used to store firewood. In August 2013 the applicants used Fisher Forestry to fell an ash tree and have the wood made into logs for fuel. See invoice 2350 dated 02/08/2013 from Fisher Forestry appendix 3. The tree was felled, cut into logs and the logs have been stored in the wood store since that time. See appendix 2 Photograph 3.
- 4.5 The applicants have provided a statutory declaration to confirm their use of the outbuildings as described above over the period since late 2011 to date. The uses described are incidental to the residential use of the Croft. The incidental residential use of the outbuildings marked bin store, garden store and wood store, has continued for a period in excess of 10 years.
- 4.6 The concrete yard has been used by the applicants to gain access from the bungalow to the outbuildings which have been used for incidental residential use as domestic storage and to park and turn vehicles. They have also used the concrete yard closely in connection with the occupation of the bungalow for other domestic activities such as washing cars. See photograph 4. Between 2014 and to date they have created annual plant displays on stands in front of the garden store which provide a colourful display and enjoyment and require regular watering. See photographs 5 to 15. The concrete yard and the outbuildings are easily accessed from the kitchen door of the bungalow by a short path. The concrete yard is the most convenient place at the property to park and turn cars.
- 4.7 The applicants state in the statutory declaration that they park their cars on the concrete yard. In 2011 they had a silver car. In 2012 they acquired a second car with a red roof. These cars were usually parked alongside each other. The silver car was replaced with a white one in

2016. Visitors to The Croft always park their cars in concrete yard area. The google images below show cars parked on the concrete yard on various dates from 2011.



Google Earth April 2015



Google Earth June 2018



Google Earth April 2020



Google Earth July 2021



Google Earth June 2022

- 4.8 The applicants have provided photographs taken in January 2012 and September 2014. Photograph 4, 20th September 2014, shows the silver car parked in the concrete yard and the car with the red roof being washed. Photograph 5, 7th January 2012 shows the silver car parked in the concrete yard and children playing on scooters in the yard. Photograph 6, 9th September 2014 shows the silver car parked in the concrete yard.

5.0 PLANNING ASSESSMENT.

Time Limits

- 5.1 Section 171(B) of the Town and Country Planning Act 1990 states
- (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 ten 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 ten 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.”

- 5.2 The time limits for enforcement were recently amended by the Levelling up and Regeneration Act 2023 bringing the time limit for all enforcement in England up to 10 years. However, there are transitional arrangements as set out in paragraph 1.5 above which states that the relevant period for operational development to become lawful is 4 years if the development was completed 4 years before the 25th of April 2024.
- 5.3 The matter stands to be considered against the 4-year immunity rule as there has been operational development of the construction of outbuildings and concrete yard and the 10-year rule as there has been a change of use of land to residential curtilage and change of use of outbuildings to incidental residential use.

Operational development

- 5.4 The outbuildings and concrete yard the subject of this application at The Croft are clearly visible on aerial images on google earth shown above from 2003. The statutory declaration confirms that the outbuildings and concrete yard existed when the applicant bought the property in September 2011. The outbuildings and the concrete yard have existed for more than four years before the 25th of April 2024 and are now lawful and immune from enforcement by virtue of section 171B (1) of the Town and Country Planning Act 1990.

Lawfulness of use

- 5.5 The statutory declaration confirms that the applicants have used the outbuildings the subject of this application for incidental residential purposes for the storage of household items since they moved into the property in late October/early November 2011 and as a wood store August 2013. The use of these outbuildings for incidental residential purposes has continued for a period of more than 10 years and is now lawful and immune from enforcement by virtue of section 171B (1) of the Town and Country Planning Act 1990.
- 5.6 The aerial images above and the historical photographs 4, 5 and 6 in appendix 2 indicate that the concrete yard has been used for the parking of applicants' cars. The concrete yard is used to gain access to the outbuildings which have been used for incidental residential purposes. It has been used for recreational activities such as growing and displaying plants, and for visiting children to play on. The concrete yard has been used in a useful manner providing an area to park and turn cars belonging to the occupiers of the dwelling and their visitors and to wash cars. The parking of cars is a use which is intimately associated with the use of the

dwelling. It forms part and parcel of the use of the dwelling and the incidental residential use of the outbuilding. The concrete yard and outbuildings are next to the rest of the residential curtilage of the dwelling including the garden, the paths around the dwelling and the drive. The use of the concrete yard for incidental residential purposes as part of the residential curtilage of the dwelling has continued for a period of more than 10 years and is now lawful and immune from enforcement by virtue of section 171B (1) of the Town and Country Planning Act 1990.

Concealment

- 5.7 The applicants have not deliberately concealed the use of the concrete yard and outbuildings in association with their occupation of the dwelling.

6.0 CONCLUSIONS.

- 6.1 We have demonstrated that the outbuildings at The Croft were constructed more than 4 years before the 25th of April 2024 and they have been used continually as incidental residential accommodation to The Croft for a period in excess of 10 years. The area of concrete yard was constructed more 4 years before the 25th of April 2024 has been used as residential curtilage for the parking and turning of vehicles, to gain access to the outbuilding from the dwelling and for incidental residential activities for more than 10 years. These are now lawful and immune from enforcement by virtue of section 171B (1) of the Town and Country Planning Act 1990.

Appendices

Appendix 1 Statutory Declaration by Mr Richard Hubbard

Appendix 2 Photographs

Appendix 3 Fisher Forestry invoice