

## **APPLICATION REPORT – 19/00645/CLEUD**

**Validation Date: 11 July 2019**

**Ward: Chorley South East**

**Type of Application: Certificate of Lawfulness (Existing Use)**

**Proposal: Application for Lawful Development Certificate seeking confirmation that the use of the land for recreational purposes has never been abandoned and that the time for enforcement action in respect of the breach of planning control has expired.**

**Location: Land Adjacent To Wigan Lodge Wigan Lane Chorley Duxbury Chorley PR7 4DB**

**Case Officer: Mr Iain Crossland**

**Applicant: Mr David Balbi**

**Agent: Mr Joshua Hellawell, PWA Planning**

**Consultation expiry: 26 November 2019**

**Decision due by: 5 September 2019**

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### **RECOMMENDATION**

1. It is recommended that a Lawful Development Certificate is granted.

### **DESCRIPTION OF PROPOSED DEVELOPMENT**

2. This application is for a Lawful Development Certificate seeking confirmation that the use of the land adjacent to Wigan Lodge, Wigan Lane, Chorley for recreational purposes has never been abandoned and that the time for enforcement action in respect of the breach of planning control has expired.

### **REPRESENTATIONS**

3. Representations have been received from 12 addresses. These set out the following:
  - I have seen no activity take place on the site for many years.
  - There have never been any outbuildings, charity events, music or rehearsals on the land.
  - The land has not been used for any purpose.
  - No organised social gatherings have taken place on the land.
  - The land in question was never used for amenity / recreational / gardening / allotment / leisure use.
  - The photographs of the social gathering are not on the land in question.
  - There was never any access to the land.
  - The current owner has removed lots of landscaping.
  - The current owner has made the site appear untidy.
  - The current owner is planning to put buildings on the land.

## PLANNING CONSIDERATIONS

4. The Town and Country Planning Act (TCPA) 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 granted is lawful if the time for enforcement action in respect of the breach of planning control has expired.
5. Section 191(4) states that if the local planning authority is provided with information satisfying it of lawfulness of such a breach the Authority must issue a certificate to that effect. The relevant section of TCPA 1990 in relation to the relevant immunity periods for when development becomes lawful is Section 171B. 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.*
6. The applicant is required to prove that on the balance of probabilities, the land shown on the location plan (within the red edge) has been used for recreational purposes for over ten years prior to the date of submission of this application (i.e. 5<sup>th</sup> July 2019). The onus is on the applicant to demonstrate this.
7. The application is accompanied by
  - A completed application form
  - Location plan
  - Supporting information statement
  - Historic photographs of the site
8. From the information that has been submitted, and the information available to the Council, the following can be established:
9. Wigan Lodge is a grade II listed building, which is associated with Duxbury Park and has been in use as a dwelling since its construction in the early 19<sup>th</sup> century.
10. Planning permission was sought for the 'Extension and erection of detached garage' at Wigan Lodge in 1987 (ref.87/00835/FUL). The information submitted with the application identified the extent to the land ownership associated with the lodge, which included the land subject to the current application.
11. Mr David Kent and Mrs Elsie Kent owned and resided at Wigan Lodge for a period of time up until its sale in 1994.
12. The land identified within the red edge drawn on the location plan that is the subject of this application was previously within the grounds of Wigan Lodge, which was in use as a dwellinghouse and remains a dwellinghouse.
13. When the dwelling was sold in 1994 Mr and Mrs Kent retained the ownership of the land subject to the current application. This marked the point at which the land became severed from the remaining land associated with the dwellinghouse.
14. Mr and Mrs Kent moved to nearby Rawlinson Lane.
15. In the signed declaration Mrs Kent states that the land was retained on the basis that they would continue to use it for their own enjoyment and recreational purposes.
16. Mrs Kent states that the land continued to be used for exercising the dog, watching golf, barbeques and private parties, as examples.
17. Their use of the land diminished as they grew older and their mobility was affected.
18. The land was sold to the current owner Mr Balbi in November 2018.

19. No planning permission has ever been sought for alternative uses of the land.
20. It is established that the application site was historically available for private recreational use in association with Wigan Lodge until the land was separated from the dwelling as part of a sale in March 1994. At that point it is reasonable and logical to conclude that Mr and Mrs Kent retained the ownership of the land with the intention of continuing to use it for their own private recreation and enjoyment in the same way in which they had previously used it for recreation, whilst living at Wigan Lodge. This is supported as no planning permission was ever sought for any other use or development.
21. It is the applicant's assertion that the lawful use of the site has been as freestanding recreational space since the point at which the ownership was severed from that of Wigan Lodge. The key issue to consider, therefore, is whether the land can still be considered freestanding private recreational space or whether this use has been abandoned.
22. The Courts have made clear that the concept of abandonment has a narrow application to planning law (*Pioneer Aggregates Ltd v SoS Environment* [1985] AC 132).
23. In the cases of *Castell y Mynach Estate v SoSW* (1986 JPL 40) and *Hughes v SoSETR* (2000 EWCA Civ 506) it was outlined that the following must be considered in order to confirm abandonment:
1. Condition of the site;
  2. Interim changes of use;
  3. Duration of non-use; and
  4. Intention of the owners must be considered in light of all the above.
24. Each of these considerations are addressed in turn below:

*Condition of the site*

25. It is noted that the site had become overgrown prior to its clearance by the current incumbent, Mr Balbi. Aerial photographs suggest that the site has always been landscaped in a semi natural state, although it seems reasonable to accept that the land became more overgrown as Mr and Mrs Kent grew older and spent less time on the land. In this case it is reasonable to accept that the condition of the land would vary throughout time and would not necessarily indicate any ceasing of its use.

*Interim changes of use*

26. No such uses have been established and no planning permission has ever been sought for alternative uses.

*Duration of non-use*

27. The duration of any non-use is not considered to be significant enough as to warrant abandonment in isolation. This point must be considered in the context of case law, which includes examples of land and buildings that have not been used in many years not being considered to have been abandoned.

*Intention of the owners*

28. There would not appear to have been any intention from the current or previous owners to abandon the use or change it. The land was clearly retained by Mr and Mrs Kent for a reason and the case that they retained it for their own private recreational purposes is a reasonable one, given that they continued to live close by. In addition, no planning permission was ever sought by them, which may otherwise signify some other motive for retaining the land. There is no reason to doubt therefore that Mr and Mrs Kent continued to use the land for their own recreational purposes with no intention to do otherwise. It is accepted that this use may have declined over time with age, and which ultimately resulted in the sale of the land to Mr Balbi.

## CONCLUSION

29. It is considered that on the balance of probabilities, and in the absence of any conclusive evidence to the contrary the land shown on the location plan (within the red edge) ref.19013-03 Rev.A received on 21<sup>st</sup> October 2019 has been used for recreational purposes for a period of over ten years prior to the date of submission of this application (i.e. 11th 2019).
30. It is, therefore, recommended that the Certificate is granted.

## RELEVANT HISTORY OF THE SITE

**Ref:** 19/00375/FUL      **Decision:** PDE      **Decision Date:** Pending  
**Description:** Construction of a new entrance onto Wigan Lane and blocking up of existing access point.

**Ref:** 19/00868/TPO      **Decision:** PDE      **Decision Date:** Pending  
**Description:** Application for works to protected trees - Chorley BC TPO 5 (Chorley) 2008 - Crown lift trees to 5.5m over highway and fell two sycamore trees in centre of site.