



Lawful Development Certificate.

**Strafford House, Gilroyd Lane, Barnsley, S75 3EG**

Suite A

The Old Workhouse

The Chestnut

Cross Houses

Shrewsbury

Shropshire

SY5 6JH

## 1.0 Introduction.

- 1.1 This is a resubmission of an application for a Lawful Development Certificate for the existing use of land as domestic curtilage at this site referred to as Strafford House, Gilroyd Lane, Barnsley, S75 3EG. A previous application (2011/0567) was refused by the council for the following reason; *'The applicant has failed to provide sufficient evidence to show that the land in question has been used continuously as domestic curtilage for 10 years or more'*.
- 1.2 Strafford House is a detached stone built house lying to the west of Gilroyd Lane, Dodworth. It is bounded on three sides. by land which is both formally cultivated as flower and vegetable garden and by land which has been lightly managed as a less formal garden for the cultivation of fruit trees, ornamental trees, and the siting of an apiary. A 'fire pit' has been long established for barbecuing, benches and a swing seat have also been part of the garden for the enjoyment of family and friends. Over the years a numerous pieces of play equipment have been erected in the garden for children's use but have now been removed.

## 2.0 Relevant considerations.

- 2.1 The officers report prepared when determining the refused application is most relevant, especially the comments made by the Legal Officer. The officer commented, *'there is sufficiently clear and unambiguous evidence to grant a certificate for residential use for the small area around the house and the house itself but insufficiently clear and unambiguous evidence that the area of land obtained in 1976 has been used for a period of 10 years for residential purposes.'* This is the crux of the matter.
- 2.2 The Act places the onus of proof upon the applicant. If the council cannot prove a case otherwise on the balance of probability, a Certificate has to be issued. It is not a matter of subjective opinion; it is a matter of fact.
- 2.3 The Legal officer further commented; *'..the remainder of the land appears as an agricultural field and appears separate from the remainder of the property, with the stone wall and fencing marking a distinct boundary.'* Reference is made to aerial photographs from 2002 and 2009. They continue; *'A search of the aerial photographs the Council holds from 2002 do not appear to show domestic use of the land. These maps clearly show the land as a field with no evidence of any items that may be expected in a garden such as flower beds, outbuildings, children's play equipment, and seating. The land appears to have been mown; however this in itself does not prove that the land has been used for domestic purposes. The 2009 photo shows some tree planting; however as with the mowing of the grass, this does not prove that the land has been used for domestic purposes.'* (my emphasis).
- 2.4 I note the use of the word '*appear(s)*' in the Officers comments and it is clear the only evidence the council rely on in this case are the two aerial photographs. They do not refer to any first- hand knowledge of the site. It is significant that the council did not produce evidence other than the aerial photographs, which are open to interpretation, and only indicate a split second in time during 2002 and 2009. From an inspection of the photographs it is impossible to 'prove beyond reasonable doubt' that the 'field' has or has not been used for domestic purposes for 10 or more years. The absence of '*flower beds, outbuildings,*

*children's play equipment, and seating' identified by the officer, proves nothing. Is it the council's position that all gardens must have this domestic paraphernalia to be a garden? This is clearly a flawed argument as there is no requirement under the Act for a garden to contain domestic items. In fact the Act avoids any definition of garden and relies on the OED and the use of the term in common parlance. A wholly relevant case appears from 2008 which is directly relevant to this case and I attach a very brief summary below. (Source; Daily Mail).*

*'But yesterday the two High Court judges overturned Mr Rockall's conviction from two years ago and called on the Oxford English Dictionary definition of an English country garden to be changed so that wild and uncultivated land can be regarded in law as a garden. Lord Justice Moses said: 'The Oxford English Dictionary states that a garden is an enclosed piece of ground devoted to the cultivation of flowers, fruit or vegetables.*

*'That definition is clearly now too narrow, as the current fashion for wild gardens and meadow areas amply demonstrates.*

*'The reality is that no description will categorically establish whether a piece of land is a garden or not. It is incumbent on the fact finder to determine its use.*

*'It is important to look at the relationship between the owner and the land, and the history and character of the land and space.'*

*The judge added: 'It has been contended that the garden was so disused that it had ceased to be a garden - I have some doubts about that.*

*'Did it cease to be a garden because the owner went abroad and the occupier had neither the means nor the intention to keep it well maintained? There will be many of us that inherit land and are unable to maintain it in the way our forefathers kept it, through insufficient time or money.*

*'The fact that the previous owner didn't have the need or desire for the land as a gardener and that the owner went abroad didn't mean that the garden ceased to be one.'*

- 2.5 The previous submission included a Planning Statement, much of which is reproduced below to illustrate the history and use of the land.
- 2.6 Strafford House was purchased by the present owners Mr and Dr Eldred in November 1976 along with the front, and rear gardens as outlined in red on the attached plan, The land adjacent to the house, of approximately 1.65 acres, outlined in red on the enclosed outline drawing, was held under a tenancy which was a continuation of an original agreement made on January 15th 1929 by Strafford Collieries Ltd which permitted the use of the land for the enjoyment of the owners of Strafford House. It also confirmed a right of drainage of sewage from Strafford House into a sump in the middle of the land. This drainage continues to this day. Fencing between the formal garden and the land to the north and west of the house was removed by the owners in the late 1970's in order to incorporate the land and formal

garden into one. The tenancy continued until the land was purchased from the executors of the Estate by the present owners on December 6<sup>th</sup> 2002.

- 2.7 In 1976 at the time of the purchase of Strafford House the children of the house were aged 2 and 4 years. The opportunity to use the land as a garden for their safe enjoyment and the enjoyment of their friends was the prime consideration for the tenancy being continued and for the subsequent purchase of the land in 2002.
- 2.8 In the late 1970's a portion of the land which was being used to grow fruit and vegetables was fenced off with rabbit wire in order to protect the fruit and vegetables from attack. This area remains in a fenced state. This rabbit fencing was not intended to, nor has ever demarked the garden. The sole reason for this fence was crop protection in this portion of the garden.
- 2.9 The remaining unfenced area of the garden has been and continues to be used for the cultivation of apples, pears, plums, cherries, sweet chestnuts and hazel nuts with additional ornamental trees. An area to the north of the garden has deliberately been left uncut to encourage butterflies, bumble bees, moths and other insects and to provide wild bird habitat and food.
- 2.10 An apiary has been located in the garden for honey production and fruit pollination for over ten years. Honey production is a serious hobby for the owners. Mr Eldred is a member of the British Beekeepers Association and a member of the Barnsley branch.
- 2.11 An area of the garden is left in its natural state in order to preserve a local example of 'ridge and furrow' cultivation, which dates back to the *late* 17th C. The owners have avoided any landscaping or cultivation that would damage this important historical feature.
- 2.12 Because the owners have chosen not to cultivate this area a broad spectrum of wild flowers has been preserved and encouraged to regenerate. Best practice is followed by cutting this wild flower area once a year when the flowers and grasses have seeded.
- 2.13 A large area of closely mown grass continues to be used for the playing of ball games, picnicking and other leisure activities, both by the family, friends and church groups.
- 2.14 Annual charity fundraising events are held along with firework displays and bonfire parties.
- 2.15 A fire pit and barbecue with accompanying wood store has been a feature of the garden and has been used extensively for the last fifteen to twenty years.

3.0 **Revised Submission.**

3.1 When determining the previous application, the Council's Legal Officer concluded, *'The evidence submitted is therefore too imprecise and insufficient and in the absence of specific information a certificate of Lawful Use cannot be granted.'*

3.2 We include robust Statutory Declarations as part of this application which prove the land has been used for a garden, for a period well in excess of 10 years.

3.3 Attached are Statutory Declarations from:

Barry R Eldred DL .

Rebecca Cottey MSc, PGCE, BSc.

Dr James Eldred.

Peter Goodman.

Alan Saxby.

Andrew Wilkinson.