

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF
LAWFUL DEVELOPMENT**

Reference no.: 2018/CL/92594/W

Site: 20, Wellhouse Lane, Kirkheaton, Huddersfield,
HD5 0RB

Description: Certificate of lawfulness for proposed outbuilding

Case Officer: Teresa Harlow

Decision Reference: PROPOSED OPERATIONS GRANT

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date 24-Sep-2018

**APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR A
PROPOSED DEVELOPMENT**

No: 2018/92594

APPLICANT: G.AHMED

**RE: HYACINTH FARM 20 WELL HOUSE LANE KIRKHEATON
HUDDERSFIELD HD5 0RB WEST YORKSHIRE**

1. Application

- 1.1 The application is for a lawful development certificate ("CLOPUD") in respect of land at Hyacinth Farm 20 Wellhouse Lane Kirkheaton Huddersfield HD5 0RB ("the Application"). It is dated 7th August 2018 and was validated by the Council on the 8th August 2018.
- 1.2 The eight week period for determination consequently expires on 3rd October 2018.
- 1.2 The Application was submitted by an agent on behalf of the applicant. The site is shown edged red on the plan annexed to the Application ("the Application Site") on the planning drawing number A820 04 dated 6.8.18 showing the red line boundary encompassing a single residential property buildings and land to the north-east, south and east of the single residential property ("Application Site")

With the application the planning drawing no. A820 04 indicated:

- 1.3 A) the red line boundary encompassing a single residential property with buildings and land to the north-east south and east of the single residential property
- 1.4 B) floor plan and elevations of a detached building subject of the Application
- 1.5 C) 1:500 site plan indicating this building to be a "leisure building"
- 1.6 D) Application form stating at section 4 the application is for "proposed operations" for formation of ancillary structure within curtilage of Class C3 dwellinghouse
- 1.7 The Application was submitted on the basis that the proposed building benefitted from a general planning permission granted by virtue of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). Further information

is provided in Section 5 of the application form regarding the 'grounds for application'.

2. Lawful Uses

S 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) S192 (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. The Relevant Test

- 3.1 The burden of proof lies firmly with the Applicant and the relevant test for whether the use can be deemed lawful is the “balance of probability”.
- 3.1 The applicant’s evidence does not need to be corroborated by “independent” evidence. If the local planning authority has no evidence of its own, or from others, 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.
- 3.2 It is important that the application is precise and unambiguous, Government guidance in National Planning Practice Guidance states :-
“Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not” (Reference ID: 17c-002-20140306)

“An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a

local planning authority may be justified in refusing a certificate”
(Reference ID: 17c-005-20140306)

4. Previous Use of the Site/Background

4.1 Relevant planning history related to the Application includes:

Planning permission 2002/91353 granted in 2002 for the erection of extension and alterations to the existing farmhouse and erection of detached stables/agricultural store. This constitutes the host dwelling for the purpose of the Application.

Important to note is:

1. That permitted development rights for extensions or outbuildings were not removed as part of this planning permission.

Planning Permission 2017/94075 for erection of “replacement building”
granted March 2018

Important to note is:

1. The red line constituting the domestic curtilage of Hyacinth Farm was assessed by the officer (see report dated 5 March 2018) is the same as the Application Site red line. This was assessed in March 2018 as constituting domestic curtilage
1. The dimensions of the building subject to this application are 15mx8mx4.5m
2. Other extensions/additions/delineation on the Application Site have occurred over the years. Recent photographs were taken for the purposes of the previously submission for a Lawful Development Certificate (ref 2018/91450) show a clear separation between a domesticated area and agricultural pasture land. This constitutes domestic gate posts, stones walls, contrasting with and separating domesticated areas from grazing land. From their appearance the walls and fences could be permitted development under Schedule 2, Part 2 Class A of the GPDO.

3. Application

The Application is for formation of ancillary structure within curtilage of Class C3 dwellinghouse.

Important to note:

1. the previous building described as “chicken shed” had dimensions of 20mx 8mx 4.5m
1. the Application building dimensions are 18m x 8m x 4m in height.

the Application building is described as a “leisure building” on the Application but on the plan indicates a covered yard, gym, garden store and pet area, health and well-being area. This is explained on the application in more detail as:

“We consider that the proposed development would be compliant with Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 for three principle reasons -

1. The proposed development site is located within an area of land agreed by the Local Planning Authority under the Delegated Decision Report to Planning Permission 2017/94075 (for erection of “replacement building”) as being residential curtilage to the host property

2. The materials, design and external dimensions of the proposed structure and its relationship to boundaries are compliant with the Conditions of Class E and

3. The proposed uses of the building (for a. the Health and Well-being of the occupiers of the host dwelling and their invited guests, b. a covered yard for the storage of machinery and equipment associated with the up-keep of the curtilage and c. Gym, garden store and pet area) are clearly uses incidental to the enjoyment of the dwelling house as defined within Para E.4 of Class E and, inter alia, the use groups identified within the explanatory to Class E found within page 39 of the DCLG publication “Permitted development for householders Technical Guidance”.

5. Evidence submitted in support of the Application

None other than that detailed in paragraph 1 above

6. Evidence submitted against the Application

No evidence has been submitted against the Application.

7. Evidence Obtained from Council Records and other Sources

7.1. I have inspected archived files held by Planning Services relating to the Application Site. In particular I have seen aerial photographs taken in 2002 2006 2009 2012. I have accessed and noted the documents on the council's website re: 2017/94075 2017/93853 and 2018/91450; I have accessed and noted the council's records in relation to application 2002/91353

7.1. I have taken photographs of the site on 22nd May 2018;

7.2. I have read the information submitted with the Application

8 Site Visit

I have made a site visit in May 2018 and took photographs in connection with the previous application for Lawful Development Certificate. No development had commenced on the Application site but extensive walling works and “domestication” was underway at the time of my visit, including the type of alterations and materials in the nature of and associated with a domestic curtilage

9. Assessment of the Evidence and application of case law

9.1 This matter relates to the whether the proposed development constituting a building of 18m x8m x4m in the location shown on the Application Site for the intended use of health and well being, and gym, garden store and pet area, and covered yard; alternatively, “leisure building” would be lawfully permitted as incidental to the use and enjoyment of the domestic host dwelling by virtue of Class E part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)]

9.2 The first consideration is identification of the correct domestic curtilage. Curtilage is determined as a planning judgment on a fact and degree basis, in accordance with established case law relating to the linkage in terms of ownership, function and physical relationship with the host dwelling. Applying that principle to the following facts therefore:

9.3 Planning permission 2017/94075 granted permission for the erection of a replacement building. In the officer’s report dated 5 March 2018 there is a clear explanation of the expansion and domestication of the land surrounding the original dwelling since 2001 as evidenced clearly in the aerial photographs. Permitted development rights were removed for 2017/94075 and the curtilage of the host dwelling was considered to be the red line boundary associated with 2017/94075.

9.4 I have no reason to disagree with the assessment made by the case officer in that case of the extent of the curtilage under 2017/94075. The photographic evidence identified above, in particular the aerial photographs 2006, also reinforces that there is clear and positive separation of the land to be seen and used as domestic, and the land which is not in domestic use by way of the existence of the domestic “chicken shed” and field immediately beyond.

9.5 The officer report dated 5 March identified a distinct domestic curtilage as shown on 2017/94075. The very clear delineation of the domestic part of the land to the surrounding larger agricultural land consisting of grazing fields is very clear to see both from aerial photographs and the current photographs taken by the planning officer.

9.6 On the balance of probabilities it is accepted the land upon which the building is proposed to be sited is domestic curtilage.

9.7 The limitations stated within Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) may apply. Development is not permitted by Class E if:-

- (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);

Comment – Not applicable

- (b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Comment - No

- (c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

Comment - No

- (d) the building would have more than a single storey;

Comment -No

- (e) the height of the building, enclosure or container would exceed—

- (i) 4 metres in the case of a building with a dual-pitched roof,
- (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
- (iii) 3 metres in any other case;

Comment – The proposed building is not within 2 metres of the boundary of the curtilage and would not exceed 4 metres in height.

- (f) the height of the eaves of the building would exceed 2.5 metres;

Comment – the height to the eaves measures 2.5 metres.

- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;

Comment - No

- (h) it would include the construction or provision of a verandah, balcony or raised platform;

Comment - No

- (i) it relates to a dwelling or a microwave antenna; or

Comment - No

- (j) the capacity of the container would exceed 3,500 litres.

Comment -No

10. Conclusion

10.1 On the basis of the analysis above I consider that the Application does benefit from purposes incidental to the enjoyment of the dwelling house under Class E part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

11. Recommendation.

Consequently I recommend that the application is approved for the following reason: the Applicant has provided sufficiently precise and unambiguous evidence to justify the grant of a certificate on the balance of probability.

Recommendation –

The proposed building as shown on submitted plan ref: A820/04 benefits from a general planning permission under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015(as amended).

Plans and specification schedule:-

Plan Type	Reference	Version	Date Received
Location/Elevation and Block Plan	A820/04		08/08/2018
Application Form	-	-	08/08/2018
Aerial Photographs	-	-	Held by Local Planning Authority
Officer Report	2017/94075		Held by Local Planning Authority

Dated 21/08/2018