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.: 2019/CL/92901/W

Site: 1, Acre House Avenue, Lindley, Huddersfield, HD3 3BB

Description: Certificate of lawfulness for proposed use of domestic garage for internet pharmacy services

Case Officer**:** Laura Yeadon

Decision Reference: PROPOSED USE 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 30-Oct-2019

Officer Report

Site Description

1 Acre House Avenue is a large detached property located on the corner of Acre House Avenue and Occupation Road. The dwelling is faced with render and has a tiled roof. The dwelling itself has a hipped roof with a single storey extension on the rear elevation and a detached garage within the south-west corner of the site. To the front of and side of the dwelling is a large area of hardstanding which could accommodate a number of vehicles. Also to the front and the side facing Occupation Road are garden areas. The wider site is comprised of mainly residential properties to the north, east and west and beyond the southern boundary is Huddersfield Royal Infirmary. To the southern boundary of the site is also an area which is protected by a Tree Preservation Area which is not within the ownership of the property.

Description of Proposal

This application is for a Lawful Development Certificate for the proposed use of the domestic garage for internet pharmacy services. The submitted details state that the business would be for internet pharmacy with no proposed alterations to the property. The house would remain as the main residence with no customers attending the property where products would be packed and dispatched during the hours of 8am and 4pm. It is anticipated that the pharmacy would dispatch deliveries on one or two occasions a day with delivery vehicles being no larger than a transit van.

History of negotiations/amendments received

No negotiations have taken place and no amended plans have been sought or submitted.

Relevant Planning History

1994/90173 Erection of extension and detached garage
Conditional Full Permission

Representations

No publicity was required and no site notice was required to be erected however 9 letters of representation have been received, 8 no. objections and 1 no. in response to comments made. The following is a summary of issues raised:

Objections

- Does the hours of use include weekends?
- Residential area and would cause disturbance from regular comings and goings
- Application states 11 cars could be parked which is not achievable

- Stop start deliveries and more air pollution is not acceptable
- Safety aspect of the garage and risk of theft due to controlled medicines being stored there and no mention of any safety/security measures
- Limited parking available due to double yellow lines on Occupation Road and being a permit parking on Acre House Avenue
- Patients can attend both the residential property and the internet pharmacy for advanced and enhanced services
- Planning notice has been removed and should be replaced
- Increased traffic impacting on highway safety and risk of accidents especially as the drive opens onto the bend of the avenue
- Other businesses operating from properties within Acre House Avenue which is a residential avenue
- Change of use is completely unsuitable in this area

In response:

- Driveway is the first one after the junction after the bend and not on it
- No increased risk by a few extra deliveries a day
- No visitors to the property and therefore no requirement for off-road parking as would be distance selling and only deliveries to patients
- Garage will be secured to required standards and inspected to satisfy criteria
- Hours of operation would be Monday to Friday 8am to 4pm
- Dispatching deliveries would be on one to two occasions a day
- Will not be carrying out any medication reviews or any other advanced/enhanced services where visitors would attend
- No physical alterations to the external buildings to identify a pharmacy

Assessment

As the application is for a Lawful Development Certificate for a proposed use or development, the planning merits of the scheme do not fall to be considered. The purpose of the application is to determine whether planning permission would be required. The only factors to be taken into account are:

1. Whether the proposed development would constitute development within the meaning of Section 55(2)(a)(ii) of the Town and Country Planning Act.

The main consideration for the form of application is to determine whether the proposed use would constitute development under Section 55 of the Town and Country Planning Act 1990 (as amended).

Section 55 (1) provides that the material change of use of land or building constitutes the carrying out of development. The courts have accepted that any ancillary operations different to the “primary” use of a building can be protected through their link to the primary use. However, the strength of relationship of an ancillary use to the primary use is a matter of fact and

degree and is only protected where the ancillary link is maintained and can be regarded as being “ordinarily incidental”. Analysis of such matters may be based upon the change in the character of the building and to what degree the new use affects the character.

In this case there are no proposed alterations to the external appearance of the building which will remain in appearance as a residential property for the applicant. It is proposed that the garage only would be used to operate the business and the house will continue to be the main residence. It is not considered that this form of business would result in noise or smell and the proposed hours of operation would not be cause undue harm to neighbouring properties at unreasonable hours. As there would be sufficient parking provision within the site with one to two despatches of deliveries a day with the delivery vehicles restricted to being no larger than a transit van and it is not considered that this would result in excessive vehicles movements beyond what could normally be expected from a typical dwellinghouse.

As such it is therefore considered the use of the detached garage to the dwellinghouse to operate an internet business would not be result in a material change of use of the property and is not considered to be development as outlined in Section 55 of the Town and Country Planning Act 1990.

On balance it is considered the use to store pharmaceutical products for delivery only operated by a member of the residential family would be reasonably ancillary to the primary use as a dwellinghouse.

Decision Authorisation - Delegated Powers

Application Number: 2019/92901

Officer Recommendation: Approve

Conditions and Reasons

The use of the garage to operate an internet pharmacy would not result in a material change of use of the property and is not considered to be development as defined in Section 55 of the Town and Country Planning Act 1990. The primary use of the building will remain as a dwellinghouse with ancillary internet pharmacy.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan			5th September 2019

The internet pharmacy will operate from the detached garage.
No customers will attend the property.
Operating hours will be Monday to Friday 8:00am to 4:00pm Monday to Friday

Report Dated: 30th October 2019