

**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.: 2020/CL/94209/E

Site: 18, Bower Lane, Dewsbury Moor, Dewsbury,
WF13 4PW

Description: Certificate of lawfulness for existing change of use
of garage to dwelling

Case Officer: Callum Harrison

Decision Reference: EXISTING 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 04-Mar-2021

Officer Report

2020/94209 - 18 Bower Lane, Dewsbury Moor, Dewsbury, WF13 4PW

Proposal

Certificate of lawfulness of existing change of use of garage to dwelling.

Site Description

The application relates to a garage to the rear of no.18 Bower Lane which currently accommodates residential tenants independent to the occupier of no.18 Bower Lane. The outbuilding is constructed with artificial stone which matches no.18. The outbuilding appears residential due to the provision of numerous windows, a tv aerial, the high quality of construction and the associated amenity space to the side, along with omission of a garage door.

The applicant claims that the site concerned has an existing use of a separate C3 dwellinghouse with no association to no.18. It is contended by virtue of the building being used for the purposes listed above uninterruptedly for 10 years, beginning from the date of this application that it can lawfully be used as a dwelling. The application form states varying times when the use began, ranging from 1980 to 1998 – all of these however exceed 4 years.

Lawful Use Certificate

Section 191(1) (a) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority. Section 191(2) of the Act provides that uses are lawful if: a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason); b) They did not constitute the contravention of any of the requirements of any enforcement notice then in force. For the purposes of the Act a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force. Section 191(2) (b) states that the inability to take enforcement action may come about because the use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired which is the case in this instance.

The Relevant Test

The burden of proof lies firmly with the Applicant and the relevant test for whether the operations can be deemed lawful is the “balance of probability”. The Applicant’s evidence does not need to be corroborated by “independent” evidence. If the Local Planning Authority has no evidence of their 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.

Limitations

A Lawful Development Certificate must contain precise details of what use or operations are found to be lawful, why and when. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a "material" change of use takes place, a Local Planning Authority may then consider further development has taken place.

Planning History

None.

Evidence Submitted in Support of the Application

In support of the application, the Applicant has provided the following documents:-

- Historical rent sheets
- Grouped plans and elevations of the site
- Internal photos of the building

Evidence Submitted Against the Application

None.

Evidence Obtained from Council Records and Other Sources

- Aerial photographs
- The Council's GIS Address Gazetteer
- Council tax records

Site Visit

Due to the Council's working protocols through a national lockdown, a site visit was not undertaken. Nevertheless, the evidence submitted by the applicant and information gathered elsewhere is sufficient to determine the claim.

Assessment of Evidence

The Applicant contends that the building in question has been used a dwelling independent to no.18 Bower Lane since at least 1998 (as per the application form).

The applicant has submitted rent sheets in support of this claim which cover rent amount paid each month between 1994 and 2000. The rent sheets also contain a letter from a well-established chartered accountant that they worked for the owner of the property to producing the annual accounts for the rental of the building as a residential property. This document also included a list of tenants. It is important to note that on the 1996/97 rent sheet the building is described as a bungalow. Officers believe that these documents are genuine and demonstrate that the building has been used for residential purposes for many years greatly in excess of the necessary 4 years for this Lawful Development Certificate to be granted.

Despite the record of rent sheets, this does not automatically mean the building became an independent dwelling given that rent was being paid. Rent can be paid as household contribution from family members living at the address. However, given that seven different tenants are mentioned of the rent records and the formality of the records themselves, particularly post 2000, it is clear this rent was not being paid by occupants that were related to, or dependant of the owner/occupier of no.18. Therefore it is considered likely that the building was being used as an independent dwelling as opposed an annex.

To further corroborate the evidence submitted by the applicant, the property is registered as a detached dwelling on the Council's GIS address gazetteer. Officers cannot find any evidence contrary to the Applicants claims. Whilst the date the use materially changed is not clear due to the discrepancies in the application form, the fact all of the dates mention refer to dates in excess of 20 years ago, the precise date does not materially matter. As Officers have no evidence of their own to contradict or otherwise make the Applicant's version of events less than probable and that Applicant's evidence alone is sufficiently precise, notably the rent sheets as opposed to the application form, on the balance of probability the building in question is considered to of been for an independent dwelling in excess for in excess of 4 years.

Council tax records also indicate that between May 2004 and May 2008 the building was used as an independent dwelling. Records suggest this use continued until February 2012 but then council tax records end. This provides independent evidence that the use was established for the necessary 4 years. However, it is important to ensure that since 2012, the use has not desisted. The photos submitted by the applicant show that the building is still capable to be used as an independent dwelling with domestic decoration and the provision of utility meters. On the basis of not having any evidence to the contrary, Officers determine that the use has not been abandoned.

In light of the evidence above, Officers are satisfied the current lawful use of the application building is within use C3 dwellinghouse as defined in the Town and Country Planning (Use Classes) Order 1987. As such, it can be lawfully used as a dwellinghouse.

Conclusion

The evidence available before Officers suggests that the application site had, addressed as no.20 Bower Lane but within the historical curtilage of no.18 Bower Lane has been used as a C3 dwellinghouse for in excess of the 4 years necessary and the use has not been abandoned. This has been confirmed by rent sheet records, site photographs and tax records. Officers could not find any evidence contrary to the Applicants claim.

For the reasons outlined above and having regard to all currently available evidence, it is recommended that a Certificate of Lawfulness should be granted.

Recommendation – Approval of Certificate of Lawfulness

Decision Authorisation - Delegated Powers**Application Number:** 2020/94209**Officer Recommendation:** Approve Lawful Development Certificate**Reason of Approval**

Based on the documentation submitted by the Applicant with evidence held by the Council and on the balance of probability it is demonstrated that the application site, the outbuilding at 18 Bower Lane, otherwise addressed as 20 Bower Lane, has a lawful use as a single dwellinghouse within Class C3 as defined by the Use Classes Order 1987.

Plans and document schedule:-

Plan Type	Reference	Version	Date Received
Application Form			18/12/2020
Grouped Plans and Elevations			18/12/2020
Rent Sheets			26/01/2021
Site Photographs			16/02/2021