

**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.: 2021/CL/91443/E

Site: Primrose Farm, Crossley Lane, Mirfield, WF14
ONR

Description: Certificate of lawfulness for proposed extension to
industrial building

Case Officer: Ian Lunn

Decision Reference: PROPOSED OPERATIONS REFUSE

**I hereby authorise the refusal 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 01-Dec-2021

Officer Report

Site Description

Primrose Farm is located approximately 310 metres south east of the junction of Crossley Lane and Lockwood Avenue on land identified as Green Belt in the Development Plan. The building, the subject of this application, is a substantial single storey predominantly steel clad structure located on the north western edge of the site. It is described on the application form as being in industrial use but is apparently currently being used as a training centre for teaching people life skills.

Description of Proposal

It is proposed to add an extension to the side (north western) end of the building and to use this for industrial purposes. The applicant considers that this can be erected as 'permitted development' (i.e. without the need to formally apply for planning permission) and has therefore submitted this application seeking a Lawful Development Certificate to confirm this.

History of negotiations/amendments received

The agent has supplied further information about the way the building is currently being used.

Relevant Planning History

96/92655 – Change of use of barn for business purposes and car parking area – Approved 24/01/97 for temporary period of one year expiring on 23/01/98. Condition 2 limited the use of the business to offices with ancillary storage and condition 5 required it to be used in connection with Primrose Barn (which was in residential use).

98/93378 - Change of use of barn for business purposes and car parking area – Approved 19/01/99. Permanent permission granted. Conditions 2 and 5 re-imposed.

2005/90962 – Removal of Condition 5 of planning permission 98/93378 – Refused 29/04/05 on highway safety and Green Belt policy grounds. Appeal allowed 08/12/05. This allowed the business to operate independently from Primrose Barn.

Representations

None. It is not necessary to advertise applications of this nature.

Consultation Responses

Mirfield Town Council:- No observations received.

Policy

Town and Country Planning Act 1990

Town and Country Planning (Use Classes) Order 1987 (as amended)

Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

Assessment

This application seeks a Lawful Development Certificate to add an industrial extension to this building. The applicant does not provide any supporting evidence or statement to clarify why they believe the extension to the existing building would be lawful other than to state it is an existing industrial building and has permitted development rights.

However and contrary to the applicants statement, the host building has only had formal approval allowing it to be used as offices (now identified as Class E(g) of the Town and Country Planning (Use Classes) Order 1987 (as amended). Furthermore, information supplied by the agent indicates that the premises are not currently used for this purpose either but rather for training purposes for teaching people life skills, a use which is different again falling within the definition of Class F1(a) of the same Order. On this basis an industrial extension could not be deemed ancillary either to the authorised planning use of the premises, which may in any case have now been 'abandoned' if they have subsequently been used for educational purposes, or to its existing use for training purposes. On this basis it is unclear how long the training use has been operating for and may in itself be an unauthorised use. However, notwithstanding this, there is no evidence to demonstrate the lawful use of the existing building is industrial as defined by the Use Classes Order 1987.

Putting this aside the extension would not meet all of the other criteria that it would need to meet to constitute 'permitted development' as an industrial extension under Class H, Part 7 of the GPDO. In coming to this view consideration has been given to the fact that when planning permission was granted allowing the building to be used as offices the application site was much more 'tightly' defined than currently shown. The red line boundaries for all previous planning applications affecting the building extend only to the building and the existing car parking area which is physically separated from the wider grassland by boundary fencing. While the former barn was once part of a wider farm (Primrose Farm) operation, this has apparently been abandoned and the former barn re-purposed via the applications for office use. Consequently, both functionally and physically the use of the building is restricted to the building and surrounding ancillary car parking area. This is considered to be both the "planning unit" defining the extent of the use and also curtilage by reason of the car parks association with the building.

Having regard to this the extension would be sited within 5 metres of the curtilage of the premises contrary to paragraph (e) , Class F, Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 20125 (as amended). Additionally, it would take up land that is currently used for the parking and turning of vehicles contrary to paragraph (f) of the same Order.

For the record, even if the building was still in use as offices, or used for industrial purposes falling within part (iii) of class E(g) of the Use Classes Order, the extension would still not meet all of the criteria it would need to meet to constitute 'permitted development' as an 'office' extension under Class A, Part 7 of the GPDO. This is because it would be within 2 metres of the curtilage boundary and the gross floor area of the original building would exceed 100 square metres contrary to paragraphs (a) and (c) of Class A, Part 7.

Likewise, the extension would still require formal approval if the host building had planning permission to be used for its current educational use failing on the same position criteria used to determine whether planning permission would be required for an extension to a school. (see Class M, Part 7 of the GPDO).

For the record it is currently possible to change the use of premises from offices to a state funded school under the terms of Class T, Part 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). However, to do so it is first necessary to formally apply to the Local Planning Authority for a determination as to whether prior approval would be required to use them for this purpose. There is no record of any such application having been made to the Council in this case. In view of this, and in the absence of any other evidence to demonstrate that the existing use is lawful, it must be concluded that the current training centre use is likely to be unauthorised in planning terms. Consequently and for completeness, Article 3(5)(b) of the GPDO removes any permission granted under the Order for any development if in the case of permission granted in connection with an existing use, that use is unlawful.

Conclusion

This application seeks a Lawful Development Certificate for the addition of an industrial extension to a building that was not currently used for industrial purposes and time of the application and that does not currently appear to have planning permission to be used for the existing either. In these circumstances the use of the proposed extension for industrial purposes could not be deemed ancillary to the existing use of the host building. Article 3(5)(b) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). removes any permission granted under the Order for any development if in the case of permission granted in connection with an existing use, that use is unlawful.

In any event the extension would also fail to fully meet the criteria for such industrial extensions as set out within Class H, Part 7 of Schedule Two of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). This is because of its proposed position in relation to the currently recognised boundary of the curtilage and because it would take up land that is currently used for the parking and turning of vehicles. The extension would constitute 'development' as defined by Section 55 of the Town and Country Planning Act 1990. Under the provisions of Section 57 of the same Act and in the absence of any planning permission the proposed development would not be lawful for the purposes of planning control.

Recommendation: Refuse

Decision Authorisation - Delegated Powers**Application Number:** 2021/91443**Officer Recommendation:** Refuse**Reason for refusal:**

This application seeks a Lawful Development Certificate for the addition of an industrial extension to a building that was not currently used for industrial purposes and time of the application and that does not currently appear to have planning permission to be used for the existing either. In these circumstances the use of the proposed extension for industrial purposes could not be deemed ancillary to the existing use of the host building. Article 3(5)(b) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). removes any permission granted under the Order for any development if in the case of permission granted in connection with an existing use, that use is unlawful.

In any event the extension would also fail to fully meet the criteria for such industrial extensions as set out within Class H, Part 7 of Schedule Two of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). This is because of its proposed position in relation to the currently recognised boundary of the curtilage and because it would take up land that is currently used for the parking and turning of vehicles. The extension would constitute 'development' as defined by Section 55 of the Town and Country Planning Act 1990. Under the provisions of Section 57 of the same Act and in the absence of any planning permission the proposed development would not be lawful for the purposes of planning control.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Existing Site Layout Plan and Elevations	19D08-FBA-ZZ-XX-DR-A-0201	P01	09/04/21
Location Plan, Proposed Site Layout Plan and Elevations	19D08-FBA-ZZ-XX-DR-A-0701	P02	09/04/21

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant and agent in dealing with the application. However, on the basis of the available information it is considered that the proposal will constitute development, as defined by Section 55 of the Town and Country Planning Act 1990, and will require formal planning permission.

Report Dated:

30/11/21

