

**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/91818/E

Site: Primrose Farm, Crossley Lane, Mirfield, WF14
0NR

Description: Certificate of lawfulness for proposed alterations to
stables to create dwelling forming annex accommodation associated with
Primrose Farm, Crossley Lane, Mirfield, WF14 0NR

Case Officer: Jennifer Booth

Decision Reference: PROPOSED OPERATIONS/USE 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 29-Jun-2021

**APPLICATION FOR CERTIFICATE OF LAWFUL USE/OPERATIONS
(Proposed)**

APPLICANT: A Shaw

SITE: Primrose Farm, Crossley Lane, Mirfield, WF14 0NR

APPLICATION: 2021/91818

1. Application

- 1.1 The applicant seeks the agreement of the Local Planning Authority that the conversion of the stable block within the grounds of Primrose Farm as an annex with an open living room & kitchen, shower room and bedroom does not constitute a material change of use and would therefore result in a lawful use.

2. Lawful Use Certificates

- 2.1 Section 192(1) (a) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any proposed use of buildings or other land is lawful to make an application to the Local Planning Authority.
- 2.1 Section 192(2) of the Act provides that uses are lawful if the Local Planning Authority is 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.

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 have 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

4. Limitations

- 4.1 A LDC must contain precise details of what use, operations, or failure to comply with a condition 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 take enforcement action against the subsequent breach of planning control.

5. Relevant Information

- 5.1 The application relates to an “L” shaped stable block, located 26m to the south of the main house, Primrose Farm. The building is single storey – there are no exact details regarding the materials of construction. The details within the stable application cited only horizontal timber boarding for the walls and onduline roofing materials. The images available do show timber cladding and what appears to be a tiled roof.
- 5.2 The building is located near the complex which includes Primrose Farm and Primrose Barn with a large office building to the north and open fields surrounding.

6. Evidence submitted in support of the Application

- 6.1 The agent has submitted a completed application form, a site location plan, an existing floor plan and a proposed floor plan showing the accommodation proposed and elevations detailing the changes to the openings.
- 6.2 A copy of the 2008 decision notice for the stables which included a condition to ensure the stables were used in an ancillary fashion to the residential occupation of Primrose Farm and not for commercial livery purposes.

7. Evidence submitted against the Application

- 7.1 None

8. Site Visit

None

9. Assessment of the Evidence

The main considerations in the determination of this application are whether the proposed development would constitute development as defined in section 55 of the Town and Country Planning Act 1990. “Development” is defined in this section as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. “Building operations” includes, for the purpose this Act, demolition of buildings, rebuilding, structure alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.

Section 55(2)(d) provides an exemption to the definition of development where a use involves “the use of any building or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.”

The question for the Local Planning Authority to consider in this case is whether or not the use of the stable block as a residential annex would be lawful with a secondary question whether or not the works to create openings in the buildings are development and benefit from any planning permission.

Use.

It is appreciated that the approval for the stables did include a condition to tie the use of the stables to the residents of Primrose Farm. The condition was imposed in the interest of highway safety so as to not intensify the access. The applicants suggest the building can only be used by a relative of the dwellinghouse by reason of this condition and as such use for residential accommodation is cannot be development. However the thrust of the condition was that the building was not to be used for commercial livery purposes and to avoid any impact on highway safety by reason of a subsequent material change of use. The only assistance the condition provides in this instance is the principle of a change of use of the building leading to a material impact and thus the question whether a change to residential accommodation in the same way leads to a material change. If it does then development as defined by section 55 will occur which then requires planning permission.

If the use of the stables as an annex is to be considered ancillary or incidental to the enjoyment of the existing dwellinghouse one would expect a significant meaningful relationship between the dwellinghouse and the stable building. This would also need to be sufficiently significant to the degree the occupants of the dwellinghouse in some way benefit from the use of the stable or have functional, practical and physical inter dependable links to the main dwelling via shared use or mutual benefit. If it does then it may be said that the main dwellinghouse and the stable block form one unit of occupation within which the interlinked activities operate i.e. the Planning Unit. Under these circumstances and as the building is proposed for primary living accommodation the use is not by any means incidental to the dwellinghouse and the exemption from development under section 55(2)(d) does not apply. Notwithstanding this, it could be accepted that the use of the annex is ancillary to the main dwellinghouse if those close links can be demonstrated.

On the other hand, if a functionally and physical separate unit of occupation can be identified which could operate independently to the main dwellinghouse, the unit of occupation would be divided which may in turn lead to a material change¹.

¹ *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240, 244

In this case and judging from proposed floor plans there is little doubt via the proposed floor plan that the stable will be capable of providing amenities essential for day to day living accommodation such as cooking, sleeping, washing, heating and toilet facilities and is therefore providing facilities required for day-to-day existence and capable of independent living accommodation. On this basis it is considered the proposed use for the stable block is a dwellinghouse². Furthermore, the stables are situated in a position some 26m from the main house with a driveway separating this from the main house and garden area. The stable would essentially form a single independent unit of occupation that does not have any functional or dependable link to the main house other than as accommodation by relatives to the dwellinghouse as stated in the applicants description.

While it is noted the stable is likely to be served by existing services to Primrose Farm, this in itself does not provide a sufficient means dependency for the stable as payment arrangements could be put in place.

Independency may arise from arrangements whereby the stable has a physical separation from the existing dwellinghouse and that no parts of the dwellinghouse are required for the stable use, for example access via the existing dwelling or indivisible use of shared areas. In this respect the stable is to be sited 26m from the corner of Primrose Farm and accessible from Crossley Lane by the existing driveway. The future occupiers would be able to utilise access to the courtyard of the stable which may form garden with no practicable need to share amenity space which is located beyond the double garage. Furthermore, there is a physical separation between the stable and the main house with the position of the stable behind the garage in its own forecourt. Both the stable and existing dwellinghouse could independently exist both functionally and physically.

While it is accepted that the occupation of a building by a family member could still be regarded as a family annex³, the applicant simply refers to occupation by a relative. Under these circumstances it is entirely possible and probable given the facilities provided for the relative occupying the converted stable block to lead an independent life without any reliance on the main dwellinghouse. It is considered the applicant has not provided sufficient evidence to demonstrate the occupation by a relative is in any way interlinked with the main dwellinghouse.

Consequently, it is considered the conversion of the stable block would result in the creation of an independent dwellinghouse forming a planning unit in its own right and not an annex as proposed by the applicant.

Given the reasons for imposing the condition relating to the use of the stable block there was clearly some concern that the intensification of the access would lead to an impact upon highway safety. In the same vein one can expect an independent dwellinghouse would also increase the use of the

² *Gravesham BC v Secretary of State for the Environment & O'Brian* [1982] P&CR 142

³ *Uttlesford DC v Secretary of State for the Environment and White* [1992] JPL 171

access which in turn adds to the material change the new dwellinghouse creates.

All matters considered the applicants have failed to demonstrate the use of the stable as annex accommodation associated with Primrose Farm is ancillary to the dwellinghouse as such and therefore a material change of use will occur. Consequently, as permission has not been granted for the conversion to a dwellinghouse, planning permission would be required from the Local Planning Authority.

Operations

The proposed conversion includes the creation of new openings in the building to bring light into the rooms to be converted to residential accommodation.

Ordinarily Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) provides a permitted development right to make alterations to a curtilage building required for a purpose incidental to the enjoyment of the dwellinghouse. However, it is well established that the use of a building for primary living accommodation is not an incidental use. As concluded above, the purpose of the building is not considered incidental to the dwellinghouse and new dwellinghouse is being created. As such Class E permitted development rights do not apply in this instance by reason of Class E(1)(i).

As no other permitted development right can be relied upon and as no other planning permission has been granted for the openings, this development also cannot be said to be lawful.

10. Recommendation.

Based on the information provided it is considered on the balance of probability that the use of the stable as annex accommodation associated with Primrose Farm is not ancillary to the enjoyment of the dwellinghouse. This is by reason of the lack of functional and physical dependency the stable would have on the existing dwellinghouse to sustain its existence. The stable could operate as an independent dwellinghouse and cannot therefore be considered subservient to the dwellinghouse or be ancillary to the enjoyment of the dwellinghouse. It would therefore amount to a separate dwelling and constitute a material change of use defined in section 55(1) of the Town and Country Planning Act 1990. Moreover, the works to create new openings in the building cannot benefit from any 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) as the building is not required for a purpose incidental to the enjoyment of the dwellinghouse and would be contrary to Class E(1)(i).

Recommendation – Refuse Certificate

Decision Authorisation - Delegated Powers

Application Number: 2021/91818

Officer Recommendation: Refuse Certificate

Based on the information provided it is considered on the balance of probability that the use of the stable as annex accommodation associated with Primrose Farm is not ancillary to the enjoyment of the dwellinghouse. This is by reason of the lack of functional and physical dependency the stable would have on the existing dwellinghouse to sustain its existence. The stable could operate as an independent dwellinghouse and cannot therefore be considered subservient to the dwellinghouse or be ancillary to the enjoyment of the dwellinghouse. It would therefore amount to a separate dwelling and constitute a material change of use defined in section 55(1) of the Town and Country Planning Act 1990. Moreover, the works to create new openings in the building cannot benefit from any 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) as the building is not required for a purpose incidental to the enjoyment of the dwellinghouse and would be contrary to Class E(1)(i).

Plans and specifications: -

Plan Type	Reference	Web ID	Date Received
Application form	-	870810	05/05/2021
Location Plan	-	870813	05/05/2021
Existing plans	-	870814	05/05/2021
Proposed plans	-	870815	05/05/2021
2008 decision notice	-	870816	05/05/2021

Report Dated 28/06/2021