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.: 2022/CL/91083/E

Site: 23, The Burrows, Birstall, Batley, WF17 8BE

Description: Certificate of lawfulness for proposed single storey rear extension and exterior alterations

Case Officer**:** Hubert Lam

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 20-Jul-2022

Officer Report

2022/91083 – 23 The Burrows, Batley, WF17 8BE

Proposal

Certificate of Lawfulness for proposed erection of single-storey rear extension and external alterations.

Site Description

The application site 23 The Burrows is within the residential area of Batley, characterised by detached dwellings of various built forms and external appearance and finishes including brickwork for external walls and roof tiles for roofing, accessed to its front (south).

The site is within a Coal Advice Low Risk Area, and not within any other relevant designated areas according to the Kirklees Local Plan.

Lawful Development Certificate

Section 192 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 and operations 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 purpose of the Act an operation or use is lawful at any time if no enforcement action may then be taken against the operation or use, and the operation or use does not contravene the requirement of any enforcement notice then in force.

Section 191 (2) (b) states that the inability to take enforcement action may come about because the operation or use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired.

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 LDC 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.

Relevant Information

Section 55 (1) of the Act provides:-
“Subject to the following provisions of this section, in this Act except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in use of any buildings or other land.”

Planning History

The relevant planning history of the site is as follows:

Reference: 90/00109
Description: Erection of 50 no dwellings and garages
Status: REFUSED

Reference: 90/03104
Description: ERECTION OF 50 DWELLINGS AND GARAGES
Status: NON DETERMINATION SUBJECT TO APPEAL

Reference: 91/02490
Description: USE OF LAND AS EQUESTRIAN CENTRE
Status: REFUSED

Evidence in Support of the Application

A completed application form, a site location plan, layout plans, elevations, and work specifications were submitted by the applicant/agent in support of the application.

Aerial images dated 2022 and Streetview dated October 2012 were employed in conjunction with the Council's records and photos to further understand the site in terms of its layout and orientation with relation to the wider context and character of the streetscape and neighbourhood.

Amended plans to the proposal bearing ref: [AW/01 Rev A] dated 05 July 2022 were received, the proposed rear extension element would remain unchanged, while amendments were made to the proposed external alterations including the proposed replacement of the existing front garage door with a proposed front window.

The amended proposal would not materially diverge from the initial proposal to the extent to be accurately described by the initial description of the proposal, and could therefore be assessed and determined under the same process.

Evidence Against the Application

None received.

Appraisal

Based on the submitted information and plans, together with the aerial and streetview images obtained, the proposed erection of the single-storey rear extension would be adjoining the main house on its existing rear (northeast) elevation and projecting into its rear garden within its residential curtilage boundary.

As such, the proposed erection of a single-storey rear extension and external alterations fall to be considered a building operation as prescribed in Section 55 (1) of the Town and Country Planning Act 1990, for which planning permission is required; however, certain development within the curtilage of a dwellinghouse can be permitted under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The Council's record indicates that the application property does have all of its permitted development rights intact.

The proposed erection of a single-storey rear extension and external alterations would therefore fall to be considered under Schedule 2 Part 1 Class A (enlargement, improvement, or other alteration of a dwellinghouse), in which Class A.3 Conditions are of relevance.

Permitted development

A. The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted
A.1 Development is not permitted by Class A if—

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

***Comment**: The dwellinghouse concerned has not been granted permission to use as a dwellinghouse by virtue of any of the listed classes as set out by Schedule 2 Part 3 of the GPDO.*

(b)as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

***Comment**: The existing area of the ground of the residential curtilage is approximately 150m^2, the proposed erection of the single-storey rear extension would cover a ground area of approximately 31m^2; as such, the proposal would not result in works exceeding 50% of the ground area of the curtilage covered.*

(c)the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

***Comment**: The proposed single-storey rear extension would be clearly and significantly set below the height of the existing two-storey main dwellinghouse.*

(d)the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

***Comment**: The proposed eaves height of the single-storey rear extension would be clearly and significantly set below the eaves height of the existing two-storey main dwellinghouse.*

(e)the enlarged part of the dwellinghouse would extend beyond a wall which—
(i)forms the principal elevation of the original dwellinghouse; or
(ii)fronts a highway and forms a side elevation of the original dwellinghouse;

***Comment**: The proposed single-storey rear extension would project from the existing rear (northeast) elevation of the original existing two-storey main detached dwellinghouse, and not extend beyond a wall forming the principal (southwest) elevation or any side elevations of the dwellinghouse. The external alterations to replace the garage door with a window does not enlarge the dwelling.*

(f)subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—

(i)extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

(ii)exceed 4 metres in height;

***Comment**: The proposed single-storey rear extension would project from the existing rear elevation of the original detached dwellinghouse by 4.0m at its furthest point externally and have a height of 3.73m. The external alterations to replace the garage door with a window does not enlarge the dwelling.*

(g)...for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—

(i)extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or

(ii)exceed 4 metres in height;

***Comment**: The proposed single-storey rear extension would project from the existing rear (northeast) elevation of the original detached dwellinghouse by 4.0m at its furthest point externally and have a height of 3.73m at the roof ridge with a lean-to mono-pitched roof layout. The external alterations to replace the garage door with a window does not enlarge the dwelling.*

(h)the enlarged part of the dwellinghouse would have more than a single storey and—

(i)extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or

[(ii)be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse;]

***Comment**: The proposed single-storey rear extension would clearly have no more than a single storey. The external alterations to replace the garage door with a window does not enlarge the dwelling.*

(i)the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

***Comment**: The proposed single-storey rear extension would project from the existing rear (northeast) elevation of the original detached dwellinghouse by 4.0m at its furthest point externally with a lean-to mono-pitched roof layout at a height of 3.73m at the ridge and 2.2m at the eaves, and would be situated 1.0m away from the nearest curtilage boundary to its side (southeast). The external alterations to replace the garage door with a window does not enlarge the dwelling.*

(j)the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i)exceed 4 metres in height,

(ii)have more than a single storey, or

(iii)have a width greater than half the width of the original dwellinghouse;...

***Comment**: The proposed single-storey extension would project from the existing rear (northeast) elevation of the original dwellinghouse and would not involve any side extension elements. The external alterations to replace the garage door with a window does not enlarge the dwelling.*

[(ja)any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);]

***Comment**: The proposed single-storey rear extension would not exceed the limits as set out in sub-paragraphs (e) to (j).*

(k)it would consist of or include—

(i)the construction or provision of a verandah, balcony or raised platform,

(ii)the installation, alteration or replacement of a microwave antenna,

(iii)the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(iv)an alteration to any part of the roof of the dwellinghouse [; or]

***Comment**: The proposed single-storey rear extension would not include the construction, installation, alteration, or replacement of any of the above as set out in sub-paragraph (k).*

[(l)the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).]

***Comment**: The dwellinghouse was not built under Part 20 of this Schedule.*

A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if—

(a)it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;

(b)the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or

(c)the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse;

[(d)any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).]

***Comment**: The application site and the dwellinghouse contained within are not situated on article 2(3) land; therefore, Schedule 2 Part 1 Class A.2 does not apply.*

Conditions

A.3 Development is permitted by Class A subject to the following conditions—

(a)the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

Comment*: Based on the submitted plans and information, the proposed materials for exterior work would be blockwork for external wall construction and roof tiles to match that of the existing main dwellinghouse.*

(b)any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be—

(i)obscure-glazed, and

(ii)non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and

[F81(c)where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.]

Comment*: The proposed single-storey rear extension would only consist the ground floor level; the proposed external alterations would include the replacement of the existing front garage door with a proposed inset window not projecting further than the existing front principal elevation.*

[(c)where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.]

Comment*: The proposed single-storey rear extension would only consist the ground floor level.*

A.4—(1) The following conditions apply to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g).

Comment*: The proposed single-storey rear extension would not exceed the limits in paragraph A.1(f) and could be considered as such.*

Conclusion

On the basis of the information submitted and available, and the observations gathered through the aerial and streetview imagery, the Case Officer was in the opinion that the proposed erection of a single-storey rear extension in the rear garden and external alterations including the proposed replacement of the front garage door with a front inset window would in its elements and in aggregate fall within the Permitted Development

Rights in which the dwellinghouse benefits from, as described in the relevant sections of the GPDO.

Decision notice text:

The proposed erection of a single-storey rear extension and external alterations as shown on the plans listed below benefit from a general planning permission granted by virtue of Article 3(1) and Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) subject to conditions stated in paragraph A.3 of the same Order.

Schedule of Plans and Specifications

Plan Type	Reference	Version	Date Received
Application Form	-	-	29 Mar 2022
Existing & Proposed Plans & Elevations	AW/01	Rev A	05 July 2022

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 in dealing with the application. No further amendments were sought as it was considered that the proposal was acceptable as submitted.

Date of Report: 21 February 2022