

**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/92105/E

Site: 28, Crown Close, Chickenley, Dewsbury, WF12  
8RG

Description: Certificate of lawfulness for proposed outbuilding

Case Officer: Craig Hewitt

**Decision Reference: PROPOSED OPERATIONS REFUSED**

**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 15-Sep-2022**

## **Officer Report**

### **Site Description**

28 Crown Close is a semi-detached, two-storey dwellinghouse in Dewsbury, located at the end of the cul-de-sac. It is finished in brick, with a gable roof finished in red clay tiles. The property has an existing detached outbuilding. Hardstanding exists at the front, with a lawned garden to the rear. The applicant property is located in a residential area. The neighbouring properties largely consist of two storey semi-detached houses.

### **Description of development**

Permission is sought for a Certificate of Lawfulness for the proposed erection of an outbuilding that would measure 15m width \* 5m depth \* max 2.5m height, with a mono-pitched roof. There would also be doors in window openings in the east-facing elevation of the proposed outbuilding. The applicant has initially confirmed that the building would be used as a commercial office.

### **History of negotiations/amendments received**

No amendments were sought or received during consideration of the application.

### **Relevant Planning History**

None applicable.

### **Consultation response**

This is an application for a Lawful Development Certificate and for this reason no consultations are necessary.

### **Issues and Assessments**

Applications for Certificates of Lawful Developments for the erection of buildings within the curtilage of dwellings are assessed against the general permission conferred by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Schedule 2, Part 1, Class E of the Order sets out the Permitted Development Rights which relates to the 'buildings etc. incidental to the enjoyment of a dwellinghouse'.

Under Class E, the following limits and conditions apply:

**Development not permitted:**

E.1 Development is not permitted by Class E 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 has not been granted as a dwellinghouse by the above.

(b) The total area of ground covered by buildings, enclosures and containers within the curtilage (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 erection of the proposed outbuilding will not result in over 50% of the total area of curtilage being covered by buildings.

(c) Any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

**Comment:** No part of outbuilding would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

(d) The building would have more than a single storey;

**Comment:** The proposed outbuilding would be single storey in height.

(e) The height of the building, enclosure or container would exceed –

(i) 4 metres in the case of a building with a dual-pitched roof,

(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or

(iii) 3 metres in any other case;

**Comment:** The proposed outbuilding would be within 2 metres of the boundary of the curtilage of the dwellinghouse, although the maximum height of the mono-pitched roof would be 2.5m.

(f) The height of the eaves of the building would exceed 2.5 metres;

**Comment:** The eaves height of the eaves would be 2.5 metres.

(g) The building, enclosure, pool or container would be situated within the curtilage of a listed building;

**Comment:** The application site does not include a Listed Building.

(h) It would include the construction or provision of a verandah, balcony or raised platform;

**Comment:** None of the above are proposed.

(i) It relates to a dwelling or microwave antenna;

**Comment:** The works do not relate to a dwelling or microwave antenna.

(j) The capacity of the container would exceed 3.500 litres.

**Comment:** Not applicable.

(k) The dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

**Comment:** This dwellinghouse was not built under Part 20 of this schedule.

### **Conditions**

E.2 in the case of any land within the curtilage of the dwellinghouse which is within –

- a) A World Heritage Site,
- b) A National Park,
- c) An area of outstanding natural beauty or
- d) The Broads,

Development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

**Comment:** No land within the curtilage of the dwellinghouse is within any of the designations listed above.

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

**Comment:** No land within the curtilage of the dwellinghouse is categorised under article 2(3) land.

### **Interpretation of Class E**

E.4 For the purposes of Class E, “Purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

**Comment:** The proposed outbuilding is to be used by the occupants for purposes that are not considered to be incidental to the enjoyment of the dwellinghouse as such. The proposed office would have a floor space of 4.4m

\* 6.7m, and to which the applicant has confirmed that the office would be used for commercial purposes – to operate a printing business. The proposed use would therefore not be incidental to the enjoyment of the dwellinghouse as such.

The applicant further submitted via amended plans that the building would be used as a games room with the additional store, w/c and gym areas. The applicant has not provided any justification why the size of the games room is required for purposes incidental to the enjoyment of the dwellinghouse. The change in use from the initially proposed office use appears to have come around in light of the Council's mindfulness to refuse the application and as not intended when the scheme was being developed.

While the size of the building is not necessarily a reason to conclude the space is not going to be used for purposes incidental to the enjoyment of the dwellinghouse, the size of the development pursuant to Class E should not be simply be allowed on the uncontrolled whim of the applicant (*Wallington v Secretary of State [2004]*). Nevertheless, where the applicant can demonstrate the building is required for genuine purposes, the size of the building should not frustrate those reasonable aspirations.

In this instance the applicant has not provided any reasoning why the large games area is required for any purposes other than as an alternative for the initially proposed office space. Officer cannot therefore accept all the space within the building is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

**Conclusion:**

The proposal has been considered against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is recommended for refusal due to failing to be required for purposes incidental to the enjoyment of the dwellinghouse.

**Decision Notice: -**

The proposed erection of an outbuilding is not considered to benefit from a general planning permission under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) as it has not been demonstrated the building is be required for purposes incidental to the enjoyment of the dwellinghouse.

The decision is based on the following details: -

**Plans and specifications schedule:-**

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location Plan	SK01		22.06.2022
Proposed Plans and Elevations	S01		29.06.2022

Report dated: 06<sup>th</sup> September 2022.