

**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.: 2023/CL/91407/W

Site: Land adj. to 9, Top O' Th' Bank, Thurstonland,
Huddersfield, HD4 6XZ

Description: Certificate of lawfulness for existing material
change in the use of the building from agricultural to general (non-agricultural)
storage

Case Officer: Katie Chew

Decision Reference: EXISTING 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 23-Nov-2023

Officer Report

Site Description

Land adj. to 9, Top O' Th' Bank, Thurstonland, Huddersfield, HD4 6XZ

The application site relates to a small portion of land owned by and located to the west of 9 Top O' Th' Bank. The site currently comprises of a medium sized single storey building, constructed with breeze block and a metal sheeted roof.

The site is accessed to the east. To the north of the building is a smaller outbuilding, and to the south and west is a heavily planted wooded area. To the east are residential dwellings.

Description of Development

The application is for a Certificate of Lawfulness for an existing material change in the use of the building from agricultural to general (non-agricultural) storage, and that this took place more than 10 years ago and as such, is now lawful.

Officers would note that whilst the submitted application form states that the use class is "other" which perhaps suggests a Sui Generis use, the evidence provided within the submitted witness statement provides details of a use which is more domestic in character and could be used for ancillary purposes to the dwellinghouse at 9 Top O' Th' Bank, therefore possibly a C3 use as defined by the Use Classes Order 1987(as amended). In particular the witness statement states the buildings started to be used for the storage of "gardening equipment (e.g. pots, potting bench, fountains stored in winter), hosepipes, drainage piping, generator, DIY tools & equipment and other miscellaneous storage." The statement goes on to state that coal was supplied every Autumn and stored for domestic use through the winter." On this basis and given the vast majority of items stored would be typically domestic in nature it appears reasonable to assess the change of use from agricultural to ancillary domestic storage.

Relevant Planning History

2022/93188 – Demolition of outbuilding and garage and erection of detached dwelling with attached garage. Withdrawn 22nd November 2022.

2006/91065 – Erection of detached double garage. Withdrawn 8th May 2006.

2006/90027 – Erection of detached double garage and store with living accommodation over. Withdrawn 15th February 2006.

Representations

This application was advertised by site notice which expired on the 31st August 2023. No representations were received as part of the advertisement period.

Consultation Responses

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate.

Parish/Town Council

Kirkburton Parish Council – Comments received 5th June 2023. No comment.

Local Ward Members

None.

Legislation

The Town and Country Planning Act 1990
The Town and Country Planning (Use Classes) Order 1987 (as amended)

Assessment

Section 191(1) of the Town and Country Planning Act 1990 (“The Act) permits any person who wishes to ascertain whether any operations or existing 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 in any person wishes to ascertain whether –

- (a) Any proposed use of buildings or other land is lawful
- (a) Any operations which have been carried out in, on, over or under land are lawful; or
- (b) Any other matters constituting a failure to comply with any condition or limitation subject to which planning permission has been granted lawful he may make an application for the purpose to the local planning authority specifying that the land and describing the use, operations and other matter.

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.

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 in 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 probable, there is no good reason to refuse the application, provided the

applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

Limitations:

The Lawful Development Certificate can contain precise details of what use or operations are found to be lawful, why and when. The 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 at 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, the Local Planning Authority may then consider further development has taken place.

Evidence submitted in support of the application:

Supporting information included a completed application form, Block Plan, Evidence Statement and Witness Statement from Jacqui Duns.

Evidence submitted against the application:

No evidence has been submitted against this application.

Evidence obtained from Council Records and other Sources:

Kompass shows the site between 2000 and 2023 with varying levels of change.

Furthermore, application reference 2022/93188 for the demolition of outbuilding and erection of detached dwelling with attached garage, was submitted to the LPA and subsequently withdrawn on the 22nd November 2022.

Site Visit:

No site visit was undertaken on this occasion however, this was due to officers carrying out a recent site visit here under application reference: 2022/93188.

Assessment of Evidence:

The application has been submitted on the basis that a material change in use of the building shown enclosed in red on the submitted Location Plan has been undertaken from agricultural to general (non-agricultural) storage over ten years prior to the date of this application. As outlined above this is to be considered reasonable to consider this as generally domestic storage ancillary to 9 Top O' Th' Bank falling under Use Class C3 as defined by the Use Classes Order 1987 (as amended), and therefore if a material change of use is deemed to have taken place, 9 Top O' Th' Bank and the 'agricultural building' would all form part of a single planning unit.

For the provisions of s.171B to operate, a breach in planning control must have occurred before the 10 year clock can start ticking. A breach in planning control is defined in s.171A of the Act as either the: -

- (a) Carrying out of development without the required planning permission or
- (a) Failing to comply with any condition or limitation subject to which planning permission has been granted.

It is part (a) which is of relevance in this case and S.55(1) of the Act provides the definition of development as: -

“Subject to the following provisions of this section, in the 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 building or other land” (my emphasis).

Consequently, it is necessary for the application to show a material change of use has occurred without the required planning permission and that breach in planning control existed for a period of 10 years during which the Local Planning Authority could have taken enforcement action.

An examination of the evidence submitted on behalf of the applicant follows.

The block plan submitted shows a red outline around the larger of the 2 buildings to the west of 9 Top O’ Th’ Bank with access also shown to the east. A limited curtilage is shown to be associated with the building. This plan does not provide any specific evidence of the uses included within the description.

A completed application form has also been submitted, this form outlines that the use/activity was begun on the 1st May 2011 and that the use/activity is not in breach of any conditions, or that there has been a disruption within the continued use of the site within the period of 10 years. As outlined earlier within the description of development section of this report, whilst the submitted application form states that the use class is “other” (Sui Generis use), looking at the evidence provided it is considered reasonable to assume that the Certificate of Lawfulness actually relates to ancillary domestic storage, which is for non-agricultural purposes and would relate to the dwellinghouse at 9 Top O’ Th’ Bank, and therefore would be classed as a C3 Use. The planning unit would therefore relate to the dwelling and the ‘agricultural building’ as a whole if a material change of use is considered to have taken place.

An Evidence Statement has also been prepared by Robert Halstead Chartered Surveyors who are acting as agent on behalf of the applicant. This statement provides a run through of the previous planning history at the site, relevant legislation, and the evidence submitted the support the lawfulness of the application.

The witness statement by Jacqui Duns outlines her as the owner of the property since 1985. Noting that the building and associated curtilage was used for agricultural purposes for a number of years by her brother 20 years ago, The brother, due to his ill health resulted in the agricultural business ceasing at this time. As a result of the above, the use of the agricultural building ceased 12 years ago and the building was from then on used for general storage purposes

for items such as gardening equipment (e.g. pots, potting bench, fountains stored in winter), pallets, garden furniture (e.g. sun loungers, garden table, garden swing), pressure washers, bicycles, hosepipes, drainage piping, generator, DIY tools & equipment and other miscellaneous storage. Logs and coal are also supplied every Autumn and stored for domestic use through the winter.

Taking the above into consideration, Officers sought to raise concerns with the applicant's agent in respect of information gathered from the Council's Kompass mapping systems which showed photographic evidence of tractors moving between the application site and adjacent land to the south. Whilst it is noted that land to the south cannot be considered within this application as it falls outside of the red line boundary applied for, this land does appear to have a relationship/ be associated with the building and its current/former use.

As the required period for the use to be lawful is 10 years, officers would be interested in any changes between 2013 and 2023. Although, as outlined by the applicant within the submitted application forms, this use is said to have ceased in May 2011. Aerial imagery in 2012 shows the application site (and land to the south) much more operational, with numerous hay bales, materials and farming equipment scattered throughout. The next available aerial photo is from 2018, this image again shows the site to be agricultural in appearance, although the use appears to be less intensive. From 2021 the site (including land to the south) does appear to be less agricultural in appearance, with the majority of farm machinery, hay bales etc. removed. Although it can be seen that items such as animal water tanks and a trailer are still visible to the south. This follows through into aerial imagery from 2023. However, as discussed in more detail below, following a site visit undertaken by Officers in 2022, the host building appeared largely vacant and underused for agricultural purposes, nevertheless, it did not appear as a building used for general or domestic storage either. As outlined within Ms Duns statement these general storage uses, together with their intensity of use, have remained unchanged to the present day. Significant weight is given to this statement as it assists in understand how the building was used over the years when considering the current appearance and character of the building. Taking this into account, visually the building appeared as one which was last used for agriculture and not one that is intensively used for domestic storage, and therefore the character of the building is not considered to have changed significantly in that time, the building is more likely to have been in use as somewhere to store domestic items owned by the applicant based on convenience given the absence of any other use. In these circumstances it is necessary to consider the it can be said, on the balance of probabilities, that a material change of use occurred in 2011 as opposed to simply a change in circumstances in how the agricultural building was used that were not material. Development as defined by section 55 of the Act can only occur where a material change has occurred. A material change is dependant upon the change in the character of the building and in borderline cases the planning effects that may flow from the change. In this instance and based upon the witness statement stating the use to store domestic items has not changed over the years, it can clearly be seen upon present appearance of the building that the character remains agricultural in

nature and the comings and goings to storage agricultural items and domestic items does not particularly change how the building is used. The building has not been altered to weather protect any personally domestic items any neither has it taken on any domestic character. Other than the removal of some plant and machinery the building and surrounding land has essential remained unchanged since agricultural activities were being carried on. Consequently, it is officers' opinion that the storage of a few household/general items within the building is not considered to materially change the agricultural use as a whole. As such no development occurred in 2011 and the Local Planning Authority could not have taken action.

Taking the above information into account, looking at the balance of probabilities, officers accept that the agricultural use may have ceased in 2011 and the activity to store agricultural machinery and plant as diminished up until 2020 as items are sold, removed. It is also accepted that the owner may have taken the opportunity to store personal items in the building over the years since the agricultural use ceased although given the intensity as described by the owner it appears not to have significantly changed the appearance and character of the agricultural building.

The applicant's agent responded to officers' comments on the 11th July 2023 via email. Noting that, *'on the question of the farm machinery on Google Earth photographs, I am happy to answer that as follows. The health issues with the applicant's brother were severe in terms of the diabetes causing blindness. As such, the agricultural use ceased but there was redundant equipment left on the site waiting to be sold. This equipment was not used following the deterioration of the brother's health as outlined in the evidence. As such, the redundant agricultural equipment waiting to be sold had no bearing on the issue of the use of the land. However, this is probably irrelevant anyway because if you look at the red line applied for, we have only included the access to the building that is on the ground, as is required to link to the nearest highway for validation purposes. We are not applying for any lawful use of the field in front of the building'*.

These comments are noted although they do not address officer's view that the building has not changed in character. In order for the Local Planning Authority to issue a certificate of lawful existing use, National Planning Policy Guidance provides that the evidence provided by the applicant should be sufficiently precise and unambiguous to demonstrate that the uses described in the application have taken place over a period of 10 years in breach of planning control. As noted above, the PPG makes it clear that the onus is on the applicant to provide sufficient information to support their application. Taking into account all of the above evidence and information, and in the absence of any corroborative details regarding the business or sales of stock, the information presented does not demonstrate, on the balance of probability, that the agricultural use of the building ceased and that a material change of use occurred to storage for a continuous period of 10 years or more at the time the application was made.

Conclusion:

Based on the information submitted, and on the balance of probabilities, it has not been demonstrated that while the building may have been used for some storage purposes a material change of use of the building from agricultural purposes to storage had occurred on this site or has been continuous for the requisite 10-year period.

Recommendation: Refuse Certificate

Decision Authorisation - Delegated Powers

Application Number: 2023/91407

Officer Recommendation: Refuse Lawful Development Certificate

Reasons for Refusal:

The information submitted is not considered to demonstrate on the balance of probabilities that a material change of use from agricultural to storage occurred within the building enclosed in red on the submitted Location Plan which has then continued in breach of planning control for a period of ten years prior to the date of this application.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application Form	-	-	15 th May 2023
Block Plan	-	-	15 th May 2023
Evidence Statement – Supporting Information	-	-	17 th May 2023
Appendix Witness Statement – Supporting Information	-	-	17 th May 2023

Report Dated:

11/09/2023