

**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/92300/W

Site: Whinney Close Farm, 106, Cockley Hill Lane,  
Kirkheaton, Huddersfield, HD5 0PF

Description: Certificate of lawfulness for proposed single storey  
side extensions

Case Officer: William Simcock

**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 26-Sep-2023**

## **OFFICER REPORT – 2023/92300**

**Whinney Close Farm, Cockley Hill Lane.**

### **Certificate of lawfulness for proposed erection of single-storey extensions**

#### **1. Introduction**

- 1.1 This application seeks to establish the lawfulness of the above development. The development consists of the enlargement of Whinney Close Farm through the erection of a side extension to the eastern and western ends of the property.

#### **2. Site and Proposal**

- 2.1 The site consists of a large two-storey detached dwelling. The main, southern elevation is constructed in stone, the sides, and much of the rear elevation, are rendered. It does not appear to have been recently extended but there is a flat-roofed two-storey addition and single-storey lean-to extension to the north elevation. There is an outbuilding close to the house to which it is linked by a short stretch of stone wall.
- 2.2 The land to the north consists of tarmac hardstanding for parking and turning. The property benefits from extensive gardens to the south. Access to the adopted highway is gained by means of a narrow driveway extending north-west from the site to Cockley Hill Lane.
- 2.3 The proposals are for the erection of an extension to the eastern end of the property which would extend 12.3m and would be parallel with the existing northern and southern walls, and would be between 4.0m and 4.5m high from existing ground level to the top of the flat roof; and for a further extension at the western end of the property, mirroring the design of the new eastern extension but projecting only 5.7m and with a roof height of only 3m (measured from where ground level is highest).

#### **3. The Law / Policy**

- 3.1 For proposed works to be lawful for the purposes of planning control they must either not require or benefit from a planning permission. Section 55 of the Town and Country Planning Act 1990 (“the Act”) defines the nature of operations [or uses] which would be regarded as development. If the proposed operations are not development then planning permission is not required. If, however, development

is to take place, section 57 of the Act states that planning permission would be required. By virtue of section 60 of the Act, planning permission may be granted for development under the provisions of a development Order otherwise a Local Planning Authority may grant planning permission under the provisions of section 70 of the Act.

- 3.2 In this instance, the relevant development order would be the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("GPDO") which, by virtue of Article 3(1), provides a general planning permission providing the proposed development complies with the limitations and conditions set out in Schedule 2 of the GPDO.
- 3.3 Section 192(1) (a) 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.
- 3.4 Section 191(2) of the Act provides that uses and operations are lawful (a) *"if no enforcement action may be taken against them because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason"* and (b) *"they do not constitute a contravention of any the requirements of any enforcement notice then in force"*.
- 3.5 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".
- 3.6 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.<sup>1</sup>

#### 4. Relevant Planning History

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<sup>1</sup> National Planning Policy Guidance – Lawful Development Certificates

- 4.1 2023/90643 – Demolition of existing dwelling and detached garage and erection of replacement dwelling, detached garage and associated landscaping. Undetermined.

2023/92292 – Prior notification for erection of single-storey rear extension. Decision: Not required.

- 4.2 The property has no record of any enforcement action.

## 5. Evidence Submitted

- 5.1 The application has provided the following drawings in support of the application:-

- Application Form
- Drawings 489-02(02)100 and 001
- Historic map, published 1907.

- 5.2 The applicant submits that the proposed enlargements to the property as shown on the submitted plans benefit from a general planning permission granted by virtue of the GPDO, Part 1.

- 5.3 An amended plan was submitted (498/02-02-100 B, replacing 498/02-02-100), 18<sup>th</sup> September, reducing the scale and height of the western extension after the architect was notified of the case officer's concerns that, as originally proposed, it would not fit into the recognised curtilage.

- 5.4 No evidence has been submitted against the application. For applications of this type, there is no requirement, either statutorily or under Kirklees' own procedures, to undertake formal publicity, and none was carried out in this case. Kirkburton Parish Council were notified of the application and reported that they did not wish to make any comment. No representations were made by any other third party.

## 6. Assessment

- 6.1 It is accepted by both parties that the proposals are development within the meaning of the Act since they comprise building operations. The assessment will determine whether the development would accord with the limitations and conditions set out in Part 1, Class A of Schedule 2 of the GPDO.

- 6.2 The submitted drawings do not include internal floorplans. But both extensions may be treated as single-storey, since even the larger, eastern extension contains no windows above ground floor level and would not be high enough to contain any functional living accommodation above ground floor.
- 6.3 To qualify as permitted development, the extensions would have to be within the residential curtilage. Of relevance to this application, the Council holds historical Ordnance survey evidence beginning 1854 and ending 2011, and aerial imagery dated 2000, 2002, 2006, 2009, 2012, 2018 and 2021. The 1922 plan shows the building as a linear structure of approximately 23m in length, with an outbuilding to its south-west. By 1955 the only noticeable change is that the outbuilding has been linked to the main building. There is no extension beyond the original side elevations. By 1965 a small extension has been added to the northern elevation.
- 6.4 The case officer's own site observations are that a substantial two-storey extension has been added to the middle part of the northern elevation and a smaller single storey lean-to extension towards the western end, which stops short of the western elevation. The dwelling does not show any signs of recent extension at either the eastern or western end.
- 6.5 The most recent map indicates that the original outbuilding has been demolished and a new one erected slightly further to the west. This is linked to the host dwelling by an internal boundary wall which performs the function of separating the rear garden from the parking and turning area. It is considered that it is still a separate structure in terms of appearance and function and therefore should not be regarded as an extension.
- 6.6 There is no record of permitted development rights having been removed for this property. It will therefore benefit from the full permitted development rights granted by Part 1, Class A of Schedule 2.
- 6.7 From historic maps dated 1955 and 1965 it is difficult to determine the original boundaries of the curtilage. These maps, and even the 2011 one, do however appear to indicate that the western boundary of the curtilage was at the time only 6-7m away from the property's western elevation. Aerial photographs also indicate that the area to the north-west of the dwelling, forming part of the application site, was not originally within the curtilage. The 2009 aerial photograph shows it to be heath or scrub, forming part of a larger holding or plot of land belonging to 108 Cockley Hill Lane. A Land Registry transaction dated 2011 shows this area (amounting to roughly

700sqm) being severed from this larger holding, and presumably acquired by the owners of Whinney Close. Photographs from 2012 onwards show it enclosed by fencing on its western side and it gives the impression of forming a single unit with Whinney Close Farm. There is, however, little or no evidence of land uses on this small plot of land that might be associated with domestic curtilage.

6.8 The plans have been amended during the application process and now show an extension extending to the west by 5.7m. This would extend to within approximately 0.5-1.0m of where the historic curtilage boundary is presumed to be, and would not extend into the recently-acquired area referred to in the paragraph above. There is therefore no longer any reasonable doubt that both elements of the proposal fall within the recognised curtilage boundary.

6.9 Under Class 1, Part A, of the GPDO, the enlargement of a dwelling house is permitted subject to a number of exceptions and limitations. In the paragraphs below, the case officer will assess compliance with these exceptions and limitations.

6.10 Development is not permitted if any of the following apply (A.1 (a-k)):

(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:** This does not apply.

(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 development would be considerably less than 50% of the total area of the curtilage, even taking into account the existence of an outbuilding, which is to be retained.

(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 extensions would be lower than the roof of the dwelling house.

(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:** It would not exceed the highest part of the eaves.

(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:** It is considered that the existing side elevation does not front a highway.

(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:** It would not extend beyond the rear wall of the dwelling house and would not exceed 4m in height, when measured from the highest part of the adjacent ground as specified in the GPDO Technical Guidance.

(g) until 30th May 2019, 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:** This is not applicable in this instance.

(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 opposite the rear wall of the dwellinghouse;

**Comment:** This does not apply since the extensions proposed would both be single-storey.

(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 enlarged (western) part of the dwellinghouse would be within 2m of the original boundary of the curtilage of the dwellinghouse and eaves height, measured from the highest part of the adjacent ground level, would not exceed 3m.

(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 extensions, as previously noted, would not exceed 4m in height and would be single-storey. The applicant's drawings show the existing dwelling to be 24.9m in length. Measurements based on Kirklees aerial photographs indicate a length of between 24.5 and 24.0m. The case officer's own measurements taken on site verify the length as being 27m which would mean that the eastern extension, at 12.3m, would be within the limit of 50%. There is no obvious explanation for the discrepancy between the case officer's site observations and those derived from aerial photographs and plans. Even if the lowest figure (24.0m) were taken to be definitive, however, the extension would only marginally exceed half the width (by 300mm) and the case officer concludes that on the balance of probabilities all of the limitations in A.1(j) are complied with.

(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 development does not adjoin any previous enlargement to the original dwellinghouse.

(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.

**Comment:** The proposal does not involve the construction of any form of raised platform or an alteration to an existing one. The plans do not indicate that there would be any works to, or installation of, a microwave antenna, chimney or similar. No alterations to the roof are proposed.

**A.2** In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if [certain criteria apply]

**Comment:** This does not apply since the dwelling is not on Article 2(3) land.

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

**Comment:** Not applicable

6.11 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:** The materials are not specified on the plans. There is therefore no conflict with this condition.

(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

(c) where the enlarged part of the dwellinghouse has more than a single storey, 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 above criteria do not apply in this instance as there are no upper floor windows and both extensions are single-storey.

6.12 It will be seen therefore, from the above analysis, that the proposed development is not caught by any of the exceptions in Class A, nor would there be any difficulty in complying with the conditions (a-c). It is therefore permitted development.

## 7. Conclusion

7.1 The proposal, based on the most recent set of plans submitted, benefits from a general permission granted by Schedule 2, Part 1, Class A of the General Permitted Development Order.

7.2 It is therefore recommended that a Certificate of Lawfulness of Proposed Development is granted.

Decision notice text.

The proposed single-storey side extensions benefit from a general planning permission granted by virtue of Article 3(1) and Part 1, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) subject to conditions as stated in paragraph A.3 of the same Order.

This decision is based on the following details(s):-

| <b>Plan Type</b>                                 | <b>Reference</b> | <b>Version</b> | <b>Date Received</b> |
|--------------------------------------------------|------------------|----------------|----------------------|
| Application form                                 |                  |                | 01-Aug-2023          |
| Location plan                                    | 489-02(02)001    |                | 01-Aug-2023          |
| Historic map                                     |                  |                | 01-Aug-2023          |
| Plans and elevations as existing and as proposed | 489-02(02)100    | C              | 26-Sep-2023          |