

**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/92496/W

Site: 1-2, Broadfields, Slaithwaite, Huddersfield, HD7
5UD

Description: Certificate of lawfulness for proposed erection of
rear extension and garden room/gym

Case Officer: Kevin Walton

Decision Reference: Lawful Development Certificate Granted.

**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.**

Teresa Harlow

AUTHORISED OFFICER

Date 16-Oct-2023

APPLICATION – CERTIFICATE OF LAWFULNESS FOR PROPOSED ERECTION OF REAR EXTENSION AND GARDEN ROOM/GYM

REFERENCE – 2023/92496

SITE – 1-2 Broadfields, Slaithwaite, Huddersfield, HD7 5UD

1. Summary

- 1.1 The application seeks a determination from the Local Planning Authority to confirm a proposed rear extension and garden room/gym would be lawful if erected at this time of this application.

2. Site

- 2.1 1-2 Broadfields is a detached two storey dwellinghouse located in a semi-rural area approximately 750 metres south of Slaithwaite village centre. The building sits with a small number of other dwellinghouses in a wider area of open fields interspersed with other dwellings.
- 2.2 The west elevation of the building fronts directly onto the highway whereas the east elevation of the building faces reasonably sized amenity space. A double garage and timber outbuilding are sited on the eastern boundary of the property.
- 2.3 The dwellinghouse is largely two storey and flanked by two single storey projections to the north and south. The west and east elevations are pebble dash render with north and south gable walls rendered and painted. Both single storey projections are pebble dash rendered. The roof of the two storey and north single storey parts of the building are covered with brown pantiles. The south single storey projection covered with corrugated steel sheets.
- 2.4 A two storey neighbouring dwellinghouse is sited directly to the east of the boundary with two, two storey dwellinghouses located across a driveway to the south.

3. Development Proposal

- 3.1 The applicant is proposing to extend the existing dwellinghouse with a dual gabled two storey enlargement projecting 3 metres from the two storey part of the east elevation. A further single storey enlargement is proposed to projection 3 metres from the east elevation of the northern single storey part of the building adjoining the north elevation of the proposed two storey enlargement. All fenestration and door openings are on the east elevation.
- 3.2 The applicant is also proposing to erect a single storey building in the amenity space measuring 12 metres in length and 5.6 metres in width. The roof is proposed to be dual pitched with the ridge running along the length of the building at 4 metres above ground level. The eaves height is

2.5 metres above ground level. The building contains two door openings on the south elevation each serving the use of the building as a games room and gym. No other openings are proposed within other elevations.

4. The Law

4.1 Section 192(1) of the Act provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, under or over land would be lawful they may make an application to the LPA. If upon application the LPA are satisfied that the operations described in the application would be lawful if instituted at the time of the application the LPA shall issue a certificate to that effect. In any other case the LPA shall refuse the application.

4.2 Section 191(2) of the Act states that for the purposes of the Act, operations are lawful at any time 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 enforcement action has expired or for any other reason)....”

4.3 Section 55(1) of the Act provides the definition for development and includes the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in use of any building or other land.

5. Relevant Planning History

5.1 Planning applications relating to the building include:-

2022/92520 – Erection of single storey and two storey extensions, replacement garage and associated works – undetermined.

5.2 There are no records of any enforcement investigations or formal action on the land.

6. Site Visit

6.1 None

7. Relevant Test

7.1 National Planning Policy Guidance [NPPG] states:-

“the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the status of the land.” NPPG also goes on to state *“in the case of applications for proposed development, an applicant needs to describe*

the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved,”

- 7.2 Where an existing use is at question NPPG advises the local planning authority that provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate “*on the balance of probability*” then there is no good reason to refuse the application.

8. Evidence Submitted

- 8.1 The applicant has provided the following drawings and information

Plan/Document	Reference	Version	Date Received
Location Plan	2796 LOC	A	21/08/23
Existing Plans, Elevations & 3D	2796 (100)01	-	21/08/23
Proposed Plans, Elevations & 3D	2796 (100)02	A	12/10/23
Email from agent	-	-	12/10/23

9. Representations

- 9.1 None Received

10. Publicity

- 10.1 None

11. Revisions

- 11.1 The basis of the applicants submission is grounded on the proposal benefitting from a general planning permission granted by virtue of article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [“GPDO”]. To succeed on these grounds would mean the proposal complying with the limitations as set out in paragraphs A.1 and E.1 of Schedule 2, Part 1, Classes A & E of the GPDO.
- 11.2 The initial submission includes plans indicating a proposed single storey rear enlargement projecting from the east elevation of the existing single storey south part of the building adjoining the south

elevation of the proposed two storey enlargement. Historic imagery held by the Council indicated this proposal would have adjoined an existing enlargement to the original dwellinghouse which extended beyond a side elevation of the original dwellinghouse. As this would adjoin the proposed two storey enlargement which extends along the entire width of the original dwellinghouse the inclusion of the single storey element would result in the enlargements to the property falling outside the limitation under paragraph (j) and (ja) of Class A.

- 11.3 The initial submission also indicated the northern single storey enlargement to be located within 2 metres of the northern boundary. In these circumstances the Courts (*Hilton, R v SoS [2016] EWHC 1861*) have judged that development as a whole must fall within the scope of permitted development and thus the eaves height of the two-storey part must be considered irrespective of whether that part of the development is more than two metres from the boundary. As such this would fall outside the limitation in paragraph (i) of Class A.
- 11.4 The size of the proposed gym was also questioned in terms of Class E development and that the use must genuinely be incidental to the enjoyment of the dwellinghouse in order to benefit from Class E.
- 11.5 In response to the above matters being questioned, the agent has revised the plan 2796 (100)02 by omitting the single storey south enlargement, setting in the single storey north enlargement from the north boundary and reducing the size of the outbuilding with some justification why the building is required. Revised plan 2796 (100)02 rev A is the amended proposed plan.

12. Assessment

- 12.1 The proposed enlargement to the dwellinghouse is considered to be a building operation materially altering the external appearance of the dwellinghouse and thus development as defined by section 55 of the Town and Country Planning Act 1990. Consequently, the proposed operations require planning permission by virtue of section 57.
- 12.2 As no existing planning permission exists for the proposed works, any planning permission can only be granted under the provisions of the GPDO. Article 3(1) of the GPDO grants a general planning permission for development complying with the limitations and conditions of Schedule 2 to the GPDO. Part 1 of Schedule 2, Class A set out limitations for enlargements, alterations and improvements to a dwellinghouse whereas Class E set out limitation for buildings erected within the curtilage of the dwellinghouse which are to be used for purposed incidental to the enjoyment of the dwellinghouse as such.
- 12.3 The proposed enlargements and outbuilding are assessed against these limitations in the tables below.

Enlargement to the dwellinghouse – Class A, Part 1 of Schedule 2 :-

Class A – enlargement, improvement or other alteration of a dwellinghouse

A. Permitted Development

The enlargement, improvement or other alteration of a dwellinghouse.

A.1 Development not permitted

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)	No
(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)	No
(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	No
(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	No
(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	The applicant has previously provided documentary evidence during the course of the live planning application to show the west elevation had an original ground floor entrance to the building. The Government's

	Technical Guidance sets out that the principal elevation is usually the elevation facing the highway and the elevation regarded to be the front of the property. In this instance it is considered the original frontage would have been the elevation with the entrance to the dwellinghouse fronting the highway. The applicant has shown the west elevation is therefore the principal elevation. The proposed enlargement is therefore projecting to the east, rear elevation.
(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	The proposed enlargement projects 3 metres from the original rear elevation. The proposed single storey part of the enlargement is less than 4 metres when measured from ground level.
(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	The proposed enlargement projects 3 metres from the original rear elevation. The proposed single storey part of the enlargement is less than 4 metres when measured from ground level.
(h) the enlarged part of the dwellinghouse would have more than a single storey and—	The proposed two storey enlargement does not project more

(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;	than 3 metres from the rear of the original elevation and is not within 7 metres from the boundary to the east.
(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	No
(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;	No
(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 subparagraphs (e) to (j)	The proposed enlargement does not adjoin any existing enlargement.
(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	The proposed roof of the two storey enlargement adjoins the existing rear roof slope. The Governmen'ts Technical Guidance advises where this is the case the roof should comply with the provisions of either Class B or C (enlargements and other alterations to the roof of a dwellinghouse). In this instance the roof increases the original roof space by 40 cubic metres in accordance with Class B and is not

	on a front roof slope or in a conservation area. The alterations to the roof therefore comply with Class B.
(l) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).	No

A.3 Conditions

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;
- (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, 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.

Erection of building within curtilage, Class E, Part 1 of Schedule 2 :-

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

E. Permitted development

3B-1028 The provision within the curtilage of the dwellinghouse of—

- (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
- (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

E.1 Development not permitted

3B-1029 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)	No
(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)	No
(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	No
(d) the building would have more than a single storey;	No
(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;	The proposed outbuilding is 4 metres above ground level with a dual pitched roof and not within 2 metres of the boundary.
(f) the height of the eaves of the building would exceed 2.5 metres;	No
(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	No
(h) it would include the construction or provision of a verandah, balcony or raised platform;	No
(i) it relates to a dwelling or a microwave antenna;	No
(j) the capacity of the container would exceed 3,500 litres	No
(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).	No

Other Matters

- 12.4 The applicant was questioned with regard to the size of the initially submitted outbuilding. It was advised that the provisions of Class E of GPDO allows the construction of outbuildings that are to be used for purposes incidental to the dwellinghouse as such. The Courts have set out that while size is a not in itself determinative a proposed incidental use must be reasonably incidental and genuinely required (*Emin v Secretary of State for the Environment* [1989] J.P.L. 909). While size is not necessarily determinative the Courts(*Croydon LBC v Gladden* [1994] 1 P.L.R. 30) have also

judged that the size of a building should not be un-restrained or solely at the whim of the occupier.

- 12.5 The initially proposed gym was unjustifiably large for it to be regarded as reasonably incidental to the dwellinghouse and as such the agent elected to reduced the size and include a games room with the gym. The agent also reasons that the owner is a former professional sportman who continues to enjoy sports and keeping fit. In such circumstance the proposed games room and gym can be considered subordinate and genuinely required for the purposes the building will be put to and therefore incidental. The other outbuilding are clearly not fit for the same purpose given there condition and size.

Conclusion

- 12.6 By reason of the amended drawing the applicant has demonstrated that the proposed enlargements to the dwellinghouse and erection of outbuilding can benefit from a general planning permission granted by virtue of Article 3(1) of the GPDO. If the development is carried out the works would not amount to a breach of planning control and no enforcement action could be taken against them. A certificate under the provisions of section 192 of the Town and Country Planning Act 1990 can therefore be issued.

Recommendation – GRANT CERTIFICATE

Decision Text

The proposed enlargements to the dwellinghouse and erection of building as shown on amended plans listed below benefit from a general planning permission granted by virtue of Article 3(1) and Schedule 2, Part 1, Classes A & E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) subject to conditions as stated in paragraph A.2 of the same Order

Plans and Documents :-

Plan/Document	Reference	Version	Date Received
Location Plan	2796 LOC	A	21/08/23
Existing Plans, Elevations & 3D	2796 (100)01	-	21/08/23

Proposed Plans, Elevations & 3D	2796 (100)02	A	12/10/23
Email from agent	-	-	12/10/23

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. The application was determined on amended plans following discussions with the applicant's agent.