

**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/92514/W

Site: 15, Longley Road, Almondbury, Huddersfield, HD5
8JL

Description: Certificate of lawfulness for existing raised decking
with glass panels to the rear

Case Officer: Teresa Harlow

Decision Reference: GRANT CERTIFICATE OF LAWFUL OPERATIONS

**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.**

John Holmes

AUTHORISED OFFICER

Date 14-Nov-2023

Officer report

Site description

The application site relates to 15 Longley Road, Almondbury, Huddersfield, a dwellinghouse.

Description of development

The applicant is seeking a determination that the building operations to 15 Longley Road, Almondbury, Huddersfield comprising the erection of raised decking with a glazed balustrade constitute lawful development.

Site visit & Publicity

A site visit was carried out and a site notice was erected, giving interested parties until 6th October 2023 to comment. No representations were received.

Consultation response

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

Relevant policy / legislation

Town and Country Planning Act 1990 (as amended) ["the Act"].

Lawful Development Certificates

Section 191(1) of 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 if:

1. 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);
1. They did not constitute the contravention of any of the requirements of any enforcement notice then in force.

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. Section 191(2) (b) states that the inability to take enforcement action may come about because the 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 granting of a certificate on the balance of probability.

Limitations

The lawful development certificate must contain precise details of what use or operation 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 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.

Relevant planning history

None

Evidence submitted in support of the application

Supporting information submitted 22/08/2023 by the applicant includes a completed application form and location plan along with the following:

- Photographs of the raised decking and glazed balustrade in situ (x8). Undated.
- Bradfabs Declaration of Performance for the manufacture of a balcony with staircase. Date of manufacture 2019, date of declaration 1st August 2019.
- Invoice for works from Bradfabs dated 15th August 2019 and handwritten annotation that states 'pd' with a date of 19/8 (no year in the date)
- On 13th November 2023 an email to the applicant from the officer manager at BradFabs, also dated 13th November 2023, was received. This stated:
"As requested to confirm the balcony was completed on August 15th 2019, if you require any further assistance please do not hesitate to contact me".

Evidence submitted against the application

None.

Evidence obtained from Kirklees Council records and other sources

The works under consideration are located to the rear of the dwelling, with no access from public land for vehicles. As such, Google Street View imagery is of minimal assistance in this instance but an image from Google Earth taken in April 2020 indicates the development in situ. This in itself is inconclusive that the building operations were substantially completed by 21st August 2019.



Google Earth image taken April 2020.

There are no planning applications at other properties around the site which would provide information to verify or disclaim the application.

Aerial photography images from Kompass (the Council's internal GIS) is available for 2021 and is shown below.



Assessment of the evidence

The applicant wants to establish that the building operations are now lawful, having been substantially completed more than four years ago.

The applicant's submission within the application form is that the "composite decking with glass panels installed in the rear garden over 4 years ago, replacing rotten timber decking, which had been in place for over 15 years".

Photographs of the decking have been provided showing it *in situ*, together with the glazed balustrades. The photographs are undated, but align with the case officer's photographs verifying that building operations have taken place.

The aerial photograph from Kompass (above) is inconclusive as to the completion of the works, but indicates a retractable canopy to the rear of the property which is also shown in the site photographs.

The principal submission comprises two documents from Bradfabs regarding the manufacture of the decking and staircase and an invoice to the applicant for the works. Both documents are dated more than 4 years before the submission of this application and refer to both the manufacture and invoice for work. In addition, a later email (13th November 2023) from the officer manager at BradFabs has been received which states that the works for the balcony were completed on 15th August 2019.

There are no drawings or images to confirm that this the work was completed as of that date, but the Google Earth image from 2020, on the balance of probability, it is concluded that it was.

The time limit for enforcement action are four years for a breach of planning control consisting of operational development.

As such, I conclude that, on the basis of the cumulative weight of the submitted evidence, the building operations to 15 Longley Road Almondbury Huddersfield comprising the erection of a raised deck with glass panels to the rear, were substantially completed more than four years ago and are therefore considered lawful.

Conclusion

Based on the above, it is considered that the building operations to 15 Longley Road Almondbury Huddersfield comprising the erection of a raised deck with glass panels to the rear, were substantially completed more than four years ago and are therefore considered lawful.

Recommendation: Granted

On the balance of probability, the building operations to 15 Longley Road Almondbury Huddersfield comprising the erection of a raised deck with glass panels to the rear, were substantially completed more than four years ago and are therefore considered lawful pursuant to section 191 of the Town and County Planning Act 1990 (as amended).

Plans and specifications schedule:

Plan Type	Reference	Web ID	Date Received
Application Form			22/08/2023
Location Plan	-		22/08/2023
Photographs of the raised decking and glass panels in situ x 8	-		22/08/2023
Invoice from Bradfabs dated 15 th August 2019			22/08/2023
Email to the applicant from BradFabs dated 13 th November 2023			13/11/2023

