

**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/92696/W

Site: 56, Greenhill Bank Road, New Mill, Holmfirth, HD9
1ER

Description: Certificate of lawfulness for proposed two storey
rear extension, single storey side extension to form garage and 3 garden
rooms to form gym, office and play room

Case Officer: William Simcock

Decision Reference: PROPOSED OPERATIONS GRANT/REFUSE

**I hereby authorise the split decision 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 30-Jan-2024

OFFICER REPORT – 2023/92696

56, Greenhill Bank Road, New Mill, Holmfirth.

Certificate of lawfulness for proposed two storey rear extension, single storey side extension to form garage and 3 garden rooms to form gym, office and play room.

1. Introduction

- 1.1 This application seeks to establish the lawfulness of the above development.

2. Site and Proposal

- 2.1 The site consists of a detached dwelling and its curtilage, located on the western side of the highway. The application seeks confirmation that the erection of extensions and outbuildings as shown on the drawings would be permitted development.
- 2.2 The proposed two-storey rear extension would be the full width of the existing dwelling and project 3.0m. It would have a flat roof which would be the same height as the eaves.
- 2.3 Two single-storey side extensions are also proposed. The one to the north elevation would be 4.799m in width and would form a garage with a flat roof. The one to the south would project only 2m from the side wall and would have a lean-to roof. A small existing detached garage would be removed to facilitate this.
- 2.4 A small porch is shown on the plans as proposed, placed in the centre of the front elevation, which would measure 1.25m by 2.4m externally and be 3.0m high (with a flat roof).
- 2.5 It is proposed that three separate detached buildings would be erected, all of back-to-earth design, wall height 2.5m from internal floor to eaves, and with double-pitched roofs a further 1.5m in height. The gym building would be 26.5m in length, the other two 11.6m.

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 59 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, development description, 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.¹

4. Relevant Planning History

4.1 None.

4.2 The property has no record of any enforcement action.

¹ National Planning Policy Guidance – Lawful Development Certificates

5. Evidence Submitted

- 5.1 The application has provided a full set of plans and elevational drawings in support of the application.
- 5.2 The applicant submits that the proposed enlargements to the property and erection of outbuildings as shown on the submitted plans benefit from a general planning permission granted by virtue of the GPDO, Part 1.
- 5.3 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.

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, Classes A, D and E of Schedule 2 of the GPDO.
- 6.2 Evidence from aerial photographs held by the Council dating back to 2002 and historical maps dating back to 1955 indicate that the land has always been used for purposes incidental to the enjoyment of the property and formed a single unit and enclosure with it. It is therefore considered that all of the proposed works are within the domestic curtilage of the property.
- 6.3 There is no record of permitted development rights having been removed for this property. It will therefore benefit from the full set of permitted development rights granted by Part 1, Class A of Schedule 2.
- 6.4 The proposal's compliance with the limitations within Class A will be assessed below.
- 6.5 *Extensions:* 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.
- 6.6 Development is not permitted if any of the following apply (A.1 (a-l)):

- (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 (including both the extensions and outbuildings as proposed) 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: All 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: None of the extensions would extend beyond a wall forming a principal elevation or fronting 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: No extension would exceed 4m in height when measured from the highest part of the adjacent ground as specified in the GPDO Technical Guidance, and would not extend more than 4m out.

- (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: The supporting statement confirms that the rear extension will be two-storey and from scaled measurements on the site plan it can be ascertained that it would be more than 7m from the rear boundary and would not extend more than 3 metres from the original dwellinghouse.

(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 side extension to the dwellinghouse would be within 2m of the original boundary of the curtilage of the dwellinghouse but 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 side extension would not exceed 4m in height, would not have more than a single storey, and would be less than half the width of the original dwelling house.

(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 enlargements would 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.

Comment: The proposal does not involve the construction of any formed 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.

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

Comment: Not applicable

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.

6.7 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 plans do not indicate any upper floor windows. Clause (c) does not apply because the proposed rear extension has a flat roof.

6.8 It will be seen therefore, from the above analysis, that the proposed extensions are not caught by any of the limitations in Class A, nor would there be any difficulty in complying with the conditions (a-c). It is therefore (considered separately and in isolation from the proposed outbuildings) permitted development.

6.9 *Porch:* The erection of a porch around an existing external door is permitted by Part 1 Class D provided that it does not exceed 3 square metres in ground floor area (measured externally), does not exceed 3m in height, and is not within 2m of a highway. The porch as shown would comply with these limitations, and is therefore permitted development.

6.10 *Outbuildings:* Part 1, Class E allows the erection of 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. This is subject to several limitations as set out below:

(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) 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: this does not apply.

(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: this does not apply.

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

Comment: None of the three buildings would have more than a single storey.

(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 submitted elevations show that all three outbuildings would be within these limits (when measured from the lowest ground level adjacent to the development as per the Technical Guidance).

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

Comment: The submitted elevations show that all three outbuildings would be within this limit (when measured from the lowest ground level adjacent to the development as per the Technical Guidance).

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

Comment: this does not apply.

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

Comment: this does not apply.

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

Comment: this does not apply.

(j) the capacity of the container would exceed 3,500 litre

Comment: This does not apply.

(k) the dwelling house is built under Part 20 of this schedule.

Comment: This does not apply.

- 6.11 The general grant of planning permission however only applies if the building or structure is “required for a purpose incidental to the enjoyment of the dwellinghouse as such”. There is no definition of “incidental” in the General Permitted Development Order. There are however many cases in which the Courts have contemplated the meaning of “incidental”.
- 6.12 *Emin v SSE* (1989) 58 P&CR 416 found that size is not necessarily a determining factor in itself. A large building may be reasonably incidental, but “incidental” should not include uses which cannot be reasonable in all the circumstances of the particular case and should not rest on an “unrestrained whim” of the owner.
- 6.13 *SoS v Thurrock* (2002) 2 PLR 43 held that while the applicant may evidence a requirement for the building, this is not necessarily conclusive in the question of whether it is required for purposes incidental to the enjoyment of the dwellinghouse.
- 6.14 Returning to the present case, the aggregate footprint of the three proposed outbuildings would have a footprint of 264sqm. This is approximately 500% the footprint of the existing dwelling (before any extensions), which, this being a two-storey dwelling, would be equivalent to 250% of the existing floor area. The cumulative footprint of the three outbuildings would in fact substantially exceed the footprint of the dwelling as extended under the proposed scheme. Looking at the outbuildings individually, it is considered that they all three are exceptionally large for the stated uses to which they are to be put, given the size of the property. The applicant has not provided any evidence to demonstrate why the buildings are required to the proposed size and it is therefore considered a functional gym and playroom for family could each be reasonably accommodated in a much smaller building. It would therefore appear the size of the gym and playroom is unrestrained and unjustified. The home office is also of a significant size which questions whether it can be considered incidental to the enjoyment of the dwellinghouse particularly as the size would allow accommodation of a significant number of work desks/meeting rooms etc which may suggest a separate office use beyond an incidental use one could ordinarily expect at a dwellinghouse.
- 6.15 The scale of the outbuildings proposed is therefore considered to be exceptional for a domestic setting, taking into account the modest size of the dwelling they would serve, and of the residential curtilage in which they would be placed. No written evidence has been supplied to demonstrate that the buildings are required for purposes that are ordinarily and reasonably incidental to the enjoyment of the dwelling, or that a smaller building or buildings would fail to adequately serve the same need. It is therefore considered that

they do not fall within the definition of “incidental to the enjoyment of the dwelling house”.

7. Conclusion

- 7.1 The proposal for enlargements to the dwellinghouse, it is considered, does benefit from a general permission granted by Schedule 2, Part 1, Class A of the General Permitted Development Order.
- 7.2 However it is considered the proposed outbuilding cannot benefit from a general planning permission and it is recommended that a Certificate of Lawfulness of Proposed Development cannot be granted for these parts of the proposal.

Decision notice text

Proposed Outbuildings

The proposed outbuildings, owing to their scale both in absolute terms and in relation to the size of the dwelling they would serve, are considered not to fall within a reasonable definition of “incidental to the enjoyment of a dwellinghouse” and therefore do not benefit from a general planning permission under Article 3(1) and Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Proposed Enlargement to the Dwellinghouse

The proposed enlargements to the development benefit from a general planning permission by virtue of Article 3(1) and Schedule 2, Part 1, Classes A & D of the Town and Country Planning (General Permitted Development)(England) Order 2015(as amended) subject to conditions as stated in paragraphs A.3 of the same Order.

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

Plan Type	Reference	Version	Date Received
Application form			12-Sep-2023
Covering letter			12-Sep-2023
Location plan	2813_ACU LOC		12-Sep-2023
Existing site plan	2813_ACU(100)01		12-Sep-2023
Proposed extensions	2813_ACU(100)02		12-Sep-2023
Proposed site plan	2813_ACU(100)03		12-Sep-2023
Proposed outbuildings	2813_ACU(100)04		12-Sep-2023
Proposed site sections	2813_ACU(100)05		10-Oct-2023

Report dated:

24-Jan-2024
