

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/93778/E

Site: 4, Jessop View, Staincliffe, Batley, WF17 7SG

Description: Certificate of lawfulness for existing erection of
orangery to rear

Case Officer: Jennifer Booth

Decision Reference: EXISTING 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 04-Mar-2024

Officer report

Reference:	2023/CLD/93778/E
Applicant: -	S Azam
Location: -	4, Jessop View, Staincliffe, Batley, WF17 7SG
Proposal: -	Certificate of lawfulness for existing orangery to rear

Site description

4 Jessop View is a semi-detached, red brick dwelling with an open garden and drive to the front, and enclosed gardens to the side and rear.

Description of development

The applicant is seeking a determination that the orangery to the rear of the dwelling has been in situ for more than 4 years, and as such are now lawful.

Representations

We are currently undertaking statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter.

This application has been included in the weekly lists when received and has been available on the Kirklees Website. Furthermore, neighbour letters have been sent offering the opportunity for the provision of evidence either to corroborate the applicant's information or against by 31/01/2024. No responses received.

Consultation Responses

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 and the Town and Country Planning (General Permitted Development) (England) Order 2015.

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 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 LDC 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, Local Planning Authority may then consider further development has taken place.

Relevant Planning History

2008/93493 – erection of five dwellings and detached garage - approved

Evidence submitted in support of the application

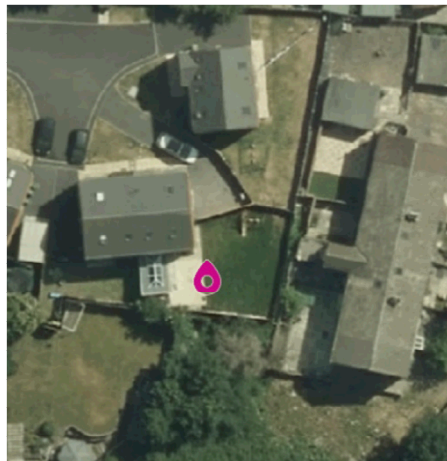
Supporting information includes a completed application form, site plan, aerial images from google maps from 2019 and photos.

Evidence submitted against the application

No evidence has been submitted against the application.

Evidence obtained from Council Records and other Sources

Kompass records from 2018.



Site Visit

None

Assessment

This application has been submitted by the applicant on the basis that the orangery has been in situ for in excess of 4 years. The applicant has supplied a site plan, photos including aerial imagery from 2019 which show the orangery. From measurements taken it is considered the enlargement to the dwellinghouse would not have benefitted from a general planning permission under Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country (General Permitted Development)(England) Order 2015 (as amended). In the absence of any other planning permission the enlargement would have been erected in breach of planning control.

However, a search on kompass clearly shows the site in 2018 with the orangery in situ. Section 171B of the Town and Country Planning Act 1990 provides an

immunity from enforcement action is unauthorised works remain substantially complete for 4 years.

It is considered therefore, that based on the evidence provided by the applicant and held by the Council, the units have been built for more than 4 years.

Conclusion

As such, on the balance of probabilities, the LPA is satisfied that the orangery to the rear of 4 Jessop View has been on site for more than 4 years. Acknowledging this, my recommendation is that the certificate of lawful use should be granted.

At the date of this advice the council has no evidence to contradict this.

Recommendation: Grant Certificate

Decision Authorisation - Delegated Powers**Application Number:** 2023/93778**Officer Recommendation:** Approve Lawful Development Certificate**Reasons for approval**

Based on the information provided by the agent and publicly available information, on the balance of probabilities, it is considered to have been demonstrated that the orangery to the rear of 4 Jessop View has been in situ for more than 4 years and is therefore considered to be lawful for the purposes of planning control by virtue of section 171B of the Town and Country Planning Act 1990.

Plans and specifications schedule: -

Plan Type	Reference	Web ID	Date Received
Application form	-	1023351	21/12/2023
Site location	-	1023427	21/12/2023
Block plan	-	1023426	21/12/2023
Existing elevations/photo	-	1023357	21/12/2023
Aerial image from 2019	-	1023426	21/12/2023

Report Dated 08/02/2024