

**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.: 2024/CL/90095/E

Site: 2, Heron Close, Ravensthorpe, Dewsbury, WF13  
3TH

Description: Certificate of lawfulness for proposed rear dormer

Case Officer: Jennifer Booth

**Decision Reference: PROPOSED OPERATIONS REFUSE**

**I hereby authorise the refusal 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 12-Mar-2024**

<b>Reference:</b>	2024/CLD/90095/E
<b>Applicant: -</b>	I Imran
<b>Location: -</b>	2, Heron Close, Ravensthorpe, Dewsbury, WF13 3TH
<b>Proposal: -</b>	Certificate of lawfulness for proposed rear dormer



### Site Description

2 Heron Close is a modern brick built semi-detached dwelling located on a corner with garden to the front, a drive to the side and a small yard to the rear. The property has recently constructed extensions to the side and rear.

The property is located within a modern development of similar properties.

### Application Proposal

The application is for a certificate of lawful proposed development for a rear dormer. The onus is on the applicant to provide evidence which states why the proposal fits with the permitted development legislation. In this case, the applicant has stated on the application form that the proposal is permitted development.

The dormer would adjoin the roof over the rear extension and would have a width of 5.4m, a height of 1.9m and a depth of 3.6m.

Total proposed roof enlargement – 18.5 cubic metres

It is noted that the previous two storey enlargement has been erected and the roof space will be adjoined to the proposed roof enlargement. The roof space of the two storey enlargement is 7.9 cubic metres

Total roof enlargement = 26.4 cubic metres.

### Relevant Planning History

2022/92606 -- erection of two storey side extension - refused

2023/91880 - erection of single & two storey rear extension - approved

2023/92947 - single storey side extension – approved

## Consultations

This is an application for a Lawful Development Certificate and for this reason, no consultations are necessary.

## Legislation

The Town and Country Planning Act 1990 Section 55 and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

## **Assessment: -**

The main considerations in the determination of this application are:

1. Whether the proposed development would constitute development as defined section 55 of the Town and Country Planning Act 1990.
1. If so, whether Permitted Development rights apply to the property; and
2. Whether the proposed development falls within permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1 (Development within the curtilage of a dwelling house), Class B (additions etc to the roof of a dwellinghouse).

The proposal comprises the formation of a dormer within the rear roof plane. Thus, the proposal constitutes the carrying out of building on and over land that would materially affect the external appearance of the existing building. As such, it is regarded as development as defined by section 55 of the Town and Country Planning Act 1990.

The application therefore falls to be considered under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1 (Development within the curtilage of a dwelling house), Class B (enlargement, improvement or alterations of a house).

## **Permitted development**

B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Development not permitted

B.1 Development is not permitted by Class B 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); **N/A**

(b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof; *The proposal does not exceed the existing height of the dwelling.*

(c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway; *The proposals would not extend beyond the existing roof slope on the principal elevation.*

(d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—

(i) 40 cubic metres in the case of a terrace house, or

(ii) 50 cubic metres in any other case;

*Total roof enlargement = 26.4 cubic metres.*

(e) it would consist of or include—

(i) the construction or provision of a verandah, balcony or raised platform, or

(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe; or **N/A**

(f) the dwellinghouse is on article 2(3) land. **N/A**

## **Conditions**

B.2 Development is permitted by Class B subject to the following conditions—

(a) the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

(b) the enlargement must be constructed so that—

(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—

(aa) the eaves of the original roof are maintained or reinstated;

and

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and

(ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse; and

(c) any window inserted on 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.

### **Interpretation of Class B**

B.3 For the purposes of Class B, “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.

B.4 For the purposes of paragraph B.2(b)(ii), roof tiles, guttering, fascias, barge boards and other minor roof details overhanging the external wall of the original dwellinghouse are not to be considered part of the enlargement.

### **Article 3(5)**

Article 3(5) of the GPDO sets out that schedule 2 of the Order does not apply where permission in connection with an existing building, the building operations involved in the construction of that building are unlawful. In this instance the permission for the two storey extension and the building works carried out differ significantly with the lowering of the dual pitched roof of the extension to accommodate the proposed roof enlargement. This has the effect of rendering the building works carried out as deviating from the approved plans and therefore unlawful as no other planning permission exists. Article 3(5) applies, therefore as the construction of that building and any part of that building when applying the statutory definition of “building”, is unlawful and as the proposed roof enlargement adjoins the unauthorised works, schedule 2 cannot apply.

### **Conclusion**

The proposed rear dormer at 2 Heron Close would not constitute permitted development as set out in Article 3(5) and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 as the proposed roof enlargement adjoins part of an existing two storey extension to the dwellinghouse that does not benefit from planning permission by virtue of deviation from the approved plans.

**Recommendation: REFUSE certificate**

**Decision Authorisation - Delegated Powers**

**Application Number:** 2024/90095

**Officer Recommendation:** REFUSE certificate

The proposed rear dormer at 2 Heron Close would not constitute permitted development by virtue of Article 3(5) and Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 as the proposed roof enlargement adjoins part of an existing two storey extension to the dwellinghouse that does not benefit from planning permission by virtue of deviation from previously approved plans reference (2023/91880).

Plans and specifications schedule: -

<b>Plan Type</b>	<b>Reference</b>	<b>Web ID</b>	<b>Date Received</b>
Application form	-	1024689	17/01/2024
Location plan	1	-	01/02/2024
Existing & proposed plans	2	-	01/02/2024
Existing & proposed plans	3	-	01/02/2024
Existing & proposed plans	4	-	01/02/2024

**Report Dated** 12/03/2024