

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/90497/W

Site: The Wood Yard, Shepherds Thorn Lane, Bradley,
Huddersfield, HD6 3TU

Description: Certificate of lawfulness for existing conversion of
office/canteen to erect one dwelling/storage unit, installation of two containers,
poly tunnel and pole barn

Case Officer: Charlotte Dixon

**Decision Reference: SPLIT DECISION- REFUSE
DWELLING/STORAGE UNIT AND POLYTUNNEL – GRANT CONTAINERS
AND POLE BARN**

**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 25-Jun-2024

Site Description

The Wood Yard is a mixed-use premises consisting of residential and business use. The site comprises one detached dwelling, as well as a yard which is in use as The Tree Surgeons yard (an arboricultural business). Sited within the yard is a poly tunnel, open-fronted barn style building, two shipping containers which were utilized to form a make-shift storage bay and two vehicle bodies which are storage units. The business use of the site, open-fronted barn style building and the two vehicle bodies are not subject to this lawful development certificate application.

Situated on top of concrete blocks is a shipping container which was a former office/canteen building and has been converted into a single bedroom dwelling. The dwelling has an open frontage with a balcony area to the front. Beneath the balcony area are two storage bays. The dwelling is constructed of metal and the balcony is constructed of a mixture of metal and wood. To provide shelter for the dwelling and balcony is a roof which is constructed of corrugated metal.

To the north-east of the dwelling is a large field which is utilized as amenity space. The use of this land is not subject to this lawful development certificate.

The site is located in Bradley Wood, near the Bradley Wood Activity Centre.

The site is subject to an enforcement investigation under reference COMP/22/0586.

Application Proposal

The application is retrospective and seeks to establish whether the dwelling, containers, poly tunnel, and storage bays at the site are lawful. The onus is on the applicant to provide evidence which states why the developments at the site are lawful.

In order for the developments to be lawful, it has to be established that they have been located at the site for 4 years or more. In this instance, the applicant has submitted a timeline of events which states that they commenced sleeping at the site in 2016 and the container which has been converted into the single-bedroom dwelling, was sited in 2019.

For context only, the application site is located in the Green Belt.

Relevant Planning History

99/91029- Erection of community resources centre- Conditional full permission

2014/93728- Erection of forestry building- Withdrawn

2015/91455- Erection of storage building- Refused- Appeal Dismissed

2024/90711- Removal of existing storage buildings, containers and poly tunnel and erection of steel framed portal storage building to be used for storage and distribution, light industrial and general industrial use- Pending consideration

History of negotiations/amendments received

Clarification has been sought from the applicant via a Planning Contravention Notice and subsequent email exchanges to establish when the shipping container was moved to the site in its current position and when the use of this container as a dwelling commenced at the site. Additionally, clarification was sought to establish when the balcony and encasing structure were constructed at the site and substantially complete.

Consultations

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

Law

The site has no policy based constraints in respect of Permitted Development. As such, the application falls to be considered under the relevant legislation as follows:-

The Town and Country Planning Act 1990.

This application was submitted on the 21 February 2024 and as such the date of lawfulness would be assessed at the time of this application (Section 191(4) of the Act.) It is noted the applicant claims the building was initially erected for as a canteen/office prior to the commencement of the residential use. If it can be demonstrated the use of the building as a single dwellinghouse occurred on or before the 21 February 2020 the use of the building may benefit from immunity from enforcement action by virtue of section 171B(2). However and notwithstanding the use of the building, if it is considered the building was not substantially completed four years prior to the date of the application, the application may be refused on the basis enforcement action could be taken against the building operations.

While orbiting to this assessment, it is noted the law with regard to time limits for enforcement action where amended on the 25 April 2024 whereby any development capable of enforcement action being taken against it by reason of 4 years immunity under section 171B(1) &(2) has now been extended to 10 years. The transitional arrangements stated under the commencement Order provided for an immunity from enforcement action under the amended section where it can be demonstrated that 4 years

have passed since building operations had been substantially completed or since a breach relating to the use as a single dwellinghouse had occurred.

Evidence submitted

Application Form – states two containers, a pole barn, polytunnel and storage bays constructed from concrete block with a canteen/office on top which was converted to a single bedroom dwelling.

- Crime Log – Listing a number of crime logs from 2004 to 2016.
- Timeline – Listing several events from 2003 to 2019.
- Photographs – two aerial photographs – undated.
- Email 06/06/2024 – embedded photographs of construction work July 2020.
- Email 27/04/2024 – Clarifying development as use of the building as a dwelling.

Evidence held by the Council.

- Aerial photographs – dated 2009, 2012, 2018, 2021.
- Planning Contravention Notice
- Google Earth Pro imagery
- Site photographs 2014 (Planning app ref 2014/93728)

Assessment:

The Development

The applicant describes the development to consist of polytunnel two containers, a pole barn, a poly tunnel and a former canteen/office converted into a single bedroom dwelling and that the use of the land is a wood yard and dwelling. The applicant within submissions claims that the use of the site as a wood yard commenced in 2003 with the applicant taking ownership in 2010. It is claimed they commenced sleeping at the site in 2016 with a container being delivered in 2018 and then being permanently sited in 2019. While no plans have been submitted indicating where each element of the development are sited, it is considered the pole barn and two containers are located towards the north of the site and the dwelling at the south side adjacent to the M62 motorway.

The evidence provided and held by the Council, in particular aerial photographs dated 2012 & 2018 indicate the pole barn two containers are present at the site with what appears to be the canteen/office unit in the field to the east of the yard area appearing in 2018. Google Earth imagery dated May 2019 has an indication the same canteen/office unit to be re-located to the west side of the yard. Google Earth imagery dated April 2020 further indicates the office/canteen building was moved to the current position on top of the concrete blocks. This would appear to be consistent with the applicants

timeline in so far as the container unit was delivered in 2018 and subsequently permanently sited in 2019 within the erection of the large shed which is taken to be the concrete block structure.

The applicants email of June 2024 clearly indicates the works to complete the construction of the concrete blocks by erecting a roof structure and balcony around the container were still ongoing in July 2020.

The applicants' other information does not offer any further evidence to further clarify the nature of the works carried out.

While the applicant's view in their email of April 2024 suggests they wish the Council to consider the lawfulness of the use of the canteen/officer container as a dwellinghouse, their evidence and that held by the Council indicates the canteen/office unit was delivered to the site and subsequently incorporated into other building works to form a building which was then used as a dwellinghouse. The applicant has not officered any evidence to demonstrate the use of the land to site the canteen/office was lawful or indeed whether any residential use had been established on the land. It is claimed the applicant slept at the site from 2016 although there is no evidence to indicate the frequency of these overnight stays or whether these stays were use as a permanent residential use. Overall there is no evidence to suggest the site has established any residential use.

Consequently, the works carried on at the site appear to consist of the erection of the pole barn and siting of two containers prior to 2012 with the erection of dwellinghouse consisting of concrete blocks supporting the converted container with roof structure and balcony completed sometime after July 2012.

The polytunnel only appears on aerial photographs in 2020 and only to the extent the framework was erected without covering.

From the evidence provided, it is considered the works to erect the dwellinghouse, polytunnel and pole barn are building operations and therefore operational development as set out in section 55 of the Town and Country Planning Act 1990.

For the developments on the site to be lawful, it has to be established that the operational developments have been substantially completed for at least 4 years before the date of the application.

Erection of Dwellinghouse

After assessing the responses to the Planning Contravention Notice, it has been established that the work commenced in 2019 and the concrete blocks were built, and the container that was used for form was dwelling was sited on the concrete blocks in 2020. Following this, the encasing metal frame forming the balcony and corrugated metal roof was substantially completed in July 2020. Once the balcony was substantially complete, this created the two storage bays and therefore these storage bays have been substantially

complete since July 2020.

The Council consider that the dwelling was only substantially complete after the encompassing metal frame consisting of the roof and balcony were completed. This notion is supported by caselaw, particularly by *Devine v Secretary of State for Levelling Up, Housing and Communities*¹, in which it was determined at appeal that the works to create a new wing of the building and replacement of the entire roof amounted to construction of a new building, and the works were not complete more than four years (the relevant limitation period) prior to the date of the enforcement notice being served. In this instance, though the works to construct the dwelling may have happened over a short period of years, they still formed all one operation and therefore the building was not considered to be substantially complete until the encompassing metal roof and balcony were built in July 2020. The installation of the balcony formed the two storage bays that are located under the dwelling and as such, it is considered that the dwelling and storage bays have not been substantially complete for 4 years.

Polytunnel

With regard to the erection of the poly tunnel, aerial imagery shows that the frame of this was present on the site in 2020. However, the sheeting was not installed until after this date, with it only present on aerial imagery from 2022 onwards. Aerial imagery from the 16th June 2021 shows that the sheeting was not on the poly tunnel. As such if the poly tunnel is considered as being development, the poly tunnel was not substantially complete until the sheeting was installed. From looking at aerial imagery, the earliest date the sheeting could have been installed was on the 16th June 2021, meaning that the poly tunnel does not exceed the 4-year period.

Two containers/Pole Barn

Section 55 of The Town and Country Planning Act (TCPA) defines development as “*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*”. “Building operations” include-

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

¹ *Devine v Secretary of State for Levelling Up, Housing and Communities* [2023] EWCA Civ 601 (25 May 2023)

(d) other operations normally undertaken by a person carrying on business as a builder.

The pole barn is a relatively substantial structure with three enclosed sides and roof, clearly amounting to operational works. It is also clear the works to erect this building was completed in at least 2014 and as such became immune from enforcement action in 2018.

In this instance, the containers are not fixed to the ground or provided with utility services. Each container can be transported by lorry and placed on the site by crane and did not require on-site assembly, or demolition if removed. Therefore, as a matter of fact and degree, the containers do not amount to the erection of permanent structures on the site and therefore would be considered to be a use of the land for the purposes of siting containers.

While the applicant has not provided any information to demonstrate the use of the wood yard is lawful, it is clear the pole barn and containers have been present on the site since 2012 with clear evidence of log storage and processing being undertaken in 2014 when site visit photographs were taken. Consequently it is considered the use of the wood yard for log storage and processing has been undertaken on the site 10 years prior to the date of this application and as such the siting of the containers for those purposes is ancillary to that use.

Conclusion

The proposal has been considered against the time limits as specified in Section 171B of The Town and Country Planning Act 1990 (as amended) and is recommended for a split decision. The aspects of the proposal consisting of the erection of one dwelling and poly tunnel are not considered to have been substantially complete for 4 years prior to the date of this application. The

If has been demonstrated that the pole barn and siting of containers is now lawful by virtue of section 171B and Section 191 of the Town and Country Planning Act 1990.

Recommendation: Split Decision

Authorisation - Delegated Powers

Application Number: 2024/90497

Officer Recommendation: Split Decision

KIRKLEES COUNCIL HEREBY REFUSES TO CERTIFY THAT ON 21-FEB-2024 THE OPERATIONS DESCRIBED IN THE FIRST SCHEDULE THERETO IN RESPECT OF THE LAND SPECIFIED IN THE THIRD SCHEDULE HERETO AND EDGED RED ON THE SUBMITTED PLANS WOULD BE LAWFUL WITHIN THE MEANING OF SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), FOR THE FOLLOWING REASONS:

The applicant has failed to demonstrate that the erection of the dwellinghouse/storage bays consisting of building operations to convert of the former canteen/office unit and erection of concrete blocks, roof, walling and balcony sited towards the south of the yard area and the erection of polytunnel benefit from any immunity from enforcement action by reason of section 171B of the Town and Country Planning Act 1990. The works to erect the dwellinghouse are consider to be operational development which were not substantially completed 4 years prior to the date of this application.

KIRKLEES COUNCIL HEREBY CERTIFIES THAT ON 21-Feb-2024 THE OPERATIONS DESCRIBED IN THE SECOND SCHEDULE THERETO IN RESPECT OF THE LAND SPECIFIED IN THE THIRD SCHEDULE HERETO AND EDGED RED ON THE SUBMITTED PLANS WOULD BE LAWFUL WITHIN THE MEANING OF SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), FOR THE FOLLOWING REASONS:

It is considered, on the balance of probability, that the erection of the pole barn towards the north of the yard area was substantially completed in excess of 4 years prior to the date of this application. The siting of the two containers adjacent to the pole barn is also considered to be immune from enforcement action by virtue of section 171B of the Town and Country Planning Act 1990.

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Timeline of events	-	-	21/02/2024
Crime log	-	-	21/02/2024
Location plan	PP-12820163v1	-	21/02/2024
Photo montage	-	-	23/02/2024
Aerial photographs	-	-	Held by the Council