

**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/91087/E

Site: East Barn, Heymoor Farm, Abbey Road,
Shepley, Huddersfield, HD8 8EP

Description: Certificate of lawfulness for existing use of land for
purposes incidental to the enjoyment of the dwellinghouse

Case Officer: Jennifer Booth

Decision Reference: EXISTING USE 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 24-Jul-2024

Officer report

Site description

East Barn is a semi-detached barn conversion set in a semi-rural location.

Description of development

The application is for a certificate of lawfulness for the existing use of land as domestic garden. The application is based on the grounds that the use began more than ten years before the date of the application.

Representations

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

As such, we have publicised this application via neighbour notification letters which expired on the 3rd June 2023 whereby no representations have been received.

Kirkburton Parish Council have no comments to make.

Consultation Responses

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

Relevant Policy / Legislation

The Town and Country Planning Act 1990; The Town and Country Planning (Use Classes) Order 1987 (as amended).

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 Information

Material Change of Use

Section 55 (1) of the Act provides:

"Subject to the following provisions of this section, in the Act except where the context otherwise requires, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of a material change in use of any building or other land"

Section 171B provides and in the case of a material change of use in breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Relevant Planning History

2002/91706 – change of use of existing barn to two dwelling and erection of double garage – granted

2003/90357 – reuse, extension and adaptation of barn to form two dwellings with detached double garage – granted

Evidence submitted in support of the application

Evidence submitted includes the application form, site location plan and a supporting statement.

The supporting statement includes:-

- aerial images of the site from 2015.
- Photos from a sales document - 2023,
- Statutory declarations from the previous owners and neighbours.

Evidence submitted against the application

No evidence has been submitted against the application.

Evidence obtained from Council Records and other Sources

None

Site Visit

A site visit has not been undertaken by a planning officer.

Assessment of evidence

The applicant has stated that the land has been used as domestic garden associated with East Barn for over 10 years.

Before the length of time the land has been used, the matter of curtilage is considered. Curtilage in and of itself is not a land use and does not necessarily

comprise all of the land in someone's ownership. If a lawful development certificate is issued, this could only agree (or not as the case may be) that the land has been used in association with East Barn for activities incidental to the enjoyment of the house rather than garden land which is often associated with curtilage. What constitutes the curtilage for any dwelling is matter for assessment in terms of the merits in each instance. Moreover, the Courts have held that land use for purposes incidental to the enjoyment of the dwellinghouse may include land outside curtilage land. Consequently, it is considered appropriate to modify the description of development to the use of land for purposes incidental to the enjoyment of the dwellinghouse.

In terms of assessing association with the dwellinghouse to the degree the land has been used for incidental purposes, factors including the physical layout of the building and attached land, the ownership, past and present; and their use or function; past and present are considered important.

In terms of physical layout, aerial imagery both held by the Council, through Google Earth and submitted by the applicants, indicate in 2003 the building appeared to have had defined boundaries encompassing the land tinted blue on the submitted title plan. Planning application reference 77/00522 also closely follows the same boundary. Imagery from 2002 and 2003 suggests this is land that has a close association with the building which appears to form one clear enclosure and thus reasonable to conclude the area tinted blue is curtilage to the dwellinghouse.

Imagery from Google Earth dated June 2009 shows the eastern boundary to the blue land had been removed and some activity was being carried out between the east boundary of the blue land and east boundary of the land tinted pink on the title plan. It is not possible to accurately describe the activity on the land other than to surmise the land is being prepared as an extension to the recognised garden area. The statements from the previous owner do not describe in detail when they undertook the activity on this land other than to state they used the blue land and the land to the east of the blue land as residential garden. Consequently, the evidence is not clear enough to demonstrate the land had undergone a material change of use in 2009.

The next available aerial imagery held by the Council is a 2012 image which is not dissimilar to the 2009 image whereby the appearance is more a field rather than garden and as such no material change can be said have occurred in 2012.

Imagery from Google earth dated June 2015 is identical to the aerial image embedded in the Planning Statement claimed to be June 2009. It is considered the agent has erred in this claim, particularly has the second image embedded

in the statement claimed to be 2015 is in fact the Google image dated April 2021 when comparing specific items and features on the land. Therefore, little weight can be given to the aerial imagery submitted within the Planning Statement.

However, the images from Google Earth dated June 2015 does show a marked change in the appearance of the land east of the blue land. The trampoline and ornamental shrubbery/trees appear to have been established to the degree the land to the east of the blue land is less distinguishable as a separate area beyond the recognised original garden area. Given the domestic appearance of the land in 2015, it is accepted to be materially different to the 2012 image held by the Council and thus a material change of use occurred between 2012 and June 2015. As no planning permission was granted for this change of use, a breach of planning control occurred between these dates. It also appears the extent of land in breach of planning control is land between the east boundary of the land tinted blue on the title plan and east boundary of the pink tinted land as shown hatched green on exhibit AJ1 as submitted with the statement of truth.

Subsequent Google Earth imagery from 2016 and photographs of the land as it appear now show the land to be used for domestic purposes with the Wendy house and play equipment appearing in 2016. However, it is noted the domestic land appears to have been further extend to the south by April 2021. This seems to indicate a further breach of planning control in 2021.

Aerial imagery alone does demonstrate an unauthorised material change of use to domestic purposes had occurred from June 2015 to the date of the application, 24 April 2024 being 8 years and 10 months.

It is accepted, however, that the appearance of the land in June 2015 indicated the change to domestic garden was not immediate and would have been undertaken over time.

Statements of Truths submitted with the application claim the land had been used as garden for at least 13 years which may well be the case although imagery from 2012 and before do not support the argument any use as garden was as a matter of fact and degree a material change to garden.

The critical date for evidence is 10 years prior to the date of the application which would be 24 April 2014 being 1 year and 2 months prior to the June 2015 aerial image. As noted above, the statements provided in submissions make the claim the land has been garden for at least 13 years which is afforded weight given 8 years and 10 months of those 13 years are collaborated by aerial imagery. Consequently and while the 2012 aerial image does not show a material difference from the surrounding fields, it is clear the owners intentions

were to over time establish the land as garden from 2006 when the boundary wall was removed. It is therefore accepted that from 2006 to 2015 the owners would have, over 9 years, gradually establish a domestic use of the land to the degree 1 year and 2 months before the 2015 aerial image, the land would have most likely been well established as domestic land. Therefore and as it is already accepted the material change of use would have occurred sometime between 2012 and 2015, the weight of evidence suggests on the balance of probability the material change to purposes incidental to the dwelling did as a matter of fact and degree occur in excess of 10 years prior to the date of the application. The Council has no evidence to contradict this.

However, it is not accepted all the land within the red line boundary has been used for 10 years. Aerial imagery clearly indicates the land south of the establishment of garden in 2015 was only commenced as garden since 2021. It is considered appropriate to clarify the extent of lawful garden in the decision notice.

Conclusion

As such, Officers are satisfied that the land has been used for purposes incidental to the enjoyment of the dwellinghouse at East Barn. On this basis, the recommendation is that the certificate of lawful use should be granted.

Recommendation: Grant Certificate

Decision Authorisation - Delegated Powers**Application Number:** 2024/91087**Officer Recommendation:** Gran Lawful Development Certificate**Reasons for refusal**

Based on the information submitted by the applicant and the information held by the Local Authority, it has been demonstrated on the balance of probabilities that the land hatched green on plan reference "Boundary Treatment Plan" embedded in the Planning Statement, excluding an area of land 10 metres north of the fence to the south boundary as annotated, has been used for purposes incidental to the enjoyment of the dwellinghouse at East Barn, Abbey Road, Shepley for a period in excess of 10 years prior to the date of this application.

Plans and specifications schedule: -

Plan Type	Reference	Web ID	Date Received
Application form	-	1037993	24/04/2024
Location plan	-	1038300	24/04/2024
Planning statement	-	1038998	24/04/2024

Report Dated 22/07/2024