

**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/91187/E
Site: 1, Lime Tree Grove, Birkenshaw, BD11 2BJ
Description: Certificate of lawfulness for existing garage
Case Officer: Jessica Irwin
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 11-Jul-2024

Officer Report

Site Description

1 Lime Tree Grove is a red brick, semi-detached dwelling located in a primarily residential area of Birkenshaw. The property hosts an amenity area to the front of the principal elevation of the house, part of which is used as a driveway, alongside a garden amenity area to the rear.

Description of Development

The application is for a Certificate of Lawful Existing Development for a garage. The applicant has stated on the application form that the proposal exceeds permitted development rights – the height of the building exceeds 2.5 metres within 2 metres of the boundary of the dwellinghouse but as the building work was completed more than four years ago it is now lawful and immune from enforcement action.

Relevant Planning History

No relevant planning history.

Representations

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

Consultation Responses & Publicity

As this is an application for a Lawful Development Certificate, no consultations have been deemed necessary.

There is no statutory duty to advertise Lawful Development Certificate's for existing development. On the balance of probabilities, as the evidence is clear in this instance, there is no need to advertise via site notice.

Legislation

The application falls to be considered under the relevant legislation as follows:

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

2. 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.

Evidence submitted in support of the application

The agent has submitted a screenshot of Google Earth imagery taken on the 22nd of April 2020 as supporting information. The applicant has stated the date to which the building work was substantially completed as 31st of January 2020.

Evidence submitted against the application

No evidence has been submitted against the application.

Evidence obtained from Council Records and other Sources

Timestamped aerial imagery is available via Google Earth (as per the supporting information provided by the agent acting on behalf of the applicant). Imagery dated 22nd of April 2020 shows the garage in situ, as depicted in the Location Plan submitted as part of the application.

Assessment of evidence

15th of
May
2019 –
Google
Earth
Image



22nd
April
2020 –
Google
Earth
aerial
image



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”

The works carried out consist of the erection of a garage exceeding permitted development rights (more than 2.5 metres high within 2 metres of the boundary). These works are considered operations consisting of building works and thus development requiring planning permission.

At the time the application was made, Section 171B provides that:

“Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operation in, on, over or under land.....no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed.”

However, section 171B was previously amended under the Levelling Up and Regeneration Act 2023 on the 25 April 2024 whereby the ten year period was limited to four years. Regulation 5 of the Commencement Order provides that the amendment to ten years does not apply where the operations were substantially completed before the 25 April 2024. In this case the operations are claimed to be substantially completed in 2020 and as such the 4 year immunity provision can be applied.

The applicant has stated that the building has been substantially complete on site since 31st of January 2020. Aerial images from Google Earth show the building complete on the 22nd of April 2020. The Local Planning Authority has no evidence to make the applicants version less credible and weight is therefore given to the aerial imagery. As the Council has no evidence otherwise it is considered on balance that the building has been substantially complete in excess of four years prior to the application and therefore immune from enforcement action by virtue of Section 171B.

Conclusion

On the balance of probabilities, I am satisfied that the building has been on the site for more than four years before the date of this application. The council has no evidence to contradict this. Acknowledging this, my recommendation is that the certificate of lawful use should be granted.

Recommendation: Grant Certificate

The applicant has demonstrated that, on the balance of probabilities the unauthorised building operations to the garage have been substantially completed more than four years before the date of this application.

Plans and specification schedule: -

Plan Type	Reference	Web ID	Date Received
Application form	-	1039979	08/05/2024
Location Plan	-	1039978	08/05/2024
Supporting information	-	1039980	08/05/2024