

**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/91647/W

Site: Bellgreave Barn, 61, Fulstone Hall Lane, New Mill,
Holmfirth, HD9 7DW

Description: Certificate of lawfulness for the erection of building
used for purposes incidental to the enjoyment of the dwellinghouse

Case Officer: Chris Cockroft

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 19-Aug-2024

APPLICATION 2024/91647
APPLICATION FOR CERTIFICATE OF LAWFUL USE (LDC)
APPLICANT: Stephen John Shaw & Sally Elizabeth Shaw

Certificate of lawfulness for existing use of garage

1. Site Description

1.1 The application relates to a site to the west of Bellgreave Barn, 61, Fulstone Hall Lane, New Mill, Holmfirth, HD9 7DW. 61, Fulstone Hall Lane is one of three dwellings created by converting existing farm buildings under planning permission 96/92338.

This site to the west includes the garage referred to in the application, which was granted planning permission in March 2021, for the "Erection of stable block" (2001/90222).

1.2 Historically the site has been open green space/agricultural land, attributed to its former use in conjunction with Bellgreave Farm. The site is not physically separated from Bellgreave Barn which sits on the East side. The immediate area surrounding the site is rural in character.

2. Application Proposal

2.1 The application is for a certificate of lawfulness for the existing use of a building for purpose's incidental to the enjoyment of the dwellinghouse. The onus is on the applicant to provide evidence which states why the existing use is lawful. The applicant sought to remove the use of the land edged green on the location plan from the description of development. It is therefore appropriate to modify the description of the certificate application.

2.2 In this case, the applicant has stated on the application form that the existing use of the building edge in red on the application plan (2904 01), has been in continuous use as a domestic garage for over 4 years (since 2020).

Relevant Planning history: -

- 96/92338 RE-USE OF EXISTING FARM BUILDINGS NEW EXTENSION AND ALTERATIONS TO FORM 3 NO DWELLINGS
- 2000/91657 EXTENSION OF DOMESTIC CURTILAGE
- 2001/90222 ERECTION OF STABLE BLOCK
- 2003/93713 ERECTION OF GARDEN ROOM/CONSERVATORY
- 2008/92178 ERECTION OF GARDEN ROOM/CONSERVATORY

3. Consultations: -

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

4. Legislation: -

4.1 The Town and Country Planning Act 1990

5. 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 in any person wishes to ascertain whether –

- (a) Any proposed use of buildings or other land is lawful
- (a) Any operations which have been carried out in, on, over or under land are lawful; or
- (b) Any other matters constituting a failure to comply with any condition or limitation subject to which planning permission has been granted lawful he may make an application for the purpose to the local planning authority specifying that the land and describing the use, operations and other matter.

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.

6. The Relevant Test

6.1 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 grant of a certificate on the balance of probability

7. Limitations: -

7.1 A LDC must contain precise details of what use or operations are found to be lawful, why and when. These 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, a Local Planning Authority may then consider further development has taken place.

8. Evidence Submitted in Support of the Application: -

In support of the application the applicant has provided the following documents:-

- Statutory Declaration
- Plan Ref 2904 (01)
- Four photos dated 11th (2) May 2013, 25th May 2013, 11th June 2013

9. Evidence Submitted Against the application: -

No written representation was received during the course of this application.

10. Evidence Obtained from Council Records and Other Sources: -

Aerial photos of the Council’s area commissioned by the Council.

Google Earth Imagery

11. Site Visit

A site visit was not undertaken.

12. Assessment of evidence

12.1 This application has been submitted by the applicant on the basis that the garage has been used incidental to the enjoyment of the dwellinghouse, in excess of 4 years rather than used for the stabling of horses as approved. The applicant submits that the residential use of the building in breach of planning control is now beyond the time limits for the taking of enforcement action. With regard to the relevant time limits for taking of action as set out in section 171B, at the time the application was made, the time limits are from 25 April 2024 10 years from the breach occurring or 10 years from when an unauthorised building is substantial completed.

12.2 For the provisions of s.171B to operate, a breach in planning control must have occurred before the 10 year clock can start ticking. A breach in planning control is defined in s.171A of the Act as either the: -

- (a) Carrying out of development without the required planning permission or
- (a) Failing to comply with any condition or limitation subject to which planning permission has been granted.

It is part (a) which is of relevant in this case and s.55(1) of the Act provides the definition of development as: -

“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” (my emphasis).

12.4 In January 2001 an application was submitted for ‘Erection of Stable Block’ and was granted full condition planning permission in March 2001. The permit was to erect an “L-shaped” building measuring 13.6 metres x 6.8 metres with a south projection of 3 metres x 4.7 metres. The height was approved a 1.9 metres to the eaves and 3 metres to the ridge of the dual pitch roof. Plans submitted with the application indicate the building to measure 8 metres x 4.1 metres with a south projection of 2.8 metres x 3.5 metres. The Council’s mapping system indicates the submitted dimensions are consistent with the measures taken from the mapping system. Consequently, it appears clear the building as built is approximately 5 metres shorter in length 2.7 metres shorter in width and thus significantly not in accordance with the approved drawings.

12.5 It therefore appears the unlawful development consisted of operational works which appear to have been substantially completed in 2001. With regard to the time period for immunity from enforcement action in force at the time, the building operations would have become immune from enforcement action in 2005, irrespective of the use the building was put to and any conditions attached to the permission also not enforceable as the permission was not implemented.

12.6 The applicant further goes on to state that, the building was used as storage for garden equipment associated with the dwelling from 2001, until it was cleared out and refurbished in 2020, when it began to be used as a domestic garage and has been since that date.

12.7 In terms of the statutory declaration by the applicant Mr Shaw, aerial imagery on Google Earth corroborates that the refurbishment work was completed sometime before 22 April 2020 with external changes to the external materials and formation of hardsurface around the building. The extent of these changes can be seen through the photographic evidence

provided by the applicant. These works significantly alter the external appearance of the building are in themselves would constitute development. Notwithstanding any suggestion the external works may benefit from permitted development rights if the building is considered to be within the curtilage of the dwellinghouse, the works appear to have been substantially completed 4 years prior to the 25 April 2024. The transitional arrangements provided within the Commencement Order bringing into force the time periods changes regarding enforcement action, retained immunity from enforcement action any unauthorised development that was substantially completed 4 years prior to the 25 April 2024.

12.8 On the balance of probability the information presented is considered to be sufficient to demonstrate that the building operations involved in the construction of the building are lawful at the time of this application.

Conclusion: -

On the balance of probability, the building edged red on location plan 2904/01 is lawful for the purposes of planning control at the time of this application. Notwithstanding the description of development provided by the applicant, it is considered appropriate to modify the description of development from use of garage to erection of building for purposes incidental to the enjoyment of the dwellinghouse under the provision of section 191(4) of the Town and Country Planning Act 1990.

**Recommendation – Approve Certificate
Decision Authorisation - Delegated Powers**

Application Number: 2024/91647

Officer Recommendation: Approve Certificate

It is considered that the evidence available demonstrates that on the balance of probabilities, the erection of the building edged red on location plan reference 2904_ACU_01 used for purposes incidental to the enjoyment of the dwellinghouse at Bellgreave Barn, 61, Fulstone Hall Lane, New Mill, Holmfirth, HD9 7DW is lawful for the purposes of planning control.

Plans and specification schedule:

Plan Type	Reference	Date Received
Location plan	2904_ACU 01	11/06/2024
Photography Evidence	1 – 2 – 3 - 4	14/06/2024
Statutory Declaration	Statutory Declaration V1.4 Signed	11/06/2024
Supporting information (Building images)	-	16/08/2024

Report Dated: 14/08/2024

