

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/91692/W

Site: Carr House, Hightown Lane, Holmfirth, HD9 3HY

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

Case Officer: Charlotte Dixon

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 08-Aug-2024

Officer Report

Site Description

Carr House is a two-storey detached dwelling constructed of natural stone and is located within the Holmfirth Conservation Area. The site subject to this certificate of lawfulness application is located to the northwest of Carr House, opposite a single-track road and is not located within the Conservation Area. The site is currently utilised as a garden, with maintained lawns as well as a trampoline, swing and shed being on the land.

Description of Proposal

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

History of negotiations/amendments received

No negotiations or amendments received.

Relevant Planning History

N/A

Consultation Responses

The Holme Valley Parish Council submitted their representations in which they support this certificate of lawfulness application.

Assessment

The applicant offers the view that the site in question has been used as a garden incidental to the enjoyment of the dwellinghouse at Carr House, Hightown Lane, Holmfirth, stating in their evidence that it has been utilised as a garden in excess of 10 years.

In regard to this matter, the applicant has submitted a series of aerial images from Google demonstrating the site over a period of 19 years from 2002 to 2021. They have also included some images held by the Council which again demonstrates the site over the period of 19 years.

I have assessed the submitted aerial photographs which demonstrate that the site has been manicured since 2002. In aerial images dated from 2006, there is the presence of a trampoline on the site and the site remains well maintained, with the presence of other forms of residential paraphernalia gradually

increasing over the years. The well-maintained state of the site continues until the latest aerial image in 2021, which was demonstrated within the applicant's evidence. A shed was built on the site in 2021 which can represent an intensification of the domestic use of the site.

Aerial imagery only dates back to 2002, which as confirmed above, demonstrated a manicured garden and the applicant has not submitted any information to evidence the use of the site prior to 2002, though the applicant stated that the site was used as a garden/allotment by the previous owners, which was before 1998. The use of land as an allotment has been established through case law to be identified as being within agricultural use; therefore, the prior use of the land would have been mixed use residential and agricultural use. After this, the land has been used within residential use as incidental to the enjoyment of the dwellinghouse.

Under the provision of Section 55 of the Town and Country Planning Act 1990, the change of use would only constitute development requiring planning permission if that change of use is material in terms of change in the character of the land. Though I do not have a definitive date in which the site was used for only residential purposes, aerial imagery confirmed that the site was manicured in 2002, inferring it was being used for purposes incidental to the enjoyment of the dwellinghouse at this time, and that the material change of use occurred between 1998 and 2002. As the use of the land prior to 1998 was mixed-use residential and agricultural and then the use of the land was residential after this date, as evidenced by aerial imagery in 2002, this would amount to a material change of use as I am satisfied that the site has been used for purposes incidental to the enjoyment of the dwellinghouse for more than 10 years.

It should be noted however that while it may be accepted that a material change of use to residential land used for the enjoyment of the existing dwelling has occurred, this does not automatically accept that the land is subsequently providing an extension to any former domestic curtilage of the dwelling. 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 that the land has been used in association with Carr House for activities incidental to the enjoyment of the house, rather than garden land which is often associated with curtilage.

The site is separated from the dwelling at Carr House by an unadopted track. As such, there is a degree of physical separation between the curtilage of the dwelling and the site. Though what is considered as being curtilage is a matter of fact and degree, the site is not located immediately beside or around the dwelling. The Courts have held that land used for purposes incidental to the enjoyment of the dwellinghouse may include land outside curtilage land. In this instance, it can be concluded that the site is not part of the domestic curtilage of Carr House. Consequently, it is suggested that the description of this certificate is corrected to "*Certificate of lawfulness for existing use of land for purposes incidental to the enjoyment of the dwellinghouse*".

Conclusion

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 coloured green on the “Location Plan” (224044D-100-P01) has been used for purposes incidental to the enjoyment of the dwellinghouse at Carr House for a period in excess of 10 years prior to the date of this application. On the basis of the land being used for purposes incidental to the enjoyment of the dwellinghouse, the recommendation is that the certificate of lawful use should be granted.

Recommendation: Grant certificate

Decision Authorisation - Delegated Powers

Application Number: 2024/91692

Officer Recommendation: Grant certificate

NOTE: The certificate relates to the use of the land only and does not confer any confirmation that the land can also be considered curtilage land to the dwellinghouse.

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Location Plan	24044D-100-P01	-	17/06/2024
Justification Statement	24044JS	-	17/06/2024

Report Dated:

07/08/2024