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/93620/E

Site: 55, Church Street, Emley, Huddersfield, HD8 9RP

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

Case Officer**:** Laura Yeadon

Decision Reference: EXISITNG 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 30-Oct-2025

APPLICATION FOR CERTICATE OF LAWFUL USE – EXISTING

APPLICATION NUMBER – 2024/93620

ADDRESS - 55, Church Street, Emley, Huddersfield, HD8 9RP

PROPOSAL – Certificate of lawfulness for existing use of land for purposes incidental to the enjoyment of the dwellinghouse.

1. Description of Proposal

1.1 The proposal is for a certificate of lawful use of land as garden at 55 Church Street, Emley.

1.2 The site subject to this application is to the rear of the dwellinghouse facing northerly with approximately two thirds of the land within the designated Green Belt. Access to the property is via a shared driveway with the land to the rear of the dwellinghouse appears to be bound by fencing, walls, hedges and trees. The land slopes downwards from the property to the north-west.

2. Lawful Use Certificates

2.1 Section 191(1) of the Town and Country Planning Act 1990 ["the Act"] permits any person who wishes to ascertain where any operations or any existing use or buildings or other land would be lawful to make an application to the Local Planning Authority.

2.2 Section 191(2) of the Act provides that uses are lawful if:

1) No enforcement action may then be taken 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 do not constitute the contravention of any of the requirements of any enforcement action notice then in force.

3. The Relevant Test

3.1 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'.

3.2 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 probable, there is no good reason to refuse the application, provided that the applicant's

evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

4. Limitations

4.1 The Lawful Development Certificate must contain precise details of what the use or operations 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 is lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to a point where a 'material' change of use takes place, the Local Planning Authority may then consider further development has taken place.

5. Relevant Planning History

5.1 1985/01278 – Erection of detached dwelling and double garage – Granted Conditionally

6. Evidence submitted in support of the application

- Application form
- Location plan – ref: P01
- Planning Statement including a background to the application site, aerial photos, photographs taken 2023 and 2 no. statutory declarations

7. Evidence submitted against the application

7.1 None

8. Evidence obtained from the Council or other sources

- Aerial photographs from a number of time periods

9. Procedural Matters

9.1 The applicant submits that the land has been used as a domestic garden and is thus the established curtilage of the dwellinghouse. The application is submitted pursuant to section 191 of the Act which provides an application route for the Local Planning Authority to consider the lawfulness of a particular development, in this case the use of land as a garden. It is well established that curtilage is not considered to be a use of land but rather a piece of land associated with a dwellinghouse. Consequently it is considered necessary to modify the description of development under the provisions of section 191(4) of the Act to describe the use of the land specified on the decision notice. In this instance the use of the land is considered to be properly described as the use of land for purposes incidental to the enjoyment of the dwellinghouse.

10. Assessment of evidence

10.1 The application form states that the land that is enclosed, laid out and used as a formal garden for the amenity and enjoyment of the occupiers of 55 Church Street and is part of the established curtilage of the property in use as a C3 dwelling. It goes on to cite that the use was substantially completed on 1st March 1985. The application seeks to confirm that the use is lawful as it began more than 10 years before the date of which the date the application was submitted.

10.2 It therefore appears that the thrust of the applicant's case is the use for the purpose of a domestic garden has existed in breach of planning control for a period of time as set out in Section 171B of the Act and is therefore immune from enforcement action.

10.3 For the provisions of Section 171B to be considered, a breach of planning control must have occurred before the 10-year period commences and has continued to be a breach of capable of being enforced against for a period of 10 years. A breach in planning control as defined in Section 171A of the Act is either the:

a) the carrying out of development without the required planning permission or

b) failing to comply with ant condition or limitation subject to which planning permission has been granted.

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

> *Subject to the following provisions of this section, in this 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 any material change in the use of any buildings or other land.*

10.5 Since the historic use of the land is presumed to be agricultural or open grassland, the Council acting as Local Planning Authority should initially consider, in the absence of any planning permission, whether there is any evidence to show that at any time in the past the land has undergone a material change of use to land incidental to the enjoyment of the dwellinghouse and that the use has been carried on for a 10 year period, and has not subsequently been abandoned

10.6 Secondly, section 55(2)(d) provides that *"the use of any buildings or other land within the <u>curtilage</u> of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such",* is exempted from the definition of development. Therefore, if such a

material change of use cannot, on the balance of probabilities, be found to have occurred over a 10-year period, then a second consideration could be whether any of the land can reasonably be regarded as curtilage to the dwellinghouse and as such domestic in nature by virtue of close association. In assessing this matter, the tests derived from the Courts should be used. These are a) ownership past and present, b) layout and c) functional relationship to the dwellinghouse.

Material Change of Use

10.7 As part of the submission, the application has been accompanied with a Planning Statement which includes the background of the site, the existing use of the site and an explanation of the evidence submitted including an explanation of the evidence put forward by the applicant. Aerial photographs dated 2002, 2003, 2009, 2016, 2019 and 2020, photographs of the garden area dated 2023 and Statutory Declarations are also included.

10.8 The land itself which is subject to this application sits to the north of the area of defined curtilage which was granted alongside the dwelling as part of the 1984 application for the dwelling itself. This is clearly demonstrated on page 4 of the Planning Statement. No restrictions were imposed on the decision notice which related to the extent of curtilage via condition.

10.9 From viewing the 1984 planning file and comparing the plans to the information demonstrated within the Planning Statement and aerial maps held by the Council, it appears that the land is distinctively separated into two sections. The first being immediately to the rear of the property which hosts a lawned garden and a terraced garden, accessed via a gap in the hedge and a pathway to secondly, a larger parcel of land beyond which is annotated of being 4770 square metres in size, which is significantly more that the plot of land containing the dwellinghouse and associated amenity space which was granted under the 1984 application which is noted as being 1890 square metres, as submitted within the Statement.

10.10 The area directly to the rear of the property appears to be lawned and manicured with ornamental hedging, surfaced paths and bedding plants with limited paraphernalia associated with garden features which is a larger area which was granted as amenity space within the 1984 planning application. However it is clear that this has been a formalised as part of the intimate amenity space for the property for a significant period of time. The 2023 photographs demonstrate that the access to the larger parcel of land is via an arched hedge at the rear part of the lower terrace.

10.11 In terms of the larger piece of land, the Planning Statement contains aerial imagery from Google Earth dated 2002, 2003, 2009, 2016,

2019 and 2020 which indicates that the area of land in question has been manicured to be a lawned area with trees around the perimeter and engineering works occurred prior to 2000 to install a pond. The images consistently demonstrate that there are no outbuildings or any associated paraphernalia evident within this area of land.

10.12 It is clear from the submitted details that the character and appearance of this parcel of land has remained relatively unchanged for a significant period of time. The gap within the hedge has also remained in situ for the same or similar period of time.

10.13 The imagery available submitted by the applicant appears to be consistent with the aerial imagery held by the Council.

10.14 Evidence has been submitted in the form of 2 no. declarations which were witnessed a legal practice stating that the house completed its construction in 1985 and that the grounds were enclosed by walls and fences and laid out as formal gardens consisting of lawns, ornamental trees, fruit trees, a pond and shrubs and provided a safe and secure area for the use of the occupiers and have continued to do so, maintaining the land as formal gardens forming part of the curtilage of the property.

10.15 In assessing whether or not a material change of use has occurred it is required to establish the character of the land before and after the change has occurred. If it can be concluded that the change in the character of the land is a material change then development will occur and a material change of use will have taken place.

10.16 Due to the passage of time, there is no evidence to conclude the character of the land in question, prior to it being fenced off and the planting installed (pre 2000) and therefore, the Council has no evidence which would be contrary to the claims submitted within the application.

10.17 It is therefore concluded that the larger parcel of land appears to have been maintained by the occupiers of the host building for a substantial period of time.

10.18 The applicant claims the larger parcel of land was used immediately after the erection of the dwellinghouse in 1984. As the larger parcel of land did not form part of the area of land subject to the 1984 planning application for a dwellinghouse, any use of the land for domestic purposes would not have benefitted from this permission. As such the use of the larger parcel of land for purposes incidental to the enjoyment of the dwellinghouse would have constituted a material change of use from a previous use as grassland/agriculture. As the Council have no evidence over and above that submitted to dispute the claims of the applicant that the use of the land has been as domestic garden and therefore, on the balance of probabilities,

the larger parcel of land is likely to have been used for incidental purposes for the enjoyment of the dwellinghouse for a period time exceeding 10 years from the date of this application and has become immune from enforcement action, thus established as being the lawful use of the land.

10.19 Therefore, as the use of the land appears to have been used for domestic purposes, in the interest of completeness, it is also considered beneficial to also consider whether this land is formalised as curtilage land to the dwellinghouse and thus would have been exempted from the definition of development by virtue of Section 55(d) of the Act.

Curtilage

10.20 The Oxford English Dictionary defines curtilage ad *'The area of land around and a house and its surrounding yard and outbuildings used for domestic purposes, as fenced (i.e. marked out so as to have the effect of an enclosure)'.*

10.21 Case law exists surrounding the definition of curtilage which is considered relevant in this case. In McAlpine v Secretary of State for the Environment [1995] the judgement that was arrived at was the Dyer case (Dyer v Dorset CC [1989] were it was maintained and further concluded that curtilage is constrained to a small area around a building which is attached and forms one enclosure within it. The Court of Appeal in Secretary of State for the Environment, Transport and the Regions v Skerritts of Nottingham [2000] set out that the definition of curtilage in relation to a building must remain a question of fact and degree in each case.

10.22 As established by previous case law, there are three factors to be considered when determining whether land becomes curtilage including the functional links between the land and building i.e. an 'intimate' association' with the building, ownership of the land and the building and land regarded as a single enclosure with the building.

10.23 In terms of functional links, the land immediately to the rear of the property is lawned and manicured with ornamental hedging, surfaced paths and bedding plants with limited paraphernalia associated with garden features including an established hedge line separating the space from the larger parcel of land beyond.

10.24 Drawing number P01 demonstrates that all the land subject to this application is within the red line boundary of the site. However, Land Registry title deeds indicate that the two parcels of land hold different title deeds. That being said, the applicant claims to own all the land subject to the application and the Council has not been presented with any evidence to the contrary. Therefore, the applicant appears to have owned the land, past and present.

10.25 As set out above, the immediate intimate amenity space to the rear of the property appears consistent with that approved within the 1984 application and is clearly established with a clear intimate relationship with the host dwelling through boundary treatments and domestication which separates itself from the larger parcel of land. In terms of the parcel of land immediately to the rear of the property, it is considered that the ownership, functional and physical attributes with the approved parcel of land is the established curtilage to the dwellinghouse and therefore its use for purposes incidental to the enjoyment of the dwellinghouse as is lawful by virtue of Section 55(d) of the Act.

10.26 With regard to the larger parcel of land, it is evidenced and therefore clear that this land benefitted from immunity from enforcement action by virtue of Section 171B of the Act. However, this area of land was never intended to be part of the established curtilage of the property, evidenced by the applicants within page 4 of the Appeal Statement and also by virtue of the approve 1984 application plans. In contrast, the larger parcel of land was not intended to be used as curtilage land when the 1984 planning application was approved and while the owners may have used it as garden for some time, the clear physical separation between the two parcels of land, less intimate character and separation via two land ownership titles suggest it is land outside curtilage. The Courts have held that the fact that land may have been used for purposes incidental to the enjoyment of the dwellinghouse but that does not automatically result in the land becoming curtilage. Therefore, a footnote shall be included on the decision notice to this effect.

11. Conclusion

11.1 Therefore, taking into account all the above, on the balance of probabilities, Officer's are satisfied that the entity of the land shown on the submitted plans can be considered lawful as land for purposes incidental to the enjoyment of the dwellinghouse at 55 Church Street, Emley.

12. Recommendation

12.1 The recommendation is that the Certificate of Lawful Development is granted subject to the imposition of a footnote in relation to curtilage added to the decision notice.

Decision text:

It has been demonstrated, on the balance of probabilities, that the land within the red line boundary as shown on drawing number P01 has been used for purposes incidental to the use of the dwellinghouse at 55 Church Street for a period in excess of 10 years.

NOTE: The decision only confirms the use of the land for purposes incidental to the dwellinghouse at 55 Church Street. The decision does not confirm the extent of any domestic curtilage.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	P01		24th December 2024
Planning Statement	Bradbury Project Management Ltd		24th December 2024

Dated: 23rd October 2025