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.: 2025/CL/90011/W

Site: Petrol Filling Station, Station Street, Meltham, Holmfirth, HD9 5QR

Description: Certificate of lawfulness for existing use as petrol filling station with unrestricted opening hours

Case Officer**:** Charlotte Hancock

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 06-Mar-2025

Site Description
The site is a petrol station located adjacent to Morrisons supermarket on Station Street in Meltham. The site is screened to the south and west by vegetation and located to the east of the site is Morrisons supermarket. Located to the north, south and west side of the site are residential dwellings.

Lawful Use Certificate
Section 191(1) (a) of the Town and Country Planning Act 1990 ("the Act") permits any person who wishes to ascertain whether any operations or proposed 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:

a) 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);
b) 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 grant of a certificate on the balance of probability.

Limitations
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.

Relevant Information

Planning History

93/00423- Erection of retail store with ancillary offices, storage, staff accommodation, car parking and access road- Approval of reserved matters
98/91985- Erection of retail food store with ancillary offices, storage, car park, servicing area and access road. petrol filling station with car wash. new electricity sub-station- Conditional full permission
99/92664- Erection of illuminated signage to retail store and petrol filling station- Advertisement consent granted
2005/91122- Erection of supermarket signage- Advertisement consent granted
2005/94068- Erection of fencing and gates- Conditional full permission
2012/91214- Erection of extension to store, car parking and access works- Conditional full permission
2012/91473-Erection of 8 non-illuminated signs-Advertisement consent granted
2012/91576- Erection of steel mesh timber fencing to part of customer trolley bay under the store canopy to form garden centre- Conditional full permission
2012/93704-Variation of condition 2 on previous permission 2012/91214 for erection of extension to store, car parking and access works- Removal or modification of condition(s)
2016/90671- Variation condition 25 (delivery hours) on previous permission 98/91985 for erection of retail food store with ancillary offices, storage, car park, servicing area and access road, petrol filling station with car wash, electricity sub-station- Withdrawn
2020/90614- Erection of extensions to existing store, alterations to include relocation of ATM and the erection of garden centre- Section 106 full permission
2022/90161- Discharge conditions 3, 4, 5, 6 and 7 on previous permission 2020/90614 for erection of extensions to existing store, alterations to include relocation of ATM and the erection of garden centre- Discharge of condition(s) split decision
2022/93232-Discharge conditions 4 (Phase II Intrusive Site Investigation Report), 5 (Remediation Strategy) on previous permission 2020/90614 for erection of extensions to existing store, alterations to include relocation of ATM and the erection of garden centre- Discharge of condition(s) approved
2022/94067- Discharge condition 9 (Ecological Design Strategy) on previous permission
2020/90614 for erection of extensions to existing store, alterations to include relocation of ATM and the erection of garden centre- Discharge of condition(s) approved
2023/93405- Discharge of condition 8 (footpath) of previous permission 2020/90614 for erection of extensions to existing store, alterations to include relocation of ATM and erection of garden centre- Discharge of condition(s) approved

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

Evidence in support of the application

The submitted evidence includes;

- Decision notice from planning application 98/91985

Evidence against the application
The council has no definitive record against the application.

Assessment of the Evidence

The applicant states that the use of the petrol filling station was established via planning permission 98/91985 and that this application does not include planning conditions which restrict the hours of operation on the site.

The application relates to the erection of a retail food store with ancillary offices, storage, car park, servicing area and access road, petrol filling station with car wash and new electricity sub-station and therefore established that the petrol station is lawful. The development of the store and petrol station is considered to have been erected pursuant to this planning application and therefore extant along with all conditions. No other subsequent planning permission for extensions to the store supersede the 1998 permission or otherwise invalidate the conditions. After reviewing the decision notice of this permission provided as part of this submission, there is an absence of planning conditions restricting the hours of use of the petrol filling station. Additionally, there are no other conditions attached any other permission on the site which restricts the hours of operation for the site. However, condition 24 states:

"(24) The car wash shall not be used outside the hours of 07.00 to 21.30 on any day."

And condition 25 states:

"(25) Deliveries to the store and/or petrol filling station shall not take place outside the hours of 06.30 to 22.00 Monday to Saturday and 09.30 to 21.30 Sundays and Public Holidays."

Consequently, the lack of restriction on opening hours does not extend to the use of the car wash which is part of the petrol filling station or the delivery of fuel outside of the hours set out in conditions 24 & 25. Opening the petrol station only for 24 hours a day is therefore not in breach of planning control.

Conclusion
The Applicant has supplied evidence to support the claim that there is no planning condition attached planning permission 98/91985 which relates to the erection of the petrol filling station, that restricts the hours of use of the petrol filling station.

Recommendation: Approve certificate

Based on the evidence listed below, and in the absence of any contrary evidence, it is considered on the balance of probability that the 24 hours opening of the petrol station for the sale of fuel and goods at Morrisons retail store at Meltham is not in breach of planning control.

NOTE: Conditions 24 and 25 of planning permission reference 98/91985 restricting hours for the use of the car wash and deliveries remain extant and enforceable: These conditions state:-

"(24) The car wash shall not be used outside the hours of 07.00 to 21.30 on any day."

"(25) Deliveries to the store and/or petrol filling station shall not take place outside the hours of 06.30 to 22.00 Monday to Saturday and 09.30 to 21.30 Sundays and Public Holidays."

This decision is based on the following information(s):-

Plan Type	**Reference**	**Version**	**Received**
Location Plan	PA01		06/01/2025
Site layout plan	PA02		06/01/2025
98/91985 Decision Notice	98/91985		06/01/2025
Application From	1071907		06/01/2025

Report Dated: 24/02/2025