

**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/90702/E

Site: 4-5, Mazebrook, Drub, Cleckheaton, BD19 4BT

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

Case Officer: Laura Yeadon

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-Oct-2025

APPLICATION FOR CERTIFICATE OF LAWFUL USE – EXISTING

APPLICATION NUMBER – 2025/90702

ADDRESS - 4-5, Mazebrook, Drub, Cleckheaton, BD19 4BT

PROPOSAL - Certificate of lawfulness for existing use of land as domestic curtilage

1. Description of Proposal

- 1.1 The proposal is for a certificate of lawful use of land as domestic curtilage at 4-5 Mazebrook, Cleckheaton.
- 1.2 The site subject to this application is the land to the rear south of the dwellinghouse which is a Grade II Listed Building located on land defined as Green Belt within the Kirklees Local Plan. Access to the property is via a driveway off Drub Lane which serves the properties within Mazebrook and also Mazebrook Barn.

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 of 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);
 - 1) They did 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 than 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 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 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 the 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 2015/94018 Erection of detached garage (within the curtilage of a Listed Building)
Conditional Full Permission

6. Evidence submitted in support of the application

- Application form
- Location plan and block plan
- Existing site plan
- Aerial imagery annotated with 2002 & 2015 (IMG_5282 & IMG_5280)
- Photographs annotated 1991 & 1998 (IMG_5285 & IMG_5283)
- Photographs with no date. (IMG_5284 & IMG_5286)

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
- Previous planning application records including plans
- Site photographs from previous planning application

9. Assessment of evidence

- 9.1 The application form states that the land has been used as garden in conjunction with the main house for over 10 years. It goes on to states that *the outbuildings have been used as garden stores for over 10 years*. Two plans have been submitted with one annotating the domestic curtilage of the main house and the other shows the overall client ownership boundaries within the area. The application seeks to confirm that all the land as shown on the submitted plans has

changed its use for the purposes of a domestic garden in excess of 10 years before the date that the application was submitted. It therefore appears the thrust of the applicant's case is the use for the purpose of a domestic garden has existing in breach of planning control for a period of time as set out in section 171B of the Town and Country Planning Act 1990 ["the Act"] and is thus immune from enforcement action.

9.2 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 capable of being enforced against for a period of 10 years. A breach in planning control is defined in Section 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.

9.3 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.

9.4 Since the historic use of the land is presumed to be agricultural or simply 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 dwelling house, that this use has been carried on for a 10 year period, and has not subsequently been abandoned.

9.5 Secondly, section 55 (2)(d) provides that "*the use of any buildings or other land within the curtilage 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: (i) ownership past and present (ii) layout and (iii) functional relationship with the dwellinghouse

Material Change of Use

- 9.6 The applicant provides a series of photographs in an attempt to demonstrate the use of the land. With respect to the photographs provided by the applicant, images shown on IMG_5284 & IMG_5286 are undated (other than an annotation of 1991 on one photograph) and given the close context of the imagery shown on each photograph is it unclear where and when within the land the images are taken from. No weight can be given to IMG_5284 & IMG_5286.
- 9.7 IMG_5285 & IMG_5283 show a series of images with one annotated with a date of 1991 and another 1998. As above, the close context of the imagery makes it unclear where on the land the images are taken from. No weight can be given to IMG_5285 & IMG_5283.
- 9.8 IMG_5282 & IMG_5280 are a little more helpful in so far as they show the wider site from above with annotations indicating the images are dated 2002 and 2015. IMG_5282 appears to show two distinct areas of land directly to the south of the dwellinghouse, the first roughly triangular in shape measuring approximately 55 metres x 35 metres ["Triangular Land"]. The second further south of the Triangular Land, seemingly separated by a hedge, measures approximately 66 metres by 66 metres and appears to include a pond ["the Pond Land"]. In this image the Triangular Land appears to include an enclosed area of land populated with trees, buildings and grassed areas. The Pond Land appears physically annexed from the Triangular Land and forms part of the field to the northeast. Some weight can be given this image in so far as the Triangular Land on appearance seems to be enclosed with the dwellinghouse with a degree of domesticity. The Pond Land is clearly annexed with no suggestion it is used for purposes incidental to the dwellinghouse.
- 9.9 IMG_5280 is annotated 2015 and indicates the Triangular Land is a similar in appearance to IMG_5282 whereas the Pond Land appears to have been enclosed from the wider field with a boundary along the northeast corner with a degree of planting indicating a marked different appearance from 2002.
- 9.10 The applicant provides no further information to demonstrate the land has been used for purposes incidental to the dwellinghouse.
- 9.11 Turning to the Council's evidence, aerial imagery from 2002 is largely consistent with the image shown on IMG 5280 and as such collaborates the evidence that the Triangular Land appears to form one enclosure with the dwellinghouse and the Pond Land separate. Image from 2006 shows the Triangular Land of similar appearance and the Pond Land having been enclosed with the carrying out of

planting and a bridge over the pond. Aerial imagery dated 2009 and 2012 shows the planting undertaken to mature with a number of buildings appearing, particularly on the northeast boundary of the Pond Lane. Imagery dated 2012 to 2021 further show the planting to mature to the degree the appearance of the Pond Land becomes similar to the appearance of the Triangular Land.

- 9.12 From the Council's aerial imagery, it is unclear how physically the two areas of land are cojoined given the existing hedge on imagery up to 2018 seems to be entirely intact. A small "gap" in the dividing hedge can be seen in 2018 although the 2021 image shows the hedge to remain intact with the small gap in the north east corner.
- 9.13 The officer photographs held on the 2015 planning application for a detached garage offer little further evidence other than to show the land directly south of the dwellinghouse within the Triangular Land is no doubt a formalised garden to the dwellinghouse.
- 9.14 Imagery available on Google Earth appear consistent with the aerial imagery held by the Council.
- 9.15 Overall, the only evidence offered by the applicant that may carry some weight is the annotated aerial image of 2015 although this is only to the degree it shows a snapshot in time in 2015 where some planting had taken place on the applicant land which appear domestic. However, the evidence held by the Council in the form of aerial imagery from 2002 to 2021 clearly indicates the Triangular Land is consistent in appearance throughout this period with the Pond Land taking on a similar appearance to the Triangular Lane from a period 2006 onwards.
- 9.16 In assessing whether or not a material change of use has occurred it is established that the character of the land before and after the change has occurred is the key factor. If it can be concluded the change in the character of the land is a material change then development will occur.
- 9.17 In this instance, there is no evidence to clearly show the previous character of the Triangular Land to assess when and whether a material change of use occurred. It is clear from aerial imagery, and particularly the officer photographs held on the 2015 planning file, that large parts of this area of land are very much domestic in appearance, with manicured trees, shrubs, hedges and grassed areas. As the Council holds no evidence to the contrary, it is accepted the Triangular Land has maintained a domestic appearance since at least 2002 and thus is likely to be considered land use for purposes

incidental to the dwellinghouse. This may be further supported if it can be concluded this forms curtilage land.

9.18 The Pond Land is clearly annexed away from the Triangular Land when comparing the two areas of land as shown on the 2002 image and resembles the appearance of the field to the northeast other than what appears to be an engineering operation to form a pond. There is a marked difference in character to the Triangular Land to the degree it is not considered to be land used for purposes incidental to the dwellinghouse.

9.19 However, there is no doubt the Pond Land started to change in appearance from as early as 2006 with planting, structures resulting in an appearance resembling the Triangular Land. Given the similarities in the appearance in 2012 and given the Triangular Land is already considered to be used for purposes incidental to the dwellinghouse it seems reasonable to conclude the Pond Lane had changed in character from the 2002 image to the degree the land had materially changed from formally an open field by, at the latest 2012, to an enclosed part of the domestic use of the dwellinghouse. As this appearance and change in the character of the Pond Land has existed since at least 2012 to the date of this application, there appear little doubt that a material change of use occurred between 2002 and 2012 which did not benefit from planning permission. As this breach of planning control has remained unenforced, the use of the Pond Land has become immune from enforcement action between 2002 and 2022 and thus established as being the lawful use of the land.

9.20 As stated in paragraph 9.17, the Triangular Land appears to have been used for domestic purposes for some years and likely to be lawful for such purposes although in the interests of completeness it is 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

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

9.22 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]) where 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.

- 9.23 As established by previous case law, there are three factors to be considered when determining whether and becomes curtilage including the functional links between the land and the 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.
- 9.24 In terms of functional links, the details submitted within the plans, it is clearly annotated the land currently within the domestic curtilage is considered by the applicant to be only the north part the Triangular Land. This area is manicured and contains hedging and paraphernalia which are common within garden areas and has an established tree/hedge line.
- 9.25 It is noted that both sections of land to the south of the annotated area (as shown and annotated on drawing number 4135/01/002) are outside of the land registry title document for the dwellinghouse and sits within a wider title including large areas of wider fields. However, 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. Consequently, the applicant appears to have owned the land both past and present.
- 9.26 As set out above, the areas of the Triangular Land are considered to have been used for purposes incidental of the dwellinghouse and clearly have established a long functional association with the dwellinghouse. The Triangular Land is also clearly physically part and parcel of the dwellinghouse with long established boundaries particularly along the south boundary separating the Pond Land. Overall and with regards to the Triangular Land, it is considered the ownership, functional and physical associated with the dwellinghouse are to such an extent is it accepted the Triangular Land is the established curtilage to the dwellinghouse and thus it's use for purposes incidental to the enjoyment of the dwellinghouse as such is lawful by virtue of section 55(d) of the Act..
- 9.27 The question of whether to Pond Land is also curtilage land is extraneous to the question of lawfulness in this instance as it has been concluded this land benefited from immunity from enforcement action by virtue of section 171B of the Act. However, it is noted that

the Pond Land did not form part of the established curtilage on the Triangular Land in 2002 and over the years, the aerial imagery has clearly indicated a physical separation albeit the land became part of the incidental land over time. The Courts have held that the fact the land may have been used for purposes incidental to the enjoyment of the dwellinghouse does not automatically result in the land becoming curtilage land. Consequently, it is considered prudent to include a footnote on the decision notice to this effect.

10. Conclusion

10.1 Therefore, on the balance of probabilities, Officers are satisfied that the entirety of the land within the red line boundary as shown on the submitted plans can be considered lawful as land used for purposes incidental to the enjoyment of the dwellinghouse at 4-5 Mazebrook.

11. Recommendation

11.1 Officer recommendation is to approve the application.

Decision note:

It has been demonstrated, on the balance of probability, that the land within the red line boundary as shown on drawing numbers 4135/01/001 and 4135/01/002 has lawfully been used for domestic purposes incidental to the use of the dwellinghouse at 4-5 Mazebrook.

NOTE: This decision only confirms the use of the land for purposes incidental to the dwellinghouse at 4-5 Mazebrook. The decision does not confirm the extent of any domestic curtilage.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan and block plan	4135/01/001		14 th March 2025
Site plan	4135/01/002		14 th March 2025
6 no. photographs			14 th March 2025

Report date: 8th August 2025