

**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/91360/E

Site: 78, Kirkgate, Hanging Heaton, Batley, WF17 6DJ

Description: Certificate of lawfulness for proposed erection of detached outbuilding

Case Officer: Laura Yeadon

Decision Reference: PROPOSED OPERATIONS REFUSED

I hereby authorise the refusal 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-Jul-2025

Officer Report

[Weblink](#)

Site Description

78 Kirkgate is a back-to-back property which sits behind No. 74 Kirkgate and attaches to and projects beyond No. 76 Kirkgate which is a through terrace, that was historically also a back-to-back dwelling (dating back to circa 1893). The submitted location plan (reference PP-14025342v1) and proposed plan (drawing number RB/01) indicate that the amenity space for the property is the land to the south of the application site and No. 78 and also the space to the side and rear of the attached property No. 76. This includes the driveway to the side of No. 76. The property is constructed from stone and hosts a large single storey extension which projects into the amenity space to the south of the property.

Description of Proposal

Permission is sought for a Certificate of Lawfulness for the erection of an outbuilding within the curtilage of the property.

The outbuilding would be located within the amenity space of the property and would be a total width of 4.5 metres, total depth of 10 metres with an overall height of 2.3 metres to the top of the flat roof.

No details have been submitted with regards to construction materials.

The property has not had its Permitted Development Rights removed.

History of negotiations/amendments received

No negotiations have taken place and no amended plans received.

Relevant Planning History

None

Consultation Responses

None required

Issues and Assessment

The main considerations in the determination of this application are:

1. Whether the proposed development would constitute development as defined within section 55 of the Town and Country Planning Act 1990; If so, whether permitted development rights apply to the property; and

1. Whether the proposed development falls within permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1 (Development within the curtilage of a dwellinghouse), Class E (building etc incidental to the enjoyment of a dwellinghouse).

Schedule 2, Part 1, Class E of the Order sets out the Permitted Development Rights which relates to:

‘(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas”.

In assessing the proposal against this:

Development not permitted

E.1 Development is not permitted by Class E if—

- a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

Comment: *The dwellinghouse was not granted permission by any of the above.*

- a) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Comment: *No more than 50% of the total ground area would be covered by additions to the property.*

- b) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

Comment: *The property is a back-to-back property and therefore the original principal elevation of the property is the southern elevation of the building, to the rear of No. 74. Due to the siting of the outbuilding, this would be situated on land forward of a wall forming the original principal elevation of the application property as shown on drawing number RB/01. The Permitted development rights for householders Technical Guidance states that‘there will be only one principal elevation on a house’ and given that the properties fronting the highway (No’s 74 and 76) are not within the red line boundary of the application site, the only principal elevation of No. 78 is the southern elevation. The proposal therefore fails to meet this criteria.*

c) the building would have more than one storey;

Comment: *The building would not have more than one storey.*

d) the height of the building, enclosure or container would exceed –

- (i) 4 metres in the case of a building with a dual-pitched roof,
- (i) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
- (ii) 3 metres in any other case

Comment: *The building would be within 2 metres of a boundary however the overall height would not exceed 2.5 metres*

e) the height of the eaves of the building would exceed 2.5 metres;

Comment: *The building would have a flat roof and the overall height would not be more than 2.5 metres.*

f) the building, enclosure, pool or container would be situated within the curtilage of a listed building;

Comment: *The building would not be situated within the curtilage of a listed building.*

g) it would include the construction or provision of a veranda, balcony or raised platform;

Comment: *No veranda, balcony or raised platforms are proposed.*

h) it relates to a dwelling or microwave antenna; or

Comment: *Not applicable*

i) the capacity of the container would exceed 3,500 litres.; or

Comment: *Not applicable*

j) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)

Comment: *The dwellinghouse was not built under Part 20 of this Schedule.*

E.2 In the case of the any land within the curtilage of the dwelling which is within –

- (a) an area of outstanding natural beauty;
- (a) the Broads;

- (b) a National Park; or
- (c) a World Heritage Site,

development is not permitted by Class E of the total area of ground covered by buildings, enclosures, pool and containers situation more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

Comment: *The land within the curtilage of the dwelling is not within any of the above.*

E.3 In the case of land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwelling.

Comment: *The land within the curtilage is not within article 2(3) land.*

Interpretation of Class E

E.4 For the purposes of Class E, “purpose incidental to the enjoyment of the dwelling house as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

Conclusion:

The proposal has been considered against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is recommended for refusal.

The proposed outbuilding does not benefit from a general planning permission granted under Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the outbuilding would be situated on land forward of a wall forming the original principal elevation of the application property as shown on drawing number RB/01 contrary to sub-paragraph E.1(c) of Class E.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	PP-14025342v1		19 th May 2025
Location plan, proposed site plan, proposed elevations and floor plans	RB/01		19 th May 2025

Dated: 5th June 2025

