

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/91809/E

Site: 634, Bradford Road, Batley, WF17 8HF

Description: Certificate of lawfulness for existing use of
premises within Class E

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 09-Sep-2025

Officer Report

[Weblink](#)

Reference: 2025/91809

Applicant: A Dagi

Location: 634, Bradford Road, Batley, WF17 8HF

Proposal: Certificate of lawfulness for existing use of premises within Class E

Site description:

The application site relates to 634 Bradford Road which is located within an area of land which is surrounded by both residential and commercial development. The site is currently occupied by conservatory type buildings. The site fronts Bradford Road and is accessed via a dropped crossing and to the rear of the site is an area which is occupied by trees which are the subject of a Tree Preservation Order.

Description of development:

The application is for a Certificate of Lawful Development for the existing use of the premises within Use Class E for the display and sale of goods, namely conservatories. The application form indicates that the Certificate is sought on the grounds that the use began more than 10 years before the date of this application and is therefore lawful.

Representations:

We are currently undertaking statutory publicity requirements, as set out at Table 1 and Table 2 in the Kirklees Development Management Charter.

This application has been available on the Kirklees Website for public view.

Consultation responses:

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate. The applicant seeks to demonstrate that the use of the premises began more than 10 years before the date of this application.

Relevant Policy/Legislation:

The Town and Country Planning Act 1990
The Town and Country Planning (Use Classes) Order 1987

Assessment:

Section 191(1) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or existing 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:

1. 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);
1. 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 granting of a certificate on the balance of probability.

Limitations:

The LDC 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 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, Local Planning Authority may then consider further development has taken place.

Relevant Planning History:

1986/02721 Use of land for exhibition site for greenhouses, conservatories and garden buildings
Granted Conditionally - Implemented

2003/94067 Erection of office block

Conditional Full Permission – Not implemented

2008/92126 Erection of office block
Withdrawn

2008/94251 Erection of office block
Conditional Full Permission – Not implemented

2009/93323 Erection of detached dwelling
Refused

2012/90072 Extension to time limit for implementing existing permission
2008/94251 for erection of office block
Granted – Not implemented

2019/92639 Demolition of existing buildings and erection of two storey office
block
Withdrawn

Evidence submitted in support of the application:

The applicants have submitted:

- Completed application form
- Location plan
- Planning Statement
- Appendix A - Pages 1, 2 and 3

Evidence submitted against the application:

No evidence against the application has been received

Evidence obtained from Council Records and other sources:

Council's Mapping system demonstrating arial imagery and site history along
with Street View imagery.

Site visit:

No site visit has been undertaken.

Assessment:

The application has been submitted by the applicant on the basis that the site
has been operation within Use Class E for a period in excess of 10 years.

For the provisions of s.171B to operate, a breach in planning control must have
occurred before the 10 year clock can start ticking. A breach in planning control
is defined in s.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.

It is part (a) which is of relevance in this case and s.55 (1) of the Act provides the definition of development as: -

‘Subject to the following provisions of this section, in the 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 a material change in use of any building or other land’.

Consequently, it is necessary for the applicant to show a material change of use occurred without the required planning permission and that breach in planning control existed for a period of 10 years.

An examination of the evidence submitted on behalf of the applicant as follows:

Application form

A completed application form has been submitted with the application which states that the reason for the submission of the Lawful Development Certificate is an existing use for Use Class E(a) – Display/Sale of goods other than hot food. It goes on to cite that the description of the existing use is as a use within Class E and that the conservatory sales site has operated for well over 10 years with the date of works being substantially completed being 3rd March 1987.

Site location plan

Drawing reference number 001 includes 2 no. plans which are location plans at 1:200 scale and 1:1250 scale. Both plans refer to the same application site known as 634 Bradford Road, Batley.

Planning Statement

A Planning Statement has been submitted with the application which cites the following:

...‘the site was granted approval for use as a conservatory sales site in 1986 under application reference 86/62/02721/A1, and it continued to operate in this capacity up to the present day. Both the conservatory structures and the associated office unit remain on the site. As the site has been used for the display and sale of goods, namely conservatories, this activity falls within the definition of retail, which falls under Use Class E. The Google imagery of the site shown in Appendix A (see separate sheet), shows conservatories being displayed continuously over a period of more than 10 years, from 2008 to 2024. Conservatories are still being displayed on the site to this day. It is also evidenced that the site was granted planning permission for a new office development in 2008 under application reference 2008/62/94251/E1. The Design and Access Statement submitted with that application referred to the

site as a conservatory sales pitch. It should be noted that this permission was never implemented.'

It is noted that the original application was approved under application number 1986/02721 for the use of the land for an exhibition site for greenhouses, conservatories and garden buildings. The decision notice for this application granted a temporary permission under condition 1 which stated the following:

- 1. The permission hereby granted shall be for a limited period only to expire on 4th September, 1989 and on the expiration of this period the site shall be restored and all buildings removed to the satisfaction of the District Planning Authority, unless after proper application having been made the period shall be extended by the District Planning Authority.*

The reason for imposing this condition was as follows:

- 1. To enable the District Planning Authority to assess the impact of the proposal in that period and the proposals relate to the display of buildings constructed of temporary construction.*

There was a further condition imposed which stated the following:

11. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1972, the site shall be used only for the display of conservatories, greenhouses and garden buildings, unless otherwise agreed in writing by the District Planning Authority.

The reason for imposing this condition was:

11. It is considered that the site is not suitably located for an unrestricted retailing use.

It does not appear from the planning history of the site that the temporary use of the site was ever changed by a subsequent planning application or permission.

It is noted that there were a number of applications on the site following the granting of the 1986 permission. The application of most relevance in this case is 2008/94251 which obtained planning permission for the erection of an office block. The Officer Report for this application describes the use of the site being '*currently occupied by a conservatory sales company who use this part of the site for displays*'. This appears to imply that the use of the site for the display of conservatories following the lapse of the 1986 application on 4th September 1989 as specified within Condition 1 of the decision notice.

Officers have no evidence to the contrary to dispute with the information contained within the Planning Statement which states that the 2008 application has not been implemented and that the site appears to have been used for the

period of 1986 to 2008 by a sales company/companies for the display of conservatories.

Appendix A

Page 1 of 3

Page 1 of the Appendix provides screen shots from Google Streetview from 2008, 2009, 2012 and 2014.

2008 screenshot – this screenshot indicates that the site was operated by 'Slimline Window's due to the signage to the side of the site and also adjacent to the door on one of the conservatories. The imagery demonstrates that a number of styles of conservatories were non display at this time. The information accessible to the LPA accords with the imagery provided within the screenshot.

2009 screenshot – this indicates that the site is identical to the 2008 screenshot with the same associated signage. The information accessible to the LPA accords with the imagery provided within the screenshot.

2012 screenshot – this indicates that conservatories were in situ within the site however the style of these structures have changed. The signage indicates that the site was operated by Walkers Windows. The information accessible to the LPA accords with the imagery provided within the screenshot.

2014 screenshot – this indicates that the site was laid out identically to the 2012 screenshot albeit with the signage changed to Tong glass and windows ltd. In addition, an additional opening hours sign is in situ on the railing fronting the site. The information accessible to the LPA accords with the imagery provided within the screenshot.

Page 2 of 3

Page 2 of the Appendix provides screen shots from Google Streetview from 2015, 2016, 2017 and 2018.

2015 screenshot – this indicates the same site layout as the 2014 with the same advertisement as the 2014 imagery. However there is an unrelated banner sign attached to the front railings. The information accessible to the LPA accords with the imagery provided within the screenshot.

2016 screenshot - this indicates the same site layout as the 2015 with the same advertisement as the 2015 imagery with the banner sign removed. The information accessible to the LPA accords with the imagery provided within the screenshot.

2017 screenshot – as above

2018 screenshot – the layout of the site remains unchanged from the above screenshots however the signage to the side of the site has been removed. The information accessible to the LPA accords with the imagery provided within the screenshot.

Page 3 of 3

Page 3 of the Appendix provides screen shots from Google Streetview from 2019, 2020, 2023 and 2024.

2019 screenshot – again the layout of the site remains unchanged from 2018. The signage to the side of the site has been removed however an unrelated banner sign to the railings is in situ. The information accessible to the LPA accords with the imagery provided within the screenshot.

2020 screenshot – as above with the unrelated banner sign removed. The information accessible to the LPA accords with the imagery provided within the screenshot.

2023 screenshot – the image indicates that a number of the conservatory displays had been removed from the site. Notwithstanding this, the image demonstrates that conservatories remain on site. No signage is evident. The information accessible to the LPA accords with the imagery provided within the screenshot.

2024 screenshot – as above. The information accessible to the LPA accords with the imagery provided within the screenshot.

Evidence held by the Council

It is clear from the information held on the Council's mapping system that the land has been used for the display of conservatories for a significant number of years and whilst there was a planning application submitted in 2003 & 2008 for an office block with a subsequent application in 2012 to extend the time to implement the permission which was granted consent, that the office permission (2008) has not been implemented.

It is apparent from the planning history that, 1986, following the grant of planning permission that the use of land for the sale and display of conservatories was implemented. This use appears to have carried on during an intervening period from 1986 to 2008 in breach of condition 1 of the 1986 approval. On the 4 September 1989 the planning permission expired and with that all other conditions ceased to have effect. A breach of planning control occurred in September 1989.

Google Streetview imagery indicates the sale and display of conservatories operating actively until May 2017. The site appears to have been vacated in June 2018 to the present day although the conservatory buildings remained erected.

In light of the evidence, there appears little doubt the land has been used for the display and sale of conservatories in breach of planning control from 1989 to at least 2017 and as such became immune from enforcement action in 1999. Consequently, a certificate may be issued for this specific existing use.

However, the applicant submits that the sale and display of conservatories falls into Class E(a) of Schedule 2 to the Use Classes Order 1987 (as amended) which would encompass general retail activities.

Section 191(5)(b) provides that a certificate shall include reference to any use class within the Use Classes Order 1987 where applicable. Therefore, it is necessary to consider whether or not the sale and display of conservatories falls within any specific use class.

Prior to the amending Order in 2020, retail sales was stated to fall into Class A1 of Schedule 1 (Shops) where previously the Court had held that this implied a retail use would be confined to uses operating within a building. Previously open air retail uses, such as garden centres, caravan sales etc where considered to fall outside Class A1. In this case, it is noted that a number of conservatory buildings have been present on site for a significant number of years, albeit without planning permission, and likely to have been used for administrative purposes and thus operating in a building.

However, the Use Classes Order has since been amended for the display and sale of goods in England and now Class E (Commercial, Business and Service) with the inference of operating within a building now lost. Moreover, Section 55 of the Town and Country Planning Act 1990 and Article 3(1A) of the Order refer to the use of a building or other land which suggests in the absence of any reference to shop, that the display and retail sale of goods to members of the public are not confined to a building. Therefore, it is accepted that the retailing and display of conservatories does fall into Class E(a) of Schedule 2 of the Order.

Conclusion

Based on the information submitted it has been demonstrated that the evidence put forward by the applicant is sufficiently precise and unambiguous that the site has been used for the display or retail sale of conservatories to members of the public (Class E(a) of Schedule 2 Schedule 2 of The Town and Country Planning (Use Classes) Order 1987 (as amended) for a period in breach of planning control in excess of 10 years.

Recommendation: Grant Certificate

Decision Authorisation: - Delegated Powers

Application number: 2025/91809

Officer Recommendation: Approve

Reason:

On the balance of probabilities, the applicant has demonstrated that the site has been used for the display or retail sale of conservatories to members of the public (Class E(a) of Schedule 2 Schedule 2 of The Town and Country Planning (Use Classes) Order 1987 (as amended)) for a period in breach of planning control in excess of 10 years.

Plan Type	Reference	Version	Date Received
Location plans	001		1 st July 2025
Planning Statement	0001A		1 st July 2025
Appendix A	Page 1 of 3		1 st July 2025
Appendix A	Page 2 of 3		1 st July 2025
Appendix A	Page 3 of 3		1 st July 2025

Dated: 13th August 2025