

**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/91941/E

Site: Summerhill, 86, Hopton Lane, Lower Hopton,
Mirfield, WF14 8JS

Description: Certificate of lawfulness for proposed erection of
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 09-Sep-2025

Officer Report

[Weblink](#)

Site Description

Summerhill, 86 Hopton Lane is a large detached two-storey dwelling located within an area defined as Green Belt within the Kirklees Local Plan. The property is constructed from red brick and has a concrete tiled roof. To the front of the property is an area of hardstanding and to the rear is a terrace and garden area leading to an open field which is incorporated to the host property on the land registry title deeds.

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 rear amenity space of the property and would sit alongside the western boundary. The outbuilding would have a width of 7.8 metres and would be a depth of 26 metres. The outbuilding would have a flat roof at a height of 3 metres (as annotated within the application form) with a green roof upon it.

No details have been submitted with regards to construction materials.

Officer note:

As part of a Certificate of Lawful Development, the onus is on the applicant to provide evidence which states why the proposal fits with the permitted development legislation. In this case, the applicant has stated on the application form that the outbuilding is not forward of the principal elevation of the original dwellinghouse; it does not exceed 50% of the total area of land around the original house; is not itself, separate, self contained living accommodation and does not have a microwave antenna and; has a maximum height of 3 metres and is set 2 metres from the boundary.

History of negotiations/amendments received

Whilst no negotiations have taken place, the Agent was contacted for clarification as to why such a large space was required and whether smaller options had been explored. The Agent confirmed that the design incorporated a hydrotherapy pool to accommodate a family member with additional needs with the location of the outbuilding was near to the house for practical reasons. Further correspondence took place and the justification for the size of the building has been put forward that *‘the spaces required and sized specified by the clients needs for such a space, we have designed with this in mind for a space that is incidental to the host dwelling. I do appreciate its large (for the reasons mentioned above) but we have kept it a low profile with a green flat roof and it isn't in front of the principal elevation and with it being quite a*

considerable plot, the proposed building does not detract from amenity space for this house and it doesn't have an impact on neighbouring houses.'

Relevant Planning History

2014/91536 Erection of non-illuminated sign
Advertisement consent granted

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: *The total area of ground covered by extensions would not exceed more than 50% of the total area of curtilage.*

- 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: *No part of the building would be situated on land forward of a wall forming the principal elevation of the original building.*

- 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 not be within 2 metres of a boundary of the curtilage of the dwellinghouse would not exceed 3 metres in height. It is noted that the building appears to have a parapet roof to accommodate the green roof therefore, it is likely, based on the information contained within the application form that the height of the roof (omitting the parapet wall) would not exceed 3 metres.*

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

Comment: *The overall height of the building would exceed 2.5 metres. The Permitted Development for householders Technical Guidance is clear that 'The eaves of a building will be the point where the lowest point of a roof slope, or a flat roof, meets the outside wall of the building.' Therefore, due to the overall height of the building exceeds 2.5 metres given the application form states that the maximum eaves height is 3 metres.*

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

Comment: *The building would not be 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 platform is 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:

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 on 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.

Notwithstanding the above assessment and that the proposed development fails on E.1(f) of The Town and Country Planning (General Permitted

Development) (England) Order 2015 (as amended), the overall size of the outbuilding is considered to go beyond that which is incidental to the enjoyment of the main dwellinghouse.

The area of accommodation indicates that the building would be used as a hydrotherapy pool, sensory room with a storage area and shower/changing room

The Courts (*Emin v Secretary of State for the Environment* [1989]) have held that the size of an outbuilding cannot alone be a single determinative factor in deciding whether or not a use or uses can be incidental to the enjoyment of the dwellinghouse although the Deputy High Court Judge stated:

“[This] could not rest solely on the unrestrained whim of him who dwelt there but connotes some sense of reasonableness in all the circumstances of the particular case. That was not to say that the arbiter can impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to his enjoyment of the dwelling. The word incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself.”

The Agent was contacted with regards to the proposed size of the building and states the spaces were *‘sized and specified by the clients needs for such a space and that the building was designed with this in mind’*. No further information regarding why this level of accommodation is required to meet the needs of the client; whether any form of proposed accommodation can be achieved within the existing dwellinghouse and/or the basis of how the calculations of the floor space required to meet the needs of the client were formulated. The information provided is therefore unclear and imprecise and contrary to paragraph 006 of National Planning Policy Guidance (Lawful Development Certificates) where it states *“an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.”*

Therefore, given the size of the of the proposed building especially in terms of the increase in footprint over and above the size of the original and/or existing dwelling, it is not considered that there is any evidence to demonstrate the use of the building are reasonably necessary or required for the incidental enjoyment of the dwellinghouse.

Therefore, Officers cannot accept that space is reasonably required, incidental to the enjoyment 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 eaves of the building would be more than 2.5 metres which is contrary to sub-paragraph E.1(f) of Class E.

In addition, the proposed erection of an outbuilding is not considered to benefit from a general planning permission under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) as it has not been demonstrated the building is be required for purposes incidental to the enjoyment of the dwellinghouse.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	(EX)002		14 th July 2025
Proposed block plan, elevations and floor plans	(20)001		14 th July 2025
Email	Orange Design Studio		19 th August 2025

Dated: 20th August 2025