

**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/92054/W

Site: Upper House, Upper House Road, Hade Edge,
Holmfirth, HD9 1RW

Description: Certificate of lawfulness for existing use of
outbuilding for enjoyment of the dwelling

Case Officer: Laura Yeadon

Decision Reference: EXISTING USE 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 30-Oct-2025

APPLICATION FOR CERTIFICATE OF LAWFUL USE – EXISTING

APPLICATION NUMBER – 2025/92054

ADDRESS - Upper House, Upper House Road, Hade Edge, Holmfirth, HD9 1RW

PROPOSAL - Certificate of lawfulness for existing use of outbuilding for enjoyment of the dwelling

1. Site Description

- 1.1 Upper House is a large detached dwelling located within an area defined as the Green Belt within the Kirklees Local Plan.
- 1.2 The Justification Statement submitted with the application states that the property is a small holding and had various outbuildings that both the previous owners and the current owners have used for keeping livestock.

2. Description of Proposal

- 2.1 Permission is sought for a Certificate of Lawfulness of an outbuilding for the enjoyment of the dwellinghouse.
- 2.2 The Justification Statement states that the application is for a 'Certificate of Lawfulness for existing use of outbuilding the "Chicken Shed" for purposes incidental to the enjoyment of the dwelling Upper House, Upper House Road, Little Cake Lane, Hade Edge, Holmfirth, West Yorkshire HD9 1RW.'
- 2.3 The building subject to this application is known as the "Chicken Shed" which is claimed to have been historically used for chickens and also to store feed and hay.
- 2.4 The 'Chicken Shed' itself has a footprint of 5.3m x 5.5m and is located approximately 76m to the south-east of the host dwelling with a dual pitched roof. The building is within an area of woodland, just outside an area protected by a Tree Preservation Order (10/78/a1).

3. Lawful Development Certificates

- 3.1 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.
- 3.2 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);

- 2) They did not constitute the contravention of any of the requirements of any enforcement action notice then in force.

4. The Relevant Test

- 4.1 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'.
- 4.2 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.

5. Limitations

- 5.1 The Lawful Development Certificate must contain precise details of what use or operations 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.

6. Relevant Planning History

- 6.1 1988/03975 – Erection of two storey extension to form lounge, double garage, 2 bedrooms and bathroom – Granted Conditionally

7. Evidence submitted in support of the application

- 7.1 The following evidence has been submitted:
 - Application form
 - Location plan – ref: PP-14174794v1
 - Block plan – ref: 24010D-01-P01
 - 3 x photographs from inside the building
 - Justification Statement – ref: 24010JS – Mason – Upper House – Use of Outbuilding Justification
 - Invoice for works dated July 2003

8. Evidence submitted against the application

8.1 None

9. Assessment of Evidence

9.1 The applicant seeks to obtain a Certificate of Lawful Development for the existing use of an outbuilding (Chicken Shed) for the enjoyment of the dwellinghouse which is sited on land to the south-east of the host dwelling.

9.2 The application claims that the outbuilding known as the 'Chicken Shed' has been in use for the purposes incidental to the enjoyment of the dwellinghouse in excess of 10 years with the Justification Statement (paragraph 6) stating *As the keeping of livestock diminished, the applicants two sons used the "Chicken Shed" as an extension to the house; as a den, and as they grew older for parties and sleepovers, and latterly for overnight stays with their friends when visiting for walking and climbing in the area.'*

9.3 It therefore appears that the thrust of the applicant's case is the use of the Chicken Shed as a lawful domestic use for purposes incidental to the enjoyment of the main dwellinghouse by reason of continuous and uninterrupted residential use in excess of 10 years prior to the date of the Justification Statement being produced (paragraph 13).

9.4 This, therefore, indicates that applicant seeks to confirm that the use of the building as incidental use has existed in a 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.

9.5 For the provisions of 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 as either the:

- a) Carrying out of development without the required planning permission; or
- b) Failing to comply with any condition or limitation subject to which planning permission has been granted.

9.6 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.

- 9.7 The land in which the building is located, is presumed to be woodland. The Council acting as the 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 building has undergone a material change of use to form residential accommodation which would be either ancillary or incidental to the enjoyment of the dwellinghouse. In terms of whether the accommodation is incidental or ancillary, both of these are referenced within the Justification Statement.
- 9.8 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 where the outbuilding is located 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

- 9.9 To establish whether a change of use to the building has occurred, the applicants have submitted an application form, invoice from 2003, a Justification Statement and internal photos of the outbuilding dated 2024.
- 9.10 The submitted application form states that the use of the building for purposes incidental to the enjoyment of the dwellinghouse has been in existence for in excess of 10 years. It also states that the use or activity began 26th July 2003.
- 9.11 The invoice submitted is dated 26th July 2003 and breaks down the invoice of works to supply and fit new windows to dwelling (assumably the host dwelling); to dig out and concrete new floor to outbuilding; and to supply and fit 2 no. brown uPVC windows and new baton door to outbuilding. Officers do not consider that the installation of a concrete floor and the fitting of 2 no. windows and a door constitutes that a material change of use has occurred and therefore this information carries little weight on this matter.
- 9.12 The Justification Statement claims that the use of the building was formerly to store feed and hay. This therefore indicates that the building was formerly an ancillary building to the agricultural use of the land. The Statement goes on to state that the applicants’ sons used the outbuilding as an extension to the house as a den and held parties and sleepovers with friends. There is no timeframe or indication given to when this

change took place, nor does the Statement indicate that the building was in continuous use for a period of 10 years or more.

- 9.13 The Statement goes further to state that the building is connected to a large septic tank, water and electricity and that the building hosts a small kitchen and a stove. Again, there is no information provided that as to when these installations were made to the building and to what extent the building was used as either ancillary or incidental accommodation to the host dwelling.
- 9.14 Paragraph 9 of the Justification Statement demonstrates that 4 no. domestic rooflights are evident within the roof form of the building. Council records do not dispute the imagery provided however the installation of roof lights do not indicate that a material change of use to the building has taken place.
- 9.15 The Statement concludes that the 'Chicken Shed' has been used for a long number of years (pre 2003) as an annex to the main dwelling therefore exceeding the 10-year rule set out in Section 171B of the Town and Country Planning Act 1990.
- 9.16 Photographs have been submitted demonstrating the internal arrangement of the building. The photographs indicate that they were taken in February 2024. 2 no. documents contain one single photo each and the third contains a photo montage. The single photographs demonstrate that the images are likely to have been taken at the same time albeit from different angles. It is noted that there appears to be limited evidence submitted to demonstrate that the building is being used as ancillary accommodation and appears to be more incidental than ancillary and used for storage purposes. The images contain evidence of the storage of furniture including tables, chairs and drawers. The undated photo montage appears more akin to annex accommodation whereby a wood burning stove, sofa, sink and table and chairs are evident. However, the date in which the photographs were taken are unknown and therefore little weight can be given to these images. It is also noted that the land surrounding the building (woodland) does not appear to have changed when viewing the aerial maps held by the Council.
- 9.17 Taking into account all the above, it appears from the 2024 photographs that the use of the building at that point in time was for storage in connection with the main dwellinghouse. However, the applicant has not provided any clear and precise evidence as to the time when and for how long the building has been used for this purpose. Whilst it appears that the building has been used for some form of domestic storage, this does not in itself indicate that the building has been in continuous and uninterrupted use for a period of 10 years or more and that a material change of use has as a fact of fact and degree occurred.

- 9.18 Whilst the justification statement claims the sons of the owner had used the building as a den and for parties etc, no evidence has been submitted as to the frequency of these uses between date of the invoice in 2003 and the photographs dated 2024. Therefore, there is a significant period of time period where there is no evidence to suggest that the use of the building had changed from a chicken shed within the agricultural smallholding to a use of the building as either ancillary or incidental to the enjoyment of the dwellinghouse. Therefore, the evidence submitted is ambiguous and not precise and thus does not clarify that a material change of use has taken place.

Curtilage

- 9.19 The Oxford English Dictionary defines curtilage as *'The area of land around a house and its surrounding yard and outbuildings used as domestic purposes, as fenced (i.e. enclosed) or marked out to the effect of an enclosure'*.
- 9.20 There is caselaw surrounding the definition of curtilage which is considered relevant in this case. In the case of *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.
- 9.21 As established by previous case law, there are three factors to be considered when determining whether land becomes curtilage including the functional links between the building i.e. an 'intimate association' with the building. ownership of the and the building and land regarded as a single enclosure with the building.
- 9.22 In this case, the physical layout of the land demonstrates that the outbuilding subject to this application is separated a significant distance from the host dwelling at approximately 76 metres to the southwest within a rear section of woodland. The building is also separated from the host property by the access to and the property known as 66 Upper House Road and also an area of land which appears to be used for agriculture. Therefore, the building is not located on land which would traditionally surround a dwellinghouse such as a garden and there is no 'intimate association' between the host property and subject building.
- 9.23 In terms of ownership, the submitted details indicate that the land in which the building is located is within the ownership of the host property however it is also noted that the dwelling and the land edged in blue on drawing number PP-14174794v1 are under different title deeds with Land Registry.

9.24 It is therefore concluded that the given the distance and physical separation from the host building and the 'Chicken Shed' and the lack of intimate association between the two buildings, that the 'Chicken Shed' is not considered to be within the curtilage of the host dwelling known as Upper House thus not considered to be exempted from the definition of development by reason of section 55 (2)(d).

9.25

10. Conclusion

10.1 Therefore, on the balance of probabilities, it has not been demonstrated that the outbuilding known as the 'Chicken Shed' has undertaken a material change of use and has been used for purposes for the enjoyment of the dwellinghouse known as Upper House, Upper House Road, Hade Edge, Holmfirth, HD9 1RW for a continuous and uninterrupted period in excess of 10-years prior to the submission of this application.

10.2 In addition, the building as an outbuilding known as the 'Chicken Shed' is not located within the defined curtilage of the dwellinghouse known as Upper House, Upper House Road, Hade Edge, Holmfirth, HD9 1RW and therefore the use of the building for ancillary purposes fails to meet the criteria of Section 55(2)(d) of the Town and Country Act 1990.

Decision text:

On the balance of probabilities, it has not been demonstrated that the outbuilding known as the 'Chicken Shed' has undertaken a material change of use and has been used for purposes for the enjoyment of the dwellinghouse known as Upper House, Upper House Road, Hade Edge, Holmfirth, HD9 1RW for a continuous and uninterrupted period in breach of planning control in excess of 10-years prior to the submission of this application.

The building as an outbuilding known as the 'Chicken Shed' is not located within the defined curtilage of the dwellinghouse known as Upper House, Upper House Road, Hade Edge, Holmfirth, HD9 1RW and therefore the use of the building for incidental purposes fails to meet the criteria of Section 55(2)(d) of the Town and Country Act 1990.

Plans and specification

Plan Type	Reference	Version	Date Received
Location plan	PP-14174794v1		22 nd July 2025
Block plan	24010D-01-P01		22 nd July 2025
Photos x 3			22 nd July 2025
Justification Statement	24010JS – Mason – Upper House – Use		22 nd July 2025

Plan Type	Reference	Version	Date Received
	of Outbuilding Justification		
Invoice	Robert M. Coxhead		22 nd July 2025

Dated: 21st October 2025