

**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/92936/W

Site: 27, The Hollow, Meltham, Holmfirth, HD9 5LA

Description: Certificate of lawfulness for existing garden room
to rear elevation

Case Officer: Laura Yeadon

Decision Reference: PROPOSED OPERATIONS 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 11-Dec-2025

Officer Report

[Weblink](#)

Reference: 2025/92936

Applicant: C O'Brien

Location: 27, The Hollow, Meltham, Holmfirth, HD9 5LA

Proposal: Certificate of lawfulness for existing garden room to rear elevation

Site description:

27 The Hollow is a two-storey semi-detached dwelling located within an area without notation on the Kirklees Local Plan. The property is constructed from stone and is set back and in an elevated position to The Hollow. The property hosts a garden area to the front and a further garden area to the rear.

Description of development:

The application seeks a Certificate of Lawful Development for an existing garden room which is located on the rear elevation of the property on the grounds that the building works began more than 10 years before the date of the submission of this application. The application form states that the building works were substantially completed on 13th July 2008.

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.

Meltham Town Council have acknowledged that the application has been submitted.

Consultation responses:

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate.

Relevant Policy/Legislation:

The Town and Country Planning (General Permitted Development) (England) Order 2015

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.

In determining for the purposes of this section whether the time for taking enforcement action under 171B of the Act has expired, that time is to not be taken to have expired if in the case of a breach of planning control in England, ten years before the date on which the operations were substantially completed.

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:

1999/90413 Erection of first floor extension
Conditional Full Permission

Evidence submitted in support of the application:

- Application form
- Location plan – ref: PP-14423603v1
- Site plan – ref: TQRQM25293120901166
- Aerial image – ref: 1st June 2009
- Aerial image – ref: 19th March 2025
- Photograph – ref: as existing

Evidence submitted against the application:

No evidence against the application has been submitted.

Evidence obtained from Council Records and other sources:

- Council's mapping system (Kompass)
- Google Maps

Site visit:

No site visit has been undertaken.

Assessment:

The application has been submitted by the applicant on the basis that he building works were substantially completed more than 10 years before the date of the submission of this application.

Initially it is necessary to consider whether the rear projection would have benefitted from and permitted development available at the time the development commenced. The application has not provided any evidence to demonstrate the volume of the development and any previous enlargements fell under the limitations as set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended at the time of the development). Consequently it is not possible to establish whether the development did in fact require planning permission at the time. Consequently it is considered necessary to consider, in any event, whether the development could be lawful by any other means if unlawful at the time the development was undertaken.

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 follows.

Imagery has been submitted by the applicant dated 2009 and 2025 which clearly annotates and identifies the garden room as being substantially completed. This is clarified by the aerial imagery held by the Council. The applicant claims that the works were completed in 2008 and given the structure is evident on the 2009, Officers have no reason to refute this claim.

As the garden room is clearly visible on the 2009 maps, the works had commenced more than 10 years before the date of the submission of this application (20th October 2025) the ten-year time limit as specified within Section 171B of the Town and Country Planning Act 1990 would apply. Therefore, based upon the information submitted and that held by the Council, the structure would have been immune from enforcement action in 2019.

As such, there is no reason to refuse the Certificate of Lawful Development.

Conclusion:

Based on the information submitted and records held by the Council, Officers are satisfied that the garden room at 27, The Hollow, Meltham, Holmfirth, HD9 5LA was substantially completed more than 10 years prior to the date of the submission of this application. On this basis, the recommendation is that the certificate of lawful use should be granted.

Recommendation: Grant Certificate

Decision Authorisation: - Delegated Powers

Application number: 2025/92936

Officer Recommendation: Grant Lawful Development Certificate

Based on the information submitted by the applicant and the information held by the Local Authority, it has been demonstrated on the balance of probability that the garden room at 27, The Hollow, Meltham, Holmfirth, HD9 5LA had been substantially completed in excess of 10 years, prior to the date of this application and as such is lawful.

Plan Type	Reference	Version	Date Received
Application form	PP-14423603		20 th October 2025
Location plan	PP-14423603v1		20 th October 2025
Site plan	TQRQM25293120901166		20 th October 2025
Aerial image	1 st June 2009		29 th October 2025
Aerial image	19 th March 2025		29 th October 2025
Photograph	As existing		29 th October 2025

Dated: 9th December 2025