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/92992/E

Site: 4, Calder Road, Ravensthorpe, Dewsbury, WF13 3JS

Description: Certificate of lawfulness for existing use of premises for mixed use with Class E(a) shop front area and Class C3 (residential) accommodation to the rear and upper floors

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 21-May-2026

Officer Report

Weblink

Reference: 2025/92992

Applicant: A Bashir

Location: 4, Calder Road, Ravensthorpe, Dewsbury, WF13 3JS

Proposal: Certificate of lawfulness for existing use of premises for mixed use with Class E(a) shop front area and Class C3 (residential) accommodation to the rear and upper floors

Site description:

4 Calder Road is a mid-terraced property located within the Ravensthorpe District Centre as defined within the Kirklees Local Plan. The property is constructed from stone and hosts an extension to the rear elevation. The roof is covered with blue slate and within the front elevation is a roof light. The property is accessed directly from the footway on Calder Road.

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.

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);

2. 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:

None

Evidence submitted in support of the application:

The applicant has submitted:

- Application form – ref: PP-14437012
- Location plan – ref: PP-14437012v1
- Existing floor plans
- Planning Statement
- Appendix H – screenshot of Kirklees Council's online system
- Appendix E – street view imagery 2018 and current 2025 photograph
- Executor consent email

Evidence submitted against the application:

No evidence has been received

Evidence obtained from Council Records and other sources:

- Council's Gazetteer mapping system (Kompass)
- Google Maps
- Google Street View

Site visit:

No site visit has been undertaken.

Assessment:

The application has been submitted by the applicant to confirm that the use of the building has been Class E(a) shop to the front of the building with a Class C3 use to the rear and the upper floors.

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
(b) 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.

Application form – Ref: PP-14437012

A completed application for has been submitted which describes the existing use of the building as follows:

'The property comprises a two-storey mid-terraced building with a traditional shopfront facing Calder Road.

The front ground-floor room has historically been used as a retail premises (formerly trading as Kola Newsagents), falling within Use Class E(a) – display and sale of goods other than hot food. The space retains its original shop window, separate entrance from the street, and internal layout suitable for retail use.

The rear part of the ground floor contains a kitchen/dining area, and the first floor contains bedroom and a bathroom, together forming the residential accommodation (Use Class C3).

The application therefore seeks a Certificate of Lawful Existing Use confirming the property's established mixed-use status:

- *Class E(a) – shop at the front ground floor; and*
- *Class C3 – dwellinghouse to the rear and upper floors*

No physical works or operational development are proposed as part of this application.'

The application goes on to claim that the use began more than 10 years before the date of this application.

Location plan – ref: PP-14437012v1

A location plan has been received which outlines the property in red.

Existing floor plans

Existing floor plans have been submitted however these do no appear to be to scale due to being a screenshot. Notwithstanding this, the plans indicate that there is a front room/shop area to the front of the ground floor with a kitchen/dining area to the rear and at first floor are 2 no. bedrooms and a bathroom with a further 2 no. bedrooms within the roof space.

Appendix H – screenshot of Kirklees Council's online system

This document evidences that the Council's online system recognises that the property contains 2 no. addresses, one being the residential property and one being the shop.

Appendix E – street view imagery 2018 and current 2025 photograph

Screenshots of the building are submitted to identify the premises (2018) along with a current photograph. A Google Street View screenshot is also submitted to demonstrate the historical commercial character of the frontage of this section of Calder Road.

Executor consent email

The document demonstrates that the consent from executors of the estate to which the site relates to was obtained prior to the submission of the application.

Planning Statement

A Planning Statement has been submitted containing the following headings:

1) Introduction
2) Site Description
3) Background and Planning Context
4) Proposal
5) Supporting Evidence
6) Planning Policy and Justification

Taking each point in turn:

1) Introduction

The introduction section of the Statement states that the application seeks a Certificate of Lawful Existing Development to confirm the status of the property as a mixed-use status with a Class E(a) shop front area and Class C3 residential accommodation to the rear and upper floors. It confirms that it does not involve any physical works or change of ownership but simply ensures that the planning record accurately reflects the long-standing lawful use of the building ahead of a transfer of ownership.

2) Site Description

The Statement cites that the building forms part of a traditional terrace fronting Calder Road. It states that the property lies within a short parade of established commercial and service units which includes No's 2-10 Calder Road. It claims that the building retains a commercial shopfront window facing Calder Road and a separate domestic door providing access to the upper-floor and rear residential accommodation. This section of the Statement confirms that the site is not within a Conservation Area and is not a listed building.

3) Background and Planning Context

Section 3 of the Statement claims that historical directories and Googe Street View imagery (2010-2018) confirms that the premises formerly traded a Kola Newsagents/Video & Music Centre before later reverting back to residential use without structural alteration. The Statement claims that the existing ground floor front room remains laid out and suitable for small-scale retail, with a glazed shop window and direct street access and therefore it represents a mixed-use building where the front room constitutes a commercial unit and the remainder a dwellinghouse.

4) Proposal

This section confirms that the application seeks only to confirm the lawfulness of the existing mixed-use arrangement., namely the front of the ground floor as shop (Class E(a)) and rear ground floor and upper floors as residential (Class C3). It also confirms that there are no proposed alterations proposed either internally or externally.

5) Supporting Evidence

The information contained within this section reflects that listed above.

6) Planning Policy and Justification

Section 6 makes claim that under the NPPF, a use can be deemed lawful if it has continued for over 10 years without enforcement, it states that the retail use element has existed in some form for well over this period with no enforcement or discontinuation notice served. It claims that given the unbroken commercial character of the parade, the use is entirely consistent with local planning policy.

7) Conclusion

The conclusion section of the report confirms that the evidence submitted demonstrates that the property has historically and continuously operated as a mixed-use property and therefore seek to regularise the position via the granting of a Certificate of Lawful Existing Use.

Evidence held by the Council:

The Council's mapping system holds evidence to the use of the building which is limited to the residential use of the property. Historic evidence indicates that the property has been used as commercial (shop/showroom/retail) and a flat. No details establish timeframes for when the uses commenced or ceased.

Google Streetview allows for views of the front elevation of the building in July 2008, August 2009, August 2015, July 2016, Hune 2017, June 2018, April 2019, March 2021, September 2021, October 2002, May 2023 and August 2025.

It is clear on the July 2008 image that the window opening and door opening hosted lettering in associated with a commercial use of the building with associated fascia signage, however it is unclear as to what commercial enterprise occupied the property other than business operating as a 'claims management' business which, in itself is not a retail use. As such, an unauthorised change of use occurred at this time from Use Class A1 to Use Class A2.

From August 2009 onwards, all the signage had been removed, and a blind/window covering was in situ covering the interior of the window opening. This continues to be the case to the present day. The only change to the appearance of the building appears to be that between when the 2017 and 2018 images were taken, a roof light was inserted into the roof space of the front

elevation. This indicates that it is likely that accommodation was contained within the roof space.

Assessment of all evidence:

The applicant claims that the use of the building forms a mixed-use property, as explained above. However, to establish this, the former use of the building would need to fall within this classification for a period of 10 years or more, prior to the submission of this application.

The National Planning Practice Guidance states that:

'In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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 grant of a certificate on the balance of probability.' (Paragraph 006).

From the evidence provided and held by the Council there is little evidence to suggest that the use of the front part of the ground floor of the building has been used for retail purposes for a period of 10 years or more prior to the date of the submission of the application.

The evidence provided within section 3 of the Planning Statement indicates that the ground floor 'reverted' to residential post 2018. This claim is clear that the property is not currently in use as commercial at ground floor level.

Section 6 of the Statement claims that a use can be continued for over 10 years without enforcement and that the retail element has been unbroken however, this contradicts the claim within section 3 that the use had been reverted to residential use in 2018.

Google Streetview imagery consistently demonstrates that there is no indication of the building being used commercially from 2009 onwards.

Both the retail use and residential use are assessed as follows:

Retail Use

From 1990 to 2008 there was an established retail use in part of the ground floor of the building.

In 2008, a claims management business were operating from the site as demonstrated from business rates records and from the associated signage on the building. As noted above, the Use Class was changed from A1 to A2 which, at the time, would have required planning permission and therefore an unauthorised change of use occurred at this time.

From 2008 onwards, the use of the front area of the ground floor of the property had a 'nil' use as there is no evidence to suggest that any form of use associated with the commercial aspect of the building was taking place. Due to the intervening use of the A2 use as established by the claims management business operating from the site, the use of this part of the building did not benefit from an established retail use and therefore, no planning permission for retail was in place, nor has been established since.

As such, the ground floor or part or the ground floor use of the building has not been regularised via any planning permission of demonstrable formal use and therefore, is now considered to have a 'nil' use.

Residential Use

The use of the rear of the ground floor and the upper floors of the building was established in the past but there is little evidence that the building was used for a number of years. From 2018 to the present day, Council Tax has been paid and has continuously done so to the present. Therefore, this use has been continuous for a period of 4 years or more and it is therefore considered that the residential use of the building is lawfully established.

Mixed Use

As assessed above, it has not been demonstrated that a lawful mixed use of the building has been established and it has not been demonstrated that the building has been in such a use for an uninterrupted period of 10 years or more, prior to the date of the submission of this application.

Whilst the Council has the ability to change the description to a single use building (residential Use Class C3 in this case), this would require changing the site boundaries of the application which cannot be changed via the submission of the application.

Conclusion:

Taking into account all the above, on the balance of probabilities, the existing use of the building appears to be residential with the front part of the ground floor of the building having a 'nil' use. The information submitted does not demonstrate that the retail element of the building has been in operation for a period of 10 years or more prior to the submission of this application. The information submitted and held by the Council indicates that the A1 retail use was changed to an unauthorised A2 use in 2008. No form of commercial use has been identified to have taken place from 2008 to the present day.

Due to the lack of information or evidence from the time of 2008 until 2018 when it appears that this part of the building was used for residential purposes, there is no evidence to support a mixed use of the site.

On the balance of probability, it is considered that the applicant has not provided sufficient evidence to demonstrate that the existing use of the building is a

mixed-use building under Class E(a) and C3 of the Use Classes Order 1987 (as amended).

Recommendation: Refuse

Decision Authorisation: - Delegated Powers

Application number: 2025/92992

Officer Recommendation: Refuse

Reason:

On the balance of probability, it is considered that the applicant has not provided sufficient evidence to demonstrate that the existing use of the building is a mixed-use building under Class E(a) and C3 of the Use Classes Order 1987 (as amended).

Plan Type	Reference	Version	Date Received
Application form	PP-14437012		5th November 2025
Location plan	14437012v1		5th November 2025
Existing floor plans			5th November 2025
Planning Statement			5th November 2025
Appendix H	Screenshots		5th November 2025
Appendix E	Screenshots		5th November 2025
Executor consent email			5th November 2025