

**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/93021/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 15-Dec-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 24.2 metres. The outbuilding would have a flat roof at a height of 3 metres (as annotated within plan ref: (20)001) 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 house. The Outbuilding and other additions do not exceed 50% of the total area of land around the original house. The Outbuilding is not itself separate, self-contained, living accommodation and does not have a microwave antenna. The Outbuilding is single storey with a maximum height of 3 metres and is set 2m from the boundary.'*

History of negotiations/amendments received

Following the refusal of the previous application at the site, this application has been submitted with minor alterations to the building. In addition to the submitted plans, a Supporting Statement has been submitted which details the requirements of the building. Following a consultation response from the Council's Accessible Homes Team, the Agent was advised that the concerns raised previously both via email and by the previous decision notice still remain. In response, the Agent sent email correspondence that the building complies with current permitted development rights and that the outbuilding would be 'incidental' to the dwellinghouse.

Relevant Planning History

2014/91536 Erection of non-illuminated sign
Advertisement Consent Granted

2025/91941 Certificate of lawfulness for proposed erection of outbuilding
Refused - 1. 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 subparagraph E.1(f) of Class E.
2. 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.

Consultation Responses

K.C Accessible Homes – *‘We have no clients on our records at this address for disabled adaptations/OT assessment so cannot comment on this proposal.’*

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;
2. If so, whether permitted development rights apply to the property; and
3. 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.*

- b) 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.*

- c) 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.*

- d) the building would have more than one storey;

Comment: *The building would not have more than one storey.*

- e) the height of the building, enclosure or container would exceed –
 - (i) 4 metres in the case of a building with a dual-pitched roof,
 - (ii) 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
 - (iii) 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.*

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

Comment: *The height of the eaves 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, the overall height*

of the building exceeds 2.5 metres with the application form stating that the maximum height is 3 metres which is the same as the annotation on the submitted plans and fails to meet this criteria.

- g) 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.*

- h) it would include the construction or provision of a veranda, balcony or raised platform;

Comment: *No veranda, balcony or raised platform is proposed*

- i) it relates to a dwelling or microwave antenna; or

Comment: *Not applicable.*

- j) the capacity of the container would exceed 3,500 litres.; or

Comment: *Not applicable*

- k) 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;
- (b) the Broads;
- (c) a National Park; or
- (d) 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: *Not applicable*

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.

The area of accommodation indicates that the building would be used for 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.”

An application was submitted under reference 2025/91941 whereby the Local Planning Authority refused the application for a similar scheme. Following the refusal notice being issued, correspondence took place between Officer’s and the Agent which set out the requirements which would need to take place in order to received a favourable outcome to any future submission. This included:

- ensuring that the proposed outbuilding would comply with the regulations;
and further information relating to:
 - 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 floor space required to meet the needs of the client were formulated

As part of this submission, the size of the building has been reduced marginally with the same width as previously submitted and with the length reduced from 26 metres to 24.4 metres. The overall height of the building remains to be over 2.5 metres and therefore this submission fails to comply with sub-paragraph E.1(f).

A Planning Statement has also been submitted alongside the submitted plans. This sets out the key specifications and that the outbuilding would not constitute

self-contained living accommodation and would remain wholly ancillary to the main dwellinghouse.

The details confirm that the outbuilding building would equate to 3.1% of the plot area and 1.25 x larger than the footprint of the host dwellinghouse. Officers do not contest this claim.

The use has been confirmed as a hydrotherapy pool and sensory room to support a family member and that *'the facility would provide therapeutic, recreational and wellbeing benefits for the family within their domestic curtilage.*

The Statement clearly cites the dimensions for the proposed space proposed and states the following:

- sensory room – 7.1m x 7.9m: to support daily therapy for a dependant family member with autism and additional needs, with sensory lighting, sound equipment and circulation space
- pool area – 7.1m x 12m: a modest domestic pool (approx. 5m x 11m, 1.5m in depth) with space for hoist equipment, plant and safe access
- shower/changing room (1.6m x 3m) and store/plant room (2m x 3.2m): ancillary facilities necessary for pool use

The justification put forward for the plant and storage areas are to serve the hydrotherapy pool with the size determined solely by technical and safety requirements in order to house the necessary pool filtration equipment, pumps and the associated heating system. The justification cites that the plant room is not intended for any habitable or independent use and will function only as a service space for the safe operation of the hydrotherapy pool and is therefore an integral and incidental part of the overall building use.

With regard to the justification for the sensory room, it is stated that a space of 7.1m x 7.9m is required to accommodate a safe, functional and therapeutic environment for a child with additional needs. It cites that *'this size allows for the inclusion of essential sensory equipment—such as soft play zones, movement and lighting features, and calming areas—while maintaining adequate circulation space for mobility aids and adult supervision. A smaller area would restrict the range of sensory activities and compromise safety, accessibility, and the room's therapeutic effectiveness. The 7.1m x 7.9m footprint therefore ensures the room meets the child's sensory, physical, and emotional needs.'*

Whilst the requirements of the accommodation could be acceptable in principle, in the absence of any evidence in terms of how these calculations have been determined and in the absence of any relevant supporting information or advice from an Occupational Therapist or from the Council's Accessible Homes Team who have no record of any person within the dwellinghouse requiring adaptations or assessments, it has not been demonstrated that the sheer size

of the proposed building which has a footprint over 1.25 times the footprint of the main dwelling is 'reasonably required'.

In addition, no evidence has been submitted with regards to whether any form of the proposed sensory requirements could be achieved within the existing dwellinghouse, as advised following the previous refusal of a proposed outbuilding.

Section 10 of the Supporting Statement responds to the previous reason for refusal. It cites that the refusal reason was:

"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."

It goes on to state that this conclusion is incorrect as:

'The proposed outbuilding is located more than 2 metres from any boundary.

- *Under **Class E.1(e)**, the maximum overall height for a flat-roofed outbuilding in this position is **3 metres**. The proposal is within this limit.*
- *The Government's **Permitted Development Rights for Householders: Technical Guidance (2019, p.41–43)** makes clear that the 3m overall height limit applies where the building is more than 2m from a boundary. The proposal fully accords with this guidance.*
- *"5) Height limits Outbuildings must be single storey with a maximum overall height of 4 metres with a dual pitched roof, or three metres in any other case."*

Accordingly, the development complies with both Class E.1(e) and Class E.1(f). The refusal reason therefore misapplies the GPDO and should be set aside'.

With respect to this conclusion, it is correct that with regard to *E.1(e)*, *the overall height of the building would, as correctly cited can be no more than 3 metres providing that that the building is more than 2 metres of the boundary and does not have a dual-pitched roof.*

However, the fundamental section of the Order (as assessed above) sub-paragraph *E.1(f)* states:

f) the height of the eaves of the building would exceed 2.5 metres;

The Permitted Development for Householders Technical Guidance (page 43) states 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. The Guidance on Class A (d) above includes examples and further guidance (see page 12).

As such, the building fails on this part of Class E.

It is therefore concluded that the proposal 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.

Also, it has not been evidenced that the size of the building is reasonably required for purposes incidental 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 evidenced that the building is be required for purposes incidental to the enjoyment of the dwellinghouse.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form	PP-14434632		29 th October 2025
Location plan	(EX)002		29 th October 2025
Proposed block plan, elevations, floor and roof plan	(20)001		29 th October 2025
Lawful Development Certificate Supporting Statement			29 th October 2025

Dated: 12th December 2025

