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/93072/E

Site: Denroyd Farm, 99, Denby Lane, Upper Denby, Huddersfield, HD8 8TZ

Description: Certificate of lawfulness for existing use of land for residential garden (within a Conservation Area)

Case Officer**:** Faiza Bano

Decision Reference: EXISTING USE 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 17-Feb-2026

APPLICATION FORE CERTIFICATE OF LAWFUL USE – EXISTING

APPLICATION NUMBER – 2025/93072

ADDRESS - Denroyd Grange, 99, Denby Lane, Upper Denby, Huddersfield, HD8 8TZ

PROPOSAL - Certificate of lawfulness for existing use of land for residential garden (within a Conservation Area)

1. Description of Proposal

1.1 The proposal is for a certificate of lawful use of land as domestic curtilage at Denroyd Grange, 99 Denby Lane

1.2 The site subject to this application is the land to the rear south of the dwellinghouse which is located on land defined as Green Belt and within the Upper Denby Conservation Area within the Kirklees Local Plan. Access to the property is via a driveway off Denby Lane which serves 93 and 95 Denby Lane too.

2. Lawful Use Certificates

2.1 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.

2.2 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);

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

3. The Relevant Test

3.1 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'.

3.2 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.

4. Limitations

4.1 The Lawful Development Certificate 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 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.

5. Relevant Planning History

5.1 98/90657: Re-use, extension and adaptation of existing farm buildings to form five dwellings and erection of one detached dwelling with associated garages (within conservation area) - *Conditional Full Permission*

5.2 2018/90799: Erection of single storey rear extension and changes to garage doors (within a Conservation Area) - *Conditional Full Permission*

5.3 2025/91037: Erection of single storey rear extension, installation of solar panels, replacement of windows and garage doors, installation of electric gate and associated external alterations (within a Conservation Area) - *Conditional Full Permission*

5.4 2023/92204: 97, Denby Lane, Upper Denby, Huddersfield, HD8 8TZ - Certificate of lawfulness for existing use of land for purposes incidental to the enjoyment of the dwellinghouse (within a Conservation Area) - *Cert of Lawful Use Granted*

6. Evidence submitted in support of the application

- Application form
- Proposed Site/Block Layout
- Location Plan
- Supporting Statement – which includes historical ariel imagery of the site.

7. Evidence submitted against the application

7.1 None

7. Evidence obtained from the Council or other sources

- Aerial photographs from a number of time periods
- Previous planning application records including plans
- Site photographs from previous planning application

9. Assessment of evidence

9.1 The application form states that the land has been used as garden in conjunction with the main house for at least 23 years. It goes on to state that *the attached aerial photographs show that the site was mown grass and included within the domestic curtilage since at least 2002.* Two plans have been submitted with one annotating the domestic curtilage of the main house and the other shows the proposed site plan which includes a proposed outbuilding submitted as part of an open application – 2025/92157. The application seeks to confirm that all the land as shown on the submitted plans has changed its use for the purposes of a domestic garden in excess of 10 years before the date that the application

was submitted. It therefore appears the thrust of the applicant's case is the use for the purpose of a domestic garden has existing in 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.

9.2 For the provisions of section 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 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.

9.3 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.

9.4 Since the historic use of the land is presumed to be agricultural or simply open grassland, the Council acting as 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 land has undergone a material change of use to land incidental to the enjoyment of the dwelling house, that this use has been carried on for a 10 year period, and has not subsequently been abandoned.

9.5 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 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

9.6 Historical evidence indicates that the land originally formed part of the wider grazing and agricultural land associated with the former farmstead. The site was subsequently redeveloped in 1998 to provide five dwellings and one detached dwelling. The applicant has submitted a supporting statement, including aerial imagery, which purports to demonstrate that the land has been maintained and

utilised as external garden space ancillary to the residential enjoyment of Denroyd Grange, 99 Denby Lane, since at least 2002.

9.7 Ariel imagery from 2000 does not show a clearly defined physical boundary separating the application land from the adjoining grassed area. By 2002, the site appears as a regularly mown grassed area, visually distinct from the agricultural field to the south. The land is enclosed by hedging and fencing and there is no clear demarcation separating number 99 Denby Lane from the land in question, indicating functional association with the dwelling.

9.8 Further aerial imagery from the Council's records confirm that, by 2006, the land was clearly enclosed and maintained as a private residential garden space and distinct from the agricultural land to the south which continued to exhibit active farming use, creating a clear distinction between the two areas. Subsequent aerial imagery from 2015 indicates the removal of several trees within the site establishing a defined a defined boundary treatment and vegetation which reinforces the land's domestic character.

9.9 This progression is also reflected in the applicant's submitted Google Earth imagery, which shows that by June 2016 the land had evolved into a well-defined and enclosed garden area, with mature boundary planting providing screening from surrounding fields. The combined evidence demonstrates a clear change in both the physical appearance and functional use of the land over time.

9.10 On balance, it is considered that the material change of use from former meadowland to domestic garden amenity space occurred at some point after 2000. No planning permission was sought or granted for this change; therefore, a breach of planning control had taken place prior to 2015. The available evidence indicates that, for many years, the land has been laid out, maintained, and used as part of the residential curtilage of the dwelling, and has not been in agricultural use associated with farming activities since before 2000.

9.11 The last lawful use of land is considered to be agricultural, associated with the former farmstead. The use of land as residential garden forms part of the residential planning unit and is materially different from agricultural use.

9.12 The enclosure of land, its physical incorporation in the residential planning unit, regular maintenance as lawn, and absence of any agricultural activity are indicative of a change in the character of the land from agricultural and domestic use. The land no longer functions as part of an agricultural unit but instead as a private residential amenity space. This represents a material change of use.

9.13 Imagery available on Google Earth appear consistent with the aerial imagery held by the Council.

9.14 Whilst the applicant has submitted aerial imagery as part of the supporting statement, limited evidence has been provided in

the form of statutory declarations, photographic records, or other documentary evidence to demonstrate the precise date at which the use became exclusively residential in character.

9.15 The change from agricultural land to land used as domestic garden amenity space constitutes a material change of use. Agricultural land and residential curtilage are materially distinct uses, and the enclosure and incorporation of the land into the residential planning unit represents a change in the character of the use of the land

9.16 On the basis of the available evidence, it is considered that the material change of use from former meadowland to domestic garden land had occurred sometime after 2000 and before 2002 when the land was clearly enclosed and functioning exclusively as private residential amenity space.

9.17 The evidence further indicates that this residential use has continued for a period in excess of ten years without interruption and without evidence of any reversion to agricultural use. The use is therefore considered lawful through the passage of time. The land now forms part of the established residential land of Denroyd Grange, 99 Denby Lane.

9.18 Given the land forms part of the lawful residential land of the dwelling, it is not considered to constitute open agricultural land or countryside for the purposes of Green Belt assessment. The proposal is therefore assessed on the basis of development within an established residential planning unit rather than as encroachment into the countryside.

9.19 As stated in paragraph 9.18, the land appears to have been used for domestic purposes for some years and likely to be lawful for purposes incidental to the enjoyment of the dwellinghouse.

10.Conclusion

10.1 Therefore, on the balance of probabilities, Officers are satisfied that the entirety of the land within the red line boundary as shown on the submitted plans can be considered lawful as land used for purposes incidental to the enjoyment of the dwellinghouse at Denroyd Grange, 99 Denby Lane.

11.Recommendation

11.1 Officer recommendation is to approve the application.

Decision note:

It has been demonstrated, on the balance of probability, that the land within the red line boundary as shown on drawing ‘H25-99 002’ (Proposed Site/Block Layout) and Location Plan has lawfully been used for domestic purposes incidental to the use of the dwellinghouse at Denroyd Grange, 99 Denby Lane.

NOTE: This decision only confirms the use of the land for purposes incidental to the dwellinghouse at Denroyd Grange, 99 Denby Lane. The decision does not confirm the extent of any domestic curtilage.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Proposed Site / Block Layout	H25-99 002		03-Nov-2025
Location Plan	-		03-Nov-2025
Supporting Information	Supporting Statement		03-Nov-2025

Report date: 12/02/2026