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/93315/W
Site:	The Mistle, 999, New Hey Road, Outlane, Huddersfield, HD3 3FH
Description:	Certificate of lawfulness for proposed use of garage for beauty studio
Case Officer**:**	Laura Yeadon

Decision Reference: CERTIFICATE OF LAWFULNESS 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.

John Holmes

AUTHORISED OFFICER

Date 06-Mar-2026

Officer Report

Weblink

Reference: 2025.93315

Applicant: D Gough

Location: The Mistle, 999, New Hey Road, Outlane, Huddersfield, HD3 3FH

Proposal: Certificate of lawfulness for proposed use of garage for beauty studio

Site description:

The Mistle, 999 New Hey Road is a large detached dwelling which is located within the defined Green Belt within the Kirklees Local Plan. The property is a bungalow and has a large projection to the front of the property which sits alongside the garden area of the property. Within the southern corner of the curtilage, within the forecourt of the property is a detached double garage.

Description of development:

The applicant seeks a Certificate of Lawful Development for the proposed use of part of the detached garage for a beauty salon.

The applicant states that external works would be the alteration of one of the garage doors to a window and a door. All other works would be internal.

The application form states that the home-based beauty studio would be used by the homeowner only and that only one client would attend at a time by appointment only. It goes on to state that there would be no employees, no signage, no waiting area and no increase to noise and disturbance with parking available within the private driveway.

Plans have been submitted that confirms that 'garage 1' (left bay) would remain unchanged for parking and storage and 'garage 2' (right bay) would be converted to the beauty studio. It also confirms that the property will remain in Use Class C3 as a private dwellinghouse.

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 (General Permitted Development) (England) Order 2015

Lawful Development Certificates:

Section 192(1) (a) of the Town and Country Planning Act 1990 ("the Act") permits any person who wishes to ascertain whether any operations or proposed 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 the Local Planning Authority is provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application.

The Lawful Development Certificate System provides the possibility of obtaining a statutory document confirming that the use, operation or activity named in it is lawful for planning purposes on the dates specified in the document. Once it is granted, the new type of certificate remains valid for the use or development described in it, on the land it describes, provided there is no subsequent material change in the circumstances.

The grant of a certificate applies only to the lawfulness of development carried out, or proposed, in accordance with the Planning legislation.

A certificate granted for a proposed use or operation will describe the precise use or operation on a site in the terms considered permissible without the need to make a planning application for it.

Section 191(2) of the Act states that "For the purposes of this Act, uses and operations are lawful at any time if:-

a) 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 enforcement action has expired or for any other reason); and

b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force".

Section 192(2) of the Act states:-

"If on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described

in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect…"

Therefore if the Local Planning Authority is satisfied on balance, and having regard to the above sections read together, that no enforcement action could be taken because the proposed change of use would not constitute "development" involving a material change of use of the dwelling, a certificate should be issued on the grounds that the change does not constitute development. Otherwise the application should be refused.

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:

2000/92948 Re-use of redundant farm buildings and new extensions to form 2 dwelling. Erection of detached garage and formation of driveway
Conditional Full Permission

2008/90764 Certificate of lawfulness for the erection of a detached garage
Granted

2014/92530 Removal of existing conservatory and erection of single storey side extension
Conditional Full Permission

Assessment:

The submission seeks clarity that the proposed use of one bay of the existing double garage for a beauty studio. The works would be primarily internal to convert the garage bay with the external alterations limited to the replacement

of the existing garage door to a door and a window. The submission states that the business would be operated by an occupier of the host property and does not require planning permission as the use would not result in development falling outside of Class C3 of the Use Class Order 1987 (as amended).

The use of the building is a dwellinghouse falling within Class C3 of the Use Class Order 1987 as set out within the application form. This is supported by Google Street View imagery. The Council does not have any information to dispute this claim and are therefore satisfied that this is the lawful use of the building.

Physical works to the building

The application form clarifies that the business would be a beauty studio offering treatments such as nails, lashes, brows, waxing and makeup.

The alteration to the garage door to a window, in some cases, would fall within Part 1, Class E of Schedule 2 of the General Permitted Development Order however, in this case, it is clear that the intention of the works are to facilitate a commercial enterprise. Therefore, in this case, the works could not fall within Class E of the GPDO as this requires the use of the building to be incidental to the enjoyment of the dwellinghouse. As these works would provide accommodation to create a commercial enterprise, this is not considered to result in works which would not be incidental. As such, planning permission would be required for these works.

Use of the garage structure as a business

The application seeks to confirm the lawful use of part of the garage structure for the purpose of commercial use. Section 55 of the Act establishes that the making of a material change of use of a building represents development. The consideration is whether such a proposed change of use is material for the purposes of Section 55. However, Section 55(2)(d) provides an exemption to the definition of development providing that the use of any building within the curtilage of a dwellinghouse is used for purpose incidental to the enjoyment of the dwellinghouse.

The recognised starting point in considering whether a material change would occur would be to initially consider the planning unit (Burdle v SoS [1972]). The existing planning unit is a dwelling with associated curtilage which, in this case is to the front of the property. This judgement considered that if a distinctively, unrelated activity which is functionally and physically separate from the winder planning unit is established, a new planning unit may be created.

The garage structure is a stand-alone detached building which does not attach to the main dwellinghouse. Part of the building would be used for business premises and would have limited reliance on the main dwellinghouse to be fully functional as a business premise. Consequently, it is considered

that the use of the outbuilding could create a separate planning unit if it is deemed that a material change of use occurs.

Materiality in the context of the meaning of development is dependent upon whether there is a change in the character of the property (Guildford Rural DC v Penny [1959]). From the information supplied by the applicant the dwelling would remain the dominant use.

The information submitted by the applicant indicates that the business use would operate with one client at a time, by appointment only. It goes on to say that there would be no employees, no signage, no waiting area and no increase to noise or disturbance.

That being said, no details have been submitted in terms of operational hours, the length of treatments, number of appointments anticipated, working days etc and therefore, in the absence of this information, it is not clear and unambiguous as to whether or not there would be a significant increase in traffic movements which would result in a use which is incompatible within a residential setting and not normally expected at a typical dwellinghouse. This would further add to the material change of use of the building and therefore, the exemption if Section 55(2)(d) does not apply.

As such, the use could be considered to be a significant change from the existing use of the property and would have a material impact on the existing character of the dwelling. Therefore, the information is not clear to conclude whether or not a material change of use would occur at the dwellinghouse leading to development requiring planning permission. As no planning permission exists for the proposed business use, it cannot be considered lawful for the purposes of Section 192.

Conclusion:

Based on the above, it is considered that to use part of an outbuilding within the curtilage of The Mistle, 999, New Hey Road, Outlane, Huddersfield, HD3 3FH could constitute a material change of use and therefore development as defined by Section 55 of the Town and Country Planning Act 1990 [“the Act”]. In the absence of planning permission the proposed business use is not considered lawful for the purposes of Section 192 of the Act.

The information submitted does not provide clear evidence to conclude that a material change of use would not occur and the proposed physical works to the building would not benefit permitted development as the works would facilitate a commercial enterprise.

Therefore, it is recommended to refuse the certificate.

Recommendation: Refuse Certificate

Decision Authorisation: - Delegated Powers

Application number: 2025/93315

Officer Recommendation: Refuse Certificate

Reason:

1. It is considered, on the balance of probabilities, that the use of part of an outbuilding within the curtilage of The Mistle, 999, New Hey Road, Outlane, Huddersfield, HD3 3FH for business purposes would constitute a material change of use and therefore development as defined by Section 55 of the Town and Country Planning Act 1990 ["the Act"]. In the absence of planning permission, the proposed business use is not considered lawful for the purposes of Section 192 of the Act.

2. The external works to the garage would materially affect the external appearance of the building and do not fall within the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the external works would be to facilitate a use which is not incidental to the enjoyment of the dwellinghouse.

Plans and specifications:

Plan Type	Reference	Version	Date Received
Location plan	TQRQM25337140433215		4th December 2025
Block plan	TQRQM25335201616695		4th December 2025
Existing floor plans			4th December 2025
Proposed floor plans			4th December 2025
Supporting Statement			16th December 2025