

**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.: 2026/CL/91249/E

Site: Pigatu, 106, Hartshead Lane, Hartshead,
Liversedge, WF15 8AJ

Description: Certificate of lawfulness for existing use of land for
purposes incidental to the enjoyment of the dwellinghouse.

Case Officer: Laura Yeadon

Decision Reference: LAWFUL USE GRANTED

**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.**

John Holmes

AUTHORISED OFFICER

Date 08-Jul-2026

APPLICATION FOR CERTIFICATE OF LAWFUL USE – EXISTING

Application number: 2026/91249

Address: Pigatu, 106, Hartshead Lane, Hartshead, Liversedge, WF15 8AJ

Proposal: Certificate of lawfulness for existing use of land as domestic garden associated with the existing dwelling

1. Description of Proposal

- 1.1 The proposal is for a certificate of lawful use of land as domestic garden associated with the existing dwelling, Pigatu, 106 Hartshead Lane.
- 1.2 The site subject to this application is to the north and west of the dwelling with the entire land falling within the defined Green Belt within the Kirklees Local Plan. Access to the property is off Hartshead Lane with the land, subject to this application bound by stone walling.

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 or 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:
 - a) 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);
 - a) They do 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 the use or operations are 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 a 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 1990/01927 – Conversion of agricultural barns to dwelling – Conditional Full Permission
- 1991/02945 – Erection of detached garage and horse stalls – Conditional Full Permission
- 1997/93288 – Regrading embankment and drystone walling – Conditional Full Permission
- 2001/93272 – Erection of extensions – Conditional Full Permission
- 2012/93360 – Erection of first floor extension above existing store – Conditional Full Permission
- 2025/90389 – Erection of front extension – Refused

6. Evidence submitted in support of the application

- Application form
- Location plan
- Supporting Planning Statement
- Letter from current owners
- Letter and photographs from previous owners

7. Evidence submitted against the proposal

- 7.1 None

8. Evidence obtained from the Council or other sources

- Council's mapping system
- Information obtained from internet

9. Procedural Matters

- 9.1 The applicant submits that the land outlined in red on the submitted location plan has been used as a domestic garden associated with the dwellinghouse. The application form states that the use began more than 10 years before the date of this application and has been in continuous use.
- 9.2 The application is submitted pursuant to Section 191 of the Act which provides an application route for the Local Planning Authority to consider the lawfulness of a particular development, in this case the use of land as a garden. It is well established that curtilage is not considered to be a use of land but rather a piece of land associated within a dwellinghouse. Consequently it is considered necessary to modify the description of development under the provisions of Section 191(4) of the Act to describe the use of the land specified on the decision notice. In this instance the use of the land is considered to be properly described as the use of land for purposes incidental to the enjoyment of the dwellinghouse.

10. Assessment of Evidence

- 10.1 The submitted Supporting Planning Statement states that the current occupiers bought the property in 2004 and that the previous owners had the property since 2001. In that time, both owners of the property have maintained the land in question, keeping the grass trimmed and using it as a garden area in association with the property.
- 10.2 It goes on to state that both occupiers provide statements of this use and that Google Earth images show the trimmed condition of the land over the last 10 years.
- 10.3 It therefore appears that the thrust of the applicant's case is the use for the purpose of a domestic garden has existed in breach of planning control for a period of time as set out in Section 171B of the Act and is therefore immune from enforcement action.
- 10.4 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 again for a period of 10 years. A breach in planning control is defined in Section 171A of the Act as either the:
- a) The 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.

- 10.5 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 the making of any material change in the use of any buildings or other land.

- 10.6 Since the historic use of the land is presumed to be 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 to land incidental to the enjoyment of the dwellinghouse and that the use has been carried on for a 10 year period. And has not subsequently been abandoned.
- 10.7 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 a) ownership past and present, b) layout and c) functional relationship to the dwellinghouse.

Material Change of Use

- 10.8 As part of the submission, the application has been accompanied with a Planning Statement which includes the background of the site and includes Google Earth imagery from 2015, 2020, 2023 and 2025. Letters from both the previous and present owners of the property and land have also been submitted as evidence of the use of the land.
- 10.9 The land itself which is subject to this application sits to the north west of what is considered to be the defined curtilage, as demonstrated on previous applications for planning permission. As part of planning permission references 1990/01927 and 1991/02945 which was for the conversion of agricultural barns to dwelling and for a detached garage and horse stalls a condition was attached to both permission which stated the following:

Notwithstanding the provisions of the Town and Country Planning (General Development Order) 1988, no buildings, structures, or erection of any kind (including walls, fences, hedges, trees, shrubs or drainage works) shall be constructed or planted in the area

shown hatched on the approved plan without the prior written approval of the Local Planning Authority and neither shall be area shown hatched on the approved plan be laid out for the purposes of a private garden.

- 10.10 Whilst the plans are not available to view online, given that the conditions relate to an area of land, it is assumed the area is that which this application relates. The condition clearly did not grant permission for the land to be used as a private garden.
- 10.11 From viewing the previous application files, aerial maps and information contained within the Planning Statement and a letter from the previous owners of the property, it appears that the land is separated into two sections. The first being the upper section which has been regraded and stone walled and provides terraced and lawned areas and the second being a larger parcel of land which appears to be open grassland albeit with a pond created within the north-west corner which the previous owners indicate was created in 2000. The land subject to this application is significantly larger than the upper section and that defined as curtilage as part of the previous 2025 application for a front extension.
- 10.12 The area of land in which this application relates to appears to have been lawned and manicured for a significant period of time. The applicants claim is that the land has been mowed and other maintenance work such as the pruning of shrubs and general weeding has taken place since the property was purchased in April 2024 and for a period of 23 years prior, by the previous owners.
- 10.13 In terms of this land, the Council's records dating back to 2000 demonstrate that the land has been manicured and maintained from then until the present day with the engineering operations to install a pond occurred between 2000 and 2002. The images dated 2000, 2002, 2006, 2009, 2012, 2018, 2021 and 2025 consistently demonstrate that there are no outbuildings or any associated paraphernalia evident within this area of land.
- 10.14 It is clear from the submitted details that the character and appearance of this parcel of land has remained relatively unchanged for a significant period of time.
- 10.15 The imagery submitted by the applicant appears to be consistent with the aerial imagery held by the Council.
- 10.16 In assessing whether or not a material change of use has occurred it is required to establish the character of the land before and after the change has occurred. If it can be concluded that the change in the character of the land is a material change then development will occur and a material change of use will have taken place.

- 10.17 Due to the passage of time there is no evidence to conclude the character of the land in question prior to 2000 and therefore, the Council has no evidence which would be contrary to the claims submitted within the application.
- 10.18 It is therefore concluded that the larger parcel of land appears to have been maintained by both the previous and current owners of the host building for a substantial period of time.
- 10.19 Previous planning applications at the property did not form part of the area of land within the red line boundary/curtilage of the property and therefore the use of the land for domestic purposes would not have benefited from planning permission. Whilst a condition was imposed on the 1990 and 1991 permission as well as the 1997 approved application, if a breach has occurred, in the absence of any enforcement action, the breach of condition would be immune from enforcement action due to the passage of time. As such the use of the larger parcel of land for purposes incidental to the enjoyment of the dwellinghouse would have constituted a material change of use from a previous use as grassland/agriculture. As the Council have no evidence over and above that submitted to dispute the claims of the applicant that the use of the land has been as domestic garden and therefore, on the balance of probabilities, the larger parcel of land is likely to have been used for incidental purposes for the enjoyment of the dwellinghouse for a period time exceeding 10 years from the date of this application and has become immune from enforcement action, thus established as being the lawful use of the land.
- 10.20 Therefore, as the use of the land appears to have been used for domestic purposes, in the interest of completeness, it is also considered beneficial to also consider whether this land is formalised as curtilage land to the dwellinghouse and thus would have been exempted from the definition of development by virtue of Section 55(d) of the Act.

Curtilage

- 10.21 The Oxford English Dictionary defines curtilage as ‘The area of land around *and a house and its surrounding yard and outbuildings used for domestic purposes, as fenced (i.e. marked out so as to have the effect of an enclosure)*’.
- 10.22 Case law exists surrounding the definition of curtilage which is considered relevant in this case. In *McAlpine v Secretary of State for the Environment* [1995] the judgement that was arrived at was the *Dyer* case (*Dyer v Dorset CC* [1989] where it was maintained and further concluded that curtilage is constrained to a small area around a building which is attached and forms one enclosure within it. The Court of Appeal in *Secretary of State for the Environment*,

Transport and the Regions v Skerritts of Nottingham [2000] set out that the definition of curtilage in relation to a building must remain a question of fact and degree in each case.

- 10.23 As established by previous case law, there are three factors to be considered when determining whether land becomes curtilage including the functional links between the land and building i.e. an 'intimate' association' with the building, ownership of the land and the building and land regarded as a single enclosure with the building.
- 10.24 In terms of functional links, the land immediately to the north and west of the property is lawned and manicured with ornamental hedging, terracing, bedding plants with limited paraphernalia associated with garden features including an established regrading of land and stone walling separating, in the most part, the space from the larger parcel of land beyond.
- 10.25 Land Registry title deeds indicate that both the host property and the area of land subject to this application fall under the same title deed. The applicant claimed this to be the case on previous planning application reference 2025/90389 whereby the extent of curtilage was noted with a red line boundary and the land in question within a blue line boundary, thus the same ownership. The Council has not been presented with any evidence to the contrary. Therefore, the applicant appears to have owned the land, past and present.
- 10.26 As set out above, the immediate intimate amenity space appears to be consistent when viewing historical aerial imagery. In terms of the parcel of land immediately to the rear of the property, which contains the raised garden and terracing, it is considered that the ownership, functional and physical attributes with the approved parcel of land is the established curtilage to the dwellinghouse and therefore its use for purposes incidental to the enjoyment of the dwellinghouse as is lawful by virtue of Section 55(d) of the Act.
- 10.27 With regard to the larger parcel of land, it is evidenced and therefore clear that this land benefitted from immunity from enforcement action by virtue of Section 171B of the Act. However, this area of land was never intended to be part of the established curtilage of the property, given the condition imposed on the 1990, 1991 and 1997 decision notices. Whilst it appears to have been maintained by regular mowing, weeding, forming a pond etc, and whilst there is no physical uninterrupted boundary line separating the parcels of land other than the evidenced regrading of the land and stone walling, it is suggested that it is land outside the curtilage of the property. The Courts have held that the fact that land may have been used for purposes incidental to the enjoyment of the dwellinghouse, that does not automatically result in the land

becoming curtilage. Therefore, a footnote shall be included on the decision notice to this effect.

11. Conclusion

11.1 Therefore, taking into account all of the above, on the balance of probabilities, Officer's are satisfied that the entity of the land shown on the submitted plans can be considered lawful as land for purposes incidental to the enjoyment of the dwellinghouse at Pigatu, 106, Hartshead Lane, Hartshead, Liversedge, WF15 8AJ for a period in excess of 10 years.

12. Recommendation

12.1 The recommendation is that the Certificate of Lawful Development is granted subject to the imposition of a footnote in relation to curtilage added to the decision notice.

Decision Authorisation: - Delegated Powers

Application number: 2026/91249

Officer Recommendation: Grant Certificate

Reason:

It has been demonstrated, on the balance of probabilities, that use of the land within the red line boundary as shown on drawing number PP-14919950v1 has been used for purposes incidental to the use of the dwellinghouse at Pigatu, 106, Hartshead Lane, Hartshead, Liversedge, WF15 8AJ and was lawful at the time of the application.

NOTE: The decision only confirms the use of the land for purposes incidental to the dwellinghouse at Pigatu, 106, Hartshead Lane. The decision does not confirm the extent of any domestic curtilage.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form	PP-14919950		8 th May 2026
Location plan	PP-14919950v1		8 th May 2026
Supporting Planning Statement	HPS9826		8 th May 2026
Letter from previous owner			8 th May 2026
Letter from current owner			8 th May 2026

