

**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/91358/E

Site: 23, South Street, Oakenshaw, BD12 7DJ

Description: Certificate of lawfulness for existing extension

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.

Emma Thompson

AUTHORISED OFFICER

Date 13-Jul-2026

Officer Report

[Weblink](#)

Reference: 2026/91358

Applicant: Joseph Bell

Location: 23, South Street, Oakenshaw, BD12 7DJ

Proposal: Certificate of lawfulness for existing extension

Site description:

23 South Street is a two-storey gable fronted property which is within an area of land within the Strategic Green Infrastructure Network within the Kirklees Local Plan. The property is detached and constructed from artificial stone with a tiled roof. To the front of the property is a porch and small garden area with a driveway leading to an attached single storey garage and to the rear is a larger garden area. To the rear of the garage is a garden room which is the structure this application relates to.

Description of development:

The application seeks a Certificate of Lawful Development for the existing extension to the rear of the garage structure. The details within the application form indicates that the garden room was constructed and completed in June 2009 and therefore benefits from immunity from enforcement action and is therefore lawful development.

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.

No comments have been provided.

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 (as amended)
- The Town and Country Planning (General Permitted Development) (England) Order 2015

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);
1. 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.

Prior to 25th April 2024, the time period in which enforcement action should be taken for operational development was 4 years. Transitional arrangements provide that if operational development was substantially completed prior to the 25th April 2024 then the requirement of the passage of 4 years to become immune from action continued to apply to that development.

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

Relevant Enforcement History:

None

Evidence submitted in support of the application:

- Application form – ref: PP-14946430
- Location plan – ref: UK Planning Maps
- Block plan – ref: SC / 26 / 641 - 001
- Pre-existing plans – ref: SC / 26 / 641 – 101
- As built plans – ref: SC / 26 / 641 – 201
- Date stamped aerial images – ref: 2009, 2011, 2015 and 2019

Evidence submitted against the application:

No evidence against the application has been submitted.

Evidence obtained from Council Records and other sources:

- Council's mapping system (Kompass)
- Information available on the internet

Assessment:

The application has been submitted by the applicant on the basis that the structure forming the garden room (as annotated on plan) was constructed in 2009 and is therefore lawful by virtue of the passage of time and is therefore immune from enforcement action.

Permitted development rights have been removed from the property under planning references 1977/01856 and 1978/01241. However, the claim is that the structure was erected in 2009 and therefore, should the works be in breach of conditions previously imposed on the decision notices, any breach of condition would be in excess of 10 years from the of the submission of this application and would therefore be immune from enforcement action by virtue of the passage of time.

The application relates to Section 191 of the Town and Country Planning Act 1990 in relation to an existing use, operation or activity as the garden room has been constructed. Information held online demonstrates that the extension is on situ to the rear of the attached garage.

In this case, the garden room was constructed without the benefit of any planning permission for its construction. Therefore, an assessment needs to be made as to whether the structure is immune from enforcement action.

Current legislation states that in terms of time limits for enforcement action The Levelling-up and Regeneration Act 2023 amended the Town and Country Planning Act 1990 (section 171B) to update the time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

When this change was enacted, transitional measures were introduced as to when the breach of planning control took place. Pertinent to this application is when the works commenced and were substantially completed. The transitional measures state that if the breach took place prior to 25th April 2024, operational development relating to building, engineering or mining then enforcement action can no longer be taken from four years, beginning the date where the operations were substantially completed. There is no record of any enforcement action being undertaken by the Local Planning Authority with regard to this particular development.

Information submitted within the application form and date stamped photographs indicate that garden room was constructed and completed in June 2009 and has been in situ since.

Information held on the Council's mapping system demonstrates that the structure appears to be in situ on the 2006 aerial imagery and has been continuously evident on the 2009, 2012, 2015, 2019, 2021 and 2025 maps. This therefore corroborates the applicants claim that the structure was completed in June 2009.

The time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act 1990 as amended by the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 for transitional arrangements).

The transitional arrangements set out that the amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where in relation to a breach of planning control referred to in sections 171B(1) & (2) of the 1990 Act (time limits), the breach occurred before the day on which that section comes into force.

In this case, on the balance of probabilities, the breach is considered to have occurred between 2006 and 2009. In the absence of enforcement action having been undertaken within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024, it is concluded that on the balance of probability the development the subject of this certificate is immune from enforcement action being able to be undertaken.

Therefore, given that the applicant has demonstrated that (on the balance of probabilities) the likelihood is that the works to construct the garden room were substantially completed in June 2009 it is considered that immunity from

enforcement action was gained in April 2013 and is now lawful for the purposes of planning control.

Conclusion:

Based on the information submitted and information available to the Council, the garden room to the rear of the attached garage to the dwellinghouse is lawful for the purposes of planning control by virtue of Sections 191 & 171B of the Town and Country Planning Act 1990 (as amended) and The Planning Act 2008 (Commencement No. 8) and Levelling up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

Recommendation: Grant Certificate

Decision Authorisation: - Delegated Powers

Application number: 2026/91358

Reason:

Based on the information submitted and information available to the Council, the garden room to the rear of the attached garage to the dwellinghouse is lawful for the purposes of planning control by virtue of Sections 191 & 171B of the Town and Country Planning Act 1990 (as amended) and The Planning Act 2008 (Commencement No. 8) and Levelling up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

Plan Type	Reference	Version	Date Received
Application form	PP-14946430		20 th May 2026
Location plan	UK Planning Map		20 th May 2026
Block plan	SC / 26 / 641 - 001		20 th May 2026
Pre-existing plans	SC / 26 / 641 – 101		20 th May 2026
As built plans	SC / 26 / 641 – 201		20 th May 2026
Date stamped aerial images	2009, 2011, 2015 and 2019		20 th May 2026

Dated: 9th July 2026