

SUPPORTING STATEMENT

Application for a Lawful Development Certificate (proposed use), 28 Battye Street, Eastborough

Site address	28 Battye Street, Eastborough, WF13 1PH
Local planning authority	Kirklees Council
Application type	Lawful Development Certificate for a proposed use (section 192, Town and Country Planning Act 1990)
Existing use	Vacant former retail unit (Class E) with first-floor storage
Proposed use	Light industrial (Class E(g)(iii))
Operational development	None
Designations	Not in a conservation area; no Article 4 direction applies
Prepared by	2DIO
Date	October 2026

1. Introduction

This statement has been prepared by 2DIO on behalf of the applicant in support of an application under section 192 of the Town and Country Planning Act 1990 for a Lawful Development Certificate for a proposed use at 28 Battye Street, Eastborough.

The applicant asks the Council to certify that the use of the building for light industrial purposes within Class E(g)(iii) of the Town and Country Planning (Use Classes) Order 1987 (as amended) would be lawful, because it does not involve development and so does not need planning permission.

The application turns on a question of law and fact: whether the proposed use falls in the same use class as the lawful existing use. It is not a request to weigh the planning merits of the scheme.

2. The site

The site is a detached commercial building at 28 Battye Street in the Eastborough area of Dewsbury. The ground floor is a vacant unit that was most recently arranged as a shop, and the first floor has been used for storage. The building has an existing high-level loading bay at first-floor level.

Next door is a barber shop. It is not part of the application and will carry on as it does now. Off-street parking is available on the site, and private access runs along the sides of the building. The site is not in a conservation area and is not subject to an Article 4 direction.

3. Existing lawful use and planning history

Ground floor

The ground floor has been used by a succession of retail businesses, including a pharmacy and a spares shop. Both are retail uses falling within Class E(a) (display or retail sale of goods, other than hot food, principally to visiting members of the public). The lawful use of the ground floor is therefore a Class E use.

The unit has not been let for the past four years because demand for retail space in this location was low. A period of vacancy does not change the lawful use of a building, which remains Class E.

First floor

The first floor has been used for storage in connection with the shop on the ground floor, and it forms part of the same planning unit. Storage serving a shop is part of the Class E use of the unit and is not a separate use.

4. The proposed use

The proposal is to use the whole building for light industrial purposes within Class E(g)(iii). The use will be carried on as follows:

- The ground floor will be used for light industrial activity in place of the former retail use.
- The first floor will be used in connection with that activity, including storage and handling of goods, and will continue to be served by the existing high-level loading bay.
- Only activities that can be carried on in a residential area without detriment to its amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit will take place. This is the statutory definition of the Class E(g)(iii) use, and no activity falling outside it is proposed.
- No building, engineering or other operations are involved. No extension and no external or internal alteration are proposed, so the use will be carried on within the building as it stands.

5. Legal basis for the certificate

The test

Section 192 allows a person to apply for a certificate stating that a proposed use would be lawful if it were begun at the date of the application. The Council must issue the certificate if it is satisfied that the use would be lawful. The burden of proof rests on the applicant, and the standard is the balance of probabilities.

Change of use within a use class

Section 55(2)(f) of the 1990 Act provides that a change of use within a class specified in a use classes order is not development. Article 3(1) of the Use Classes Order 1987 gives effect to this. It provides that where a building is used for a purpose of any class specified in the Schedule, the use of that building for any other purpose of the same class shall not be taken to involve development of the land.

Application to this site

Class E (commercial, business and service) has been in force in England since 1 September 2020. It brings together retail uses in sub-paragraph (a) and uses that may be carried out in a residential area without harm to amenity, including industrial processes, in sub-paragraph (g)(iii).

The lawful use of the building is retail within Class E(a), with first-floor storage that is part of the same Class E use. The proposed use is light industrial within Class E(g)(iii). Both uses fall within Class E, so the change is a change of use within a single use class. By operation of Article 3(1), it does not involve development and planning permission is not required.

The change involves no operational development. No Article 4 direction applies, and Article 4 directions remove permitted development rights, not the effect of the Use Classes Order, so would not alter this analysis in any case.

6. Other matters

Matters of design, highways and amenity are not relevant to the legal test for a certificate. For completeness, the Council can note that there will be no external change to the building, that ample off-street parking is available and that servicing is by the existing loading bay and private access.

7. Conclusion

The existing lawful use of 28 Battye Street is a Class E use. The proposed light industrial use falls within Class E(g)(iii), and the change involves no operational development. By virtue of section 55(2)(f) of the Town and Country Planning Act 1990 and Article 3(1) of the Use Classes Order 1987, the proposal does not constitute development and the use would be lawful. The applicant therefore requests that a Lawful Development Certificate be issued.