



Appeal Decision

Site visit made on 18 August 2025

by Grahame J Kean BA (Hons), Solicitor (HRA), MIPRoW, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2025

Appeal Ref: APP/Z4718/X/24/3342475

The Coach House, Fairfield Road, Holmbridge, Holmfirth, HD9 2NP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr G Morton against Kirklees Metropolitan Council.
 - The application ref 2023/92491 is dated 18 August 2023.
 - The application was made under section 191(1)(a)] and (b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is: 1) the erection and completion of a detached garden store and garden building and 2) the material change in the use of the ground floor of the building to an independent dwellinghouse at ground floor level, and associated garden curtilage land.
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.
2. The appeal is dismissed in relation to the alleged material change in use of the ground floor of the building.

Background

3. The site application plan shows the wider plot, known as the Coach House, located off Fairfield Road between Holmbridge and Holmfirth town centre. The main house is to the rear of the plot and within it, to the side, is shown the converted garden store and garden building (which I shall refer to as the building). The building has no curtilage area on its side elevation nearest to the main house, but such an area is shown in front of the building, including a short, shared driveway extending south and eastward which slopes down to Fairfield Road.
4. The building subject to the application is southeast of the dwellinghouse with a narrow gap providing vehicular access to its first-floor elevation to the north. The land steps down towards the front boundary where there is a grassed area. I saw that this area had been subsumed within a residential use associated with the use of the ground floor for residential purposes.

Main Issues

5. By s193(4) an LDC may be issued under s191 or s192 for the whole or part of the land specified in the application; and, where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them.

6. By s191(4) and s192(2), the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application. In an LDC appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant.
7. Planning permission Ref 2000/91544 was granted by the Council on 11 July 2000 (2000 permission) for erection of extension and detached garage/garage store.
8. Condition (2) stated:
The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications specifically with regard to siting, design and materials, except as may be required by other conditions unless otherwise agreed in writing by the Local Planning Authority.
9. Condition (5) stated
The detached garage and store hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as The Coach House, Fairfields Road, Hinchliffe Mill.
10. The application now under appeal and which the Council failed to determine, is twofold. It seeks an LDC in respect of building operations for the building, described as a detached garage and garden store, constructed differently from, and therefore in breach of, the 2000 permission which authorised the building to be constructed as a garden/store. Secondly, it seeks to establish a material change of use (MCU) of the ground floor of the building to an independent dwellinghouse and associated garden curtilage land.

Reasons

Building operations

11. The application form states that the reason for the application is an existing use, building work or activity in breach of a condition, specifically a C3 dwellinghouse use.
12. The evidence before me is that building was substantially completed together with alterations more than four years before the LDC application was made to the LPA. The alterations were: (a) the ground floor area of the building was built larger than approved: and (b) there were alterations to the permitted openings. Drawing reference 2335-0101-PO1 is submitted, showing the “as-built” building. The Council states that it has no reason to dispute the accuracy of the drawing, but this is incorrect. The Council, in its statement, refers to a high-level window installed on the north-east elevation, for example, whereas this is not shown on the so-called existing plans. Clearly, it should have spotted the clear difference between the two.
13. It is undisputed that the building was erected in breach of planning control given the absence of any other planning permission authorising what has now been built. The Council accepts that having regard to the evidence of building control records, the operations were substantially completed in 2001 and remained in breach of planning control for a period in excess of four years without any enforcement action being taken. Based on the information provided in this appeal, I see no reason to disagree but whether the four-year period is applicable is arguable.

14. The Council's statement is riddled with typographical errors and unclear, inconsistent statements. It fails to consider the possibility that the operational breach of planning control should be considered as a breach of condition 2 noted above, attached to the 2000 permission. The Council accepts that the increased size of the building is "*inconsequential and de minimis*" and the door and window openings are "*generally the same as approved and built*".
15. The "front elevation" in the approved drawing is the "north-west elevation" in the as-built drawing. On this elevation there was supposed to be a wide garage opening with a metal up and over door. What has been built now is a much narrower single garage door and next to it, double French windows. The appellant states that the windows replaced a single garage door five years ago. This would be consistent with the Council's statement that the original alterations included a "*double garage door on the front elevation of the top floor being changed to two single garage doors*".
16. Stairs were supposed to come down the side of the building, across the south-west elevation (the "side" elevation in the approved drawing but in reality the front of the building) where the ground level main door opens onto the common area within the plot. However, a ground floor bathroom area can be seen which according to the Council is "*projecting from the southwest [sic] elevation*".
17. The Council's statement fails to clarify that this projection is in addition to what it regards as the de minimis increase in size of the building (because it states (wrongly) that "*the approved drawings show a garage measuring 6.4 metres by 6.5 metres whereas the building as built measures 6.8 metres by 6.6 metres*." The additional projection is clearly seen in the as-built drawing and would in fact bring the total footprint well beyond those dimensions.
18. Once this is clear, it is understandable that the Council finds this to be a significant deviation from the approved drawings due to a) it being built as part of the overall building in 2000, and b) the fact that the "*sets [presumably "steps"] as approved parallel to the south-east elevation... changed to the 'V-shaped' steps to allow for the construction of the south east projection*".
19. On this basis it is arguable that the four-year period should apply and not the ten-year period applicable to breach of conditions but any event the Council has failed to take any effective enforcement action whatsoever within either period.
20. Development becomes immune from enforcement if no action is taken 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 (as is the case here). Therefore, s171B(1) provides immunity from any further enforcement action in respect of the operational development that has been carried out and such development would be lawful by virtue of s191 of the Act.
21. The appellant is entitled to a certificate of lawfulness to that effect.

Material change of use

22. The appellant relies, for its claim that the garage and garden store building underwent a MCU to a building comprising a dwellinghouse at ground floor level, on s171B which provides for immunity in the case of "*any other breach of planning control*" after the end of the period of ten years beginning with the date of the

breach. However, the MCU posited is of a building already erected (the building was constructed and completed in 2000). Therefore, the relevant subsection is s171B(2) which states “*where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*” (emphasis supplied).

23. Clearly, the 4 year rule applies to the alleged material change of use but the Council did not pick this up in its statement. As is well known, or should be, “building” includes part of a building as defined in the 1990 Act.
24. The “sworn” evidence is that ten years later, in 2010, the ground floor, originally used as a garden store in accordance with the planning permission, was converted into a separate dwelling and has been used as such since then. The appellant’s adult son and his partner lived in the dwelling from 2010 to 2013, followed by his three adult daughters (2013 to 2016, 2016 to 2019 and 2019 to the present). The curtilage land shown on the plan accompanying the application has also been used for the enjoyment of the occupants of the converted accommodation, which comprises a bedroom, bathroom, dressing room and an open plan living, dining and kitchen space.
25. The Council agrees that the ground floor of the garage was occupied by the adult offspring over a significant time period from 2010, and that they benefited from facilities used for day-to-day existence such as washing and cooking with sleeping and living space. Despite the use of the ground floor as a separate living space, the Council contends that this did not sever the wider planning unit, ie the use of independent living space does not automatically result in a MCU. Both parties cited established authority (Uttlesford¹) including in the appellant’s case, the commentary reported in Journal of Planning and Environmental Law (JPL).
26. Relevant factors pointed out by the Council include the following. No separate utilities served the garage accommodation other than internet supplies. The Council’s records, undisputed, are that accommodation was not registered or valued for Council Tax purposes as a separate dwellinghouse. Nor is the accommodation recorded as having a separate postal address. The construction of the garage/store in 2000 was clearly for purposes ancillary to the main dwelling at The Coach House and the planning unit in 2010 was the unit of occupation including both the main dwelling and the outbuildings including the garage/store.
27. Further, the garage/store remained reliant on the main dwelling for all main services including power and heating. Given there is no postal address, occupants would be reliant on the main dwelling to receive post. There is no parking provision in the appellant’s self-defined curtilage which suggests that any parking would be shared within the curtilage areas directly in front of the main dwelling.
28. I agree that these are relevant factors. The first-floor garage remains within the property of the main dwelling whilst the converted accommodation, although not physically separated from it, has its own ground floor entrance, oriented differently from the entrance to the upper garage/store which is on higher ground and faces the rear of the plot. Such arrangements for “under-dwellings” are common in this part of the country and, although this might not be such a standard layout along say, terraces of dwellings in the Holme valley, I do not give as much weight as the

¹ Uttlesford D.C. v Secretary of State for the Environment [1991] E.G.C.S. 29 (QBD); J.P.L. 1992, Feb, 171-177.

Council does to the fact that there is no physical detachment of the accommodation from the rest of the building that belongs to the main dwelling.

29. The evidence about use of the garden area makes it difficult to imply, as the Council attempts to do, that it is probable that the occupants kept their garden equipment in the “store” and thus also relied on the main dwelling in this way. It is said that the occupants apparently have separate storage for their equipment, but I noticed the “store” has a hot water/heating boiler connected to the building and contains many and varied items of domestic paraphernalia including a pram that could well relate to the occupation of those in the ground floor below.
30. There is also information from the appellant and his wife that the adult offspring come around for the occasional meal and hang out washing in the garden area at the front of the accommodation. Therefore, they are not prevented from accessing the main dwelling or presumably using other parts of the curtilage for parking or storage. Nor would they otherwise be restricted to the use of the garage and area in front. The Council says that overall, the accommodation simply allows additional living space without purposefully establishing a distinct separate dwelling unconnected with the main dwellinghouse.
31. I note both parties’ positions. I also note that it is not explained in terms what the formal legal position is regarding ownership and possession of the converted accommodation. The appellant and his wife also say that the garden area in front of the building has not been used by them and over the period in question it has been used solely by *“those occupying the apartment”* but this suggests to me that the area is still in the ownership of the main property. Indeed, rent was paid when partners of their adult offspring lived in the building, which suggests that no rent was paid at other times when it was occupied. It is unclear whether there was any actual period where the adult offspring occupied the property without partners, but why the point would be made in that case is equally unclear. Lack of consistency in rental payments, especially when it is adult offspring only who are occupants, would hardly serve to highlight the functional separation between the buildings.
32. The established criteria for discovering the “planning unit” have been considered, however I regard them as a tool only for establishing whether a MCU has taken place. Of more immediate assistance is the Uttlesford case² which establishes among other things that if a converted garage has all the facilities needed for a single dwelling use, its occupation by someone with no connection to the main house would have to be regarded as a MCU. So, the existence of facilities to live independently does not settle the matter entirely and the question becomes whether the use of the whole area remains as a single-family occupation, a matter of fact and degree for the decision-maker. I agree with the commentary in the JPL report of Uttlesford, ie the fact of a blood relationship must be significant, but it cannot be conclusive as *“we can all think of examples of relatives who live next door to each other but yet live completely separate lives”*.
33. Here, the adult offspring are said to live independently, cooking their own meals and not being reliant on their parents in the main dwelling for their day-to-day domestic existence. Given the close proximity between the converted accommodation and the main dwelling and the undisputed familial relationship among the occupants, I have considered how often the adult offspring might have

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crossed over and socialised with the rest of the family in the main house, but little detail is provided. Nevertheless, what little is said about those arrangements is undisputed by the Council.

34. There may be no requirement in planning law for a property to be correctly registered for Council tax, however no plausible explanation has been given for the fact that the converted accommodation was never registered for Council tax during the relevant period. Registration would normally, and reasonably, be expected to flow from the creation of a new separate residential unit. Not *“realis[ing that] this would be necessary”* as the appellant puts it, appears a rather thin excuse, and is more consistent with a lack of intention to provide an entirely separate dwelling but rather to have the building used as an annexe over which the owners retain ultimate control. The absence of such registration and payment provides indirect evidence in conflict with the appellant’s version of events.
35. The lack of separate utilities provides another, and in my view significant, indication of the functional relationship that exists between the main dwelling and the converted accommodation. This, taken together with the lack of postal address and the lack of registration for Council tax combine to weigh significantly against the evidence in support of the application. None of these factors may have been highlighted as determinative in the context of the case law but a planning judgement has to be made as a matter of fact and degree.
36. A previous appeal decision Ref APP/T3725/X/13/2194189 provides no real assistance in this appeal save that it highlights that a fact and degree judgement has to be made on the specific circumstances of the case, as to whether there is ancillary residential accommodation as was contended for by that appellant or a separate dwelling, as is argued to be the case here.
37. I question the genuineness of the statutory declaration, as it is claimed to be on the face of the document. The person before whom the statutory declaration of Mr Morton was sworn, according to the document, is “Andrew G. Sylvester”. His profession or occupation is not given and therefore he does not appear to be a practising solicitor or person authorised to administer oaths for the purposes of the Legal Services Act 2007, on 15 August 2023 when the declaration purports to be sworn in front of him.
38. Also with regard to the statutory declaration, s183(4) of the 2007 Act requires that a relevant authorised person before whom an oath or affidavit is taken or made must state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made. It would appear this has not been done.
39. Even if I accepted (which on the information before me I do not) that evidence had been given on oath before an authorised person in the form required by statute, rather than a simple written statement, to which I still nevertheless give some weight, the evidence taken as a whole lacks detail. In particular, it is unclear as to the reasons why the accommodation has not been registered for Council tax or any payments made, why separate utilities have not or could not be provided, and why the property has no separate postal address.
40. In my view, the totality of the appellant’s evidence, on its own, is insufficiently precise and reliable to support the existence of a continuous separate residential use throughout the relevant period. The Council’s own evidence in relation to lack of Council tax registration or payments also weighs in the balance. I find, on the

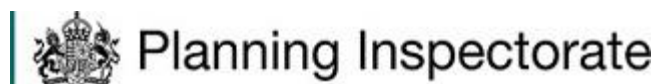
balance of probabilities, that the converted accommodation has not been occupied as a separate self-contained residential unit on a permanent and continuous basis throughout the relevant period and that the planning unit has remained a single unit of occupation across the whole plot. I conclude that the development the subject of the LDC application is not immune from enforcement action and is unlawful.

Conclusion

41. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the operational development comprising the erection of the garage/store building that refusal would not have been well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2)(b) of the 1990 Act (as amended).
42. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the ground floor of the garage/store building was well-founded and that this part of the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Grahame Kean

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 August 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto as shown and described on the Drawing No 2335 - 0101 - P01 dated April 2023 attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations were substantially completed more than four years before application was made for the certificate, therefore immunity attaches to the operations by virtue of section 171B(1) of the Town and Country Planning Act 1990 (as amended)

Signed

Grahame Kean

Inspector

Date: 19 August 2025

Reference: APP/Z4718/X/24/3342475

First Schedule

The erection and completion of a detached garden store and garden building.

Second Schedule

Land at The Coach House, Fairfields Road, HOLMFIRTH, HD9 2NP.

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan referred to

