

**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.: 2022/CL/91422/W

Site: The Barn, 17, Jagger Lane, Kirkheaton,  
Huddersfield, HD5 0QZ

Description: Certificate of lawfulness to confirm valid commencement of development approved under 2017/92564 for demolition of existing outbuildings and erection of detached dwelling within 3 years of the planning approval

Case Officer: William Simcock

**Decision Reference: EXISTING OPERATIONS GRANT**

**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.**

Kevin Walton

**AUTHORISED OFFICER**

**Date 07-Jul-2022**

**Officer Report – 2022/91422a**  
**The Barn, 17, Jagger Lane, Kirkheaton, Huddersfield, HD5 0QZ**

**1. Description of Proposal**

1.1 The proposal is for a Certificate of Lawfulness for Proposed Use or Development to confirm valid commencement of development approved under 2017/92564 for demolition of existing outbuildings and erection of detached dwelling within the 3-year time limit allowed under condition (1). The application was granted conditional full planning permission 15<sup>th</sup> December 2017.

1.2 Only one condition was worded in such a way as to require further details to be submitted and approved before development (or a phase of the development) commences, and is reproduced below:

“5. The buildings identified as ‘existing buildings to be removed’ on approved drawing number 1284-15-005 Rev B that lie to the south-east of the new dwelling shall be surveyed for the presence of bat roosts by a suitably qualified ecologist and the findings of the survey submitted to and approved in writing by the Local Planning Authority before the buildings are demolished. Where the results of the survey demonstrate that bats may be affected by the demolition and it can be demonstrated that a Natural England European Protected Species (EPS) licence will not be required, a written method statement (based on the format of Natural England’s EPS licence application method statement) detailing how the demolition shall be completed without harm to any bats, shall be submitted to and approved by the Local Planning Authority before any works to demolish the buildings take place. The demolition shall then be carried out in accordance with the approved method statement.

**Reason:** To protect the biodiversity of the site and to accord with the National Planning Policy Framework Chapter 11 and Policy PLP30 of the Publication Draft Local Plan.”

**2. Lawful Use Certificates**

2.1 Section 191(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.

2.1 Section 191(2) of the Act provides that uses are lawful if at any time if no enforcement action may be taken in respect of them and they do not constitute a contravention of any the requirements of any enforcement 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 use can be deemed lawful is the “balance of probability”.
- 3.1 The Applicant’s evidence does not need to be corroborated by “independent” evidence. If the Local Planning Authority have 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 grant of a certificate on the balance of probability.<sup>1</sup>

#### **4. Limitations**

- 4.1 A LDC must contain precise details of what use or operations are found to be lawful, why and when. These 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.

#### **5. Relevant Planning History**

- 5.1 2017/92564 for demolition of existing outbuildings and erection of detached dwelling. Approved 15<sup>th</sup> December 2017.
- 5.2 2022/90405: Discharge condition 5 (bat emergence survey) on previous permission 2017/92564 for demolition of existing outbuilding and erection of detached dwelling. Approved 23<sup>rd</sup> May 2022.
- 5.3 COMP/20/0453: Alleged breach of condition (5).

#### **6. Evidence submitted in support of the Application**

- 6.1 The following evidence has been submitted in support:
- 6.2 A covering letter containing the following text: “There is a condition that requires the buildings identified as ‘existing buildings to be removed’ on approved drawing number 1284-15-005 Rev B that lie to the south of the site, to be surveyed for the presence of bat roosts, before being demolished. A survey has been completed and submitted to the Council under application Ref:2022/90405. It should be noted that the buildings identified as ‘existing buildings to be removed’ on approved drawing number 1284-15-005 Rev B, does not include the large building on the site that has been removed.”
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- 6.3 Emails from Kirklees Building Control to the architect and another party (possibly the applicant) date 08-Apr and 20-Apr-2022 confirming that a site inspection was done on 25<sup>th</sup> September 2020 and the works were deemed by Building Control to have been commenced.
- 6.4 Photographs of foundation trenches.

## **7. Representations**

- 7.1 Since the application was for a Certificate of Lawfulness for Proposed Use or Development, no publicity was required to be undertaken either under the terms of the Development Management Procedure Order or the Kirklees Development Management Charter.
- 7.2 No representations were made. Kirkburton Parish Council chose to make no comment.

## **8. Assessment**

- 8.1 The Local Planning Authority (LPA) does not dispute the granting of planning permission.
- 8.2 The development would have to have been commenced on or before 14<sup>th</sup> December 2020 to comply with the restriction in Condition (1).
- 8.3 Condition (5) is not worded in such a way that that the bat survey has to be undertaken before development commences, but only before the two buildings to which it relates are demolished. The two “existing buildings to be removed” shown on drawing 1284-15-005 Rev B are located to the south-east of the application site, immediately adjoining but outside the red line boundary.
- 8.4 Discharge of condition letter ref. 2022/90405 dated 23<sup>rd</sup> May 2022 confirms that an acceptable bat survey report has been submitted and is sufficient to discharge Condition (5). This condition is therefore deemed to have been complied with.
- 8.5 There were no pre-commencement conditions.
- 8.6 Two separate applications have been made for consent under the Building Regs, reference number 2020/01402 and 2021/01913. The first did not contain a full set of plans. The outcome of the first application was that Building Control confirmed that development had commenced, with the site having been cleared and one section of a trench excavated (officer’s note 28<sup>th</sup> September 2020). The latter application was rejected 12<sup>th</sup> May 2022.

- 8.7 The photographs show trenches having been dug in a manner consistent with the excavation of foundation trenches for a small new dwelling.
- 8.8 It is considered the Council's own Building Regulations records, corroborated by the exchange of emails and photographic records submitted by the applicant, amount to compelling evidence that development has been commenced.

## **9. Conclusion**

- 9.1 By virtue of the above it is considered that there has been no breach of conditions that would affect the lawfulness of the works carried out. It is therefore recommended to grant the certificate on the grounds that on the balance of probabilities a valid commencement was undertaken within the time limit specified under condition (1).

**Recommendation – GRANT CERTIFICATE OF LAWFULNESS**

## Decision Authorisation - Delegated Powers

**Application Number: 2022/91422**

**Officer Recommendation:** Grant Certificate

On the balance of probabilities it is considered the ground works carried out on or before 14<sup>th</sup> December 2020 to implement planning permission ref. 2017/92564 amounted to a lawful commencement of development within the 3-year time limit specified in condition (1).

Plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Application form			27-Apr-2022
Location Plan	UK Planning Maps		26-Apr-2022
Covering letter			26-Apr-2022
Site photographs			27-Apr-2022
Emails from Kirklees Building Control dated 08 and 20-Apr-2022			26-Apr-2022

**Report Dated:** 29-Jun-2022