

**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.: 2023/CL/91231/W

Site: St Peters Church, Byram Street, Huddersfield,  
HD1 1BU

Description: Certificate of Lawfulness for proposed works to continue the erection of porch entrance, fire escape enclosure, platform lift and formation of ramp and step connection to Lord Street with creation of area for multi-functional events and incidental parking associated with the church approved under previous permission 2019/93789 granted on 21st October 2020. (Listed Building within a Conservation Area)

Case Officer: Teresa Harlow

**Decision Reference: PROPOSED 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 02-Jun-2023**

**Reference:** 2023/91231

**Site:** St Peter's Church, Byram Street, Huddersfield. HD1 1BU

**Application:** Certificate of Lawfulness for proposed works to continue the erection of porch entrance, fire escape enclosure, platform lift and formation of ramp and step connection to Lord Street with creation of area for multi-functional events and incidental parking associated with the church approved under previous permission 2019/93789 granted on 21st October 2020. (Listed Building within a Conservation Area)

**Applicant:** PCC of St Peter's Parish Church

## **1. Application**

- 1.1 The site consists of The Parish Church of St Peter which is a Grade 2\* listed building situated on the corner of Byram Street, Lord Street with their junction with Westgate. The Church is set within extensive grounds that form an important public space. The front of the church, onto Westgate, is of hard paving that allows access to a café within the crypt of the church. The church is an outstanding example of early 19th century gothic architecture and makes a positive contribution to the Huddersfield Town Centre Conservation Area.
- 1.2 Application no. 2019/93789 authorised the “Erection of porch entrance, fire escape enclosure, platform lift and formation of ramp and step connection to Lord Street with creation of area for multi-functional events and incidental parking associated with the church (Listed Building within a Conservation Area)
- 1.3 The application form states that the building operation the church have commenced initial works, completing a new kitchen and drainage works in February 2022 and also exploratory excavation within the Crypt, the site of proposed lift and stairs. The exploratory excavation confirmed that the raised floor level can be lowered without major impact on the historic foundations.

## **2. Lawful Use Certificate**

- 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.
- 2.2 Section 191(2) of the Act provides that uses are lawful if the Local Planning Authority is provided with information satisfying then that the use or operations described in the application would be lawful if instituted or begun at the time of the application.

### **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 the Applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

### **4. Limitations**

- 4.1 A Lawful Development Certificate 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. If the use subsequently intensifies or changes in some way to the point where a “material” change of use takes place, a Local Planning Authority may then consider further development has taken place.

### **5. Relevant information**

- 5.1 Application no. 2019/93789 for the erection of porch entrance, fire escape enclosure, platform lift and formation of ramp and step connection to Lord Street with creation of area for multi-functional events and incidental parking associated with the church. granted on 21st October 2020.

#### [Decision notice](#)

- 5.2 The above application was granted with 3 conditions. The first that development was to commence within 3 years of the date of the permission. Condition 2, that the development was to proceed in accordance with the approved plans and specifications set out in the decision. The final condition, no. 3, stated that:  
*no development shall commence to form the area shown as public realm on plan no 3060(0-) 102 E until a scheme detailing all hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. ....*
- 5.3 The information submitted in respect of this Lawful Development Certificate does not include reference to the area of public realm (condition 3) and there is no evidence to suggest this part of the planning permission has been commenced.

- 5.4 The relevant information to consider, therefore, is whether that has been a commencement of development (condition 1) and whether this development is in accordance with the plans and specifications set out in condition 2.

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

- 6.1 The following has been submitted as evidence:
- Application form providing detailing that the upper ground floor kitchen has been formed and exploratory works have been undertaken in the space proposed to provide the platform lift.
  - The submission provides the following information:  
Drawings nos. 3060 (0-) 01B, 3060 (0-) 118 (site investigation works), 3404 (0-) 01 Existing Lower Ground Floor Plan, 3404 (0-) 15 Phase 1 Proposed Kitchen Plan.  
Archaeologist's Watching Brief Reports.  
Photographs
  - Confirmation that all the above works were carried out consistent with current planning, Church of England Faculty and Building Regulations approval.
  - Email from agent dated 23<sup>rd</sup> May 2023 stating that: "I confirm that the attached plan drg 3060(0-) 118 and Archaeological Report ref OSA22WB26 provide evidence of initial works to lower the Crypt floor to accommodate the approved stairs, and landing for the platform lift".

## **7. Site visit**

- 7.1 The works undertaken are internal and sufficient information has been submitted within the application to assess the scope of the work so far.

## **8. Evidence submitted against the application**

- 8.1 None.

## **9. Assessment of evidence and the law**

- 9.1 The application form claims that the development was commenced within the time period of three years with permission being granted. The date of this report is still within 3 years of the original grant of that permission: 21<sup>st</sup> October 2020. Nevertheless, consideration needs to be given to the submitted supportive evidence as to the likelihood, on the balance of probability, that the works have commenced such that the works undertaken constitute a material operation.
- 9.2 Section 56 of the Town and Country Planning Act 1990 states that '*for the purposes of this Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun*'.

- 9.3 Material operations are stated to include: *'the digging of a trench which is to contain the foundations, or part of the foundations, of a building'* .
- 9.4 It is noted that there are no pre-commencement conditions attached to the planning permission.
- 9.5 The evidence submitted with the application does not include any external works to the building. Whilst the church is a Grade II\* listed structure, listed building consent is not required for internal works as there is ecclesiastical exemption for such works. Although internal alterations to a building are not 'development' as defined in Section 55 of the Act, as these are described in the description of development on the planning permission, this will be taken as 'evidence' for the commencement of development.
- 9.6 The agent has submitted hand marked annotated plans of the internal changes to the building completed to date. This is included in an email and attachments received 23<sup>rd</sup> May 2023 (plan 4875\_01). The email states that the internal alterations shown on the approved plans, to date, have not be completed as shown on the approved plans due to budgetary constraints. In particular: "To reduce cost it was decided to leave the Parish office where it is currently and enlarge marginally the existing store room to form the kitchen". These works have involved little intervention to the building.
- 9.7 Other evidence submitted with the application provides evidence, on plan drg 3060(0-) 118 and Archaeological Report ref OSA22WB26 that initial works to lower the Crypt floor to accommodate the approved stairs, and landing for the platform lift have been undertaken. The photographs and supporting watching brief show that a trench, at least, has been dug and that the works correspond to the location of the platform lift shown on the originally approved plans. This can be deemed an operation within the scope of section 56, and thus a commencement of development for the planning permission.
- 9.8 The works undertaken to provide a trench in connection with lowering the floor to accommodate the platform lift are considered pursuant to the extant planning permission and providing the development to install that platform lift is carried out in accordance with the planning permission, those works would be considered lawful.
- 9.9 191(2) – *'For the purpose of this Act uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect to them (whether because they did not involve development or require planning permission or because the time for enforcement has expired for any other reason)'*. Taking into account the above evidence, on the balance of probability, it is considered that works comprised within 2019/93789 have been lawfully commenced within the time limit of the application.
- 9.10 It is noted that the layout of the kitchen as constructed on lower ground floor is not as shown on the approved plan ref 3060(0-)10 (kitchen,

parish office and store) and as such is not comprised in the approved development. Notwithstanding this, those works are also internal and not regarded as development for the purposes of section 55 and consequently simply form part of other works that are not covered by the planning permission. These works can therefore be disregarded.

## 10. Recommendation

10.1 Based on the above it is considered that the development was materially commenced lawfully within the application's time limit. As the development is considered to be lawfully and comprises part of the approved development thus it is considered to be lawful. This is also subject to the requirements of condition 3 being discharged.

**Decision Authorisation:** Delegated powers

**Application number:** 2023/91231

**Officer Recommendation:** Grant Certificate of Lawfulness

On the balance of probabilities the applicant has demonstrated that development approved via application 2019/93789 was materially commenced within the application's time limit, in accordance with Section 56 of the Town and Country Planning Act 1990. The erection of porch entrance, fire escape enclosure, platform lift and formation of ramp and step connection to Lord Street with creation of area for multi-functional events and incidental parking associated with the church are therefore considered to benefit from an extant planning permission ref 2023/91231, subject to the requirements of condition 3 which are yet to be discharged.

This decision is based on the following plan(s):-

Plan Type	Reference	Version	Date Received
Email from Agent dated 23 <sup>rd</sup> May 2023, with attachments			23 <sup>rd</sup> May 2023
Application Form			25 <sup>th</sup> April 2023
Archaeology Watching Brief (kitchen)	OSA21WB12 July 2021		25 <sup>th</sup> April 2023
Archaeology Watching Brief (cellar)	OSA22WB26 July 2022		25 <sup>th</sup> April 2023
Archaeology Watching Brief Record (cellar)	OSA22WB26 Sept 22		22 <sup>nd</sup> May 2023
Faculty Approval	19-45C dated 20.5.19		25 <sup>th</sup> April 2023
Location Plan	3060 (0-) 01B		25 <sup>th</sup> April 2023
Site Investigation works plan	3060 (0-) 118		25 <sup>th</sup> April 2023

Existing Lower ground floor plan	3404 (0-) 01		25 <sup>th</sup> April 2023
Lower ground floor kitchen plan – as installed	3404 (0-) 15		25 <sup>th</sup> April 2023
Lower ground floor plan with hand written annotations of works	4875_01 - plan ref 3060(0-) 10		23 <sup>rd</sup> May 2023
Photograph montage			26 <sup>th</sup> April 2023

Dated: 30<sup>th</sup> May 2023.