

**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/92269/W

Site: adj former Rose and Crown, 43, Northgate,  
Almodnbury, Huddersfield, HD5 8RX

Description: Certificate of lawfulness to confirm valid  
commencement of development approved under 2021/92501 for erection of  
two storey building (use class E) with associated landscaping (within a  
Conservation Area) within the 3 year time limit given in condition

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 02-Oct-2023**

**Officer Report – 2023/92269**  
**Land adjacent to former Rose & Crown, 43 Northgate,**  
**Almondbury HD5 8RX**

**1. Description of Proposal**

- 1.1 The proposal is for a Certificate of Lawfulness to confirm valid commencement of development approved under application 2021/92501 for the erection of a a two-storey building (use class E) with associated landscaping (within a Conservation Area within the 3-year time limit allowed under condition (1). The application was granted conditional full planning permission 13<sup>th</sup> April 2022.
- 1.2 The basis of the application is that a material start has been made on implementing the permission and that there were no conditions attached to the permission that require discharging before any construction above slab level begins, not before the commencement of development.

**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>
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#### **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**

2014/92740 – Discharge conditions 3-7 and 10 on previous permission 2013/93917. Approved 19<sup>th</sup> March 2015.

2018/90406 – Erection of two dwellings including formation of new access. Approved.

2019/92880 – Discharge conditions 4 (retaining structures and raised ground works) and 6 (Construction method statement) on previous permission 2018/90406. Approved.

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

- 6.1 The applicant has submitted following evidence:
- 6.2 Email correspondence with the Local Planning Authority (13<sup>th</sup> June 2023) offering the informal opinion that a lawful start may have been made on the development provided that the building works do not contravene any of the conditions.
- 6.3 Site Inspection Report from Socotec Building Control. This reports on a visit dated 9<sup>th</sup> June 2023. This states that works have commenced on drainage for the main building. RWP branch from the new building into a new manhole SW PPIC3 has been laid. UPVC 100mm diameter pipe installed and laid with adequate line and fall, surrounded by pipe bedding.

#### **7. Evidence submitted against the Application**

- 7.1 No evidence was submitted against the Application

#### **8. Representations**

- 8.1 Final publicity date (site notice) expires: 12-Sep-2023.
- 8.2 No representations were made as a result of this publicity.

## **9. Assessment**

- 8.1 The Local Planning Authority (LPA) does not dispute the granting of planning permission.
- 8.2 It is also accepted by both parties that there are no conditions that require additional information to be submitted before commencement of development, but only before construction proceeds above slab level.
- 8.3 The remaining factor that needs to be assessed is whether the works undertaken so far amounted to a valid commencement of development. The case officer visited the site, viewing it from the public highway. The condition of the site was as it appears in the submitted photographs, consisting of bare ground.
- 8.4 The Site Inspection Report makes reference to the address of the site as being “Former Rose & Crown Public House, 43 Northgate, Almondbury, Huddersfield HD5 8RX” and the description of development as “Construction of two-storey retail (shell only) unit.”
- 8.5 The report confirms that works commenced on laying drainage to the building. The accompanying photographs show a manhole and inspection cover formed within the development site. The inspector states drainage has been installed to manhole SWPPIC3 from which drainage had been previously laid to SWPPIC5 and SWPPIC6. It can be seen from drainage plans submitted with discharge of condition 11 application (2021/92111) for planning permission ref: 2021/90101 which proposed development of the adjacent site where the existing drainage had been installed. The works carried out pursuant to 2021/92501 consists of the laying of a short length of pipe from the west corner of the proposed building as shown on approved drawing reference 3510-08H to mains drainage as confirmed in application form section 11.
- 8.6 It is therefore considered the works will be incorporated into the approved development and by virtue of section 56 of the Town and Country Planning Act 1990.
- 8.7 The three-year time limit for commencement under Condition (1) ends 12<sup>th</sup> April 2025. The date of the Site Inspection Report is comfortably within this limit.
- 8.8 It is considered on balance that the works undertaken are sufficient to qualify as commencement of development.

## **9. Conclusion**

9.1 By virtue of the above it is considered that works amounting to commencement of development were lawfully commenced. 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: 2023/92269**

**Officer Recommendation:** Grant Certificate

On the balance of probability, it is considered that the works described in the Site Inspection Report amounted to a commencement of development, and that implementation of permission 2021/92501 was thereby lawfully commenced.

Plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Application form			28-Jul-2023
Supporting information (correspondence with Local Planning Authority)	Andrew Shaw		28-Jul-2023
Site Inspection Report	151950 SOCOTEC Building Control		28-Jul-2023
Covering Letter	Johnson Mowat		28-Jul-2023

**Report Dated:** 25-Sep-2023