

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

**Town and Country (Listed Buildings and Conservation Areas) Planning
Act 1990 Section 26H/26I**

DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT FOR PROPOSED WORKS TO A LISTED BUILDING

Reference no.: 2025/CL/92520/E

Site: Garlands Residential Care Home, 27, Church
Street, Heckmondwike, WF16 0AX

Description: Certificate of lawfulness for proposed works for
replacement of slate roof covering with concrete tile roof covering

Case Officer: Kevin Walton

Decision Reference: LAWFUL OPERATIONS APPROVED

**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.**

HelenBower

AUTHORISED OFFICER

Date 20-Jul-2026

APPLICATION REFERENCE – 2025/92520

LOCATION : GARLANDS RESIDENTIAL CARE HOME, 27 CHURCH STREET, HECKMONDWIKE, WF16 0AX

CERTIFICATE OF LAWFULNESS FOR PROPOSED WORKS TO A LISTED BUILDING FOR : REPLACEMENT OF SLATE ROOF COVERING WITH CONCRETE TILE ROOF COVERING

SECTION 26H LISTED BUILDINGS ACT 1990

1. SUMMARY

- 1.1 The applicant seeks confirmation from the Local Planning Authority that the proposed replacement roof covering at the Garlands Residential Care Home, 27 Church Street, Heckmondwike does not require listed building consent from the Local Planning Authority.

2. DESCRIPTION

- 2.1 The applicant states in their application form that the proposed works consist of the “Replacement of slate roof covering with concrete tile roof covering”. The proposed works are to 27 Church Street which is a private residential care home located off Church Street, Heckmondwike located adjacent to St James Church, a listed building.
- 2.2 The applicant has not provided any drawings or samples of materials to understand the nature of the proposed roof covering. The application has been submitted on the grounds these works will not affect the special architectural or historic interest of the adjacent listed church by reason of the building not being considered a listed building.

3. RELEVANT PLANNING HISTORY

88/01138 – Alterations to coachhouse to form dwelling – Refused 13 May 1988 – upheld on appeal 21 November 1988.

92/03547 – Erection of extension to residential home – granted – 14 September 1992.

2014/91170 - Erection of extensions and alterations to existing rest home – granted 12 June 2014 – part implemented.

4. ASSESSMENT

4.1 The application is submitted pursuant to section 26H of the Listed Buildings Act 1990 [“the Act”]. Section 26H provides:

(1) A person who wishes to ascertain whether proposed works for the alteration or extension of a listed building in England would be lawful may make an application to the local planning authority specifying the building and describing the works.

(2) For the purposes of this section works would be lawful if they would not affect the character of the listed building as a building of special architectural or historic interest.

(3) If on an application under this section the local planning authority are provided with information satisfying them that the works described in the application would be lawful at the time of the application, they must issue a certificate to that

effect; and in any other case they must refuse the application.

(4) A certificate under this section must—

- (a) specify the building to which it relates;
- (b) describe the works concerned;
- (c) give the reasons for determining that the works would be lawful; and
- (d) specify the date of issue of the certificate.

(5) Works for which a certificate is issued under this section are to be conclusively presumed to be lawful, provided that—

- (a) they are carried out within 10 years beginning with the date of issue of the certificate, and
- (b) the certificate is not revoked under section 26I.

4.2 The Planning (Listed Buildings)(Certificate of Lawfulness of Proposed Works) Regulations 2014 provides that an application must :-

2.—(1) An application for a certificate under section 26H of the Act (certificate of lawfulness of proposed works) must—

(a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form substantially to the like effect);

(b) include the particulars specified or referred to in the form;

(c) specify the listed building or buildings, and describe the proposed works to which the application relates; and

(d) be accompanied by—

(i) a plan identifying the listed building or buildings to which the application relates drawn to an identified scale and showing the direction of North;

(ii) such plans, drawings and information as are necessary to describe the proposed works, together with a description of the part or parts of the listed building or buildings that are likely to be affected;

(iii) a statement explaining why the applicant believes the proposed works would not affect the character of the listed building or buildings as a building or buildings of special architectural or historic interest;

(iv) such evidence verifying the information included in the application as the applicant can provide;

(v) a statement setting out the applicant's interest in the listed building or buildings, the name and address of any other person known to the applicant to have an interest in the listed building or buildings and whether any such other person has been notified of the application; and

(vi) where the application is made in respect of Crown land and where such an application is made by a person authorised in writing by the appropriate authority⁽¹⁾, a copy of that authorisation.

- 4.3 The applicant provides a written statement¹ setting out that in their view the proposed works to replace a roof covering on a former vicarage associated with a listed church does not require listed building consent from the Local Planning Authority.
- 4.4 Within the statement the applicant identifies the adjacent St James Church as the listed building relevant to the application along with a plan identifying the building to which the application relates. The application form indicates the applicant is the owner of the building to which the application relates.
- 4.5 For clarity, it is considered the regulations provides for circumstances where the subject building is detached from the principal listed building (St James Church in this instance) and the applicant seeks to confirm whether works to the detached building requires listed building consent. Regulation 2(c) requires either the listed building or buildings (*emphasis*) be specified which in this case has been done. The application is therefore considered to be a valid application.
- 4.6 The question for the Local Planning Authority is set out in section 26H(2) of the Act in that where the works do not affect the character of the listed building as a building of special architectural or historic interest a certificate must be granted². Conversely, where the works do affect the Listed Building, an application must be refused.
- 4.7 In this instance the listed building is St James Church³ which was added to the list on the 13 January 1984. Historic England describe the listed building :-

¹ *Heritage Planning Design Limited- Planning Statement – Revision 0*

² *Section 26H(3) – Listed Buildings Act 1990*

³ *Historic England list entry number 1300258 – Kirklees Council reference BHS 4/66*

SE 22 SW HECKMONDWIKE UD CHURCH STREET
4/66 Church of St James

II

Commissioners' church in Early English style. 1830-1 by Peter Atkinson (Jnr.). New chancel and Lady Chapel added 1905. Dressed stone with ashlar dressings and buttresses. Slate roof. West tower with broach spire. 7-bay buttressed nave, 2 bay chancel and 3-bay later chancel. Steeply pitched south porch with similar baptistry to north. Plain lancets to nave and chancel. Paired arched windows to later chancel. 5-light untracied, stained glass east window. 2-tier square tower with clasping and angle buttresses. Heavily moulded doorway on south side. West lancet window. Clock to 3 elevations. Bell chamber has triple group of arched, louvred openings to each elevation. Hexagonal, stone broach spire, ribbed and with gargoyles.

Interior: Plain aisleless nave. Heavily moulded arch to original chancel on clustered colonnettes, with very steeply pointed flanking arches. New chancel has well carved organ case to left with 4 carved angels. To right is Lady Chapel with stained glass of 1907 and 1912, and well carved parclose screen. Colourful reredos with well carved panelling to each side and carved canopied figures of St Paul and St Aidan. To rear of nave is 1st World War Memorial of carved oak panels.

- 4.8 The applicant proposes works to an adjacent building known to be the former vicarage of the church which may be considered part of the listed building if deemed to be within the curtilage by virtue of Section 1(5) of the Act which provides :-

(5) In this Act "*listed building*" means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before July 1, 1948, shall [, subject to subsection (5A)(a),] be treated as part of the building.

- 4.9 The application therefore turns on the question of whether or not the vicarage is within the curtilage of the building which forms part of the land and has done so since July 1948 and as such listed by virtue of section 1(5) and if so, do the proposed works affect the character of the listed building as a building of special architectural or historic interest. If the answer to both questions is yes, then the application must be refused. If the answer to either question is no, then the certificate must be granted.

The Applicant's Case

- 4.10 The applicant provides a written statement which, in their opinion, provides a reasoning that the vicarage is not listed by reason of it not constituting a curtilage building. The applicant relies on established judgments held by the Courts and in particular Historic

England Advice Note 10 which sets out the principles of the Courts judgments.

4.11 The applicant points to court derived tests for assessing whether or not a buildings can be considered a curtilage building; namely:-

- the physical layout of the listed building and the structure;
- their ownership, both historically and at the date of listing; and
- the use or function of the relevant buildings, again both historically and at the date of listing (these tests were first proposed in the Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC, 1982, as accepted by Debenhams plc v. Westminster CC, 1987)” (p.1).

4.12 In section 3 of the written statement the applicant provides several photographic images indicating a physical boundary fence/wall has been present between the church and the vicarage on; September 2025, sometime after September 1983 and circa 1955. The applicant also provides current mapping images and mapping published 1890 showing physical planting and boundary separation between the church and the vicarage.

4.13 The applicant takes a view that the church and vicarage has been physically detached both historically and currently and as such cannot be fairly described⁴ as being attached to the church and thus should not be regarded as being within the curtilage of the church.

⁴ *Dyer v Dorset CC [1989] Q.B. 346,*

- 4.14 The applicant accepts that the evidence shows the vicarage was sold six months after the building was listed but argues that the ownership is the least weighted of the tests established by caselaw. The applicant provides no example of a cited case to support this view.
- 4.15 In terms of functional association, the applicant likens the association between the church and vicarage to that of a farmhouse and associated agricultural buildings and relevant caselaw⁵. In the Egerton case it was held that the agricultural buildings were not ancillary to the farmhouse by reason of being used for a different farming enterprise and thus not within the curtilage.
- 4.16 The applicant argues that the same principle applies to the church and vicarage and that whilst related, the use and function of the two buildings are distinctly different and within planning units relating to residential and place of worship. It is also argued that the new vicarage adjacent to the historic vicarage was completed in August 1983 and as such the historic vicarage had lost its association at the time of listing in January 1984.
- 4.17 The applicant concludes that the vicarage and church were physically separate, functionally apart and notwithstanding ownership at the time of listing, the vicarage should not be regarded as a curtilage building at the time of listing for the purposes of section 1(5) of the Act.

The Council's Case

- 4.18 It is accepted that the principle case dealing with matters of curtilage in the context of listed buildings is the *Attorney-General v Calderdale BC* as highlighted by the applicant and tests of physical

⁵ *R (on the application of Egerton) v Taunton Deane Borough Council* [2008] EWHC 2752 (Admin)

layout of the listed church and the vicarage, ownership past and present and their use or function past and present are relevant to the determination of whether the vicarage is deemed to be a curtilage building. In *Calderdale* it was held that a row of mill workers terraced dwellings detached but associated with a former mill building should be regarded as within the curtilage of the listed mill due to historical association.

- 4.19 It should be added, however, that the date of listing is the date upon which the assessment should be considered⁶. In that case, the court held that whilst the history of interrelationship between buildings is relevant and *Calderdale* held that ownership and function past and present should be taken into account, any material change in circumstances occurring before the date of listing cannot have the effect of bringing outbuildings into the curtilage of a building. The primary focus should be upon the state of affairs existing at the time the building is listed.
- 4.20 This is understood to mean that where the evidence points to a situation where a building may that have been within the curtilage of another building in the past and those relationships are severed before the date of listing, then the building will have lost its curtilage status.
- 4.21 Whilst not expressed in the applicant's written statement, it is considered this is the thrust of the applicant's argument, in so far as they advance a situation where the vicarage has lost it's functional and physical attachment to the church and irrespective of ownership, the vicarage cannot be within the curtilage at the time of listing.

⁶ *Morris v Wrexham CBC* [2001] EWHC Admin 697

- 4.22 The facts of the matter here can stem from historical imagery submitted by the applicant and held by the Council. Historical maps published 1890, 1894, 1907, 1922, 1938, 1956 and 1967 indicate an un-questionable linkage between the church and the vicarage with inter-connecting pathway and annotation of church and vicarage. There is little doubt the church and vicarage are historically physically and functionally interrelated in much the same way are the mill building and cottages were in the *Calderdale* case, albeit in different uses. This functional association clearly continued throughout the 1970 until such time as a new dwellinghouse obtained planning permission and was erected in 1982-1983.
- 4.23 Whilst it is accepted that the new dwellinghouse was subsequently due to become the new vicarage, the evidence is clear that the existing vicarage at the time of listing in January 1984 remained part of the wider church buildings and was not severed by any intervening use or occupation from historic uses to the situation at the time of listing, albeit vacant. In brief, it is considered the act of vacating an associated building does not have the consequence of taking that building outside the curtilage of another building unless other evidence dictates otherwise. Consequently, in this case a view is taken that the former vicarage had a clear historical association with the church of which that functional association was not severed by the erection of another building that may have intended to be an alternative vicarage at the time of listing.
- 4.24 This view of functional relationship is further supported by ownership at the time of listing. Whilst it is noted that the applicant's view is that ownership should be given less weight than other factors of curtilage, they do not point to any authority to support this view. Ownership past and present is a factor the courts decided is relevant to the question of curtilage and should therefore be taken into account and a matter of fact and degree as held in *Dyer vs*

Dorset CC listed above. Indeed, in a High Court case⁷, the court held that the ownership of land was the determining factor in a question of whether a strip of land purchased and subsumed into adjoining historical gardens did have the effect of extending the curtilage of a listed building. Therefore, irrespective of any intent to sell the former vicarage, it is clear that ownership at the time of listing remained within the same parcel as the church and as such this can only give a degree of weight in favour of reasoning the former vicarage remained in the curtilage of the listed church at the time of listing.

4.25 With regard to any physical detachment the former vicarage may have had from the church, the applicants have demonstrated that historical imagery/mapping and more recent, pre-listing photography shows there has been some degree of physical boundary between the vicarage and church over the years. However, it is clear from historical mapping listed above, a historical pathway linked the church and the vicarage. The applicant's evidence does not clearly indicate this link was lost at any time before the date of listing and it would not appear unreasonable to determine that the physical linkages between the vicarage and the church continued to exist before the former vicarage was sold at the time of listing. For all intents and purposes, the former vicarage remained an intrinsic part of the church to the degree the church and the vicarage would have visually been read as being a group of buildings within a single enclosure.

4.26 Overall, it is considered that there is clear evidence to demonstrate that the former vicarage and church possess a close association both historical and at the time of listing. It is considered that there is insufficient physical detachment to draw a conclusion that the buildings can be read as physically separate unrelated buildings

⁷ *Sumption v Greenwich LBC* [2007] EWHC 2776

and ownerships past and at the time of listing do not demonstrate the former vicarage has undergone any degree of separate occupation or functional usage to the degree there has been a change in circumstances in historical association before the time of listing. It is considered therefore that the former vicarage was a curtilage building to the listed church on the 13 January 1984.

- 4.27 In the interest of completeness and whilst this may be the view at the time of listing, some regard is given to *Sumption* in so far as the court seems to have accepted a principle that the extent of curtilage may expand, in that case on the basis of additional land being purchased and subsumed into the curtilage of the listed building. Whilst it is noted that this judgment was held in the light of Part 2, Class A permitted development rights⁸ at the time and that a means of enclosure could not be erected within the curtilage of a listed building, there does not appear to be any differential between what may be considered curtilage for the purposes of a listed building as set out above. It is accepted that a different test does apply to the application of permitted development rights, for instance when considering what may be erected under permitted development rights within the curtilage of a building and that of determining the extent of curtilage at the time of listing. However, in the case of *Sumption* the courts consideration turned on the extent of the curtilage of a listed building at the time the fence was erected with a conclusion the extent of curtilage had expanded since the property was listed. In similar circumstances, it is considered appropriate in this application to consider the position at the time of this application and whether any material change in circumstances could be applied to the proposed works to replace the existing roof covering when the application was submitted.

⁸ Town and Country Planning (General Permitted Development) Order 1995

- 4.28 It is also accepted that *Sumption* applied in the case of land that was not curtilage being subsumed into curtilage, whereas this matter would be considered on the basis of whether or not the land where the former vicarage is sited has been de-annexed from curtilage since the time of listing. Notwithstanding this, it is considered there is no reason to advance an argument that the principle set out in the judgment cannot be applied in reverse in so far as whilst it is possible land can be annexed into a listed curtilage, it can also be de-annexed if there is a material change in circumstances which can be clearly evidenced.
- 4.29 In law, there does not appear to be any reason why section 1(5) of the Act cannot allow for this principle to apply as a listed building includes any object or structure within the curtilage of the building which forms part of the land has done so since before July 1948. Consequently, where it is concluded that there has been a material change in the extent of the curtilage of a building in so far as the object or structure no longer forms part of the land, it may be considered to no longer part of the listed building included on the list.
- 4.30 This also appears consistent with *Morris* whereby a change in circumstances on land before the listing of a building may affect the extent of curtilage, it appears a material change in circumstance can equally apply after the date of listing when considering whether a building falls within the curtilage of a listed building for the purposes of section 1(5).
- 4.31 Under such circumstances it is accepted that the former vicarage was sold into a different ownership shortly after the date of listing and subsequently converted into a residential care home by 1988 thus severing all functional ties to the church as a place of worship. Consequently, and given the physical boundary that had previously and continues to exist, the historical association between the former vicarage and church has been lost over time and in terms of reading

the relationship between the two buildings at the time of this application any context of physical association also appears to have diminished since the date of listing.

4.32 Therefore and at the time of this application, it is on balance considered there appears to be a sufficient material change in circumstances from the date of listed to conclude the former vicarage no longer can be considered to form part of the land deemed to be within the curtilage of the listed church and therefore is not protected under the provisions of section 1(5) of the Act.

4.33 Turning to the question as set out in paragraph 4.6 above, the proposed works to replace the roof covering on a building not deemed to be listed by virtue of section 1(5) of the Act cannot physically affect the listed building as a building of special architectural or historic interest. A certificate must therefore be granted.

4.34 It is important to note, however, that a certificate under section 26H of the Act cannot confer any lawfulness under the Town and Country Planning Act 1990 and the applicant should be advised that any works to the building may require planning permission under section 57 of the Town and Country Planning Act 1990.

5. CONCLUSION

5.1 For the reasons set out above, it is considered the proposed works to replace the roof covering on the former vicarage do not require listed building consent from the Local Planning Authority and a certificate may be issued to that effect.

DELEGATED DECISION : ISSUE CERTIFICATE

Decision Notice text:-

It is considered, based upon the remit of this certificate, that the proposed works to replace the roof covering at Garlands Residential Care Home, 27 Church Street, Heckmondwike, WF16 0AX do not require listed building consent from the Local Planning Authority as it is considered those works do not directly affect the character of the listed church as a building of special architectural or historic interest.

NOTE: The grant of this certificate does not confer any lawfulness under the provision of the Listed Building Act 1990 to any works other than works to replace the roof covering at Garlands Residential Care Home, 27 Church Street, Heckmondwike, WF16 0AX.

NOTE: The grant of this certificate does not confer any lawfulness under the provisions of the Town and Country Planning Act 1990 for any works that require planning permission from the Local Planning Authority. Should the applicant/owner require a formal determination that planning permission is not required they are strongly advised to apply for a Certificate of Lawfulness under the provisions of Section 192 of the Town and Country Planning Act 1990 with evidence to support that view or they should apply for planning permission to the Local Planning Authority. Either application will be considered upon their own merits including consideration as to the impact on the setting of the listed church and no guarantee can be given that either application will be approved.

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

Plan Type	Reference	Version	Date Received
Application form	-	-	09/09/2025
Location Plan	0550 01 Rev 0	-	09/09/2025
Written supporting statement	-	-	09/09/2025
Information held by the Local Planning Authority	-	-	-