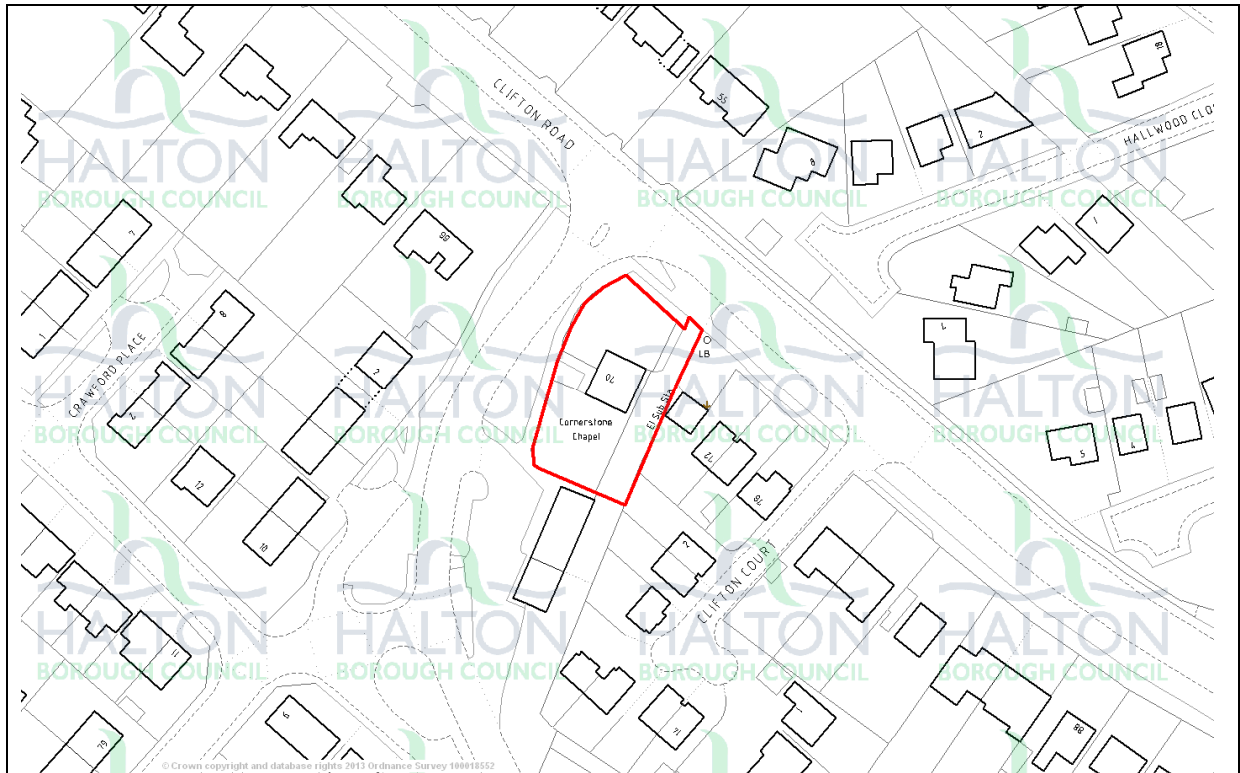


APPLICATION NO:	12/00478/ELD
LOCATION:	Hope Community Church 70 Clifton Road Runcorn
SUMMARY PROPOSAL:	Application for a lawful development certificate for use of the application site for the provision of education to vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education
WARD:	Heath
PARISH:	
CASE OFFICER:	Rob Cooper
AGENT(S) / APPLICANT(S):	Hope Corner Community Church C/O John Hughes The Wilkes Partnership LLP
DEVELOPMENT PLAN ALLOCATION: Halton Unitary Development Plan (2005)	Policy H8 'Non Residential Development in Primarily Residential Areas'
DEPARTURE REPRESENTATIONS:	No 40
RECOMMENDATION:	Refuse
SITE MAP	



APPLICATION SITE

The Site and Surroundings

The application site is the existing Hope Corner Church also known as Hope Academy, located on the corner of Clifton Road and Ascot Avenue, Runcorn. The site was formally Cornerstone Chapel.

Planning History

Planning permission 09/00492/FUL granted in January 2010 for a 'Proposed two storey community centre/church'.

Advertisement consent 09/00483/ADV granted in January 2010 for signage in relation the above approval.

Application 12/00479/S73 has also been submitted to vary the condition no. 12 of 09/00492/FUL to enable the continued use of the site for the provision of education to vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome or other mental or physical impairment liable to cause them to be excluded from normal education. This application is being considered as a separate item on this agenda.

Background

Hope Corner is a Christian Church based charity which has specialised in youth work within Halton since 1994. For many years the organisation operated out of its site at 139 Church Street in Runcorn Old Town. The Church provides Sunday and

mid-week services, provides a variety of youth activity evenings including sports, dance and music.

Over the past decade the organisation has developed a project called Progressive Social Inclusion (PSI), which directly engages young people who have experienced a variety of social problems and social exclusion resulting in the loss of education. It is understood that this work has been linked to the Halton's Pupil Referral Unit 'KS4 Gateway' at the Bridge School in Astmoor.

According to the applicant's website Hope Corner have held contracts with the Pupil Referral Unit for the provision of alternative education for the last 8 years.

In 2009/10 the charity acquired the former Cornerstone Chapel site on Clifton Road, and obtained planning permission (09/00492/FUL) to construct a two storey community centre/church. Condition 12 of the approval restricts the use of the building solely to a community centre/church.

Building began in 2011 and was completed in 2012. They have now registered with OFSTED as an independent special needs school, who have approved the use of the building for up to 20 pupils.

The purpose of this application is for Halton Borough Council to determine whether the existing planning permission 09/00492/FUL lawfully permits the applicant to use the building to provide full time education for up to 20 pupils as described above. The applicant expressly applied for a 'Proposed two storey community centre/church'. The 2009 application was therefore considered on the basis and in the context of the information that was submitted by the applicant at the time.

Community centres and Churches fall under use class order D1 use class 'Non-residential institutions'. Use class D1 covers a wide variety of uses including clinics and health centres, crèches, day nurseries, museums, public libraries, non-residential education and training centres, places of worship, religious instruction and church halls. Understandably the nature and character of these uses can vary significantly, as could their potential impacts on the surrounding residential area and highway.

As the applicant did not apply for open 'D1' use class, and all the information submitted specifically related to the community centre/church use, the application was considered accordingly. Notably the information submitted included plans and drawings, a design and access statement, a green travel plan and a tree survey.

The site is located within a primarily residential area, it was therefore considered necessary to control any future changes of uses to protect the amenity of local residents and other potential impacts such as parking and highways implications. In order to do this the following condition and associated reason was attached:

'The premises shall be used for the purposes of a community centre and church and for no other purpose (including any other purpose in Class D1 of Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision

equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason:- In order that the Local Planning Authority may control any future changes of use and to clarify the extent of this planning permission, and to comply with Policy BE1 of the Halton Unitary Development Plan.'

Because of the use restriction attached above the applicant has now applied for a lawful development certificate to establish whether the building can lawfully be used for the provision of education to vulnerable people below the age of 20 years who suffer from autism, Asperger's syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education. Paragraph 2.7 of the applicant's grounds of application states that the number of pupils will be up to 20 pupils a day.

THE APPLICATION

Part 8 of the application form states that the applicant has applied for a lawful development certificate for the following:

'Use of the application site the provision of education to vulnerable people below the age of 20 years who suffer from autism, aspergers syndrome, or other mental or physical impairment liable to cause them to be excluded from normal education'.

Part 9 of the application form states that the certificate is sought on the following grounds:

'The use forms part of the development permitted under planning permission reference 09/00492/FUL granted by Halton Borough Council viz for a community centre and church ("the permission");

The use falls within Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987;

The use is not prohibited by condition (12) of the Permission.'

CONSULTATIONS

The application has been advertised by way of site notice. Internally the Highways Engineer, Education and Open Spaces have been consulted as have ward Councillors.

Health and Safety Executive (PADHI+) – Advise that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission. This is not material consideration to the consideration of a lawful development certificate.

REPRESENTATIONS

40 objections have been received from local residents, as have objection from three Councillors. Many of representations combine comments on application

12/00479/S73, they are more relevant to that application as it is a planning application. These issues include; the need for the school when there are existing facilities in the Borough, there is no need for this facility, traffic, parking issues, litter, landscaping, antisocial behaviour, the scale and appearance of the building, need for an up dated travel plan, greater number of pupils, impact on amenity of residential area, safety and security, encroachment onto public right of way, value of property

The issues raised that are relevant to this application are; They originally applied for a community centre and church, the applicant wishes to use the site for education when a condition precludes this use, the site is already taking students,

As this application 12/00478/ELD is for a Certificate of Lawful Development, we can only consider those issues that are relevant to determining whether or not the current planning permission 09/00472/FUL allows the site to be used for the full time education of 20 pupils These matters have been assessed below.

CERTIFICATES OF LAWFUL DEVELOPMENT

Section 191 Town and Country Planning Act 1990 (“the Act”) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

The section states that for the purposes of the Act uses and operations are lawful at any time if no enforcement action may then be taken in respect of them whether because they did not involve development or require planning permission or because the time for enforcement action has expired.

If the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a certificate to that effect and in any other case they shall refuse the application.

The question therefore is whether the use applied for could be the subject of enforcement action. In the present case the question is whether an enforcement notice could be issued in respect of breach of condition 12. If the answer is yes, a lawful development certificate cannot be issued. The use which is the subject of the application clearly breaches condition 12, the validity of condition 12 has not been disputed. It is conceded that the use which is the subject of the application does not constitute a material change of use in its own right, but it does constitute a change of use. However, whether or not it involves a material change of use is not relevant as to whether it breaches condition 12.

Information provided by the applicant

The applicant’s submission includes an application form, a statement entitled ‘grounds of application’, a copy of the original application 09/00492/FUL, the case officers delegated report in relation to the 2009 application, copies of correspondence between the applicant and the Council.

In paragraph 1.10 of the applicant's grounds of application they explain that since the planning approval was granted, the internal layout of the building has been amended, and they refer to revised layout drawings WA74TD/70/02 Rev. D and WA74TD/70/03 Rev. D. These drawings never formed part the planning approval 09/00492/FUL, and have been produced at a later date. However the applicant has confirmed that these drawings annotate the first floor as 'Hope Academy' as oppose to Progressive Social Inclusion / Youth Room.

The applicants main argument is that the permitted 'community centre' use includes the use of the building for education. The applicant has stated that the in an absence of a definition of a community centre within the Town &Country Planning (Use Classes) Order 1987, the phrase should be interpreted in accordance with the definition found in the Oxford English Dictionary which is 'A building providing social, recreational and educational facilities for a neighbourhood'. The applicant states that if the matter were still in any doubt the information submitted with application 09/00492/FUL made it clear that there was an educational component.

Assessment of the application

The concept of 'the provision of education' needs to be explained further. The local planning authority accepts that a community centre use includes the provision of 'some' educational provision. Educational provision beyond a given level would take educational provision outside the concept of a community centre. At this point there would be a change of use from community centre to something else. This change of use may or may not amount to a material change of use. It follows that there is a spectrum whereby different levels of education provision sometimes do not involve a change of use, sometimes involve a change of use and sometimes involve a 'material' change of use.

Bringing this back to the question in issue, if the level of educational provision does not involve a change of use it would not breach condition 12.

Educational provision included within the concept of community centre

Stemming from the ordinary meaning of the words 'community centre' it would be expected that a number of activities would be carried on. These might include youth activities, sports, dance classes, arts and crafts, music etc.

In the 2009 planning application the applicants clearly shared this view. In that application the applicants stated:

'We provide specialist and grass roots youth work as well as creative activities for all ages. Our projects directly engage young people who have experienced serious social exclusion and/or who emotionally/physically damage, resulting in the loss of 'education'. 50% of these are 'looked after' children (in care) and 20%-30% are from vulnerable home situations. Our project covering this work is called PSI (Progressive Social Inclusion). This has been developed by us over the last 6 years. This work is linked to the KS4 Gateway in Halton'

The paragraph above is the only time the word 'education' is actually used throughout the whole planning submission. However it does not specifically state that 'education' is a proposed future use of the site. Rather, the use of the word of education in this context refers to loss of education elsewhere.

The applicant then went on to state:

'We also run three different youth activity evenings per week for young people from all over Halton. Activities include sport, mountain biking, rock climbing, music, dance, craft and the provision of a youth bar and internet café. Through the 'Hope Music' Project families are encouraged to learn musical instruments together.'

Clearly, all of the above activities are within what would normally be understood as activities associated with a community centre.

Had the applicant limited itself to the provision of the above activities this 'educational' provision would not involve a change of use, and would not contravene condition 12.

Nature of the Educational provision actually provided

The applicants have clearly established a school. They claim in their current application that there has been an intensification of the educational provision above that set out in their 2009 application, but that this does not involve a 'change of use'. They assert two other things, 1) the education provision currently provided is within the ordinary meaning of a community centre; and 2) that the provision of education currently provided is within the meaning of use classes order category D1 (c).

Both of these assertions cannot be made at the same time, assertion 1) is that there has been no change of use. Assertion 2) is that there has been a change of use but to a use with the same the same class (D1). It should be noted that the condition in any event is not limited to referencing use class D1. It actually prohibits the use for purposes other than a community centre and church. The reference to D1 in the condition merely gives examples of prohibited other purposes.

The Councils conclusion that there has been a change of use of the premises to include a school can be justified with reference to the applicants own website. This includes their admissions policy and prospectus which outline their Academy's purpose, their educational vision and outline for the school. The prospectus itself states:

'Hope Corner Academy is identified as an Independent SEN School with a Religious Character'.

The admissions statement states that:

'Hope Corner Academy is an Independent Special Educational Needs School. Pupil referrals for Hope Corner Academy come primarily from SEN assessment teams, although referrals can also be made from other agencies and parents. Our full-time

provision will be based upon 25 hours a week for Key Stage 4 (Year 10 and 11) Pupils’.

Paragraph 4.4 of the Admissions and Referrals Statement also states that:

‘through the admissions process will be able to offer up to 20 pupil places in our purpose built centre’.

It is not necessary for the purposes of this application to deal with the question of whether the ‘change of use’ constitutes a ‘material change of use’.

The determination of this application comes down to whether the proposed level of education in the new ‘Hope Academy’ is materially different to the use that was granted planning permission (09/00492/FUL)..

CONCLUSION RECOMMENDATION

The pre-condition for issuing a lawful development certificate is that no enforcement action can be taken. Enforcement action could be taken in respect of breach of condition 12 and therefore a lawful development certificate cannot be issued.

Consequently the application must be refused.

RECOMMENDATIONS

Refuse

SUSTAINABILITY STATEMENT

As required by:

- Paragraph 186 – 187 of the National Planning Policy Framework;
- The Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012; and
- The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2012.

This statement confirms that the local planning authority has worked proactively with the applicant to secure developments that improve the economic, social and environmental conditions of Halton.