

Justification Statement

Application for Certificate of Lawful Existing Use – Continuous use of Mickfield Evangelical Church as a Place of Worship (use class F1) for a period of at least 10 years.

January 2024

1.0 Introduction

- 1.1 This Statement accompanies an application for a Certificate of Lawful Existing Use in relation to Mickfield Evangelical Church, Stonham Rd, Mickfield, Suffolk, IP14 5LS.
- 1.2 The application seeks to establish that all the ancillary uses (Sunday church services, youth clubs, toddler groups, coffee morning and community meals) run by and associated with the church have taken place continuously, without interruption, for a period of more than 10 years as part of the use of the site as a place of worship (use class F1).
- 1.3 To benefit from immunity from enforcement action, the use as a place of worship must have been continuous for a period of at least 10 years.
- 1.4 This Statement, together with the accompanying statutory declarations and other evidence, will provide sufficient information to demonstrate, on the balance of probabilities, the place of worship use has occurred for a continuous period of more than 10 years.
- 1.5 This statement will be divided into three sections. First detailing the site and the conditions applied on it. The second will focus on the ancillary uses conducted on the site, as part of the conditions applied on the site. The final section details that although the applicant feels they are meeting the conditions set out on the land, they have been running the ancillary uses for more than 10 years. Both alternating views will prove that there is no doubt that the uses carried out on the site are permitted either as they are ancillary or that these activities have been carried out for more than 10 years.

2.0 Site Description and Use as per Condition

- 2.1 The application site, as outlined in red on the submitted location plan, is located off Stonham Road, Mickfield. The building was constructed and opened in 2009. Prior to this, the previous building on site was used as the Mickfield Gospel Hall. Due to the condition and associated maintenance costs of the former Hall, as well as increased church membership, a new building was applied for and erected.
- 2.2 Planning application 0743/07 for the "*Demolition of existing building and construction of new building*", was permitted in May 2007. This allowed for the

former gospel hall to be demolished and a brand-new place of worship built in its place.

- 2.3 As part of that permission condition 5 required the building to be used as a place of worship only, as follows:

Condition 5.

The building shall be used exclusively as a place of worship and for no other purpose including any other purpose in Class D1 of the 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) except pursuant to a planning permission granted on an application made in that behalf.

Reason – To enable the Local Planning Authority to retain control over the any future use of the building which may prove harmful to the living conditions of neighbouring residents.

- 2.4 A further application was submitted in 2010 (reference 2700 / 10) on land adjacent the Church, for the "[Retention of] change of use from agricultural land to church amenity land, including creation of overflow car park". Two conditions related specifically to the use of that site:

8. TIMING AND DURATION OF EVENTS - WEEKDAYS

Not more than two evening events (defined as formally organised outdoor Church activities and club functions, lunches, barbecues, sports days, outside services, weddings and activities of a similar character) shall be held on the amenity land on weekdays in any one week (Monday to Friday), and those evening activities (including any tidying of the site) shall cease by 9.30pm on the day.

Reason - In the interests of neighbour amenity through the control of the approved events in this countryside location.

9. TIMING AND DURATION OF EVENTS - WEEKENDS

Not more than one event (defined as formally organised outdoor Church activities and club functions, lunches, barbecues, sports days, outside services, weddings and activities of a similar character) shall be held on the amenity land in any one day of the week end (Saturday and Sunday), and that activity (including any tidying of the site) shall cease by 7.00pm.on the day.

Reason - In the interests of neighbour amenity through the control of the approved events in this countryside location.

- 2.5 Helpfully, these two conditions further define the ancillary uses of the church as "outdoor Church activities and club functions, lunches, barbecues, sports days, outside services, weddings and activities of a similar character".

3.0 The Development

- 3.1 Appeals APP/M1520/C/22/3292851, APP/M1520/C/3292852 (Appendix B), define development and ancillary/incidental uses – see paragraphs 19 to 22 and 30:

"19. Section 55(1) of the 1990 Act defines development as, in addition to operational development, 'the making of any material change in the use of any buildings or other land'.

20. The concept of a material change of use is not defined in statute, but the basic approach is that, for this to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

21. For principles I refer now to case law relating to what might be considered as an incidental use. The case of Emin v SSE and Mid Sussex DC [1989] deals with this question. The Court held that it is necessary to consider whether the use of the building, in the context of the planning unit, will remain ancillary or subordinate to the main use of the property as a dwellinghouse. An incidental use is one which is functionally related to the primary use. It may to an extent differ in character but is carried out as a function of the enjoyment of the dwellinghouse.

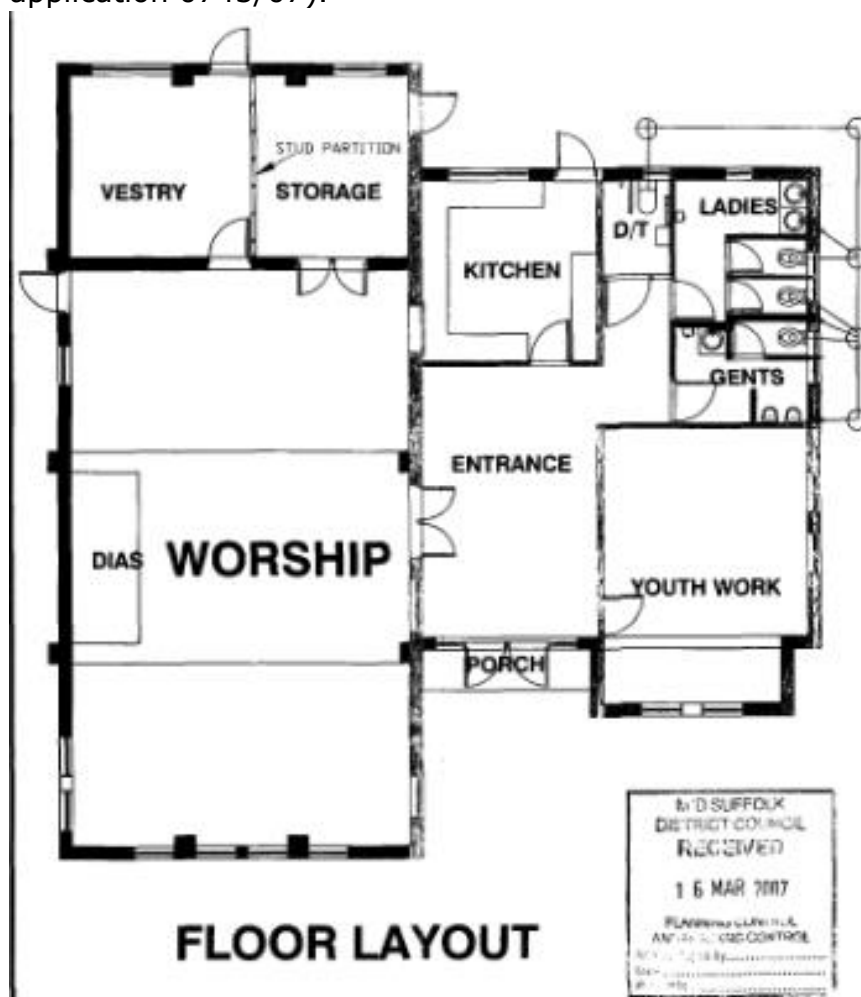
22. In Sage v SSHCLG & Bromley LBC [2021] EWHC 2885 (Admin) it was held that incidental or ancillary uses are part of the single main use, and for these purposes are not a separate use at all. The judgement upheld the established principle that a planning unit may have a single primary use, and not be in mixed use, even if uses incidental to the primary use are carried out.

30. Whether a use should be regarded as incidental will be a matter of fact and degree, but the 'incidental' link or relationship must be maintained. The scale of the use may be relevant but is not necessarily determinative."

- 3.2 Ancillary uses can be of a quite different character from the primary use. Whether a use can properly be regarded as ancillary is a question of fact and degree, requiring consideration of the functional relationship as opposed to the extent of the use – i.e. ancillary does not mean relatively small: Main v Secretary of State for the Environment (1998) 77 P & CR 300. Accordingly, an ancillary use of a place of worship does not have to be "directly concerned" with worship; it just needs to be functionally related to it.
- 3.3 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, schedule 2, part b, F.1 (f), describe a place of worship as "for, or in connection with, public worship or religious instruction". The ancillary uses described in conditions 8 and 9 of planning application 2700 / 10, specify ancillary uses as "*formally organised outdoor Church activities and club functions, lunches, barbecues, sports days, outside services, weddings and activities of a similar character*". This clearly establishes that a place of worship is quite naturally not just used for worship but for numerous other ancillary activities. It is a fundamental principle of planning law that planning permission

to use a building for a primary use will include permission to use that building for uses which are ordinarily ancillary to that use.

- 3.4 The ancillary uses within the church all fall under the umbrella of the church and are not carried out by external companies or organisations. For application 2700 / 10, an additional supporting statement confirmed that the church runs *“three church youth groups, two held on a Wednesday evening for Primary and Secondary age children, a Friday night youth group is run for the 16 plus age group”,* and *“A keep fit group has also started at the Church which at present is predominantly for church members”*.
- 3.5 Importantly that statement goes on to say that none of the activities are commercially run with no charge for those services. This is to help the wider community to *“learn and understand the values and beliefs of the Church”*.
- 3.6 In addition, the drawings accompanying the application for the new church building included a youth club area and a kitchen (taken from Planning application 0743/07).



The church was open at the time, about the ancillary activities it provides, and never sought to hide this information.

- 3.7 Given that the Church has been used for a place of worship continuously since at least 2011, alongside its numerous ancillary activities, the use is lawful in

accordance with Section 171B (3) of the Town and Country Planning Act 1990 which states:

*"In the case of **any other breach of planning control, no enforcement action** may be taken after the end of the period of **ten years** beginning with the date of the breach".* (Emphasis added).

Importantly, no breach has occurred. The requirement to restrict the use of the building to "uses directly concerned with worship" goes beyond what is required by condition 5 and represents a misinterpretation of the same.

4.0 Evidence of Continued Use

- 4.1 Mid Suffolk District Council served a breach of condition notice (BCN) in November 2023. Following negotiations with the Church the BCN was withdrawn to allow the applicant to resolve matters through this application for a certificate of lawfulness. It is of note that the uses prohibited by the Notice are carried out in countless churches across England. A reasonable person would clearly regard them as being ancillary to the use of a building as a place of worship.
- 4.2 The evidence described in Section 3 above, along with that appended to this statement, demonstrates conclusively that either alternative, demonstrates a continuous use of 10 years and meets the requirements of a place of worship as specified in the condition.
- 4.3 Sworn Declarations contained within Appendix B, shows that the ancillary uses have been going on for more than 10 years making the case clear that no planning breach has occurred as these are now lawful. At no point has the church kept youth work, for example, a secret as can be seen in a previous application submitted.
- 4.4 In relation to whether the level of evidence is sufficient to enable a positive decision from the Council, the 'balance of probabilities' test must be applied. This is a civil standard of proof, and there is no requirement for the applicants to prove their claim beyond all reasonable doubt. There can also be no consideration of Planning Policy.
- 4.5 The 'balance of probabilities' test means that the decision maker can be satisfied that an event occurred if the decision maker considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the decision maker should have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence the stronger the evidence should be before the decision maker concludes that the event is established on the balance of probability.
- 4.6 For example, fraud is less likely than negligence. This does not mean that where a serious allegation is an issue the standard of proof required is higher; it simply means that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger should be the evidence that it did occur before, on the balance of probability, its occurrence will be established.

4.7 Local Planning Authorities are advised at Paragraph 006 [Reference ID: 17c-006-20140306] of the National Planning Practice Guidance (PPG) that:

"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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."

4.8 In addition, *F W Gabbitas v SSE and Newham LBC* [1985] found that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. 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. It is therefore submitted that the applicant's evidence provided now, as well as the information associated with previous applications, is sufficiently precise and unambiguous to justify the grant of a certificate on the 'balance of probability'.

4.9 It is therefore concluded that unless the Council has any evidence to the contrary¹, the evidence submitted as part of this application provides a clear basis to enable the conclusion that the church has been used for place of worship (use class F1), including the ancillary uses associated with it, for a continuous period of in excess of 10 years. This makes the use of the church as it is, immune from enforcement action and a certificate of lawful existing use should therefore follow.

¹ Paragraph 006 [Reference ID: 17c-006-20140306] of the PPG advises that if a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence.

5.0 Conclusion

- 5.1 The level of evidence provided with this Statement proves that, on the balance of probability, the use of the church shown edged red on the accompanying plan has been in continuous use as a place of worship for over 10 years. It is therefore the case that a certificate of lawful existing use should be granted under s191 of the Town and Country Planning Act 1990.