

Statement prepared in support of an application for a Certificate of Lawfulness for an existing development under Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991)

The application seeks to confirm that an existing development consisting of a single storey rear extension constructed at 4 Hargreaves Street, Rochdale, OL11 3NW is lawful.

Statement prepared by MRH Planning Services

Date: November 2022

SITE LOCATION PLAN AND AERIAL PHOTOGRAPH



1.0 Introduction and Background

1.1 MRH Planning Services have been instructed by Mr Gary Mongan to submit to the Local Planning Authority (LPA) a Certificate of Lawfulness for an existing development under the provisions of Section 191 of the Town and Country Planning Act 1990 (the Act) (as amended).

1.2 The applicant is seeking a legal determination from the LPA to confirm that an existing development consisting of a single storey rear extension that has been constructed at 4 Hargreaves Street, Rochdale, OL11 3NW is lawful in planning terms and immune from any possible enforcement action.

1.3 The extension was constructed in 1984 by the applicant's parents who resided at the property between the period 1984 to 2022. It has therefore been in situ at the property for 38 years. Mr and Mrs Mongan are sadly both now deceased (Mrs Mongan died recently in July 2022 and Mr Mongan in 2017) and the applicant is in the process of dealing with their estate and other related affairs.

1.4 The extension is used as a kitchen facility in the property, and it has dimensions measuring 2.54 metres (projection), 3.6 metres (width), 2.65 metres (eaves height) and 3.49 metres (maximum height to ridge). Photographs showing the extension in question are included in Appendix 1 for suitable clarification of its visual appearance.

1.5 This statement is organised into the following sections:

- Section 1: Introduction
- Section 2: Central Government Advice and Legal Background
- Section 3: Site Planning History
- Section 4: The Evidence
- Section 5: Analysis of Evidence
- Section 6: Conclusions

2.0 Central Government Advice and Legal Background

2.1 Section 191 (1) of the 1990 Town and Country Planning Act states that:

If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful; or

(b) any operations which have been carried out in, on, over or under land, are lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

2.2 Section 191 (2) states that uses and operations are lawful at any time if –

(a) 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 or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

2.3 Section 191 (4) of the 1990 Town and Country Planning Act also states that:

If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

2.4 These sections allow persons to apply to the local planning authority (LPA) in writing for formal confirmation that the existing use, operations or development which he or she has carried out is lawful. The various procedures in relation to lawful development

certificate applications are described in Article 39 of the Town and Country Planning (General Development Procedure) Order 2015.

- 2.5** When considering the evidence associated with the local development certificate application, the relevant test is “the balance of probability”.

National Planning Practice Guidance

- 2.6** In the section on Lawful Development Certificates, Paragraph 005 states that the information in a Lawful Development Certificate application must be sufficient and precise.

- 2.7** Paragraph 006 states that the applicant is responsible for providing the necessary evidence to support an application. Although the local planning authority is able to canvas other evidence, it must share this with the applicant and provide them with the opportunity to respond. **In the case of an existing use or development, if the local planning authority has no contradictory evidence, there is no good reason to refuse the Lawful Development Certificate as long as the applicant’s evidence is sufficiently precise and unambiguous.**

- 2.8** Paragraph 009 states that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. **Planning merits are not relevant at any stage in this particular application or appeal process.**

The Planning and Compensation Act 1991

- 2.9** The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

- **four years for building, engineering, mining or other operations in, on,**

over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed

- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken
- 10 years for all other development. The 10-year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes **lawful**, in terms of planning.

Planning Portal Guidance - What the applicant needs to prove

2.10 It is up to the person applying for a Lawful Development Certificate for an existing use or development to show the proper evidence. This could include:

- **Proof that any building was ‘substantially complete’ more than four years before the date of the application**
- Proof that any use has been carried on continuously for a period of 10 years (four years in the case of a dwelling)

3.0 Site Planning History

3.1 According to the on-line Rochdale MBC Planning and Building Control records there are no applications relevant to the single storey rear extension, as shown in the screenshot below.

ROCHDALE
BOROUGH COUNCIL

Search My Profile Login Register

Property History [Help with this page](#)

000023047793 | 4 Hargreaves Street Rochdale OL11 3NW

Save search Refine search Print

Address **Property History (2)** Constraints (0) Map

Planning Applications (0)

Planning Appeals (0)

Properties (0)

Building Control Applications (2)

- Install a gas-fired boiler
Ref. No: 18/CP/0098013 | Status: BCO
- 1 Window
Ref. No: CP/0045184 | Status: REC

an idox solution

4.0 The Evidence

4.1 The evidence in support of the Certificate of Lawfulness application takes the form of:

1. Photographs taken on 15/9/22 showing the exact location, visual appearance, and size of the single storey extension.
2. Google Earth and Google Street View photograph images taken between 2000 and 2021 showing the presence of the single storey rear extension at the property (see Appendix 2).
3. A signed statement submitted by Mr Gary Mongan (Applicant and Executor of his deceased parents Will and Testament) confirming that the single storey rear extension was built in 1984 and has remained in situ at the property for a period in excess of 30 years. This statement is attached as Appendix 3.

5.0 Analysis of Evidence

5.1 The Google Earth photographic evidence that is submitted with this application (2000-2021) clearly shows that the single storey rear extension has been in situ at the property (4 Hargreaves Street) for in excess of 4 years. Based on date of these images, this shows a continual period of over 20 years. The authentication of the photographs should not be questioned as they are date stamped on the bottom right-hand corner and there is a noticeable change in circumstances on the images including the presence of different vehicles on driveways and on the nearby highways.

5.2 The Google Street View photograph images dated August 2008, June 2012, March 2021 are taken from outside No.11 and No.13 Onslow Street (properties directly to the rear of 4 Hargreaves Street). The wall and roof of the rear single storey extension at 4 Hargreaves Street is clearly visible in the gap that exists between the gables of

the two properties. There is also a Google Street View Image dated June 2012 showing the frontage of property and the side wall and roof of single storey rear extension are clearly visible in gap between No.4 and No.6 Hargreaves Street. The authentication of the photographs should also not be questioned as they are date stamped on the bottom right-hand corner and there is a noticeable change in circumstances on the images including the presence of different vehicles on driveways and on the highway outside.

5.3 The witness statement of Mr Gary Mongan has been made in good faith and he is an honest and decent citizen who has no criminal conviction against his name, so his credibility should not be questioned. Mr Mongan is also a Senior Environmental Services Officer at Tameside Metropolitan Borough Council with over 30 years continuous service. He has stated that the extension was built in 1984 when his parents first moved into the property, which is now over 38 years ago. Mr Mongan also lived at the property with his parents until 2005.

5.4 Section 171B (1) of the Town and Country Planning Act 1990 provides detailed explanation on enforcement time limitations and it states that '*Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*' Section 191 (2) of the Town and Country Planning Act also states that uses and operations are lawful at any time if –

(c) 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 or for any other reason).

We consider that the evidence supplied and detailed above satisfactorily proves that

the development carried out at 4 Hargreaves Street (single storey rear extension) is now lawful and immune from any planning enforcement action due to it being outside of the four-year enforcement time constraint window.

6.0 Conclusion

- 6.1** We consider that the evidence provided to support this application as detailed in Section 4 and analysed in Section 5 of this statement justifies that on the balance of probability the single storey rear extension has been built and remained in situ at the property (4 Hargreaves Street) for a period in excess of 4 years. Therefore, in planning terms, the development is now lawful and immune from any possible enforcement action by the Council.
- 6.2** We would therefore respectfully request the Council to grant / issue a Certificate of Lawfulness under the provisions of Section 191 of the Town and Country Planning Act 1990 (the Act) (as amended) to confirm this.
- 6.3** The applicant is aware that the single storey rear extension would be considered 'permitted development' under the provisions of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) due to its size and location at the property, but he would like the necessary paperwork to confirm this given that the property is likely to be sold in the future and the legality of the extension will be queried during the associated conveyancing process.

List of Appendices

Appendix 1 – Photographs taken on 15/9/22 showing the exact location and visual appearance of the existing single storey rear extension at 4 Hargreaves Street, Rochdale, OL11 3NW

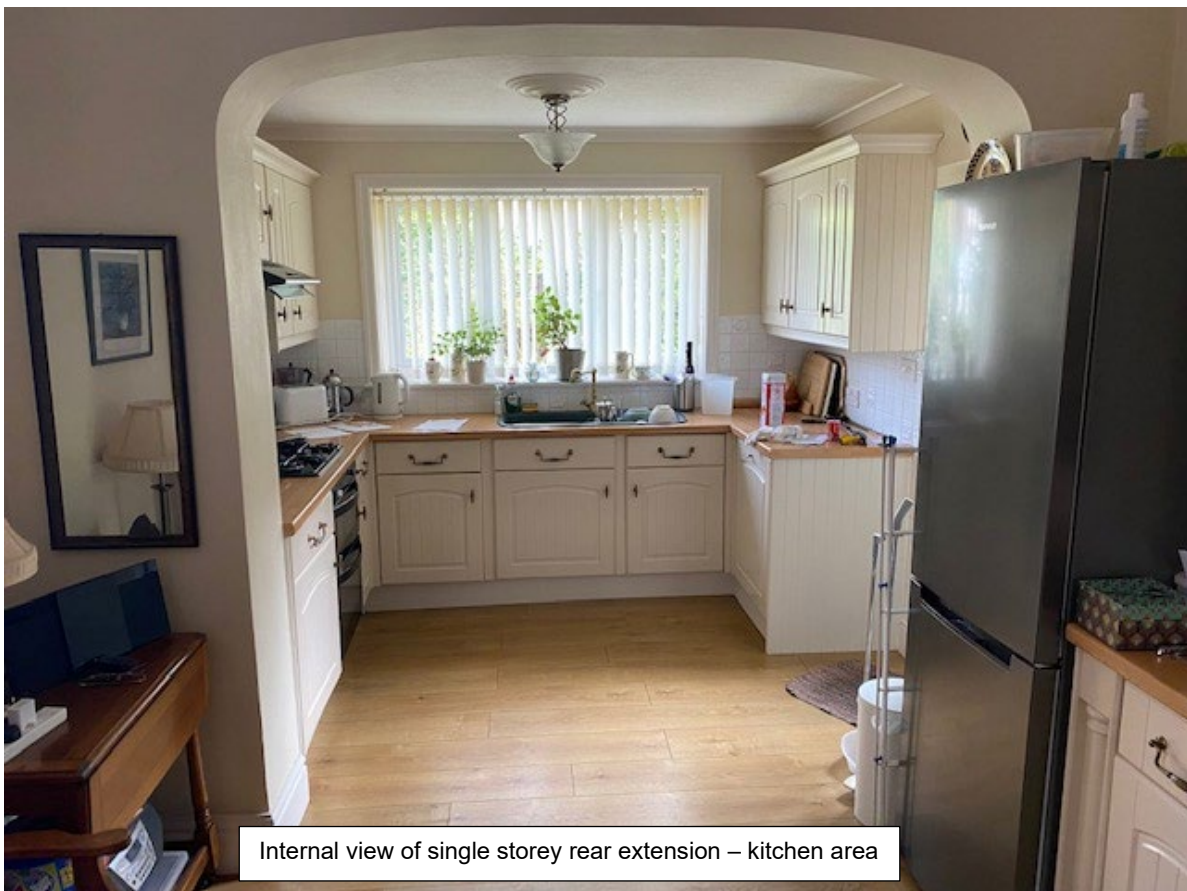
Appendix 2 – Google Earth and Google Street View images taken between the time period 2000 and 2021 showing the single storey rear extension in situ at 4 Hargreaves Street, Rochdale

Appendix 3 – Statement prepared by Gary Mongan (son of the deceased owners' and executor of his parent's final will and testament)

Appendix 1 – Photographs taken on 15/9/22 showing the existing single storey rear extension at 4 Hargreaves Street, Rochdale, OL11 3NW



Rear of property including single storey extn



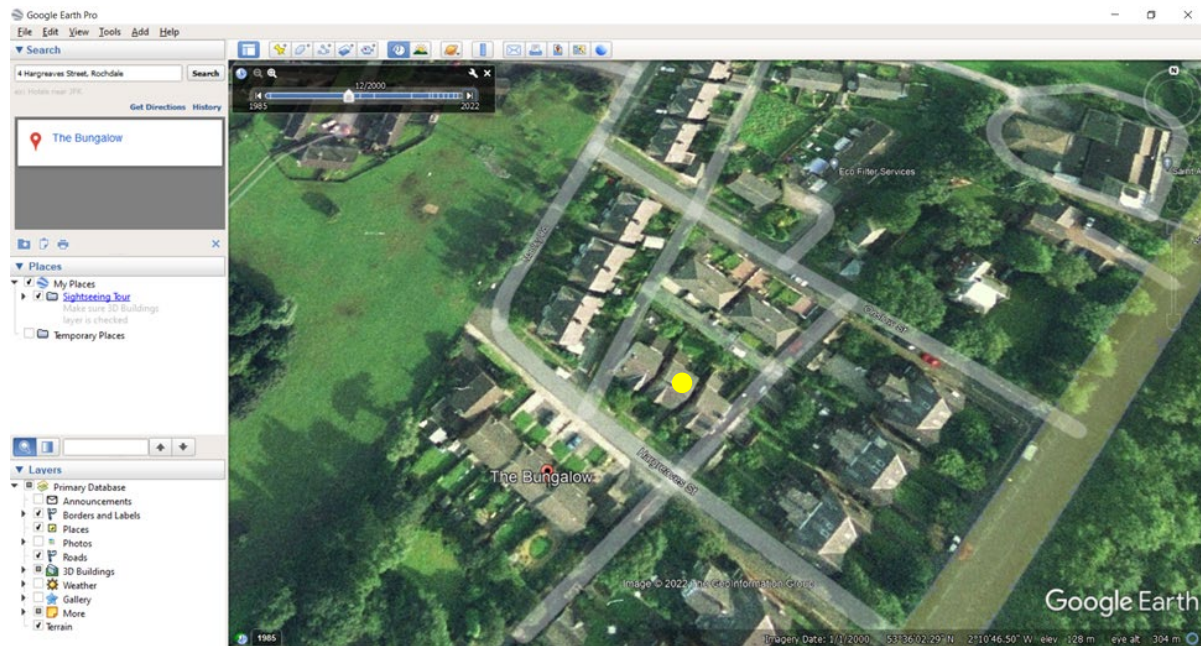
Internal view of single storey rear extension – kitchen area

Side elevation view of 4 Hargreaves Street – taken from driveway of No.6 – single storey extension visible

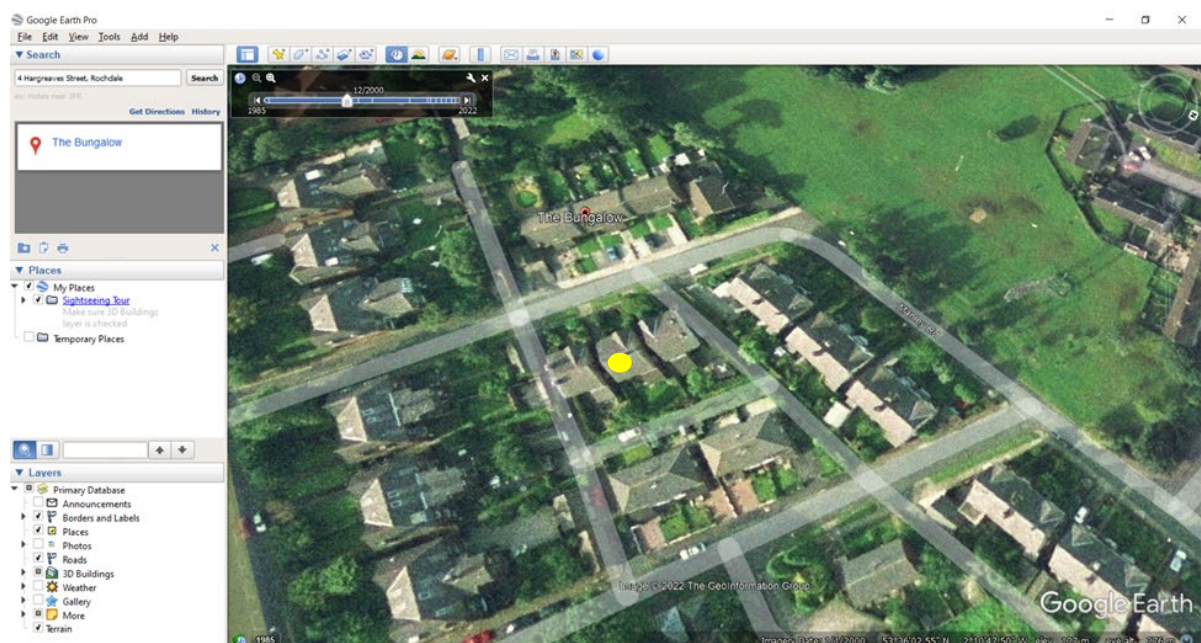


Appendix 2 – Google Earth and Google Street View images taken between the time period 2000 and 2021 showing the single storey rear extension in situ at 4 Hargreaves Street, Rochdale

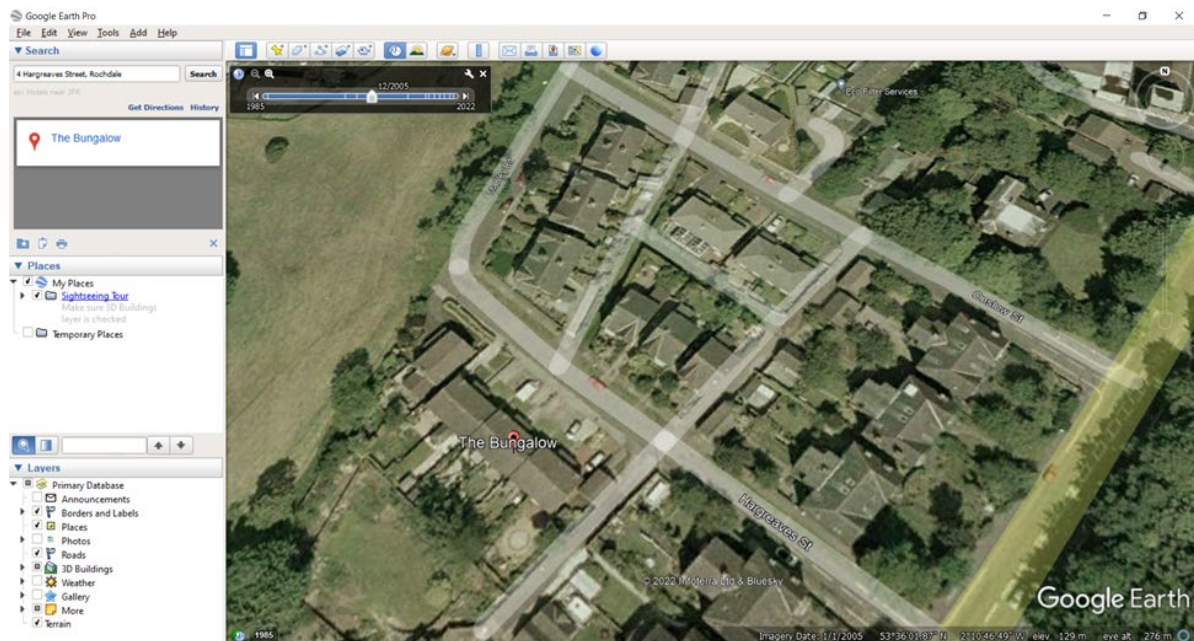
The exact location of the property shown with a yellow circle/dot on first two images for ease of reference



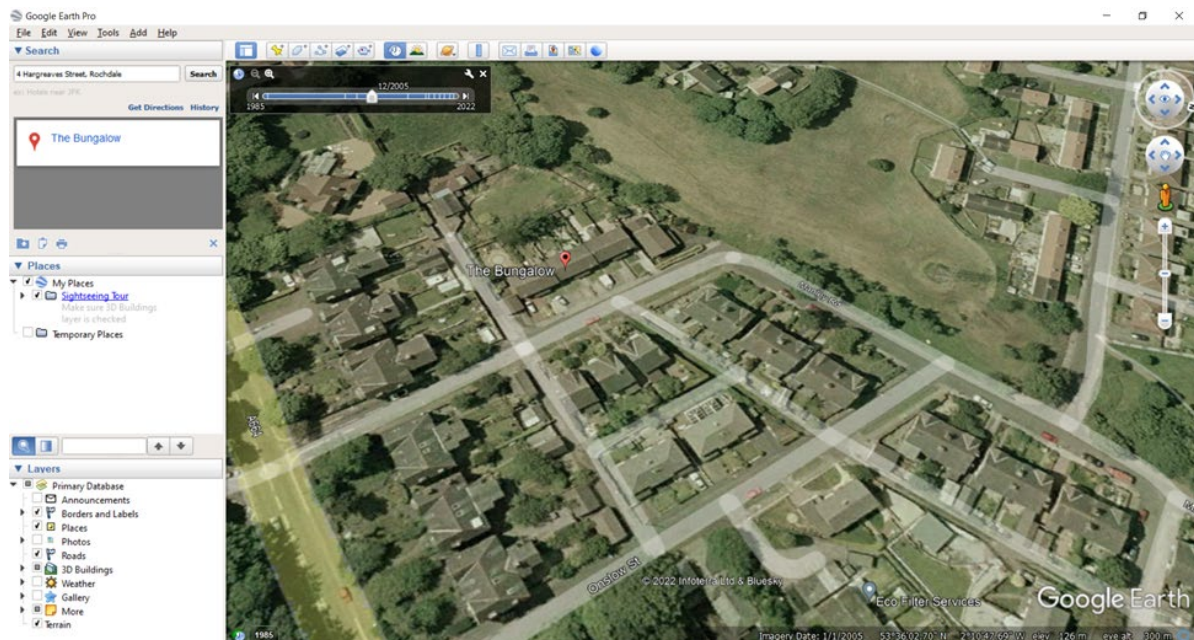
2000 Google Earth Imagery (1/1/2000)



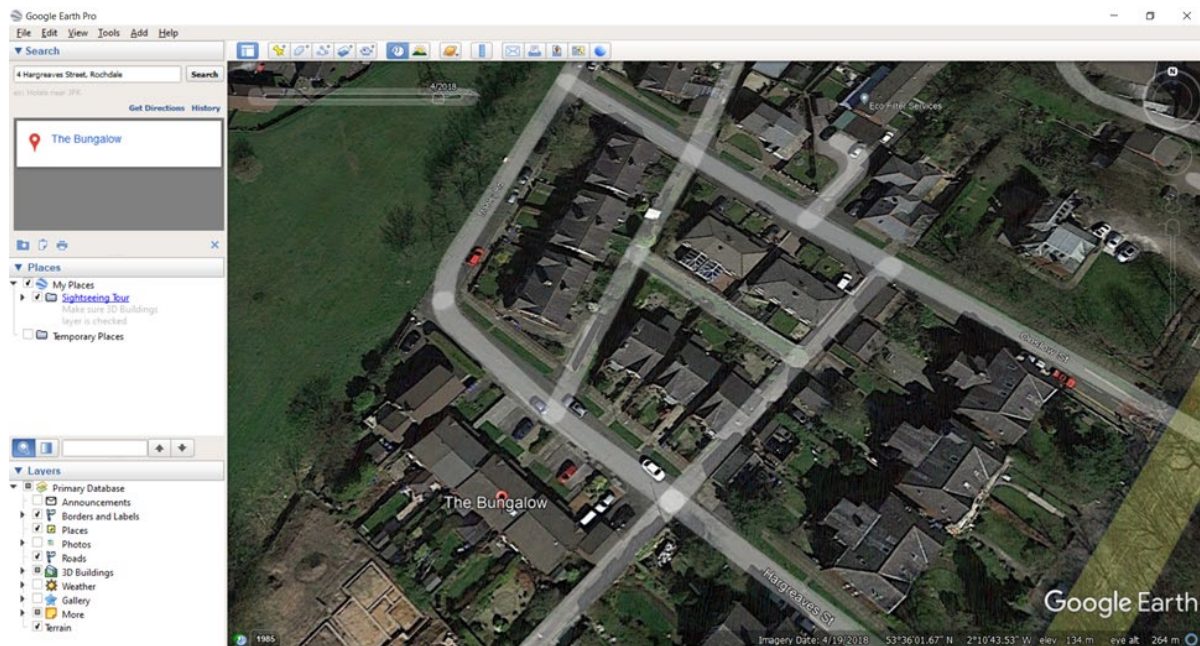
2000 Google Earth Imagery (1/1/2000) – Alternative rear view



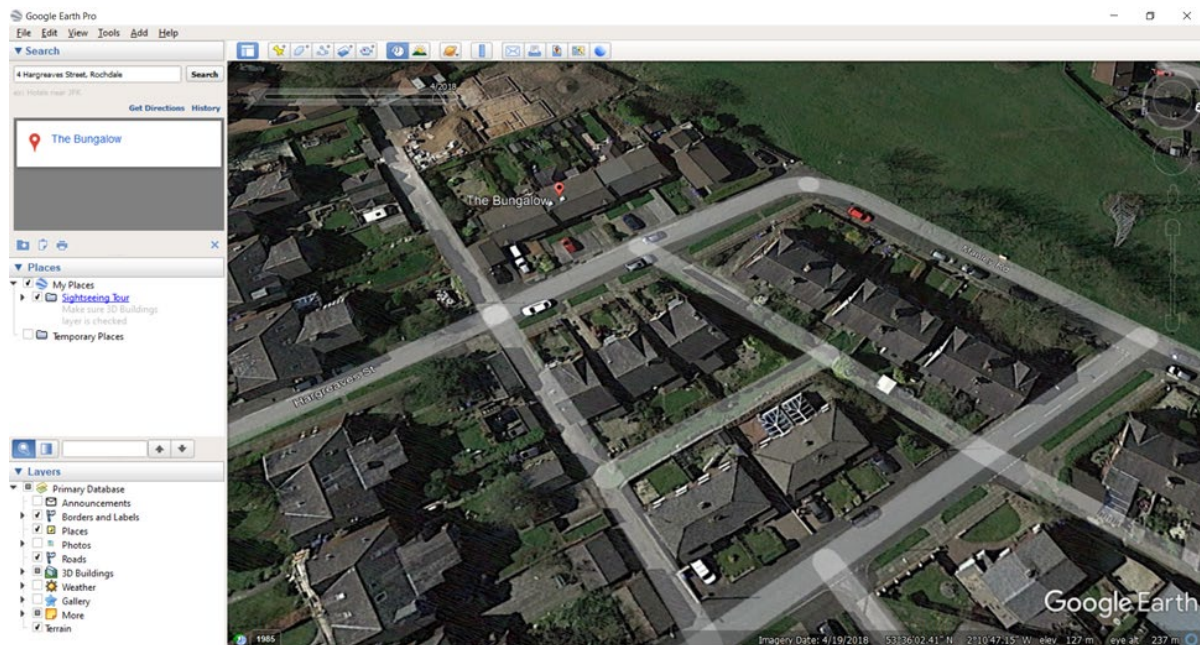
2005 Google Earth Imagery (1/1/2005)



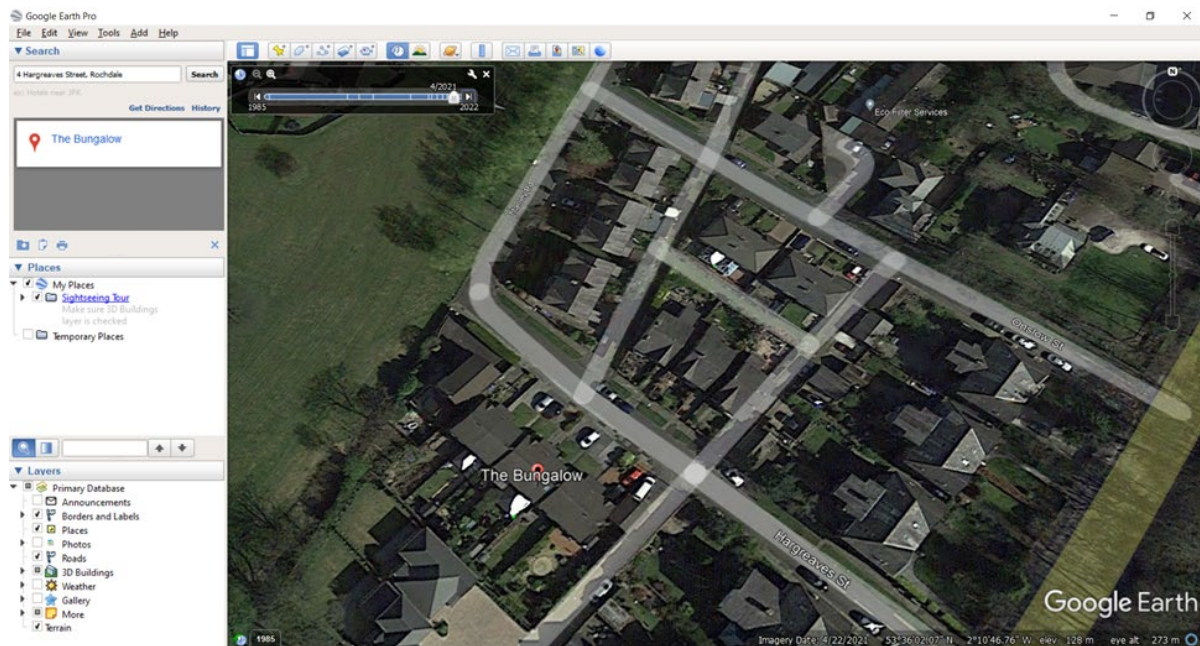
2005 Google Earth Imagery (1/1/2005) – Alternative rear view



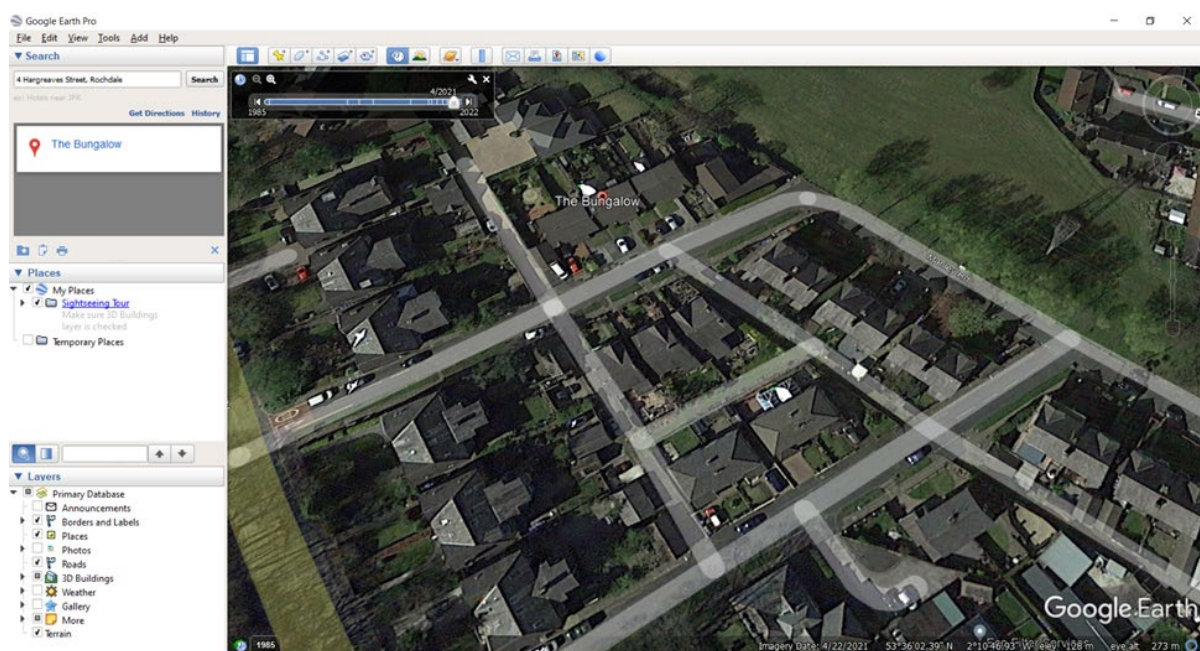
2018 Google Earth Imagery (19/4/2018)



2018 Google Earth Imagery (19/4/2018) – Alternative rear view



2021 Google Earth Imagery (22/4/2021)



2021 Google Earth Imagery (22/4/2021) – Alternative rear view



Google Street View Image dated June 2012 showing frontage of property – side of wall and roof of single storey rear extension clearly visible in gap between No.4 and No.6 Hargreaves Street



Google Street View Image dated August 2008 outside No.11 and No.13 Onslow Street (properties directly to the rear of 4 Hargreaves Street). The roof of the rear single storey extension at 4 Hargreaves Street is clearly visible in the gap that exists between the gables of the two properties (between garden trees).



Google Street View Image dated June 2012 outside No.11 and No.13 Onslow Street (properties directly to the rear of 4 Hargreaves Street). The wall and roof of the rear single storey extension at 4 Hargreaves Street is clearly visible in the gap that exists between the gables of the two properties.



Google Street View Image dated March 2021 outside No.11 and No.13 Onslow Street (properties directly to the rear of 4 Hargreaves Street). The wall and roof of the rear single storey extension at 4 Hargreaves Street is clearly visible in the gap that exists between the gables of the two properties.

Appendix 3 - Statement prepared by Gary Mongan (deceased owners son and executor of his parents will and testament)

This statement is true to the best of my knowledge and belief and is made to support my Certificate of Lawfulness to confirm that the existing development consisting of a single storey rear extension constructed at 4 Hargreaves Street, Rochdale, OL11 3NW is lawful.

Dated:

07/11/2022

Signature:



I can confirm that my parents (Mr Charles & Mrs Rose Mongan) owned the dwelling house at 4 Hargreaves Street, Rochdale, OL11 3NW between the period 1984 and 2022. Whilst growing up, I also lived at the house with my parents until 2005 along with my brother Stephen Mongan.

My father passed away in 2017 and my mother continued to live at the house on her own until she unfortunately also passed away in July 2022 (this year). The house has now been left to my brother and myself and we are the executors of our parents Final Will and Testament. We are currently dealing with their various legal affairs and whilst doing this, it has become apparent that there is no planning or building control related paperwork in respect of the single storey rear extension that they built on the property and the subject of this Certificate of Lawfulness application.

My parents purchased and moved into the house in 1984 and the rear extension was built at the same time. I recall that we lived in rented accommodation for a short while whilst the extension and other renovation works were being undertaken at the property. The rear extension has always been used as a kitchen area / facility by my parents.

In conclusion, I can confirm that the single storey rear extension has been built and remained in situ at the property (4 Hargreaves Street) for a period of 38 years.

I am happy to clarify any of the above-mentioned information in more detail if required by the Council.