

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
22/01454/CPE	Bob Melling	26 January 2023

Address: 4 Hargreaves Street, Rochdale, OL11 3NW

Proposal: Certificate of lawfulness for existing use of a single storey rear extension

PUBLICITY	Weekly list expired?	y	Site notice expired?	n/a
	Neighbour letters expired?	n/a	Press Notice expired?	n/a

DELEGATION	Significant departure from local plan?	n/a	Contrary to national policy?	n/a
	Applicant a Council Member or officer?	n	Contrary to previous decision?	n
	Major with 10 or more objections and recommending approval?	n	Called in or Planning Panel objection?	n

COMMENTS	Planning Panel comments received?	n
	Neighbour comments received?	n

EIA	Screening opinion completed and saved to Onbase?	n
-----	--	---

CONDITIONS	Pre-commencement conditions proposed?	n/a
	Pre-commencement conditions agreed (or notification period expired)?	n/a

RECOMMENDATION	GRANT
----------------	-------

CHECKED AND SIGNED OFF BY: RC

DATE: 26.01.2022

SITE

The application relates to no. 4 Hargreaves Street, a two storey, detached dwelling located in a residential area in Rochdale. The dwelling faces southwest onto the highway, adjacent to no. 2 Hargreaves Street to the southeast and no. 6 Hargreaves

Street to the northwest. The rear boundary of curtilage borders a gated alleyway. The property benefits from off road parking sited to the side of the dwelling and a sufficiently sized rear garden.

PROPOSAL

The application seeks to demonstrate lawful existing use of a single storey rear extension which has been in situ at the site for 38 years.

Evidence to demonstrate that the extension is lawful has been submitted. To support this claim a statement has been signed and dated by the applicant and a number of photographs and images taken from Google Earth and Google Street View have been submitted.

The photographs are manually dated 2022 and the Google Earth and Street View images are taken from a time period between 2000 and 2021. The statement by the applicant at Appendix 3 is dated 7 November 2022.

RELEVANT PLANNING POLICY

Legislation

Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991.

Town and Country Planning (General Development Procedure) Order (England) 2015

RELEVANT SITE HISTORY

N/A

CONSULTATION RESPONSES

Legal - The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

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, and therefore not subject to planning permission at the time. Length of time passed since erection is 38 years and therefore outside the period for enforcement in any event.

NPPG Paragraph 006 states: that the applicant is responsible for providing the necessary evidence to support an application. 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.

The evidence in relation to the application clearly stated in the supporting statement and its appendices. The statement by the applicant at Appendix 3 is signed and dated by the applicant.

On the balance of probabilities, the evidence supplied by the applicant’s agents is viable.

On the basis of the aforementioned assessment and evidence I have concluded that the applicant has demonstrated, on the balance of probabilities that the existing development consisting of a single storey rear extension constructed at 4 Hargreaves Street, Rochdale, OL11 3NW is lawful. Under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

REPRESENTATIONS

N/A

ANALYSIS

The application seeks to demonstrate that an existing development consisting of a single storey rear extension is lawful in planning terms and immune from any possible enforcement action.

Section 10 of the Planning and Compensation Act 1991 sets out the requirements for a Certificate of lawfulness of existing use or development. The requirements of the act which substituted section 191 of the principal Act (Town and Country Planning Act 1990) are summarised below:

191 Certificate of lawfulness of existing use or development.

Used if any person wishes to ascertain whether—

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

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

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

The Act establishes that, if through application the local planning authority are provided with information satisfying them of the lawfulness at the time of the application, then they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Section 171 of the Town and Country Planning Act 1990 is also relevant and establishes the time limits for enforcement as referenced above:

171B Time limits

(1)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.

(2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3)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.

Assessment of evidence

The Council's Legal representative has assessed the information submitted with the application. Section 191(2) of the Town and Country Planning Act as amended, sets out that lawful development is development against which no enforcement action

may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

It is also noted 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, and therefore not subject to planning permission at the time.

The statement dated and signed by the applicant at Appendix 3 of the Supporting Statement confirms that the single storey rear extension has been in situ for 38 years. Additionally, the images of no. 4 Hargreaves Street from Google Earth and Street View demonstrate that the extension has been in situ for at least 23 years, thereby satisfying the 10 year rule as established under section 171 of the Town and Country Planning Act 1990.

After examination of the submitted evidence the Council's Legal Officer has confirmed, that in the absence of any evidence in the Council's possession or knowledge to rebut the statements, the legal advice is that the certificate must be allowed as applied for.

Conclusion

The evidence submitted with the application demonstrates that the existing development consisting of a single storey rear extension is lawful. This evidence has been examined by the Council's Legal Officer and, on the balance of probabilities, the Council has no evidence of its own to contradict or undermine the applicant's version of events.

The recommendation is that the Certificate of Lawful Development be granted.

RECOMMENDATION GRANT

IT IS HEREBY CERTIFIED that on **26th January 2023** the existing use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of Section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

On the balance of probability, the Council has no evidence of its own to contradict or undermine the applicant's version of events that the existing development consisting of a single storey rear extension constructed at no. 4 Hargreaves Street, Rochdale, has been in situ for 38 years and is therefore immune from enforcement action.

First Schedule

Lawful development certificate of lawfulness for an existing use of a single storey rear extension.

Second Schedule

4 Hargreaves Street, Rochdale, OL11 3NW

Notes for Applicant:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended). It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under Section 171 of the 1990 Act, on that date. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Report Author Bob Melling