

APPLICATION NUMBER: 23/00599/CPE

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00599/CPE	Aimee Bovaird	25 July 2023

Address: 23 Rhodes Green Middleton Rochdale M24 4SL

Proposal: Application for certificate of lawfulness for the use of land as a garden for purposes incidental to the enjoyment of a dwelling house

PUBLICITY	Weekly list expired?	N/A	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
	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
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CONDITIONS	Pre-commencement conditions proposed?	N
	Pre-commencement conditions agreed (or notification period expired)?	N

RECOMMENDATION	GRANT
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CHECKED AND SIGNED OFF BY: M Lewis

DATE: 17.10.23

SITE

The site relates to 23 Rhodes Green, a two storey detached house south of Ellis Lane in Middleton.

The surrounding area is open in character as its predominately open fields. The site lies within Protected Open Land and is a Greenspace corridor under the saved Rochdale Unitary Development Plan.

PROPOSAL

A certificate of lawfulness is sought for the existing use of land as part of the residential curtilage.

The applicant has submitted a hand written letter from a neighbour stating the land was maintained by the residents at 23 Rhodes Green. An email has also been submitted stating the land was maintained by the sender's parents.

The applicant has also provided a supporting statement detailing the owner of the land owns the land. Within this supporting statement is google image photos over a period of many years.

RELEVANT PLANNING POLICY

The Town and Country Planning Act (1990) - S.191

National Guidance

National Planning Practice Guidance (NPPG)

Burden of Proof

The applicant is responsible for providing sufficient information to support an application. 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 (PPG Paragraph: 006 Reference ID: 17c-006-20140306)

RELEVANT SITE HISTORY

22/00557/VRCON - Application to to remove condition 14 (restricting permitted development rights) of planning permission 19/00256/FUL – Appeal Allowed

21/01622/HOUS - Single storey side extension – Withdrawn

19/00990/DOC - Submission of details to comply with conditions 5, 6, 7, 8, 9, 10 and 12 on planning permission 19/00256/FUL – RC

19/00256/FUL - Demolition of existing dwelling and construction of replacement dwelling – Approved

18/00289/FUL - Demolition of existing dwelling and construction of replacement dwelling - Resubmission of 17/01046/FUL

17/01046/FUL – Demolition of existing dwelling and construction of replacement dwelling – Withdrawn

CONSULTATION RESPONSES

Not applicable.

REPRESENTATIONS

Not applicable

ANALYSIS

S.55 of the Town and Country Planning Act 1990 sets out:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

In respect of changes of use, Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 sets out "Where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land."

For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Section 171B of the Town and Country Planning Act 1990 sets out the time limits relevant to enforcement action being taken against breaches of planning control. Paragraph 3 of this section sets out that where there has been a breach of planning control consisting any other breach of planning control (which is the relevant section for this case) no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Details submitted with the applicant include a written letter from a neighbour who has lived there for over 80 years and states the garden was always maintained by the owners, since the demolition of the intervening dwellings in the 1970s.

A further email has also been submitted stating the garden has been maintained by the lady's parents for over 40 years.

A number of google images of the land have been submitted over a considerable time period, in excess of 10 years. These images demonstrate that the land has been maintained and had the same appearance as the garden, looks to be purposefully connected to the garden on No.23 and it is adjacent to the previous house.

In conclusion, on the balance of probabilities, the use of land as a garden for purposes incidental to the enjoyment of a dwelling house, that being no 23, can be reasonably considered to have been used as a garden for a continuous period of over 10 years, and the use can be considered to be exempt from enforcement action under the provisions of section 171B of the Town and Country Planning Act 1990 and it is probable that this forms the lawful use of the site.

RECOMMENDATION

GRANT

The use of the building as a five flats is considered lawful by virtue of the provisions of Section 171B of the Town and Country Planning Act 1990, where it is reasonably assumed that the building has been used as five flats in a continuous period in excess of 10 years.

Notes for Applicant:

For the avoidance of doubt, this decision relates to the following list of plans:

Location Plan

Report Author Aimee Bovaird