

APPLICATION NUMBER: 23/00198/CPE

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00198/CPE	Aimee Bovaird	12 April 2023

Address: Land On The North Side Of Hillcrest Road Castleton, Rochdale, OL11 2QE

Proposal: Application for a certificate of lawfulness (Existing) in relation to the lawful commencement of planning permission D49154 (erection 3 dwellings) enabling completion of works in line with that permission

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	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: LA DATE: 22.05.23

SITE

The site relates to land on the north side of Hillcrest Road. This site fronts onto Hillcrest Road. This is a predominately residential area.

The site is now overgrown, the foundations of the proposed dwelling built and remain in situ. The foundations are low level and evidence shows they have been there since 2018.

PROPOSAL

A certificate of lawfulness is sought to confirm the implementation of planning permission D49154 and if the permission remains extant.

The applicant is stating the development has already begun and is lawful to continue. This is due to two houses being completed and the third has started as the foundations have been laid.

To support this additional information has been submitted, the original application and original decision notice.

RELEVANT PLANNING POLICY

National Guidance

National Planning Policy Framework (NPPF)

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

05/D46431 - Erection Of 4 Town Houses – withdrawn

06/D46756 - Erection Of 3 Dwellings -Revised Proposal D46431- Approved
25.01.2006

07/D49154 - Erection Of 3 Dwellings (Resubmission Of D46756) – Approved
12.04/2007

22/01548/FUL - Erection of two storey dwelling including dormers to rear, associated parking and garden boundary treatment - withdrawn

CONSULTATION RESPONSES

Not applicable.

REPRESENTATIONS

In accordance with the Council's Code of Publicity for Planning Applications, this application has not been publicised.

ANALYSIS

S.56 of the Town and Country Planning Act 1990 sets out:

(1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

(a) if the development consists of the carrying out of operations, at the time when those operations are begun;

(b) if the development consists of a change in use, at the time when the new use is instituted;

(c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

...

(4) In subsection (2) "material operation" means—

(a) any work of construction in the course of the erection of a building;

(aa) any work of demolition of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development.

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.

The sites most recent planning history is from 2007. This is when the original application for the erection of 3 dwellings was approved.

There is no evidence from 2007 to show the conditions have been discharged, this pre dates the formal discharge of conditions application process, however due to the amount of time passes this is not necessarily relevant. Council documents corroborate with those submitted by the applicant, the original application and decision notice. On the site, three courses of brickwork are visible showing the foundations of the property. Construction works commenced on the site in 2007, this

has been confirmed through Building Control. No.17 Hillcrest Road had a Completion Certificate issued 15/05/2018, no.15 Hillcrest Road has not had a Completion Certificate issued.

It is noted there are no differences in the site location plans and the layout of the foundations. When looking at satellite images the structure appears to be there from August 2018. The two other houses associated with the original permission (07/D49154) have been fully constructed since 2008 according to satellite imagery and the third house that is not completed has had foundation laid since 2018.

There are minor changes in the floor layout plans. There are elements of the development as built which aligns with the approved plans, and therefore it would not be appropriate to conclude that the development has not been commenced.

In conclusion the permission at land On the North Side of Hillcrest Road Castleton, approved under 07/D49154 is extant under the provisions of section 56 of the Town and Country Planning Act 1990 and it is probable that this forms the lawful use of the site. In the event that the remainder of the dwelling were to be constructed in accordance with the approved plans, there is no evidence to suggest this would be unlawful.

RECOMMENDATION

GRANT

The permission granted under 07/D49154 for the erection of 3 dwellings, has been implemented and therefore the construction of the remainder of the dwelling as approved under this permission is hereby lawful by virtue of the provisions of Section 56 of the Town and Country Planning Act 1990. The development of the site has begun, and pre commencement conditions were lawfully discharged prior to works begun on the site, within the time limit stated on the original decision notice.

Notes for Applicant:

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

Location Plan

Block Plan – 499-PL02

Floor Plans – 499-PL03

Elevations – 499-PL04

Report Author Aimee Bovaird