

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/01039/CPE	Bob Melling	30 th November 2023

Address: 14 Ann Street, Heywood, OL10 4JG

Proposal: Certificate of lawfulness for the 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
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CONDITIONS	Pre-commencement conditions proposed?	N/A
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	REFUSE
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CHECKED AND SIGNED OFF BY: RC

DATE: 30.11.2023

SITE

The application relates to no. 14 Ann Street, a two-storey, mid-terrace property located in Heywood. The dwelling faces west onto the highway, adjoining no. 12 Ann

Street to the south and no. 16 Ann Street to the north. The rear boundary of the curtilage borders an unnamed passage which connects Starkey Street with Shadwell Street East. The property benefits from a small front garden and a rear yard.

PROPOSAL

The application seeks to demonstrate lawful existing use of a single storey rear extension.

Evidence to demonstrate that the extension is lawful includes a supporting report, a block plan and a seller information form dated 12th January 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.

RELEVANT SITE HISTORY

N/A

CONSULTATION RESPONSES

Legal – The onus is on the applicant to provide evidence to show that the rear extension was in situ for more than 4 years and on the evidence provided, it is uncertain that this was the case therefore a Lawful development Certificate should not be granted.

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 Certificate is sought on the grounds that the building works were substantially completed more than four years before the date of this application. According to information provided in the application form, the building works were substantially completed on 8th September 2015.

A seller information form dated 12th January 2022 has been provided as supporting evidence. The form states that a kitchen extension was built in approximately 1978.

Images taken from Google Street View in June 2015 (Figure 1) show a rear extension with a dual-pitched felt roof and a white façade, whereas the current extension (Figure 2) has a mono-pitched tiled roof and a brick façade. Furthermore, a Rightmove advertisement for the property listed in November 2022 (Figure 3) shows the extension as it is currently.



Figure 1

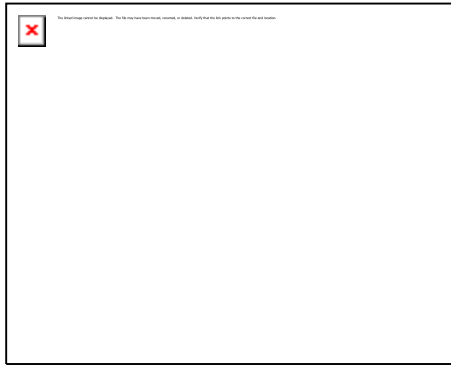


Figure 2



Figure 3

On this basis, it is evident that the extension was re-built between June 2015 and November 2022. However, it is uncertain as to when the current extension was substantially complete. The seller information form dated 12th January 2022 mentions a 'kitchen extension approx. 1978'. It is believed that this statement is referencing the original extension shown in Figure 1.

Based on the evidence provided, it is uncertain that the extension was substantially completed more than four years before the date of this application.

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).

RECOMMENDATION

On the balance of probability, the application has failed to demonstrate that the extension was substantially completed more than four years before the date of this application. The development is therefore not lawful within the meaning of Section 191 of the Town and Country Planning Act 1990.

Notes for Applicant:

INFORMATIVE:

For the avoidance of doubt, this Decision Notice relates to the following drawings and documents:-

- Application Form
- Supporting report dated 20th September 2023
- Block Plan. Drg no. A1.1 Rev PL1
- Seller information form dated 12th January 2022

