

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00030/CPE	Majid Mir	25 April 2023

Address: Caterpillar House Site Adjacent To No51 Blackstone Edge Old Road
Rochdale Littleborough OL15 0JJ

Proposal: Application for a certificate of lawfulness (Existing) relating to the lawful commencement of development under planning permission 13/01214/FUL

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
-----	--	---

CONDITIONS	Pre-commencement conditions proposed?	N
	Pre-commencement conditions agreed (or notification period expired)?	N

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

CHECKED AND SIGNED OFF BY: RG

DATE: 03 May 2023

SITE

The site is located off Blackstone Edge Old Road and with the plot of land currently appearing to be undeveloped grass land. The site slopes downwards from its south eastern corner where it fronts Blackstone Edge Old Road. Access to the site is gained from Blackstone Edge Old Road where there is a gate. There is a dry stone wall along the southern boundary with Blackstone Edge Old Road. There are also a number of trees scattered around the site.

PROPOSAL

A certificate of lawfulness is sought to confirm the implementation of planning permission 13/01214/FUL and that the permission remains extant.

RELEVANT PLANNING POLICY

Town and Country Planning Act 1990 (as amended)

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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

77/D04752	Outline Application One Detached Dwelling. Decision: Refuse.
77/D05308	Retention Of 2 Metre Ranch Fence 1 Metre From Boundary. Decision: Refuse.
13/01214/FUL	Erection of one detached dwelling. Decision: Grant subject to conditions.
17/01361/DOC	Submission of details to comply with conditions 3 and 6 to 15 of planning permission 13/01214/FUL. Request Completed.
22/01250/FUL	Erection of detached dwelling including associated access and landscaping. Application withdrawn.

CONSULTATION RESPONSES

Not applicable

REPRESENTATIONS

In accordance with the Council's Code of Publicity for Planning Applications, this application has not been publicised. However, a representation has been received in regards to the application. The representation objected to the application. The comments have been summarised below:

- ☐ The application suggests that work was undertaken in connection with the earlier application which is simply not the case or factually correct.
- ☐ Spoken to neighbours - no works have been undertaken in connection with the previous Planning Application - Ref 13/0214/FUL.
- ☐ Can clearly see from the screenshots from Google Earth that nothing has changed in the last 10 yrs +.
- ☐ The only works that was done was following a storm where the conifers on the North East perimeter were blown over, and needed to be cut down.
Officer comments: The application has been discussed below in the analysis section of the report.

- ☐ The site continues to be listed as 'greenbelt' as is regularly used by local farmers for feeding their sheep
Officer comments: The designation of the land and the planning merits of the original application are not a consideration in determining the application. The use of the land by local farmers to feed animals is inconsequential in determining this application.

ANALYSIS

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. The planning merits of the case are not relevant at any stage in this particular application or appeal process.

Section 191 of the Town and Country Planning Act 1990 (as amended) states that the burden of proof is firmly with the applicant. The relevant test is the "balance of probability", and the Council is advised that if it has no evidence of its own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

Section 56 of the Town and Country Planning Act 1990 (as amended) sets out the considerations relevant to when a development can be considered to have begun for the purposes of the Act. S.56 of the Town and Country Planning Act 1990 (as amended) states that:

- (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).

Section 56 (4) of the Town and Country Planning Act 1990 (as amended) provides definition of material operation. It states that:

- (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.

Planning permission was granted for development of the application site comprising construction of one detached dwelling on 23 December 2014 (13/01214/FUL). The planning permission was subject to a number of pre-commencement conditions; namely:

- Condition 3 – Materials;
- Condition 6 – Hard and soft landscape works;
- Condition 8 – Ecological assessment;
- Condition 9 – Septic tank;
- Condition 10 – Solar panels;
- Condition 11 – Doors, windows etc;
- Condition 12 – surface water run off;
- Condition 13 – Foul water;
- Condition 14 – FFL; and
- Condition 15 – Rainwater goods.

An application to discharge the relevant conditions (17/01361/DOC) was made and discharged in a decision notice dated 19 December 2017. The decision notice confirmed that conditions 3, 6, and 10 to 15 were discharged. The decision notice noted that as the applicants were not proposing a septic tank, condition 9 did not need to be discharged. Additionally, the other conditions that applicant applied to discharge through the application did not need to be discharged prior to commencement.

Subsequently, an email with photographs showing trenches being dug was sent to the Council on 20 December 2017. The trench was for the construction of a wall for the garage of the property. A letter was subsequently sent by the Council's planning officer, dated 09 February 2018, and sent to the agent, stating that 'a lawful commencement of the development had occurred before the planning permission expired'.

An objection was received claiming that work had not been undertaken and also provided google maps images from 2016, 2017, 2018 and 2019. The images appear to show no identifiable change over the period. It is noted that the google maps image from April 2018 would be around 4 months after the date the applicant claimed the trench was dug out. It is plausible that the trench was filled in before the date of satellite imagery.

It is noted that the site appears to have no development work that is clearly identifiable, and the trenches are not visible. However, it is noted that in the appeal APP/T2350/X/05/2004522, the Inspector considered that the digging of the trench was an integral part of the development and the subsequent infilling of the trench did not materially alter the status of the works carried out. Additionally, as noted by the Inspector in this appeal decision, the judgment in *High Peak Borough Council v Secretary of State for Environment and Courtdale Developments Ltd* (1981), it was held that it was not necessary for a trench to remain open from the time it was dug to the laying of foundations. In *Malvern Hills DC v SSE* (1982) the Court of Appeal held that the test for commencement is not the quantum of work undertaken, but whether the work was related to the planning permission involved.

In the judgement of *Connaught Quarries Ltd v SSETR & East Hants DC* (2001) the beginning of a material operation under s56 (2) and (4) Town and Country Planning Act 1990 (as amended), for the purposes of keeping a permission alive, has also to be more than 'de minimis'. Furthermore, it is noted that even when works are undertaken solely with the objective of keeping a permission alive when the developer has no intention at that time to proceed can be sufficient to achieve that aim as per the judgement of *Riordan Communications Ltd V South Buckinghamshire DC* (2000).

Noting that the work undertaken by the way of digging of a trench for the foundations to an external wall of the dwelling, the photographic evidence and the letter from the planning officer, it is considered that a material operation has been undertaken prior to the expiration of the planning permission.

Turning to the second element of the application, an assessment needs to be made on whether the planning permission is still extant and that the planning permission has not been abandoned.

In *Hartley vs MHLG* (1970) it was indicated that cessation of use can amount to abandonment if 'the land has remained unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned'. The considerations to be taken into account in deciding whether a use has been abandoned are set out in *The Trustees of Castell y Mynach Estate v Secretary of State for Wales and Taff Ely Borough Council* (1985). These are: the period of non-use, the physical condition of the buildings, whether there had been any other use, and the owner's intentions.

However these judgements relate to the abandonment of use. In regards to this application, the more relevant judgement is *Pioneer Aggregates (UK) Ltd vs SSE* (1984), which stated that 'there is no principle in planning law that a valid permission capable of being implemented according to its terms can be abandoned'. There has been a more recent judgement in regards to expiration in the form of judgement of *Hillside Parks Ltd v Snowdonia National Park Authority* (2022). However, this was related to where there have been multiple planning permissions granted.

Noting that the trench was dug out five years ago, there have been no other planning permissions granted on the site and nor does it appear that any other work has been undertaken that would mean the permission would be unable to be implemented, it is considered the planning permission is extant.

In conclusion, on the balance of probability, it is considered that a material operation relating to the development subject to planning permission 13/01214/FUL was carried out prior to the expiration of the planning permission and remains extant. As such it is considered that the development is considered to have been lawfully

commenced for the purposes of S56 of the Town and Country Planning Act 1990 (as amended).

RECOMMENDATION

GRANT

The planning permission granted under 13/01214/FUL, for the erection of one detached dwelling, is hereby lawful by virtue of the provisions of Section 56 of the Town and Country Planning Act 1990 (as amended), whereby the works carried out were undertaken within the relevant timescale and constituted a material operation.