

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.

24/00710/CPE

CASE OFFICER

Rosalind Gralton

DETERMINATION DATE 12.09.2024

Address: Land Bound By Manchester Road, Hareshill Road & Pilsworth Road West of Junction 19 Of the M62 (South Heywood Plot 1)

Proposal: Application for a certificate of lawfulness (Existing) relating to the lawful commencement of development under planning permission 22/00787/REM

PUBLICITY	Weekly list expired?	NA	Site notice expired?	NA
	Neighbour letters expired?	NA	Press Notice expired?	NA

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

COMMENTS	Planning Panel comments received?	NA
	Neighbour comments received?	N

EIA	Screening opinion completed and saved to Onbase?	NA
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CONDITIONS	Pre-commencement conditions proposed?	NA
	Pre-commencement conditions agreed (or notification period expired)?	NA

RECOMMENDATION	GRANT LAWFUL DEVELOPMENT CERTIFICATE
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CHECKED AND SIGNED OFF BY: RG

DATE: 23 August 2024

SITE

The site relates to the South Heywood Junction 19 Masterplan. Specifically this application relates to a parcel referred to as commercial Plot 1 approved under the reserved matters permission 22/00787/REM.

PROPOSAL

A certificate of lawfulness is sought to confirm the implementation of planning permission 22/00787/REM and that the permission is extant.

RELEVANT PLANNING POLICY

National Guidance

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

16/01399/HYBR - Part full/part outline planning application for the development of land at South Heywood, including the demolition of a number of existing on-site buildings and structures. Full consent sought for the construction of a new link road between Junction 19 of the M62 and Pilsworth Road, the widening of part of Pilsworth Road, together with associated junction improvements, landscaping, lighting and other works including the importation of material and engineering works in order to construct the link road. Outline consent (with all matters reserved for future approval except access) sought for a major mixed-use development comprising supporting residential uses comprising up to 1000 dwellings (Class C3); employment uses (Classes B2/B8) comprising up to 135,460m2 Gross Internal Area(GIA); a new primary school (Class D1); Class A1/A2/A3/A5 uses comprising up to 2500m2 GIA which includes no more than 499m2 of A1 uses; together with associated landscaping, open space and sports pitches, drainage, ecological enhancements, cycleway and footpath linkages, infrastructure and other works ancillary thereto. (Application accompanied by an Environmental Statement) – Approved

A number of further Non Material Amendments have been approved to 16/01399/HYBR however it is not considered necessary to repeat these in the context of this application for a lawful development certificate.

22/00787/REM - Submission of reserved matters (including Appearance, Landscaping, Layout and Scale) for the construction of a distribution centre with ancillary office accommodation, gatehouse and access arrangements, car parking, HGV bays, sprinkler tanks and pump house, attenuation ponds, landscaping, spine road and other associated works, together with preparatory earthworks and landscaping on adjoining development plots pursuant to 16/01399/HYBR - Approved

CONSULTATION RESPONSES

Not applicable.

REPRESENTATIONS

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

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.

Hybrid Planning permission was granted under 16/01399/HYBR for the wider South Heywood Masterplan under which the site subject to this application for a lawful development certificate was approved in outline for commercial development. Subsequently reserved matters (22/00787/REM) was granted.

In accordance with the hybrid permission the relevant pre-commencement conditions were discharged through the submission of the reserved matters application 22/00787/REM and through the submission of discharge of condition application 22/00898/DOC. A non-material amendment was submitted under 23/00982/ANM. The reserved matters permission itself was subject to 2 conditions, neither of which require submissions pre-commencement of works.

Following the approval of all details required by condition and necessary prior to commencement of development, the applicant has since undertaken works to the site access. From the evidence submitted and following a site visit to verify the works undertaken, officers can confirm the works as described in the supporting covering letter have taken place and are substantial and in compliance with the permissions so as to constitute a lawful commencement.

In conclusion, it is considered that a material operation relating to the development subject to planning permission 22/00787/REM was carried out prior to the expiration of the planning permission. 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 22/00787/REM, for the construction of a distribution centre with ancillary office accommodation, gatehouse and access arrangements, car parking, HGV bays, sprinkler tanks and pump house, attenuation ponds, landscaping, spine road and other associated works, has been lawfully implemented 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.