

APPLICATION NUMBER: 23/00616/CPE

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00616/CPE	Aimee Bovaird	31 July 2023

Address: 43 Bamford Way Rochdale Rochdale OL11 5NB

Proposal: Certificate of lawfulness for the proposed commencement of development as approved under planning permission ref: 20/00253/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: LA DATE: 14.11.24

SITE

This site relates to 43 Bamford Way Rochdale, the site is located to the rear of 41 and 45 Bamford Way via a private drive. The site comprises 0.63 ha. It is elongated, lying roughly north-south, the access from Bamford Way being at its northern edge. It slopes north to south, with a fall of around 12m from the access with Bamford Way down to the southern extremity of the site.

This is within the Defined Urban Area.

PROPOSAL

A certificate of lawfulness is sought to confirm the commencement of development as approved under planning permission 20/00253/FUL.

The applicant has submitted photos to demonstrate that they have commenced development, they have shown the site cleared and ground levelled by machinery. The photos also show foundation trenches that have been excavated.

The applicant has also submitted a Site Investigation Report and the results indicated there was no bird nesting found report.

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

23/00343/DOC - Discharge of conditions 3 (Investigation and Risk Assessment), 4 (Construction Method Statement), 5 (Foul and Surface Water), 7 (External Materials), 8 (Biodiversity Enhancements), 9 (Bird Nesting Season) and 10 (Pre-commencement Badger and Fox Survey) of planning permission 20/00253/FUL. Discharged 05/06/2023.

23/00280/VRCON - Section 73 application for erection of 5 no. detached dwellings, 4 no. detached double garages and associated access road and infrastructure, following demolition of existing dwelling (Resubmission of 19/00593/FUL) without complying with condition 2 of planning permission 20/00253/FUL - Approved

22/01241/NMA - Application for non-material amendment to planning permission 20/00253/FUL to change the house type of plots 1 and 3 to match approved house type on plots 4 and 5, slight repositioning of plots 1, 2 and 4 and slight realignment of approved access road. Withdrawn 27/10/2022.

22/01414/VRCON – Section 73 application to vary condition 2 of planning permission 20/00253/FUL to amend the house type on plots 1, 3, 4 and 5. Withdrawn 27/01/2023.

20/00253/FUL - Erection of 5 no. detached dwellings, 4 no. detached double garages and associated access road and infrastructure, following demolition of existing dwelling - Resubmission of 19/00593/FUL – Approved

19/00593/FUL - Erection of 5 no. detached 5-bed dwellings, 3 no. detached double garages and associated access road and infrastructure, following demolition of existing dwelling – 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

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.

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 site's most recent planning history is from 2023, 23/00280/VRCON, 'Section 73 application for erection of 5 no. detached dwellings, 4 no. detached double garages and associated access road and infrastructure, following demolition of existing dwelling (Resubmission of 19/00593/FUL) without complying with condition 2 of planning permission.' This application was approved.

Another recent planning history is 23/00343/DOC, Discharge of conditions 3 (Investigation and Risk Assessment), 4 (Construction Method Statement), 5 (Foul and Surface Water), 7 (External Materials), 8 (Biodiversity Enhancements), 9 (Bird Nesting Season) and 10 (Pre-commencement Badger and Fox Survey) of planning permission 20/00253/FUL.

From the planning history we can see conditions 3, 4, 5, 7, 8, 9 and 10 have been discharged.

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.

The applicant has submitted a document, 'Evidence of Commencement' showing site clearance areas, levelled areas or the site and foundation trench excavation. This document also includes a Site Investigation Report.

Conclusion

In conclusion, it is considered that a material operation relating to the development subject to planning permission 20/00253/FUL 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 20/00253/FUL for the erection of 5 no. detached dwellings, 4 no. detached double garages and associated access road and infrastructure, following demolition of existing dwelling - Resubmission of 19/00593/FUL 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.

Informative

For avoidance of doubt this decision relates to the following plans and documents,

Application Form

Tree Advice In Relation to the development at 43 Bamford Way, Rochdale OL11 5NB

Evidence of Commencement

Report Author Aimee Bovaird