

## **DELEGATED OFFICER REPORT**



**WOKINGHAM**  
**BOROUGH COUNCIL**

|                                                                                                                                                                                                                                                                                 |                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>Application Number:</b>                                                                                                                                                                                                                                                      | 251722                                                              |
| <b>Site Address:</b>                                                                                                                                                                                                                                                            | Former Dobbies Garden Centre, 166 Hyde End Road, Shinfield, RG2 9ER |
| <b>Expiry Date:</b>                                                                                                                                                                                                                                                             | 12 September 2025                                                   |
| <b>Site Visit Date:</b>                                                                                                                                                                                                                                                         | 30/07/2025                                                          |
| <b>Proposal:</b> Application for a certificate of existing lawful development to provide confirmation that the development approved under 212717 has been lawfully implemented prior to the expiry date of the planning permission and that construction can lawfully continue. |                                                                     |

### **PLANNING HISTORY**

| Application No. | Description                                                                                                                                                                                                                                     | Decision & Date                               |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| 18342           | Change of use from farm shop/store to garages, erection of new farm shop & store & revision of highway access.                                                                                                                                  | Approve<br>21/0/1982                          |
| 41656           | Change of use of existing building to allow sale of specialist bait and angling supplies                                                                                                                                                        | Approve<br>8/12/1983                          |
| 42252           | Demolition of existing sales area, replacement as greenhouse, extension to farm shop for retail sales.                                                                                                                                          | Approve<br>24/3/1994                          |
| 97/66314        | Proposed widening of entrance. New facade to existing building. Change of use of bungalow to office and cafe. Extension to existing buildings and provision of additional car parking.                                                          | Approve<br>11/12/1997                         |
| F/2000/1209     | Proposed extensions to retail area of garden centre                                                                                                                                                                                             | Approve<br>19/6/2000                          |
| F/2000/2968     | Proposed change of use of retail area (A1) to cafe (A3)                                                                                                                                                                                         | Approve<br>23/01/2001                         |
| F/2006/8702     | Proposed conservatory extension to existing restaurant and polytunnel enclosure to existing courtyard area.                                                                                                                                     | Approve<br>02/11/2006 –<br>not<br>implemented |
| 203425          | Application for a certificate of existing lawful development for Dobbies Retail Garden Centre Use Class E(a), Display or retail sales of goods, other than hot food Use Class E(b) Sale of food and drink for consumption (mostly) in premises. | Approved<br>29/07/2021                        |
| 212717          | Full planning application for redevelopment of                                                                                                                                                                                                  | Approved                                      |

|        |                                                                                                                                                                                                                                                                                                                 |                              |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
|        | the site to provide a new garden centre retail development incorporating restaurant/cafe, food hall and veterinary practice with ancillary works including car parking, access, outdoor display areas and landscaping, following demolition of existing buildings.                                              | 21/07/2022                   |
| 223560 | Application for submission of details to comply with the following condition of planning consent 212717 dated 21/07/2022 Condition 13 Electric Vehicle Charging Strategy. 27 Construction phase Emergency Plan 28 End User Emergency Plan. 37 Archaeology plan.                                                 | Approved<br>27/01/2023       |
| 250838 | Application for non-material amendment to planning consent 212717 to allow change of the wording of conditions 11 and 12 to exclude works of demolition for the development.                                                                                                                                    | Approved<br>04/04/2025       |
| 250950 | Application for submission of details to comply with the following condition of planning consent 212717 dated 21/07/2022. Part Discharge Condition 38. Phasing.                                                                                                                                                 | Split decision<br>29/04/2025 |
| 250953 | Application for submission of details to comply with the following condition of planning consent 212717 dated 21/07/2022. Part discharge of condition 29 relates to landscape and trees.                                                                                                                        | Split decision<br>13/05/2025 |
| 250952 | Application for submission of details to comply with the following condition of planning consent 212717 dated 21/07/2022. Part Discharge Condition 26. Contamination.                                                                                                                                           | Split decision<br>21/05/2025 |
| 250951 | Application for submission of details to comply with the following condition of planning consent 212717 dated 21/07/2022. Part Discharge of condition 16 relates to the provision of accommodation for all site operatives, parking and turning within the site during the demolition and construction periods. | Split decision<br>03/06/2025 |
| 251391 | Application for non-material amendment to planning consent 212717 to allow change of the wording of condition 2 to include the details of the proposed phasing of the redevelopment.                                                                                                                            | Approved<br>19/06/2025       |

#### INFORMATION PROVIDED

By the applicant:

- Cover Letter by Montagu-Evans LLP (agent), Ref. JOB002001/CB/TC, dated 18.07.2025.
- Site Location Plan – 11809-L-001 Rev B.

- Phasing Plan – 11809-L-003 Rev B.
- Evidence Document of Electrical Isolation of the building submitted by Metro Deconstruction Services Ltd, dated 11 July 2025.
- Copy of Electrical Isolation Certificate (Certificate Number 140725), dated 14.07.25.
- Copies of Demolition Inspection Reports by RPP Ltd, dated 30.06.25 & 17.07.25.
- Copy of Site Sign in sheet completed by Metro Deconstruction Services Ltd.
- Copy of Demolition Waste Form by Powerday PLC, dated 07.07.25.
- Site Photos before, during and following completion of works (undated).
- Letter from Metro Deconstruction Services Ltd, dated 18.07.25.

**By the Council:**

- Planning history for the site (see details below).
- Planning application drawings relating to full application 212717 and Non-material application 251391.
- Photos from site visit carried out by Officers on 30/07/2025.

**By third parties:**

- No evidence or comments received.

## **APPRAISAL**

### **Site Description:**

The application site s n respect to an existing garden centre complex located on the north-west side of Hyde End Road, Shinfield. the complex forms the edge of the settlement of Spencers Wood and marks the beginning of the built form as one enters the village from the east. The site is bound to the south west by existing low density residential development and broadly open countryside on the other boundaries. There are several existing structures on site which support the function of the site as a garden centre including the main building to serve the sales area and further polytunnels beyond this. There have been several applications to extend the existing buildings which has resulted in a somewhat ad-hock form of development that sprawls to the rear of the site.

### **Legislation:**

#### Town and Country Planning Act 1990 (as amended)

Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Section 56 (1) of the Town and Country Planning Act 1990 (as amended) states that the development of land shall be taken to be initiated “if the development consists of the carrying out of operations, at the time when those operations are begun”.

Section 56 (2) states that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

A material operation is defined in Section 56 (4) as:

- 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; and
- e) any change in the use of any land which constitutes material development.

Section 57 requires that planning permission is required for the carrying out of any development of land.

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority's duty to determine them.

191(1) 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, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

191(2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

191(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired;

and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

191(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA (1) (a “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

191(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

### Case Law

The courts have held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of evidence on such matters is ‘the balance of probability’. The Courts have also held that the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant’s version of events less probable, there is no good reason to refuse that application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

### Appraisal

A formal appraisal of the planning merits and an assessment against relevant planning policy and guidance is not required as this application is for a Certificate of Lawful Existing Development. However, evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so.

Where the burden of proof is on the applicant, the relevant test of the evidence on such matters is ‘the balance of probability.’ A Local Planning Authority (LPA) should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely ‘beyond reasonable doubt’. Moreover, the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted.

The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

The application seeks certification as to whether the planning permission (LPA Ref. 212717) for the redevelopment of the site to provide a new garden centre retail development has been lawfully implemented via a material operation prior to the expiry of the planning permission on 21/07/2025.

Planning permission (LPA Ref. 212717) was granted on 21/07/2022 subject to conditions including pre-commencement of development conditions, which have been discharged/part-discharged by the LPA (see planning history above).

On 4 April 2025, a Non-material Amendment was granted (LPA Ref. 250838) to allow an alteration to the wording of Conditions 11 and 12 to allow for the commencement of demolition on Site without triggering these conditions, to allow for the implementation of planning permission 212717.

Following this, a Non-material Amendment was granted (LPA Ref. 251391) to allow for alterations to the wording of Condition 2 to include the Proposed Phasing Plan in the list of approved drawings. This Plan introduced a phasing for the demolition works permitted as part of planning permission 212717.

The Cover Letter refers that demolition works begun on 25 June 2025 and were completed on 18 July 2025, in accordance with the approved Phasing Plan (demolition). This involved the completion of demolition of the greenhouse structure located to the rear of the main trading building, with compacted aggregate infills used to leave a level finish, as per Phase 1 demolition outlined in the approved phasing plan. The evidence submitted comprises proof of electrical isolation of the structure on 11 July 2025, and the copies of the demolition inspection reports dated 30 June and 17 July 2025 include photos demonstrating demolition works underway, including an excavator can be seen working on the subject site. Moreover, the photographic evidence provided, whilst undated, show the extent of the structure to be demolished as well as a considerable amount of brickwork left on site that were part of the structure.

The fundamental question when determining this application for a certificate of existing lawful development to establish whether planning permission 212717 was lawfully implemented is whether the works carried out are sufficient to amount to commencement of development in accordance with Section 56(4) of the TCPA 1990.

The Council are of the view that the works undertaken constitute a material operation in accordance with section 56 of the TCPA 1990 (as amended). A “material operation” as identified within section 56(4) includes any work of demolition of a building. The photos and documents submitted with the application demonstrate that the demolition of the structure was completed on 18 July 2025, thus the planning permission 212717 has been commenced within the timescales set out in condition 1

of the permission. The Council have no further evidence to contradict the applicant's claims.

### **Conclusion:**

The works undertaken at the former Dobbie's Garden Centre as described above are considered sufficient to amount to commencement of development in accordance with section 56(4) of the TCPA 1990 (as amended). The Officer therefore recommends approval of the Certificate of Lawfulness under section 191 to establish that planning permission 212717 has been lawfully implemented prior to the 3 year expiration deadline.

### **The Public Sector Equality Duty (Equality Act 2010):**

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

### **RECOMMENDATION**

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that, planning permission 212717 for the redevelopment of the site to provide a new garden centre retail development has been lawfully implemented by way of a material operation (demolition) commencing prior to the expiry of the planning consent. It is therefore considered that the application of a certificate of existing lawful use should be **APPROVED**.

|                                                           |                 |
|-----------------------------------------------------------|-----------------|
| <b>Date:</b>                                              | 22 August 2025  |
| <b>Earliest date for decision:</b>                        | 12 August 2025  |
| <b>Recommendation agreed by:<br/>(Authorised Officer)</b> | Connor Corrigan |
| <b>Date:</b>                                              | 09/09/25        |