

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251824
Site Address:	Brook Farm, Barkham Street, Barkham, Wokingham, RG40 4PH
Expiry Date:	6 October 2025
Site Visit Date:	8 October 2025
Proposal: Application for a certificate of existing lawful development for change of use of the land and the construction of 2no. buildings and use of these buildings for a childminding/nursery business (Use Class E(f)).	

PLANNING HISTORY

Application No.	Description	Decision & Date
N/A	N/A	N/A

SITE DESCRIPTION

The application site is located in the designated Wokingham countryside on Brook Farm which comprises of several buildings which share a parking forecourt. The site itself is a rear residential garden that has been adapted to be a play area for the childminding business. There are 3 no. outbuildings (two currently in use) that are used as indoor spaces for the children. This application is seeking permission for the two older outbuildings and it is likely that separate consent would be required for the new building.

There are no listed buildings at the site and the property is not within a Conservation Area or other 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order 2015).

The site is subject to wildlife and habitat designations being located in an area that holds the potential to support bat roosts, and additionally, the site is located in an amber Great Crested Newt Impact Risk Zone.

LEGISLATION

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

Section 55(1) of the TCPA 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 57 of the TCPA requires that planning permission is required for the carrying out of any development of land.

Section 171B (1) of the TCPA states that 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 in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed. It is important to note that on the 24th of April 2024, the TCPA referred to 4 years and not 10, and the legislation was updated to 10 years on the 25th of April 2024.

Section 171B (2) states that 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, in the case of a breach of planning control in England, ten years beginning with the date of the breach. The applicant is required to demonstrate on the balance of probabilities that the use commenced and has been continuous for 10 years prior to the date of application in order for the change to have become lawful. It is important to note that on the 24th of April 2024, the TCPA referred to 4 years and not 10, and the legislation was updated to 10 years on the 25th of April 2024.

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

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. As Section 191(1) (a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:

- (a) no enforcement action may 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.

Case Law

The courts have held in *Gabbitts 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.

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* and *Vale of White Horse D.C.* [1999] JPL 461 is of value.

Three questions need to be answered. Firstly, “When did the material change of use specified in the application occur?” To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application, or 4 years for operational development or use of a building as a single dwelling.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
 - States that the area outlined in red has been used for the applicant’s childcare business for 21 years.
- Ofsted Certificate of registration – EY285285
 - States that the registration date was 15 July 2004
- Ofsted Certificate of registration – EY546486
 - States that the registration date was 12/05/2017
- Contract with Wokingham Borough Council
 - Section 4.2(a) of the contract states that *‘the Tenant’s wife is permitted to operate a childminding business from the Property’*.

By the Council:

- Planning History Records (see above – confirms no previous planning history at the site).
- Enforcement History Records – confirms no extant Enforcement Notices on the application site.
- A site visit was carried out on 08/10/2025 and this confirmed the presence of the childcare business and outbuildings.
- Site visit photographs (08/10/2025).
- Aerial images from the Council’s mapping system taken from 2022 and 2019 showing the use of the site as a childcare business and the presence of the outbuildings.
- Google Earth aerial images dated 15th April 2020 and 9th May 2025.

By third parties:

- 5 people have commented on this application in support and their comments are summarised below

- The nursery is a valued part of the community providing high-quality childcare for over 10 years
- Demand for childcare has grown and it is an essential service
- No negative comments or evidence contrary to the applicants has been provided by third parties.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise the use as a childcare business.

In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. In the case of this Certificate, it must be demonstrated that the use has been on-going continuously for at least four years prior to the change in legislation of s171B of the TCPA on 25/04/2024.

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. 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”.

Evidence Submitted by the Applicant:

The submitted application from states that the area outlined in red has been used for the applicant’s childcare business for 21 years. An Ofsted Certificate of registration (ref: EY285285) has been submitted as part of the evidence and it confirms that the applicant was registered as a childminder at the application site on the 15th of July 2004. In addition to this, a further Ofsted Certificate of registration (ref: EY546486) has been submitted and this confirms the applicant is registered as a provider of childcare on domestic premises at the application site as of the 12th of May 2017. The applicant has also provided a photograph of a section of the rent contract for the property from WBC and section 4.2(a) of the contract confirms that *“the Tenant’s wife is permitted to operate a childminding enterprise from the Property”*.

Therefore, the evidence submitted by the applicant is based heavily on the demonstration that the use has been on-going continuously for at least four years prior to the change in legislation of s171B of the TCPA on 25/04/2024.

Evidence Submitted by the Council:

Google Earth aerial images dated 15th April 2020 (left) and 9th May 2025 (right).



In the images above it is clear that the site (as identified by the red line) is in the same use in 2020 and 2025. The play equipment that was seen in situ on a site visit on 08/10/2025 can be seen in the 2020 aerial photo and it is therefore clear that the site was being used as a childcare business in 2020. The two outbuildings this application is seeking permission for can also be seen in both aerial images.

Evidence Submitted by Third Parties:

No evidence contrary to that of the applicant was submitted by third parties. Comments from third parties were only supporting the application.

Assessment:***4 Year Immunity Rule:***

To be considered lawful by the passing of time, the childcare use and outbuildings must have been present on site since at least 24/04/2020 as this is 4 years prior to the change in legislation changing the rule from 4 years to 10 years. The applicant has provided evidence that the site has been used as a childcare business since July 2004. Additionally, aerial imaging on google earth shows the two outbuildings and that the site was being used in the same manner on the 15th of April 2020 as it is today. This confirms that the childcare use and outbuildings have been present on site for longer than 4 years prior to the change in legislation on 25/04/2024.

Conclusion:

Based on the evidence above, it can be said on the balance of probability that the childcare use and outbuildings, as shown in the submitted details, have been in situ for more than four years prior to the change in legislation (s171B of the TCPA). There is no evidence to show that the site was in any other use during this time.

Subsequently, the time limit for taking enforcement action has expired under s171B of the TCPA and the childcare use is lawful. A plan is attached to the draft decision notice demonstrating the area that this certificate applies to.

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 the use of the land as a childcare business, as shown in the submitted details, has been in situ on site for over four years prior to the change in legislation. It is therefore considered that the application of a certificate of existing lawful use should be approved.

Date:	24 October 2025
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Earliest date for decision:	3 September 2025
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Recommendation agreed by: (Authorised Officer)	
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Date:	24/10/25
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