

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242830
Site Address:	6 Hermitage Drive, Twyford, Wokingham, RG10 9HS
Expiry Date:	2 January 2025
Site Visit Date:	3 December 2024
Proposal: Application for a certificate of existing lawful development for installation of an air source heat pump at the rear plus associated works.	

PLANNING HISTORY

Application No.	Description	Decision & Date
231605	Householder application for the proposed extension of the existing front dormer, the conversion of the existing garage to habitable accommodation plus changes to fenestration, insertion of rooflights and removal of existing chimneys.	Conditionally Approved – 19/09/2023
222682	Householder application for the proposed extension of a dormer with changes to fenestration and 2.No rooflights following the demolition of the chimney.	Application Withdrawn – 22/12/2022
222681	Application for a certificate of lawfulness for the proposed enlargement of existing rear dormer with the addition of 8 no. solar panels and the demolition of 2No chimneys.	Approved – 03/11/2022
168/60	8 detached houses and garages	Conditionally Approved – 12/09/1960

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
- Drawing titled 'Location Plan'
- Drawing titled 'Block Plans' – no. B138523-3001 Rev.A
- Drawing titled 'Existing Drawings' – no. B138523-3101 Rev.A
- Specification document for installed Air Source Heat Pump
- Document titled 'MCS Planning Standards for Permitted Development Installations of Wind Turbines and Air Source Heat Pumps on Domestic Premises'
- Site photographs showing the development in situ.

By the Council:

- Planning History Records (see summary above) – there are no restrictive conditions relating to the Site's Permitted Development rights.
- Enforcement History Records – there are no extant Enforcement Notices relating to the site.

By third parties:

- No third party information received.

SITE DESCRIPTION

The application site is a detached bungalow on a 1960s development in Twyford. The site forms part of a row of 4no. chalet bungalow which are largely uniform in appearance from the street scene. The dwelling has recently been extended following the grant of consent refs 231605 & 222681.

The site is within a Major Development Location (Twyford) and is not subject to any wildlife designations, although it does fall within an identified bat roost habitat suitability area. There are no listed buildings at the site and the property is not within 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order (2015)).

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 57 of The Town and Country Planning Act 1990 (as amended) 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.

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.

Town and Country Planning (General Permitted Development) Order 2015 (GPDO)

Article 3 in conjunction with Schedule 2 (Part 14) (Class G) grants planning permission for the "installation or alteration etc of air source heat pumps on domestic premises".

Article 4 provides that the planning authority may give direction to restrict the effect of Article 3.

APPRAISAL

The application is for a Certificate of Lawful Existing Development to regularise the installation of an air source heat pump within the residential curtilage of 6 Hermitage Drive. In determining a Certificate of Lawful Existing Development 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 operational development could be carried out under the provisions of the GPDO.

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".

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.

Relevant details of the proposal:

The installation of an air source heat pump on the rear elevation of the existing dwellinghouse.

Assessment against legislation:

Class G – installation or alteration etc of air source heat pumps on domestic premises

			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3 (4)	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted?		✓
Art.3 (5)	4	Are the building operations involved in the construction of the original building lawful?	✓	
Art.4	5	Is there an 'Article 4 Direction' in effect for the site?		✓
Sch.2 Pt. 14 G	6	Does it consist of the installation, alteration or replacement of a microgeneration air source heat pump: (a) on a dwellinghouse or a block of flats; or (b) within the curtilage of a dwellinghouse or a block of flats, including on a building within that curtilage	✓	
G.1	7	Would the installed air source heat pump comply with the MCS Planning Standards or equivalent standards? <i>Officer's Note: This has been demonstrated through the submitted documents.</i>	✓	
G.2(a)	8	In the case of the installation of an air source heat pump, would the installation result in the presence of more than 1 air source heat pump on the same building or within the curtilage of the building or block of flats?		✓
G.2(b)	9	In the case of the installation of an air source heat pump, is a wind turbine installed on the same building or within the curtilage of the dwellinghouse or block of flats?		✓
G.2(c)	10	In the case of the installation of an air source heat pump, is a standalone wind turbine installed within the curtilage of the dwellinghouse or block of flats?		✓
G.2(d)	11	Would the volume of the air source heat pump's outdoor compressor unit (including any housing) exceed 0.6 cubic metres?		✓
G.2(e)	12	Would any part of the air source heat pump be installed within 1 metre of the boundary of the curtilage of the dwellinghouse or block of flats?		✓
G.2(f)	13	Would the air source heat pump be installed on a pitched roof?		✓
G.2(g)	14	Would the air source heat pump be installed on a flat roof where it would be within 1 metre of the external edge of that roof?		✓
G.2(h)	15	Would the air source heat pump be installed on a site designated as a scheduled monument?		✓
G.2(i)	16	Would the air source heat pump be installed on a building, or on land within the curtilage of a dwellinghouse or block of flats, that is listed?		✓
G.2(j)	17	In the case of land within a conservation area or which is a World Heritage Site, would the air source heat pump – (i) be installed on a wall or a roof which fronts a highway; (ii) or be installed so that it is nearer to any highway which bounds the curtilage than the part of the dwellinghouse or block of flats which is nearest to		N/A

		that highway?		
G.2(k)	18	Notwithstanding G.2 (j), would the air source heat pump be installed on a wall of a dwelling house or block of flats if – (i) that wall fronts a highway; and (ii) the air source heat pump would be installed on any part of that wall which is above the level of the ground floor storey.		✓
	11	Would it affect or be within the Root Protection Area of a TPO'd tree? <i>* Does not affect Article 3 permission but separate TPO approval may be needed.</i>		✓

Conclusion:

The installation of an air source heat pump on domestic premises constitutes development and this requires planning permission. The assessment carried out above confirms that permission is available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, the development being in accordance with Schedule 2 (Part 14) (Class G) of the Order.

Thus, the Council would not have been in a position to take enforcement action on the date of the application and the development would have been lawful.

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 installation of an air source heat pump on domestic premises constitutes development and thus requires planning permission. Based on the evidence provided and the Local Planning Authority's own information, it has been demonstrated that permission is available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, with the development being in accordance with Schedule 2 (Part 14) (Class G) of the Order. On this basis it is recommended that the application for a lawful development certificate be **approved**.

Date:	20 December 2024
Earliest date for decision:	29 November 2024
Recommendation agreed by: (Authorised Officer)	
Date:	20/12/24

