

DELEGATED OFFICER REPORT



**WOKINGHAM
BOROUGH COUNCIL**

Application Number:	260175
Site Address:	Ostland, Dunt Avenue, Hurst, Wokingham, RG10 0SY
Expiry Date:	7 April 2026
Site Visit Date:	30 March 2026
Proposal: Application for a certificate of existing lawful development for the occupation of the dwelling without compliance with Condition 2 of planning permission 50/62 granted on 14 th June 1962.	

PLANNING HISTORY

Application No.	Description	Decision & Date
50/62	Dwelling house at Dunt Lane, Hurst	*Approve 14 th June 1962
180815	Application to vary condition 2 following grant of planning consent (52/60) for the proposed erection of dwelling house. Condition 2 relates to remove the agricultural tie.	Refuse 12 th June 2018

**Permission 50/62 Condition 2: "The occupation of the building shall be limited to persons employed or last employed locally in agriculture as identified in Section 119 (1) of the Town and Country Planning Act 1947 or in forestry or the dependents of such persons."*

SITE DESCRIPTION

The application site is a detached chalet style two storey house and garage in designated Countryside. It occupies a parcel of land approximately 0.25 hectares and the footprint of the building is approximately 185m². The vehicular entrance to the site is on Dunt Avenue. 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 building is currently used as a dwelling house. The north, south and west elevations face onto open countryside, and the rear boundary (east facing) abuts the curtilage of Kevins Farm in Dunt Avenue.

On 12th June 2018, a Certificate of Existing Lawful Development ref 251080 was refused to vary condition 2 following grant of planning consent (52/60) for the proposed erection of dwelling house. Condition 2 relates to remove the agricultural tie. The certificate was refused because it was contrary to the relevant development plan policies and inconsistent with the provisions of the NPPF specifically in relation to the presumption in favour of sustainable development and conserving the environment.

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.” In this case, the change of use of an existing building to a dwelling house, Use Class C represents a material change of use of land and thus constitutes development requiring planning permission.

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 171B (1) 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 ten years beginning with the date on which the operations were substantially completed.

Section 171B (2) provides 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 ten years beginning with the date of the breach.

Section 171B (3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024

In this case, the applicant is required to demonstrate on the balance of probabilities that condition 2 has been continuously breached for at least 10 years prior to the date of application in order for the change to have become lawful. i.e. 23.1.2016

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 *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.

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 to properly describe the nature of the material change of use which occurred.

INFORMATION PROVIDED

By the applicant:

Appendix 1

Signed Affidavit by Pamela Szadowski dated 6th January 2026, stating that the property has been used as a dwelling for over 10 years: The affidavit confirms that the occupier, Pamela Szadowski (aged 65), has resided at the property continuously since November 2015 with her late husband, Trevor Edwin (deceased January 2021),

and their son, Jed Ruben. No other individuals have lived at the dwelling during this period. The statement sets out the employment history of all occupants and confirms that none have ever been employed in agriculture or forestry. Although Trevor Edwin was a director of a family agricultural contracting company, this role was nominal only, with no operational involvement or income, and the business entered liquidation in June 2019. The occupier and her son have been employed in education and local government roles respectively, with no agricultural connections. The affidavit further confirms that there has been no agricultural or forestry employment connected with the occupancy of the dwelling over the past 10 years and that there is no intention for such employment to occur in the future.

Appendix 2

Signed Affidavit by Jed Szadowski dated 7th January 2026 stating that he has lived at the address with his mother Pamela Szadowski since 2015. His father lived at the address until his death in 2021. No one else has lived at the house. He has been employed at Slough Borough Council since 2020, and prior to that was in full time education. He has never been employed in forestry or agriculture and have no intention to do so.

Appendix 3

Statement of Truth by Richard Norton dated 9th January 2026 confirming that he was a close friend of Pamela Szadowski and her late husband Trevor for approximately 40 years. He regularly visited the family home and can confirm that Pamela, Trevor, and their son Jed have lived at Ostland, Dunts Avenue, for just over 10 years. Trevor was employed in the maintenance of commercial vehicles, as a postman, and employed by Iveco prior to his death. The statement confirms that Trevor Szadowski was never employed in agriculture or forestry. Although he was a silent partner in a family agricultural business operated by his father and brother, he had no direct involvement or employment in farming. Pamela Szadowski is confirmed to have worked as a school assistant prior to retirement and has never been employed in agriculture. The statement confirms that, to the author's knowledge, no person residing at Ostland over the past 10 years has been employed in agriculture or forestry. The author also confirms they have no financial or other interest in the land at Ostland.

Appendix 4

Supporting Planning Statement by Sarah Mills for AFA Planning (Agriculture) Ltd dated January 2026 confirming evidence submitted includes a sworn affidavit from the applicant (dated 6 January 2026), statements of truth from her son, Jed Ruben Szadowski, and a long-standing family friend, Richard Norton, together with employment records (P45s and P60s) relating to the applicant's late husband dated 2013, 2016, 2018, 2019, 2020. Domestic documents showing the applicant's name and address for each year from 2015–2026 have also been provided.

The evidence indicates that Mrs Pamela Szadowski, her late husband Trevor, and their son Jed have resided at the property continuously since November 2015 with no other occupants Trevor Szadowski passed away in January 2021. None of the occupants have been employed in agriculture or forestry during the relevant period. Mr Szadowski was employed as a manager in commercial vehicle companies, Mrs Szadowski worked as a learning support assistant until her retirement in 2023, and

Jed Szadowski is employed in children's services at Slough Borough Council. While reference is made to an agricultural contracting business, it is stated that Trevor Szadowski had no active involvement and received no income from it, and the company was liquidated in 2019.

The documentation confirms that the relevant occupancy condition has been continuously breached until the present time.

Appendix 5

Bank statements dated July 2017 to February 2018 addressed to Pamela Szadowski at Ostland, Dunts Avenue.

Appendix 6

Council Tax Bills dated 2019/20, 2020/21, 2021/22, 2022/23, 2023/24, 2024/25 and 2025/26 addressed to Pamela Szadowski at Ostland, Dunts Avenue.

Appendix 7

Thames Water Invoice dated 29th January 2021 addressed to Pamela Szadowski at Ostland, Dunts Avenue.

Appendix 8

Block Plan reference 50/62 for proposed residence in Dunts Avenue.

Appendix 9

Location Plan of Ostland dated 26th January 2026.

Appendix 10

P60 documents dated 2013 (Volvo), 2016 (Volvo), 2020 (Iveco) and named Trevor Szadowski.

Appendix 11

HM Revenue and Customs dated named Trevor Szadowski details of leaving work (Volvo Group) dated 30th June 2018.

By the Council:

Planning application 180815 states that Trevor inherited the house in 2015

1. Enforcement Notice Records: None
2. Land Registry Title Plan BK473202 and Register View stating that Pamela Szadowski has owned Ostland, Dunt Avenue, Hurst, Reading RG10 0SY since 24.12.2015.
3. Site Plan named Land Registry Plan and dated September 2015
4. Location Plan submitted 19th April 2018
5. Royal Mail Postcode Finder: Address listed as Ostland, Dunt Avenue, Hurst, Reading, RG10 0SY

6. The Case Officer carried out a site visit on 30/03/2026 and met with the occupier of the building who confirmed that she is the owner.
7. Site visit photos (30/03/2026).
8. Google Earth/Streetview 2025
9. Trevor Szadowski registered on Companies House as 'Active' Director of Hubert Agricultural Contractors Limited. Company number 01894859 (website link [E. HUBERT AGRICULTURAL CONTRACTORS LIMITED people - Find and update company information - GOV.UK](#) Accessed 7TH April 2026).

10. Google Earth/Streetview



Figure 1 Google Earth Image dated May 2025

Site Visit Photos



Figure 2 Officer Site Visit Image taken on 30th March 2026



Figure 3 Officer Site Visit Image taken on 30th March 2026



Figure 4



Figure 5

APPRAISAL

The application is for a certificate of existing lawful development for the occupation of the dwelling without compliance with Condition 2 of planning permission 50/62 granted on 14th June 1962. 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 occupancy has been on-going continuously for at least 10 years prior to the date of this application, the relevant period being from 24.01.2016 to 24.01.2026.

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”.

Where the burden of proof is on the applicant, the relevant test of the evidence on such matters is 'the balance of probability.' 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 Applicant’s Evidence

The evidence submitted includes 3 no. Declarations, signed by the owner of the dwelling, her son, and a friend, which the Local Planning Authority should accept unless there is clear evidence to the contrary. The evidence indicates that the owner, and her son have resided at the property continuously since November 2015 and were not employed in agriculture or forestry during this period Furthermore, the owners late husband resided there continuously from November 2015 until he died in January 2021, he was not employed in agriculture or forestry but was a Director of an agricultural contracting business. The declarations state that none of the occupants have been employed in agriculture or forestry during the relevant period and no one else has lived at the house. The submitted P60 documents and Council Tax returns confirm the occupancy of Ostland by Mr and Mrs Trevor Szadowski during the relevant period. However, these documents do not provide details of employment.

Furthermore, the Council has accessed information from Companies House that contradicts the applicant’s evidence. Companies House states that Trevor Szadowski is an ‘Active’ Director of Hubert Agricultural Contractors Limited. On the face of it, it is considered that prior to his death in 2021, Trevor Szadowski’s occupation was related to agriculture as identified in Section 119 (1) of the Town and Country Planning Act 1947. This was the same occupation as Trevor’s late father who sought the original planning permission. Notwithstanding this, the Declarations state that this was not the case therefore significant weight must be given to this. No definitive evidence has been provided to substantiate that the directorship amounted to an administrative role.

Some of the information held by the Council within planning application 180815 corroborates that Trevor Szadowski inherited the dwelling in 2015 and that the yard was separately owned at this time. It does not state that he occupied the dwelling at this time or any information relating to his employment, however this fits with the evidence provided within this application.

Conclusion

The applicant's evidence indicates on the balance of probabilities that the building known as Ostland has been occupied by a person employed in agriculture for the last 10 years. Although there is conflicting evidence relating to Trevor Szadowski's employment in agriculture during the relevant period. On balance, the sworn declarations and supporting evidence are afforded greater weight than the Council's evidence and are sufficient to demonstrate a continuous breach of the agricultural occupancy condition for the purposes of section 191 of the Town and Country Planning Act 1990.

It can therefore be concluded, on the balance of probability, that during the ten-year period prior to 24 January 2026 the building known as Ostland has been occupied by persons who were not employed, or last employed locally, in agriculture as defined in Section 119(1) of the Town and Country Planning Act 1947, or in forestry, nor by the dependants of such persons. Accordingly, the agricultural occupancy condition has been breached continuously for the requisite period.

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 Condition 2 of planning permission 50/62 was breached for a period of 10 years prior to 24th January 2026.

Date:	10 April 2026
Earliest date for decision:	18 February 2026
Recommendation agreed by:	

(Authorised Officer)	
Date:	10 April 2026