

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	260689
Site Address:	Brandywell, Spring Lane, Swallowfield, Wokingham, RG7 1SU
Expiry Date:	27 May 2026
Site Visit Date:	15 April 2026
Proposal: Application for a certificate of existing lawful development for the use of land as residential garden.	

PLANNING HISTORY

Application No.	Description	Decision & Date
251180	Householder application for the proposed garden shed (part retrospective).	Refused 30/07/2025
190051	Householder application for the proposed erection of a single storey two bay garage and store room with two dormers linked to the main dwelling, and erection of new entrance walls and gates.	Approved 06/03/2019
161235	Application for submission of details to comply with the following conditions of planning consent 160290 (Dated 11/04/2016) 4. Landscaping 5. Arboricultural Survey 7. Asbestos Survey 8. Dust Mitigation Plan	Approved 02/06/2016
160290	Full planning application for the demolition of existing dwelling, double garage/workshop and cottage to rear plus erection of replacement chalet bungalow.	Approved 11/04/2016
070687	Proposed erection of two storey side/front/rear extension to dwelling plus raising of existing roof and internal alterations. Demolition of garage/workshop	Approved 31/08/2007

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form states that the full extent of the rear garden has been in use since 2016 as residential garden.

- Location Plan
- Site Plan
- Statutory Declaration (Evan Lindsell)
- Statutory Declaration (Jeff Markham)
- Statutory Declaration (Mr and Mrs Storey)
- Planning Report (Andrew Beard Planning, March 2026) which includes site photographs

By the Council:

- Planning history records check
- Planning enforcement history check
- Officer site visit photographs (dated 15/04/2026)
- Land Registry Searches - Official Copy (Title Plan) - BK161630, Official Copy (Register) - BK161630, Official Copy (Register) - BK176270 & Official Copy (Title Plan) - BK176270
- Google Image Mapping
- Google Earth
- World Imagery WayBack
- Building Regulations Searches – Tascomi (141289 and 162413)

By third parties:

- Trees and Landscape Officer comments
- Swallowfield Parish comments

APPRAISAL

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 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 (formerly four years) beginning with the date on which the operations were substantially completed.

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 ten years beginning with the date of the breach.

Regarding the above, Section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 states that the amendments made to the 1990 Act by section 115 of the 2023 act (time limits for enforcement) do not apply where in respect of a breach referred to in section 171B(1), the operations were substantially completed before the day on which that section comes into force (25/04/2024). This means that

where operational development has been carried out before 25/04/2024 the four year rule still applies (except where the operations has facilitated a material change of use).

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.

The *Panton* case was considered further by the Courts in *Secretary of State for the Environment, Transport, and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten-year period of unlawful use the Local Planning Authority, although having the power to take enforcement action, had failed to do so.

So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example the unauthorised use had temporarily ceased) than any such period could not count towards the ten-year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten-year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

APPRAISAL:

The application is for a Certificate of Lawful Existing Use for the incidental residential use of land within the curtilage of Brandywell, Spring Lane.

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

- within ten 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 ten 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 four years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within four years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024.
- within ten years for any other breach of planning control (essentially other changes of use).

In the case of this Certificate, it must be demonstrated that the land used for incidental residential purposes was within the curtilage of the dwellinghouse at the date of the application's submission and, whether the use has been occurring for a consecutive period of ten years (23/03/2016).

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".

Site Description:

The application site consists of a detached property set within a generous plot on the southeastern side of Spring Lane, Swallowfield. The southern site boundary and the central and rear section of the site are covered by Woodland Tree Protection Order – TPO-2003-2025 (W1). This covers trees of all species growing within the protection area.

The application site is located outside settlement limits in designated countryside.

Spring Lane is a single-track lane that runs from north to south connecting Swallowfield in the north with Newbarn Farm to the south.

The host dwelling is set back from the road behind a large driveway providing off-street parking. There is one outbuilding to the rear of the property.



Figure 1: Application site (ArcGIS mapping (20/05/2026))

The application site consists of approximately 6,230 m² of land to the rear of Brandywell. Prior to its current use, the rear section of the land was an area of largely undisturbed woodland, and this is reflected in its visual appearance; the land towards the rear of the plot is densely covered with mature trees.

The Applicant's Evidence:

Application Form

The application form states that it seeks to confirm the lawfulness of the following development:

“EXISTING LAWFUL USE C3 Residential (Full extent of rear garden use since 2016) on the basis of over 10 years previous full use as garden land and in line with previous red line applications. Previously two dwellings and gardens operated as one dwelling and garden for 10 years”.

The application form explains why the certificate should be granted:

“The whole site has been used as a single garden ancillary to the dwelling”.

The Application Form states the use began more than 10 years before the date of the application.

They state that the activity is not in breach of any condition.

They state the use commenced on 29/10/2015.

They state that there has been no interruption in use.

They state that there has been no material change of use since the start of the use for which a Certificate is sought.

They state that there is no change in the number of residential units.

For this application to be supported, it will be necessary for the Applicant to satisfy the Council on a balance of probabilities that:

The land has been in continuous use as residential curtilage for a period of 10 years prior to the date of the application.

Planning Report

To support the use of the land as residential curtilage associated with Brandywell, a Planning Report (Andrew Beard Planning, March 2026) has been provided. The report contends that the entire application site has lawfully formed part of the residential garden curtilage associated with Brandywell and should be certified as such for the purposes of a CLEUD.

The applicant states that since purchasing the property in October 2015, the whole site has been used as a single residential planning unit, with all land used and enjoyed as domestic garden by the family.

This use is said to have continued uninterrupted for over 10 years, including the wooded rear area, which is described as a “woodland garden” rather than separate land or woodland use.

The applicant emphasises that there has never been any fencing, enclosure or subdivision separating the rear land from the main garden area and that the land has operated as one continuous curtilage, used for leisure, play, paths, bonfires, BBQs and general domestic enjoyment.



Figure2: Taken from Planning Report (3rd Party website taken 01/12/2014) Image showing alleged paths

Previous planning applications, including application 160290 (2016) and application 190051 (2019), are cited as having included the entire site within a single red line.

The applicant argues that these applications were approved without any suggestion that part of the site lay outside the residential curtilage, and without conditions restricting or redefining the extent of garden land.

The applicant disputes the view that the presence of trees or less formal landscaping prevents land from being garden curtilage.

It is argued that domestic gardens can legitimately include wooded areas, long grass, wildlife spaces and informal planting, and do not need to be manicured lawns throughout.

The applicant refers to historic outbuildings and workshops within the rear area, asserting that in 2016 the outbuilding in the rear garden was a separate residential cottage and that application 160290 co-joined both gardens.

The applicant argues that the curtilage was only questioned for the first time in 2025, during consideration of an outbuilding proposal.

This challenge is described as inconsistent with the Council's previous treatment of the site and based on an overly narrow interpretation of curtilage linked to lawned areas.

The report states that there has been consistent use of the land as garden leading up to 2025 and its current use, this is supported by a photograph taken in 2025 that demonstrates its current use:



Figure 3: Photograph taken from Planning Report 2025 of current use

Statutory Declarations:

Evan Lindsell

The evidence submitted relies on a Statutory Declaration provided by the applicant (Mr Evan Lindsell), who owns the land. The declarant states that he purchased the property on 29 October 2015 and that it has been his sole and continuous residence since that date. He explains that, at the time of purchase, the site included an existing building located further down the garden which was in use as a habitable space, containing bedrooms, living accommodation, kitchen and bathroom facilities, as evidenced by third-party marketing photographs (It must be noted that this link does not work and the website has not been evidenced). He also refers to several covered structures behind this building, which he considers indicative of the land historically functioning as a single plot.

It is asserted that there has never been any physical subdivision of the land by fencing since his ownership, nor to his knowledge prior to that time. The declarant states that the entire area has always been maintained and used as one continuous garden area, notwithstanding that the previous owners occupied two houses on the land. He maintains that the rear parts of the land have not been used for any purpose other than domestic use.

The declaration describes ongoing domestic use of the whole garden since 2015, including routine maintenance, family recreation, children's play, and informal domestic activities. Reference is made to extended family members using the land for leisure and to the continued use of the land by the declarant's children.

The declarant further explains that planning permission was obtained for a new dwelling on the site following purchase, that he moved into the new house as works progressed, and that he now wishes to continue using the entirety of the land as a single residential garden as his family grows.

The declaration concludes with the assertion that the land has been consistently used and managed as one garden for over 10 years and forms part of the residential curtilage of the property. The document was sworn before a solicitor on 20 March 2026.

Jeff Markham

The statutory declaration is made by Jeff Markham, who resides at Greenfields, Green Lane, Stratfield Saye, Reading RG7 2EB, and relates to the land at Brandywell, Spring Lane, Swallowfield RG7 1SU. The declaration is based on his personal knowledge of the property and its use.

The declarant states that he has known Evan Lindsell for many years and was previously a neighbour and friend prior to Mr Lindsell moving to Reading. He recalls Mr Lindsell purchasing the property over 10 years ago and walking around the site with him shortly after purchase, including the entirety of the garden area, comprising both lawned areas and woodland.

It is asserted that the declarant has visited the property on numerous occasions over the last 10 years and, on each visit, observed the whole of the land being used and enjoyed as a single garden by Mr Lindsell and his family. He states that the family has made full use of the entire plot for their own enjoyment and for the enjoyment of visitors.

The declaration further refers to regular recreational use of the land, including the area at the far end of the garden, by the declarant's son together with Mr Lindsell's family over a period of more than 10 years.

Overall, the statutory declaration supports the assertion that the whole of the land associated with the property has been used continuously and consistently as a single residential garden for over ten years.

The document was not sworn before a solicitor.

Mr and Mrs Storry

The statutory declaration is made jointly by Nigel Storry and Amy Storry, who reside at Pipers Croft, Vicarage Lane, Hound Green, Hook RG27 8LF. The declaration relates to the land at Brandywell, Spring Lane, Swallowfield RG7 1SU and is based on their personal knowledge of the property and its use.

The declarants state that they have known the Lindsell family for many years and recall Evan Lindsell purchasing the property over 10 years ago. They explain that, at the time of purchase, they frequently visited the property with their children and assisted with works to the house. During these visits, their children played across the entirety of the garden, including both lawned areas and the area around the trees, which is described as a recreational space.

The declaration describes long-standing recreational and domestic use of the whole garden, including children playing together, making bonfires, building camps, and later assisting with general garden maintenance such as cutting grass and bushes.

It is asserted that, throughout the period of their visits and to the best of their recollection, the land was always used as a single, complete garden. The declarants state that there was never any fencing subdividing the land and that it was not used for any purpose other than as a garden for the enjoyment of the main dwelling.

Overall, the statutory declaration supports the landowner's position that the whole of the land has historically been used and experienced as a single residential garden associated with the dwelling at Brandywell.

The document was not sworn before a solicitor.

Third Party Evidence

Trees and Landscape Officer

The Council's Trees and Landscape Officer was consulted on the application and has reviewed the submitted information.

The Officer objects to the proposal for a certificate of existing lawful development for the use of land as residential garden. The site lies within open countryside in the parish of Swallowfield and forms part of a protected woodland subject to Woodland Tree Preservation Order (TPO) 2003/2025, within a wider rural landscape characterised by mixed farmland, hedgerows and woodland. A review of aerial imagery demonstrates a significant encroachment of managed lawn into the woodland over time, with the lawn area extending further south between 2017 and 2025 and a corresponding reduction in woodland coverage. This gradual erosion of the woodland, through tree removal and garden encroachment, is considered to have diminished its character and integrity and is inconsistent with the protection afforded by the Woodland TPO.

A site visit in April 2026 identified further formalisation of the woodland, including gravelled footpaths with metal edging and low-level lighting beneath tree canopies. These works are likely to have caused harm to protected tree roots and have adversely affected the woodland floor and its natural understory, replacing typical woodland flora with maintained lawn. The introduction of lighting is also considered harmful to the dark-sky qualities and tranquillity of this rural landscape. The woodland makes a positive contribution to the character and appearance of the Risley Woods Valued Landscape and the L3 Stanford End Wooded Sand and Gravel Hills Landscape Character Area, where policies seek to conserve woodland, rural character and dark skies. The use of this land as residential garden is therefore contrary to Local Plan Policies CC03 (Green Infrastructure, Trees and Landscaping) and TB21 (Landscape Character), and on this basis the Tree and Landscape Officer recommends refusal of the certificate.

Swallowfield Parish

They have no comment to make.

The Council's Evidence

The main issue is whether the area of woodland to the rear of the plot falls within the curtilage of the dwelling.

In *Dyer v Dorset CC*, [1988], 3 WLR 213, it was held that in the absence of any statutory or authoritative definition, the term curtilage bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. Furthermore, the Oxford English Dictionary definition was endorsed as adequate for most present-day purposes, namely "a small court, yard, garth or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings".

The relevant authorities were also reviewed in *McApline v SSE*, [1995] JPLB43. The following characteristics of curtilage were defined:

- a) it is confined to a small area about a building;
- b) intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and

c) physical enclosure is not necessary.

The area covered by the wooded area is extensive and it is distanced from the host dwelling.

While the application site is shown within a single red line boundary, the wooded area is extensive and is physically and visually distinct from the main garden area associated with the dwelling. The area is characterised by wooded grassland, with a markedly different appearance and character to the more immediate garden area surrounding the house.

Although the absence of fencing or formal subdivision is noted, this alone is not determinative. Curtilage is not defined solely by ownership or red line boundaries but by functional and physical association. The separation created by distance, change in character and lack of clear domestic containment weighs against the rear land forming part of the residential curtilage.

Nature and Character of the Land

The applicant argues that gardens may include woodland and informal areas and that the absence of manicured lawn does not preclude garden use. The Officer accepts that domestic gardens can include less formal elements; however, this does not mean that all land within a residential ownership automatically forms curtilage.

In this case, the rear land appears predominantly woodland in character and does not present as land that is clearly laid out or managed as part of a domestic garden in the ordinary sense. The visual evidence, including aerial imagery and site observations, indicates a clear distinction between the maintained garden area and the wooded land beyond. This distinction undermines the claim that the whole site functions as a single, coherent domestic garden.

Aerial Imagery

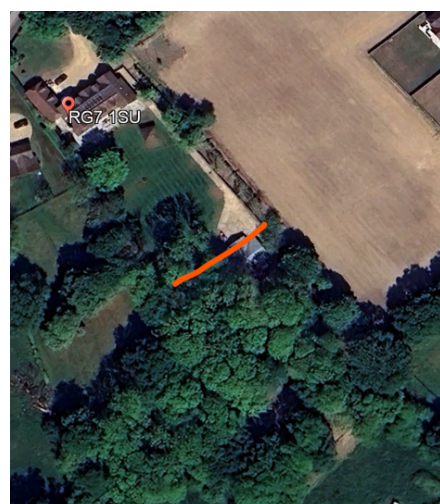
The images shown in Figure 4 include red lines showing the extent of tree removal and garden encroachment into woodland.



World Imagery WayBack March 2014
May 2020

World Imagery WayBack Feb 2018

World Imagery WayBack



World Imagery WayBack June 2023

Google Earth 2025

Figure 4 (below): Aerial Images showing woodland retreat

A review by the Council of historic aerial imagery indicates that a substantial proportion of the site was historically characterised by dense tree cover consistent with woodland rather than open garden land.

The aerial images show that, over time, trees within the area of land close to the dwelling have been incrementally removed (as shown by the red lines in approximate positions on the aerial images), resulting in a gradual reduction in canopy cover. This change is evident when comparing earlier images, where the land appears heavily wooded, with more recent images, where cleared areas are apparent.

The presence of dense woodland is not, in itself, determinative of lawful use; however, the imagery suggests that the land in question was not historically laid out or maintained in a manner typically associated with domestic garden use. The subsequent removal of trees appears to have facilitated the creation of a more open and usable space, capable of accommodating everyday domestic activities. This pattern indicates a progression towards a more conventional garden character rather than evidence that the land was continuously used as residential garden throughout the relevant period.

Accordingly, while domestic gardens can legitimately include areas of informal landscaping or tree cover, the aerial evidence does not demonstrate, on the balance of probabilities, that the woodland area formed part of the residential garden for the entirety of the claimed period. Instead, the imagery suggests that the usable garden area has expanded over time following the incremental clearance of trees, which is more consistent with a change in the use and character of the land rather than the continuation of a long-established garden use.

Indeed, the images from 2018 onwards provide imagery from when the replacement dwelling was completed (approximately), and the extent of tree removal that followed.

Functional Relationship and Domestic Use

A key test is whether the land serves the dwelling in a reasonably useful or necessary domestic manner. While the applicant has submitted statements describing occasional recreational use of the rear land (such as walking, play or informal activities), the officer considers that such incidental use is insufficient to demonstrate an intimate functional relationship with the dwelling. In addition, none of the three submitted statements include a plan to delineate where the statements are referring to, therefore, the information is unclear and not precise. Two of the statements are not legally valid (Mr and Mrs Storry and Mr J Markham) as they have not been signed in the presence of an authorised witness.

The evidence does not demonstrate that the rear woodland area is integral to the day-to-day domestic functioning of the dwelling in the same way as the immediate garden space. Sporadic or informal use does not, in itself, establish land as residential curtilage for the purposes of section 191 of the TCPA.

Planning and Site History

The applicant places significant reliance on previous planning permissions which included the whole site within a red line boundary. Officers note, however, that:

- red line boundaries identify the extent of land within an application and do not, define lawful curtilage; and
- none of the previous permissions expressly determined the lawful extent of residential garden curtilage.

The absence of a previous challenge does not amount to a positive determination that the entire site is residential curtilage. Each application must be assessed on its own merits and on the evidence before the Authority at the time.

In addition, the Council's own planning history research provides the consent details of when the original bungalow was permitted. Permission O/13/62 (approved 03/04/1962) approved the construction of the original host dwelling and adjoining dwelling (Balcombe Cottage). Condition 2 stated:

2. ~~The occupation of the dwellings shall be limited to persons employed or last employed in agriculture as defined by Section 119 (i) of the Town and Country Planning Act, 1947 and the dependents of such persons.~~

The reasons for the Council's decision to grant permission for the development subject to compliance with the conditions hereinbefore specified are:—

~~The development is justified only on agricultural grounds.~~

Figure 5: Condition 2 of permission O/13/62 decision notice

The approved Site Plan shows the original extent of the site boundaries:

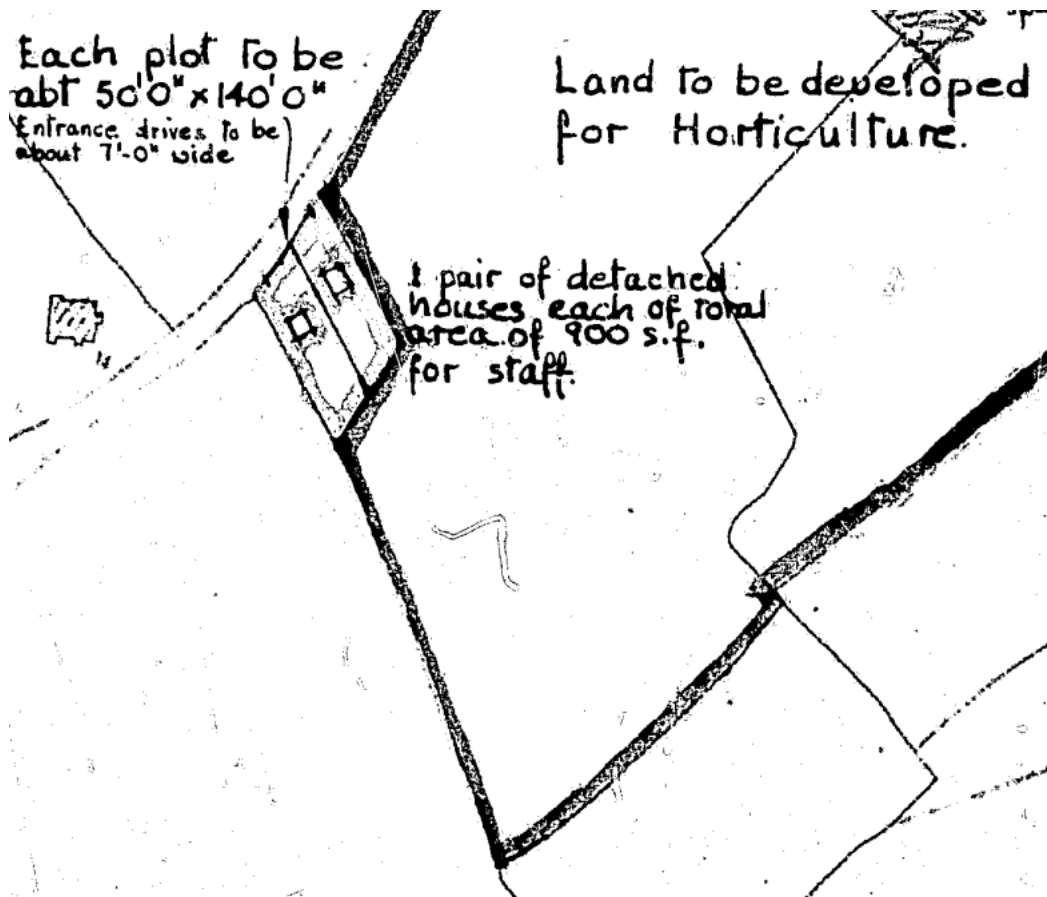


Figure 6: Site Plan permission O/13/62

The size of the site for the original bungalow was of a size similar to the current size of the adjoining property; Balcombe Cottage.

Permission 06936 (90-66) was approved on 29/09/1977 for the removal of Condition 2 from permission O/13/62. The approved plan showed the site of the subject dwelling to have slightly increased, as shown on Figure 7.

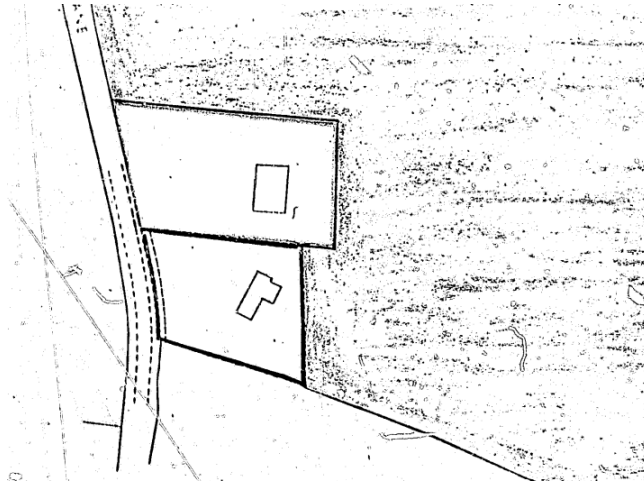


Figure 7: Plan for permission 06936 (90-66)

The Council's Building Regulation records show that in July 2014 case 141289 was opened for 'Unauthorised works'. The description of works was described as: '*3 bedroom annexe to dwelling – converted from agricultural building*'. This evidence suggests that the annexe (Brandywell Cottage) was in situ at this time and being used as separate living accommodation. Page 9 of the building regulations document states that the building had originally been 'chicken sheds'. Therefore, at the time there were two residential units on the site.



Annex

The house is for sale through WhiteKnights and I am told that not Building Regulation approval has been sought. The structure was originally chicken sheds.

Regards

David Mann
Planning Enforcement Officer
Development Control
Wokingham Borough Council
Civic Offices,
Shute End,

Figure 8: Page 9 of Building Regulations case 141289 (Taken from Tascomi)

Mr Lindsell purchased the original bungalow and a separate land parcel to the rear which was the site of the annexe on 04/11/2015. Land Registry parcels: BK176270 and BK161630. The land parcel to the rear was separate and included Brandywell Cottage.

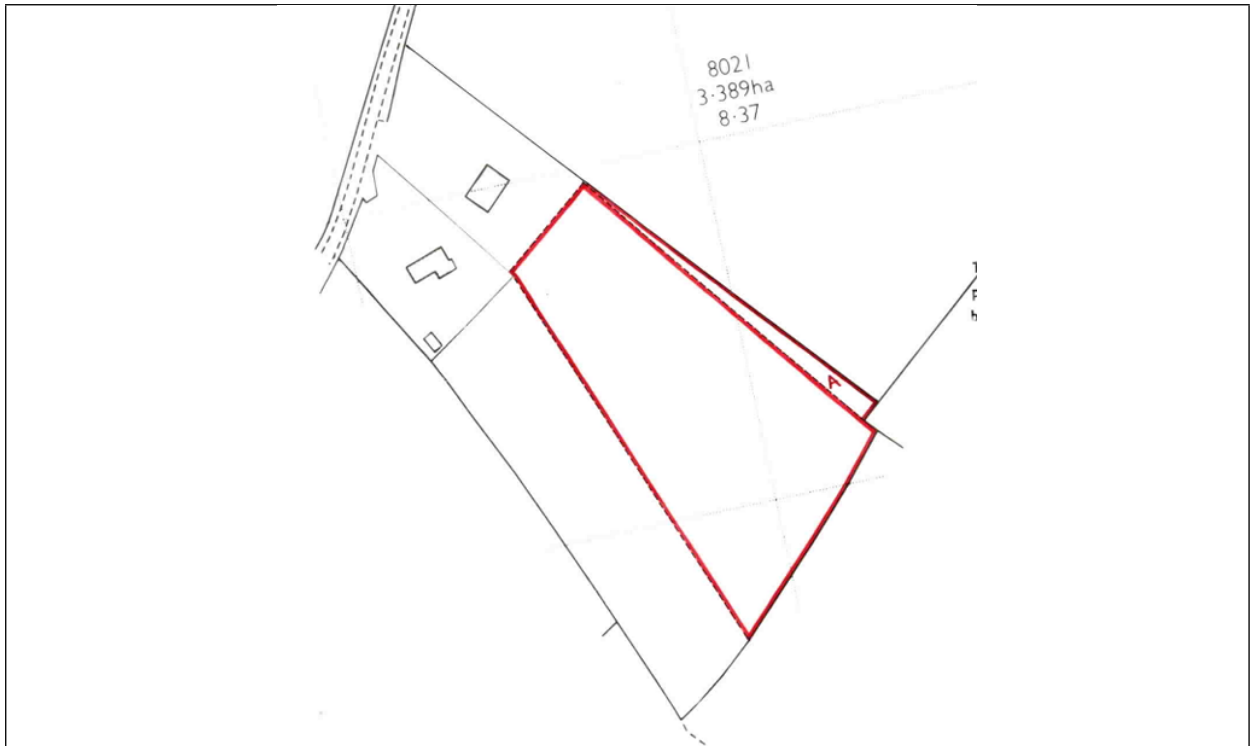


Figure 9: Land Registry Plan BK176270

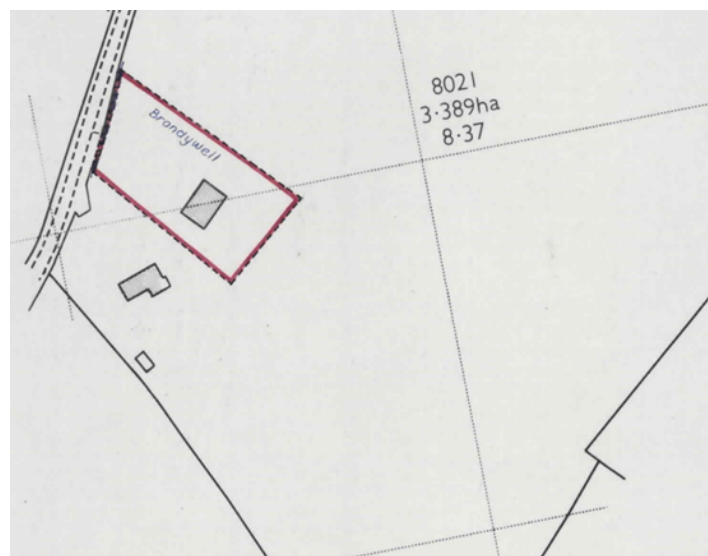


Figure 10: Land Registry Plan BK161630

Following purchasing the land, Mr Lindsell submitted planning application 160290 for: *'Full planning application for the demolition of existing dwelling, double garage/workshop and cottage to rear plus erection of replacement chalet bungalow'*. The application was approved on 11/04/2016 and showed the site within one red line.

Plan 02 titled 'Block Plan' (of permission 160290) shows Brandywell Cottage in situ. As part of permission 160290, the cottage was required to be demolished. This has not been complied with. During the demolition of the original bungalow and replacement rebuild, it is unknown whether the occupants moved off site or lived in Brandywell Cottage.

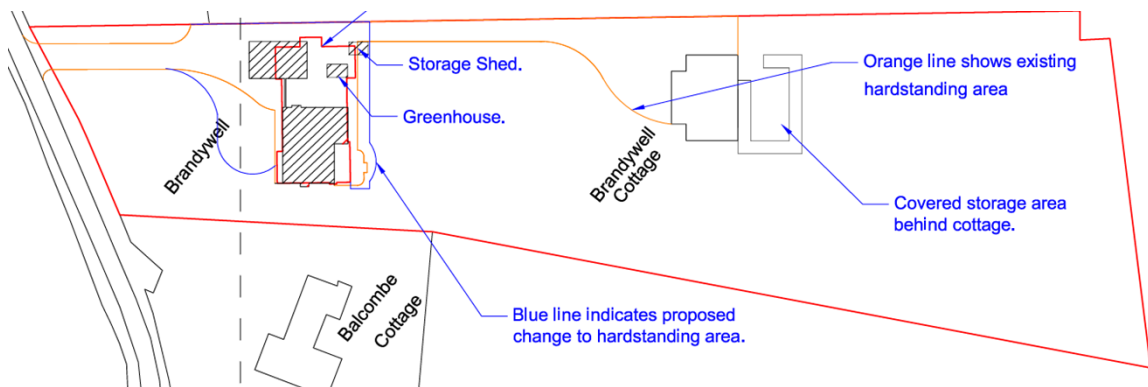


Figure11: Plan 02 of permission 1603290

No evidence has been provided to show that Brandywell Cottage was either vacated or used during this period, but it does show that at this time, Brandywell Cottage remained in situ as a separate planning unit. No information has been submitted to show that its occupation was ancillary to Brandywell. The outdoor space could have been shared but it was still functioning separately.

Following planning approval, the original bungalow was demolished and the replacement dwelling constructed. Google Earth aerial images show the construction phase dated March 2017:



Figure 12: Google Earth Image March 2017

Aerial images show that by February 2018 the dwelling was substantially complete:

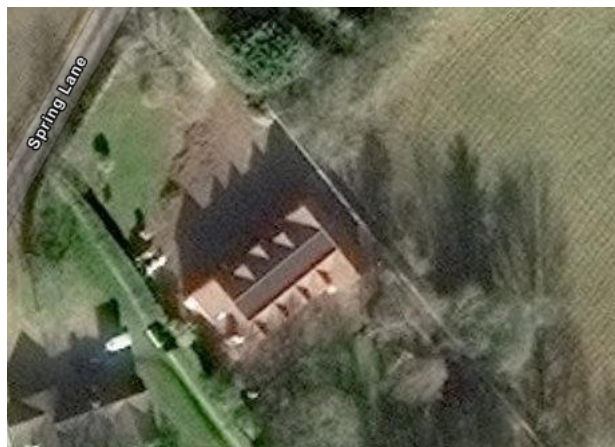


Figure 13: World Imagery WayBack February 2018

Building Regulations record 162413 for: 'New build chalet bungalow' includes the 'Final Certificate' ref: CBC/16/22373/CP.

Section 51 of the Building Act 1984
The Building (Approved Inspectors etc.) Regulations 2010 ("the Regulations")

Ref: CBC/16/22373/CP



Final Certificate

1	This Certificate relates to the following work: -	
	Description of work	New Build Chalet Bungalow
	Address	BRANDYWELL, SPRING LANE, SWALLOWFIELD, READING, RG7 1SU
	Use of building	Domestic

- 11** This certificate is evidence (but not conclusive evidence) that the requirements specified in it have been complied with.
Signed

Michelle Kenny

Date 13/11/2020
Complete Building Control Ltd
Approved Inspector

Figure 14: Final Certificate Building Regulations CBC/16/22373/CP

The certificate shows that on 13/11/2020 the Final Certificate was signed and the building signed off.

As the original dwelling (Brandywell) was demolished, it is reasonable to conclude - in the absence of evidence to the contrary - that the occupiers vacated the property during the construction period. It therefore follows that residential occupation, and any associated domestic use of the wider site, could only have recommenced once the replacement dwelling was substantially complete, which the evidence suggests was circa 2018.

As such, even if it were accepted that the entire site has been used for incidental residential purposes since that time, this would amount to approximately 8 years of use at the date of application.

This falls well short of the ten-year period required to establish immunity from enforcement.

Summary:

On the balance of probability, the evidence demonstrates that:

- The use of the entire site as residential curtilage could only have commenced following the completion and re-occupation of the replacement dwelling, which occurred circa 2018.

- This coincides with when there was significant tree removal and garden encroachment to the south.
- The claimed use has not been occurring continuously for a period of ten years prior to the date of application.

Accordingly, the Local Planning Authority is not satisfied that the use of the land described in the application was lawful at the date of submission, and the Certificate of Lawfulness cannot be granted.

The evidence submitted fails to demonstrate, on the balance of probability, that the use of the entire application site as residential curtilage and residential 'garden' land associated with Brandywell has been occurring continuously for a period of ten years prior to the date of the application. As such, the requirements of section 191 of the Town and Country Planning Act 1990 have not been met.

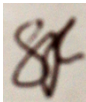
The Public Sector Equality Duty (Equality Act 2010):

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 material change of use of the land for residential purposes has not been occurring for a consecutive period of ten years based on the applicant's own case; evidence provided; and, the Local Planning Authority's own information.

The certificate is refused for the reasons set out in this report

Date:	19 May 2026
Earliest date for decision:	25 April 2026
Recommendation agreed by: (Authorised Officer)	
Date:	22.5.26