

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242262
Site Address:	23 Meadow Road, Earley, Wokingham, RG6 7EX
Expiry Date:	30 October 2024
Site Visit Date:	16 October 2024
Proposal: Application for a certificate of existing lawful development for erection of an outbuilding to the rear.	

PLANNING HISTORY

Application No.	Description	Decision & Date
062482	Proposed two storey rear extension with conversion of roof space to habitable room with dormers, plus raising of roof and pitched roofs over existing ground floor bay windows. Demolition of existing garage.	Refused 24/11/2006
070495	Proposed erection of a rear single storey extension with loft conversion to habitable room, plus raising of roof & pitched roof over existing bay & new front bay.	Approved 05/03/2007
091341	Proposed erection of first floor rear extension to dwelling with minor alterations to roof height.	Approved 04/01/2010
160919	Householder application for the proposed raising of roof to create additional habitable accommodation to dwelling and the erection of a first floor rear extension.	Refused 13/07/2016
202789	Householder application for the proposed erection of a first floor rear extension, plus the insertion of 4no. roof lights.	Approved 26/11/2020
242255	Householder application for the proposed first floor extension including conversion of roof from flat to hipped and addition of skylights.	Approved 24/10/2024

SITE DESCRIPTION

The application site is a detached chalet bungalow located within a predominantly residential area of Earley.

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 not subject to any wildlife or habitat designations.

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 *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 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 building works were substantially completed on 07/02/2024.
- Submitted Photographs
 - 'Photo 1' and 'Photo 2' are dated and they show the outbuilding as substantially completed by 14/10/2016.
 - 'Photo 3' shows the outbuilding during construction and is dated 05/05/2016.

By the Council:

- Planning History Records (see above).
- Enforcement History Records – confirms no extant Enforcement Notices on the application site.
- A site visit was carried out on 16/10/2024 and this confirmed the presence of the operation development on the location as shown in the submitted details.

- Site visit photos (16/10/2024).
- Aerial images from the Council's mapping system taken from 2015, 2019 & 2022 confirming the presence, or lack of, the operational development on the location as shown in the submitted details.
- Google Earth aerial images dated 09/03/2014 & 25/03/2017.

By third parties:

- One neighbour queried the height of the structure as it appears to be within 2 metres of the boundary and appears to exceed a height of 2.5 metres.
- Earley Town Council have raised objection to the application as the structure is not compliant with section E1(e)ii of the GPDO, as the outbuilding is higher than 2.5 metres within 2 metres of the boundary.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise the existing outbuilding which is incidental to the dwellinghouse.

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.

Alternatively, if the 4 year immunity rule is not satisfied, it must be demonstrated that the outbuilding benefits from permitted development rights under Schedule 2, Part 1, Class E of the General Permitted Development Order.

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:

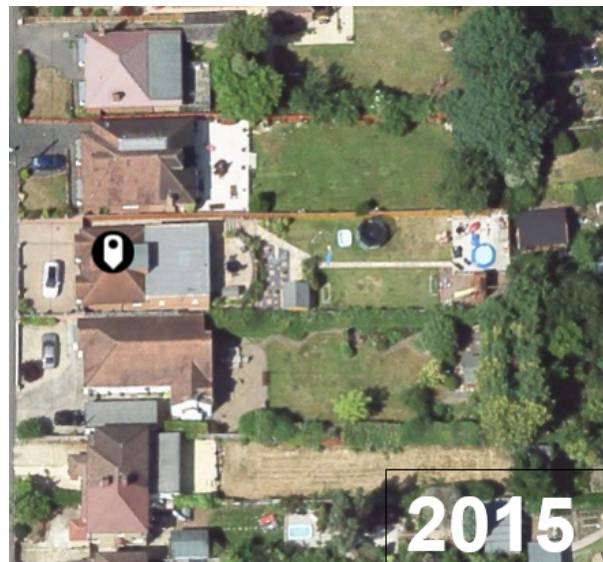
The evidence submitted by the applicant is based heavily on the submitted photographs. 'Photo 3' is a photograph dated 5th May 2016 and it shows the outbuilding under construction. 'Photo 1' and 'Photo 2' are photographs dated 14th October 2016 and they show the outbuilding as substantially completed.



'Photo 1' (left) and 'Photo 2' (right) from the applicant's submitted evidence.

Evidence Submitted by the Council:

Aerial images from the Council's mapping system taken from 2015, 2019 & 2022.





In the images above, the outbuilding can be seen in 2019 and 2022, but it is not present on site in 2015, thus demonstrating it was erected sometime after 2015.

Evidence Submitted by Third Parties:

Whilst a neighbour and the Parish Council have commented on the application. No evidence has been put forward that is contrary to the evidence provided by the applicant.

Assessment:

4 year immunity rule:

To be considered lawful by the passing of time, the outbuilding must have been 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 outbuilding was substantially finished on 14/10/2016. Additionally, the outbuilding is visible in aerial imaging dated 2019 and therefore the outbuilding had 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 outbuilding, which is incidental to the dwellinghouse, as shown in the submitted details, has 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 outbuilding has been adapted by any means within its lifetime.

Subsequently, the time limit for taking enforcement action has expired under s171B of the TCPA and the operational development is lawful. A plan is attached to the draft decision notice demonstrating the operational development 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 outbuilding, 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:	29 October 2024
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Earliest date for decision:	26 September 2024
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Recommendation agreed by: (Authorised Officer)	
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Date:	29/10/24
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