

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	250118
Site Address:	Pine Copse, Nine Mile Ride, Wokingham, RG40 3NQ
Expiry Date:	18 March 2025
Site Visit Date:	4 February 2025
Proposal: Application for a certificate of existing lawful development for the stationing of a caravan for permanent residential use.	

PLANNING HISTORY

Application No.	Description	Decision & Date
42445	Temporary permission for retention of mobile home. Change of use of agricultural land to equestrian	Approved 1994
F/2000/1366	Proposed erection of replacement dwelling and garage	Refused 14/06/2000
F/2001/3357	Proposed erection of replacement dwelling with garage, demolition of existing dwelling	Approved 06/07/2001
F/2002/7252	Proposed addition of first floor to dwelling with dormer extensions	Approved 18/09/2002
F/2003/9621	Proposed change of use of building 1 from kennels ancillary store to rural workshop/general storage, and, building 2 from part ancillary store to part kennels, office, and part general store	Approved 21/08/2003
F/2004/2736	Proposed erection of building for light industrial /storage use (B1c/B8). Demolition of existing kennels. Retrospective.	Refused 20/09/2005 Appeal Allowed 12/10/2006
F/2006/7938	Proposed change of use of land for stationing of mobile homes (19 sites)	Refused 04/01/2007
CLE/2008/0220	Application for a certificate of lawfulness for an existing use of mixed use of land for single dwelling house and residential caravan site.	Refused 05/12/2008 Appeal Dismissed 07/10/2009
F/2009/0883	Proposed change of use to residential caravan site for two mobile homes (one static and one touring) and erection of an amenity building. Retrospective	Refused 09/12/2009
F/2009/0493	Proposed erection of single storey side extension to dwelling, plus demolition of existing conservatory.	Approved 17/08/2009

F/2010/2533	Application for enlargement of access gate and formation of hard driveway access. Retrospective.	Refused 17/01/2011 Appeal Dismissed 02/08/2011
F/2012/0090	Proposed enlargement of access gate and formation of hard driveway access	Approved 14/03/2012
171380	Application for a certificate of existing lawful development for use of land for car repair and sales (Sui Generis).	Approved 30/06/2017
171378	Full application for the proposed change of use of land to equestrian, erection of building for use as hay barn and formation of existing track for access (Retrospective)	Approved 04/07/2017
171379	Full application for a change of use of equestrian barn to small parts/ plant/equipment repair/welding B1(c) light industrial (Retrospective).	Approved 04/07/2017
172555	Application for a certificate of existing lawful development for the use of land for the permanent stationing of caravans for residential (C3a) accommodation and operational development for the formation of associated hard standing and installation of external lighting.	Refused 20/11/2017 Appeal Withdrawn 19/12/2019
182427	Application for a Certificate for an Existing Lawful use for the mixed use of land for purposes ancillary to the adjoining residential dwellinghouses, the keeping of horses, the stationing of caravans for residential purposes and the parking of vehicles connected with the adjoining commercial units.	Refused 22/11/2018 Appeal Allowed 27/01/2020
230581	Application for a certificate of existing lawful development for use of existing barn units 10A and 10B for vehicle repairs and servicing and the ancillary use of the hardstanding for the parking of vehicles.	Approved 16/05/2023
230831	Full application for the proposed erection of 1no. commercial unit for car repairs and sales (retrospective).	Approved 23/06/2023
231144	Full application for the change of use of part of the site for the ancillary keeping of dogs and siting of kennels, exercise pen and associated feed store (retrospective).	Refused 24/07/2023

INFORMATION PROVIDED

By the applicant:

- Historic Aerial Imagery

- Tenancy Agreements (2013-2024)
- 2 x Statutory Declarations

By the Council:

- Postal Address Records
- Council Tax Records
- Case Officer Site Visit photos 4th February 2025

By third parties:

- Consultation comments from residents of Pine Copse

LEGISLATION

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

Section 57 requires that planning permission is needed for development of land.

Section 55 provides that development includes any *material change in the use* of land.

Timescale

Section 171.B(1) 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. However, The Act includes transitional provisions which provide that, where operational development was substantially completed before the 25 April 2024, the 4 year period will continue to apply.

Section 171B(2) 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) 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.

Section 171B(4)(b) does not prevent the taking of further enforcement action within 4 years if the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful, he 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:
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 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 and Newham LBC* [1985] JPL 630 that the relevant test of the 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 to be accepted. If the Local Planning Authority have 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 the 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.

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 accurately describes the nature of the use, the decision maker must modify/substitute each description so as to accurately 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) then 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

This application is for a Certificate of Lawful Existing Use to regularise the stationing of a caravan for permanent residential use.

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 more than ten years prior to the submission of this application i.e. since 21st January 2015.

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 small area of land within the Pine Copse complex. The site is located on the western border of the site and is within an area of land which is classed as a ‘Certificated Location’ approved by the Caravan and Motorhome Club for 5no. recreational caravan pitches with a maximum stay of 28 days at a time. This use falls under part 5 of the General Permitted Development Order 2015 (as amended) and does not require planning permission.

The application site comprises one of the 5no. pitches permitted for recreational camping and caravanning. Extensive tree coverage lines the western border of the site that immediately abuts the train line.

Evidence submitted by the Applicant:

Historic Aerial Imagery



Photo one: 2013



Photo two: 2017



Photo three: 2018



Photo four: 2020



Photo five: 2021



Photo six: 2021



Photo seven: 2023

Tenancy Agreements (2013-2024)

Tenancy agreements for No.1 Caravan and Camping/Plot 1 Caravan and Camping have been submitted. All the agreements refer to the same tenant and are dated November 2013 – November 2024, with an agreement for each calendar year within these timeframes being provided.

Statutory Declaration from occupant of Caravan

This statutory declaration asserts the following:

- The occupant of the caravan moved to the site in late 2011. They live in a touring caravan within the 'Certificated Location' part of the site as identified by the application red-line.
- The occupant works in the London Area on oil and gas civils work, with Pine Copse provided a good location to commute from.
- The occupant regularly parks their car next to the pitch.
- Once a month, the occupant pays the owner of the site rent for the pitch, water and electricity.
- Pine Copse is the occupant's only primary residence.
- The occupant confirms that caravan has been continuously in-situ since 2011 to the present day at Pine Copse, which is a period of at least 13 years.

Statutory Declaration from previous occupant of Pine Copse

This statutory declaration asserts the following:

- The author moved to Pine Copse (mobile home number 1) in 2003 and lived there continuously until the end of July 2013.
- A 5 pitch holiday Certified Location caravan site as identified in red on the attached plan, was created at Pine Copse in 2004 and the holiday use commenced.
- In late 2011 the occupant of the caravan subject of this certificate moved onto one of the 5 pitches in the Certified Location site in this touring caravan and stayed as a permanent resident.
- The occupant of the caravan parks his vehicle on his pitch.
- The occupant of the caravan was still living on his pitch when the author left Pine Copse in 2013.
- The author returned to Pine Copse approximately four months later and have been continuously living there since. The occupant of the caravan is still living on the same pitch in the Certified Location area to present day.

Evidence submitted by the Council:

Council Tax Records

The Council Tax team has no records of Council Tax payments linked to the caravan and occupant.

Postal Address Records

The Council have no records of any separate postal addresses for the caravan or occupant.

Case Officer Site Visit photos 4th February 2025



Evidence submitted by third parties:

Comments from 'Pine Copse Residents' were received during the consultation period for this application. The author of the comments outlines that whilst the resident of the caravan may have been on site for the extent of the leases provided, the caravan has only been in the location it is currently stationed for less than a year. Prior to this, the pitch the caravan is currently on was being used for caravan storage.

Assessment:

The statutory declarations and tenancy agreements submitted by the applicant ultimately conclude that the occupant of the caravan has been living at Pine Copse since at least 2013. The Council have no evidence on the contrary to this.

However, based on the evidence submitted, the Council are not convinced the caravan has been stationed within the application red-line for a continuous period of 10 years.

Firstly, the 2017 aerial of the application site is clear in that no caravans were stationed on the relevant pitch at the time of recording:



This inconsistency of pitch usage is common for recreational Caravan and Camping sites, where occupants of the pitches regularly come and go due to the 28 day occupation restrictions. It also implies that the caravan/occupant subject of this certificate has not stationed their caravan in this location continuously.

Turning to the tenancy agreements provided, these corroborate the conclusions that the occupant of the caravan has lived on the site since at least November 2013. Despite this, none of the agreements include a plan indicating the location of 'No.1 Caravan and Camping/Plot 1 Caravan and Camping' and therefore the Council are not certain these agreements relate to the application red-line.

With regards to the statutory declarations, the declaration from the occupant of the caravan asserts that they are currently living on the pitch within the application red-line and that they have lived at Pine Copse since 2011. What they do not assert, however, is that the application red-line has been the sole location of the caravan since moving to the site or for a period in excess of 10 years.

Similarly, the statutory declaration from another occupant of the Pine Copse mobile home park states that the occupant of the caravan moved onto 'one of the 5 pitches' in the Certified Location in 2011. This declaration does not specify which pitch or where.

Further to the above, comments received from Pine Copse residents during the consultation period for this application assert that the occupant and their caravan have been stationed on the relevant pitch for less than a year. This correlates with the Council's assertions that this pitch has not been continuously used by the occupant and their caravan for permanent residential use in excess of 10 years.

Turning to the Council's postal address and Council Tax records; whilst a lack of records is not a direct indicator of inconsistent use, it does enforce the viewpoint that the caravan has not been used as a consistent /permanent form of occupation in this location for a period in excess of 10 years.

Overall, the Council accept the occupant has been living on the Pine Copse site in excess of 10 years. However, the evidence surrounding the location of the caravan's

stationing is ambiguous and inconsistent. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that, on the balance of probabilities, the stationing of a caravan for permanent residential use has not been occurring within the application site for a period in excess of 10 years.

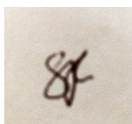
The Public Sector Equality Duty (Equality Act 2010):

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 stationing of a caravan for permanent residential use has not been occurring within the application site for a period in excess of 10 years.

It is therefore considered that the application of a certificate of existing lawful use should be refused.

Date:	3 March 2025
Earliest date for decision:	12 February 2025
Recommendation agreed by: (Authorised Officer)	
Date:	3.3.25