

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	253036
Site Address:	Suncot, School Road, Barkham, Wokingham, RG41 4TR
Expiry Date:	6 February 2026
Site Visit Date:	18 October 2025
Proposal: Application for a certificate of existing lawful development for use of land as residential garden.	

PLANNING HISTORY

Application No.	Description	Decision & Date
251704	Householder application for the proposed erection of first floor front, side and rear extension, roof extension with dormer windows.	Approved: January 2026
251485	Application for a certificate of lawfulness for the proposed erection of single storey outbuilding.	Refused: 05/08/2025
210874	Full planning application for the proposed subdivision of the site and erection of 4 no. detached dwellings following demolition of existing outbuildings, with alterations to the existing access serving Suncot, provision of parking, boundary treatment, surface water attenuation measures and hard and soft landscaping.	Refused: 11/05/2021
080067	Erection of single storey side and rear extensions to form granny annexe	Approved: 12/01/2009
082114	Erection of single storey side and rear extensions to form granny annexe	Refused: 01/10/2008 Appeal Dismissed 03/08/2009
030600	Proposed single storey front and rear extensions to dwelling, chimney to side plus erection of replacement detached garage and store room	Approved: 19/05/2003
27185	Two storey rear extension	Approved: 20/03/1987
13682	Garage	Approved: 28/08/1980
03403	Double garage	Approved: 30/05/1975

INFORMATION PROVIDED

By the applicant:

- Title Deed.
- Title Plan.
- Location Plan.
- Block Plan.
- Application Form, stating that the use began more than 10 years before the date of this application
- Planning Statement, which gives background to the site, the relevant legislation, and setting out the evidence.
- Historic Aerial Photographs.
- A letter received from the previous owners, who claims that during their ownership of the property from 1999-March 2025, the land was only ever used as residential garden.
- Decision Notice, Officer Report & Approved Plans for a recent approved application at the site (ref: 251704).
- Statutory Declarations from the current owners, Josh & Katie Chappell, stating the following:
 - They have owned the site since 26th March 2025.
 - The whole of the area outlined in red on exhibit 1 was used as residential garden in conjunction with the dwellinghouse since purchased.
 - Photos have been attached in exhibit 2, showing the family using the spaces for residential activities.
 - Exhibit 3 include the title plans and deeds.
 - Exhibit 4 includes the sales details for the site which describe it as a large expansive plot as well as a kids paradise.

By the Council:

- Aerial Photographs.
- Relevant Planning History.
- Site Photos.

By third parties:

- None

SITE DESCRIPTION

The application site comprises a substantial parcel of land situated to the rear of Suncot, adjoining several of the neighbouring properties on School Road and Langley Common Road. The land lies within the countryside and currently forms a well-maintained area of lawn, having previously consisted of lawn interspersed with a number of trees.

There are no listed buildings within the site, nor is the property located within a Conservation Area or any other form of 'Article 2(3)' land as defined by the 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.

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

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 four 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 of use to have become lawful.

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 beginning with the date of that breach.

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.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise for the residential use of land associated with Suncot (edged red on the submitted Location Plan).

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 ten years prior to the application i.e. since 11.12.2015.

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.

Assessment

The evidence originally submitted in support of the application predominantly relates to the ownership of the subject parcel of land rather than its use. These are distinct differences, a point which has been consistently emphasised throughout the process with the applicant and is well established in planning case law. For this reason, extensive commentary on documents such as the Title Deed, Title Plan, Location Plan, and Block Plan is not provided within this report. While these documents confirm the legal extent of the landholding, they do not carry weight in determining whether the land has been used as residential garden for the purposes of this certificate.

Applicant’s Evidence:

Aerial Photographs

The various aerial photographs submitted carry somewhat greater evidential value than the ownership documents discussed above. Nevertheless, when considered in isolation, they do not provide the level of clarity or continuity required to justify the issuing of a certificate.

The images from 2003, 2005, 2010 and 2013 are not relevant to the period under consideration. Notably, the aerial photographs from 2018 and 2020 display significantly denser tree coverage compared with the 2025 image. This could reasonably indicate a change in the nature or intensity of activity on the land during this timeframe.

While the presence of a maintained lawn can be observed, this in itself does not constitute unequivocal evidence of residential garden use. Similarly, the appearance of a vegetable plot and a trampoline, particularly as they are situated close to the main dwelling, does not necessarily demonstrate that the entire parcel was formally

incorporated into the residential use. These elements therefore cannot be afforded decisive weight.

Signed Letter from Previous Owner

More substantial weight is attributed to the signed letter provided by the previous owners, who sold the land to the current occupants in March 2025. Their statement confirms that the land in question had been continuously used as residential garden associated with Suncot from the point they purchased it in 1999.

Despite this letter not being in the Statutory Declarations, it is afforded positive weight. On the balance of probabilities, therefore, the LPA accepts that the land was used as residential garden to Suncot during the relevant period of 12/12/2015 to 26/03/2025.

An evidential gap remained between 26/03/2025 and 12/12/2025. Following discussion with the applicant, it was confirmed that the new owners would submit Statutory Declarations addressing this period.

Statutory Declarations

The declarations provided by Josh and Katie Chappell state that the land has been used as residential garden from the date they purchased the property until the present day. Photographs of their family utilising the land as garden were also supplied in support of their statement.

The LPA considers these Statutory Declarations to be credible and sufficiently detailed. They therefore provide adequate evidence that the land was used as residential garden associated with Suncot for the period between 26/03/2025 and 12/12/2025.

The Council's Evidence

Relevant Planning History

As highlighted during the assessment of application 251485, several plans submitted to historic planning applications at Suncot (between 2000 and 2010) appear to show the subject parcel of land as separate from the planning unit of the main property. While these documents offer some context regarding the use of the land during that earlier period, they fall outside the timeframe relevant to this application and therefore carry negligible weight.

Conversely, during the assessment of application 210874, refused in May 2021, Planning Officers accepted that the land subject to development formed part of the residential garden of Suncot. This conclusion must be afforded positive weight. Furthermore, Planning Statements accompanying more recent applications at the site have consistently identified the land as residential garden which has not been disputed.

Site Photos

Council site photographs associated with application 210874 and a 2024 pre-application enquiry show the land as predominantly managed lawn. While these

images alone do not definitively evidence active residential garden use, they are consistent with, and do not contradict, the applicant's account.

Aerial Imagery

As previously noted, the aerial imagery available to the Council, dated 2015, 2019, and 2022, neither proves nor disproves the applicant's version of events. Although the reduction in tree coverage over time raises some concern regarding the consistency of use, it is not sufficient, in isolation, to rebut the applicant's submissions or supporting evidence regarding the land's use.

Summary

Taken as a whole, the Council's evidence largely aligns with the applicant's position that the land was in use as garden between 2021 and 2024. When considering the wider relevant period for this application, there is no substantive contradictory evidence from either the Council or third parties.

Conclusion

Having reviewed the evidence submitted with the application and the Council's own evidence the Local Planning Authority is satisfied that, on the balance of probabilities, the land outlined in red on the submitted Location Plan has been used continuously as residential garden associated with Suncot, School Road, for a period of at least ten years.

Other Matters

This certificate confirms the lawful use of the land for garden purposes only. For the avoidance of doubt, the use of land as a garden does not of itself define or establish curtilage. Curtilage is a matter of fact and degree having regard to the physical and functional relationship between land and a building, rather than a use of land itself. This Certificate does not include any operational development.

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 land outlined in red on the submitted Location Plan has been used continuously as residential garden associated with Suncot, School Road, for a period of at least ten years. It is therefore considered that the application of a certificate of existing lawful use should be approved.

Date:	9 February 2026
Earliest date for decision:	8 January 2026
Recommendation agreed by: (Authorised Officer)	<i>HMM</i>
Date:	10 February 2026