

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	250017
Site Address:	10 Arborfield Road, Shinfield, Wokingham, RG2 9DY
Expiry Date:	7 March 2025
Site Visit Date:	18 February 2025
Proposal: Application for a certificate of existing lawful development for erection of an outbuilding to rear.	

PLANNING HISTORY

Application No.	Description	Decision & Date
22113	Erection of detached garage and alterations to existing access	Approved 20/08/1984
180328	Householder application for the proposed erection of single storey side and rear extension to form new entrance plus demolition of existing detached garage.	Approved 10/04/2018

SITE DESCRIPTION

The application site features a two storey semi detached dwelling located within a predominantly residential area of Shinfield.

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 subject to wildlife and habitat designations being located in an area that holds the potential to support bat roosts.

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 25/12/2020.
- Supporting information that includes photographs of the outbuilding; however, these photographs are not dated.
- Supporting information stating the development meets the requirements for Class E permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015.
- Supporting Information: Drawings.

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 18/02/2025 and this confirmed the presence of the operational development on the location as shown in the submitted details.
- Site visit photos (18/02/2025).
- Aerial images from the Council's mapping system taken from 2013, 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 16/07/2021, 15/04/2020 & 23/06/2018.

By third parties:

- One neighbour has requested the finishing of the building facing no. 9 as it is currently breeze block and has no cladding or other finish, thus making it unsightly.
Officer comments: It is noted that this is a request from the neighbour and not evidence that is contrary to that provided by the applicant.

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:

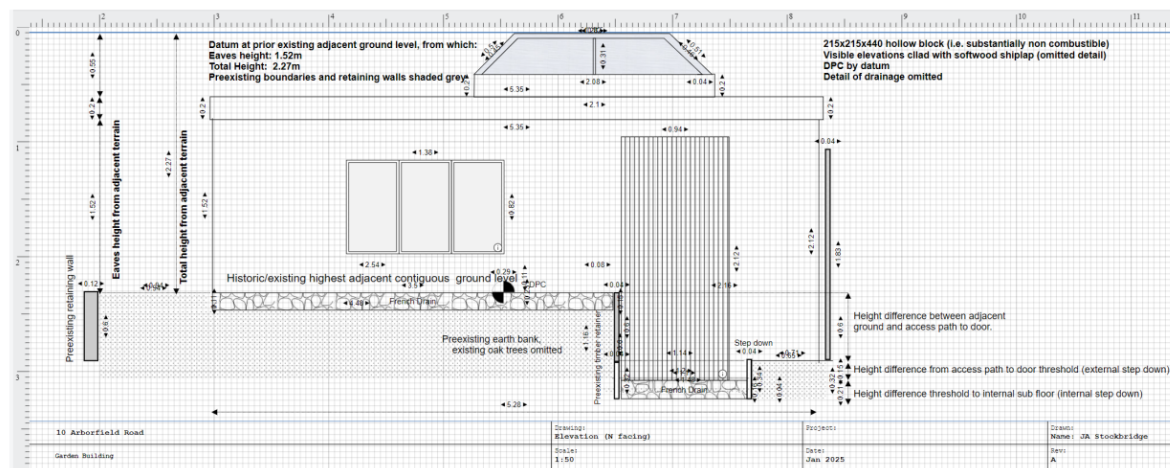
The evidence submitted by the applicant features photographs of the outbuilding, however, the submitted photographs within the supporting information document are not dated. From looking at these photographs alone, it cannot be determined as to when the outbuilding was substantially completed. The evidence submitted is therefore based heavily on the application form that states the building works were substantially completed on 25/12/2020.

Point 2.5 of the supporting information document of the applicant’s evidence states that the total height of the outbuilding is 2.27m, and that this is less than the permitted maximum of 2.5m within 2m of a boundary. The submitted north elevation plan shows the outbuilding with accurate measurements.

Garden building: North elevation (full)

Garden Building, 10 Arborfield Road: Drawings

All dimensions in metres



Garden building: N Elevation (Full)

Evidence Submitted by the Council:

Aerial images from the Council's mapping system taken from 2013, 2019 & 2022.



Zoomed in image of the outbuilding from the 2022 aerial image (below)



In the images above, it can be seen that clearing works were done between 2013 and 2019 to allow for the erection of the outbuilding, as it is clear in the 2019 image as to where the outbuilding would be located. However, the 2022 aerial image shows that the outbuilding has not been substantially completed as the wooden roof support beams are clearly visible. Additionally, the aerial image does not show the felt roof finish that was seen during the site visit on 18/02/2025 (see below).

Site visit photo 18/02/2025



Site visit photo 18/02/2025



The two site photos above show that the 'pre-existing earth bank', as labelled on the elevation submitted by the applicant, appeared from the visit to be a planting bed. The ground level was understood to be the level of the pathway leading up to the outbuilding.

Evidence Provided by Third Parties:

Whilst one neighbour has 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 stated on the submitted application form that the works were substantially completed on 25/12/2020. However, the aerial images from the Council's mapping system clearly show that the works were not

substantially completed by 30/04/2022. The outbuilding can be seen in situ on site, but the roof had not been completed.

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 not been in situ for more than four years prior to the change in legislation (s171B of the TCPA). Therefore, enforcement action could be taken under s171B of the TCPA.

General Permitted Development:

Point E.1 (e) (ii) of The Town and Country Planning (General Permitted Development) (England) Order 2015 states that development is not permitted if '*The height of the building, enclosure or container would exceed – 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse*'. Looking at the site visit photos from 18/02/2025, it is understood that the existing ground level should be taken from the path to the outbuilding and not the raised bed next to it. When the height of the outbuilding is measured from the ground level, where the entrance to the outbuilding meets the ground, it measures to 3.05 metres.

The table below includes an assessment of the outbuilding against Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.

			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted?		✓
Art.3 (5)	4	Are the building operations involved in the construction of the dwellinghouse lawful?	✓	
Art.4	5	Is there an 'Article 4 Direction' in effect for the site?		✓
Art.4	6	Is it within the curtilage of the dwellinghouse?	✓	

Fuel storage

Sch.2 Pt. 1 E.b	7	Does the development consist of a container used for the storage of oil or liquid petroleum gas?	NA	NA
Sch.2 Pt. 1 E.b	8	Is the storage for domestic heating purposes?	NA	NA
E.10)	9	Would the capacity of the container exceed 3,500 litres?	NA	NA

Outbuildings and pools

Sch.2 Pt. 1 E.a	10	Does the development comprise a building or enclosure, swimming or other pool, or the maintenance, improvement or other alteration of such a building or enclosure?	NA	NA
Sch.2 Pt. 1 E.a	11	Is the building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such?	NA	NA

Fuel storage and outbuildings

E.1(a)	12	Has permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)?		✓
E.1(b)	13	Would the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) exceed 50% of the total area of the original curtilage (excluding the original dwelling)?		✓
E.1(c)	14	Would any part of the building, enclosure, pool or container be situated on land forward of a wall forming the principal elevation of the original dwellinghouse?		✓
E.1(d)	15	If it is a building would it have more than one storey?		✓
E.1(e)	16	Would the height of the building, enclosure or container exceed:		✓
		(i) Four metres in the case of a building with a dual-pitched roof		
		(ii) 2.5 metres in the case of a building, enclosure or container within two metres of the boundary of the curtilage of the dwellinghouse?	✓	
		(iii) Three metres in any other case?	✓	
E.1(f)	17	Would the height of the eaves of the building exceed 2.5 metres?		✓
E.1(g)	18	Would the building, enclosure, pool or container be situated within the curtilage of a listed building ?		✓
E.1(h)	19	Would the development include the construction or provision of a veranda, balcony or raised platform?		✓
E.1(i)	20	Would it relate to a dwelling?		✓
E.1(i)	21	Would it relate to a microwave antenna?		✓
E.3	22	Article 2(3) land (World Heritage Sites, National Parks, AONBs & the Broads): Would any part of the building, enclosure, pool or container be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse?		✓
	23	Would it affect or be within the Root Protection Area of a TPO'd tree? * Does not affect Article 3 permission but separate TPO approval may be needed		✓

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, exceeds a height of 2.5 metres. The outbuilding therefore does not comply with point E.1 (e) (ii), and thus the outbuilding would not benefit from permitted development rights.

On this basis, the application for a certificate of existing lawful use is recommended for **refusal**.

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 has not been demonstrated that the outbuilding has been substantially completed and in situ for a period in excess of four years. Additionally, the outbuilding does not comply with point E.1 (e) (ii) of the GPDO and therefore the works cannot be considered as Permitted Development and planning permission is not available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015.

The Council thus **would** have been in a position take enforcement action on the date of the application and the development thus would **not** have been lawful. On this basis it is recommended that the application for a Lawful Development Certificate be **refused**.

Date:	7 March 2025
Earliest date for decision:	3 February 2025
Recommendation agreed by: (Authorised Officer)	
Date:	07/03/25