

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	252152
Site Address:	3 Simonds Grove, Spencers Wood, Wokingham, RG7 1BH
Expiry Date:	26 November 2025
Site Visit Date:	17/11/2025
Proposal: Application for a certificate of lawfulness for the partial garage conversion to create habitable accommodation.	

Application Number	Proposal	Decision Date	Decision	Relevant Conditions
181639	Application for the submission of details to comply with the following condition of planning consent(161255) 15/08/2017. 24. Contamination 32. Sewerage disposal/drainage	17/07/2018	Replied	N/A
172474	Application for submission of details to comply with the following conditions of planning consent 161255 (dated 15/08/2017) 3. Materials/boundary treatments 4. Boundary treatments 5. Fencing 8. Landscaping and trees 10. Landscape management plan 11. Protection of trees etc 13. Construction management 15. Access and movement 17. Surface materials 22. Archaeology 23. Lighting 26. Sustainable design and construction 27. Site waste management plan 30. Drainage system.	10/07/2018	Approve	N/A

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form states that the partial garage conversion to create habitable accommodation was constructed under permitted development.
- A Location Plan 1:1250
- A Site Plan
- Photographs.

By the Council:

- Planning History Records check.
- Building Control Record check.
- Site visit photographs.

By third parties:

- None.

APPRAISAL

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.

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 *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.

Relevant details of the proposal:

The application is a Certificate of Lawful Existing Development to regularise the partial conversion of the garage to create habitable accommodation under permitted development. 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.

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 Applicant's Evidence:

The submitted evidence includes a location plan, a site plan illustrating the converted area, and two photographs showing the front of the garage. The application form states that the conversion and use commenced on 04/12/2022. The application form also notes that the rear portion of the garage has been boarded and insulated to create additional storage/functional space. No plumbing has been installed, and the converted area is not accessible from the main house, so the change falls under permitted development. No alterations have been made to the appearance, height, or footprint of the house. The property retains two parking spaces, as shown on the

original plans.

The Council's Evidence:

A site visit was carried out by the Case Officer on 17/11/2025, during which it was confirmed that the rear portion of the garage has been converted to habitable accommodation in the form of an office space, while the front portion is being used for storage at the time of the visit. There are no relevant building control records for the works.

Assessment:

The supporting application form notes that the partial internal garage conversion and its use commenced on 04/12/2022. Accordingly, the works would not benefit from the 10-year rule under Section 171B (1) (a) of the Town and Country Planning Act 1990, which provides immunity from enforcement only where unauthorised development has been used continuously for a period of 10 years.

The works are confined to the interior of the existing building, and both the applicant's supporting information and the Case Officer's site visit confirm that they do not involve any external alterations that would materially affect the external appearance of the dwellinghouse. In accordance with Section 55(2)(a) of the Town and Country Planning Act 1990, internal alterations that do not result in a material change to the external appearance of the building do not constitute development.

However, in accordance with Section 171A(1)(b) of the Town and Country Planning Act 1990, the works constitute a breach of planning control as they fail to comply with condition 19 attached to planning permission 161255.

Condition no.19 of Planning Application ref 161255 states the following:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any Order revoking and re-enacting that Order within or without modification), any garage, carport or area of undercroft parking accommodation on the site shall be kept available for the parking of vehicles ancillary to the residential use of the site at all times. Carports and undercroft parking shall be erected in accordance with the approved plans and shall not be enclosed beyond any enclosure shown on the approved drawings without the prior written approval of the Local Planning Authority. Garages, carports and undercroft parking shall not be used for any business use nor as habitable space.

Reason: *to ensure provision of adequate parking and reduce the likelihood of unplanned roadside parking in accordance with Wokingham Borough Core Strategy Policies CP1 and CP6, the Parking Standards Study within the Borough Design Guide 2010 and the South of the M4 Strategic Development Location Supplementary Planning Document (October 2011)*

Conclusion

The proposed works comprise internal alterations that would not ordinarily amount to development under Section 55(2)(a), however, the conversion results in non-compliance with condition no.19 of planning permission 161255, which requires the garage to be retained for vehicle parking only. In accordance with Section 171A(1)(b),

this constitutes a breach of planning control. The use has not continued for the 10-year period required to gain immunity under Section 171B, and therefore planning permission is required.

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 a Lawful Use application is the 'balance of probability'. Based on the evidence submitted and the Local Planning Authority's own records, it has not been demonstrated that the partial garage conversion to create habitable accommodation is lawful. The proposed internal garage conversion would not normally constitute development under Section 55(2)(a); however, it results in a breach of condition 19 of planning permission 161255, which requires the garage to be retained for vehicle parking only. In accordance with Section 171A(1)(b), this constitutes a breach of planning control. As the use has not existed for the 10-year period required for immunity under Section 171B, planning permission is therefore required.

Date:	19 November 2025
Earliest date for decision:	23 October 2025
Recommendation agreed by: (Authorised Officer)	<i>MC</i>
Date:	24.11.2025