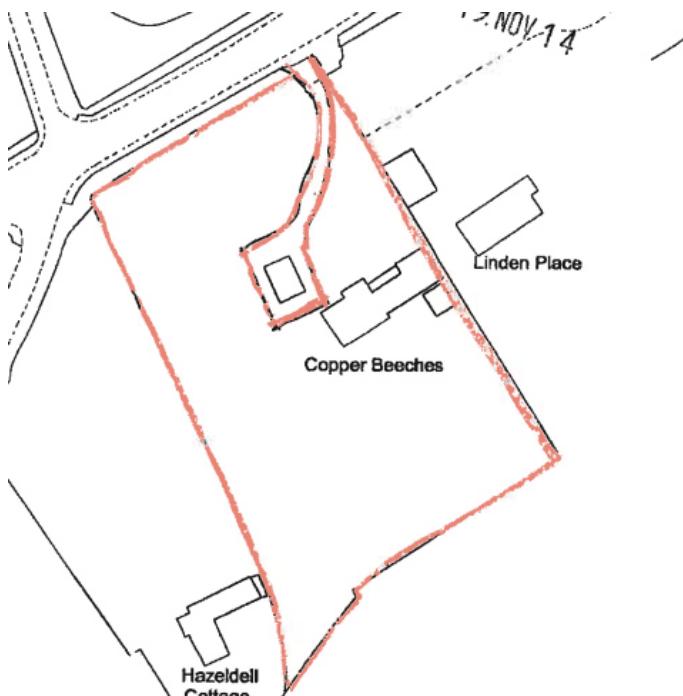


## **DELEGATED OFFICER REPORT**

<b>Application Number:</b>	252548
<b>Site Address:</b>	Copper Beeches, Bath Road, Hare Hatch, Wokingham, RG10 9UT
<b>Expiry Date:</b>	15 December 2025
<b>Site Visit Date:</b>	9 September 2025 & 2 December 2025
<b>Proposal:</b> Application for a certificate of existing lawful development for the formation and occupation of 8 no. independent flats.	

<b>PLANNING HISTORY</b>		
Application No.	Description	Decision & Date
990026	Application For Certificate Of Existing Use For Engineering Works Relating To A Vehicular Access	Approved 28/11/2000
142791	Application for a certificate of existing lawful development for 2 bed bungalow.	Approved 05/01/2015
		
162196	Application for a certificate of existing lawful development for the use of land adjacent to dwelling as a domestic garden.	Approved 10/02/2017
171394	Outline planning application with all matters reserved (except for access and scale) for the site at Copper Beeches for up to 3 dwellings and	Refused 05/07/2017

	associated works.	
180558	Full application for the proposed erection of 2no dwellings following demolition of existing dwelling and outbuildings.	Refused 24/05/2018
182525	Full planning application for the demolition of existing buildings and the erection of 1 x 4/5 bed and 1x 3 bedroom dwellings.	Refused 05/12/2018
200436	Full application for the proposed erection of one detached 5 no. bedroom chalet-style dwelling following demolition of the existing dwelling and outbuilding and retention of two separate dwellings.	Refused 14/07/2020
230133	Householder application for the proposed alterations to the separate dwelling at the rear of the main building including a single storey side extension, following demolition of the existing greenhouse (Retrospective).	Approved 23/03/2023

## INFORMATION PROVIDED

By the applicant:

- 55no. tenancy agreements covering Flats 3-11
- 2no. Statutory Declarations

By the Council:

- Site Visit Photos associated with application 230133
- Site Visit Photos dated 9<sup>th</sup> September 2025
- 200436 Officer Report
- 230133 Officer Report
- Council Tax Records for the application site

By third parties:

- Objections received from 2no. residents

## 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 *Gabbitas 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) than 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**

### **Proposal Description:**

This application is for a certificate of existing lawful use to regularise the use of the main building on the application for use as 8no. independent dwellinghouses/flats (Flats 3-10).

The development involves the conversion of a building for residential use. The submitted information indicates that all the flats within the building have been in continuous, independent residential use for a period of more than 10 years. From the date of the application's submission, the latest relevant date is 20<sup>th</sup> October 2015.

Prior to 25<sup>th</sup> April 2024 (due to the change in legislation within Section 171.B(1) of the TCPA), the conversion of a building for residential use was considered lawful provided it was continuously occupied for a period of four years. After 25<sup>th</sup> April 2024, this four-year rule changed to ten years.

Therefore, if the flats were (and have continued to be) in continuous residential use for a period of four years prior to 25<sup>th</sup> April 2024, they can be considered lawful by the passing of time.

The applicant and Council are both aware that Flat 10 was subdivided into two flats (Flats 10 and 11) as of August 2024.

**Site Description:**

The application site consists of a large detached dwellinghouse located within generous grounds and well enclosed by dense vegetation. A detached garage exists to the immediate north-east of the main building, understood to be occupied as an independent dwellinghouse (regularised by application 142791). To the rear of the main building is another outbuilding, again understood to be occupied as a dwellinghouse and lawful by the passing of time. This is not the 'pool house' which is also to the rear.

**Evidence Submitted by the Applicant:**

Tenancy Agreements for Flats 3-11

Whilst most of the information within these agreements remains confidential, below is a summary of their tenancy timeframes:

- Flat 3 – 24/09/2013 to Present Day
- Flat 4 – 12/02/2014 to Present Day
- Flat 5 – 26/08/2011 to Present Day
- Flat 6 – 24/04/2014 to Present Day
- Flat 7 – 30/09/2011 to Present Day
- Flat 8 – 04/07/2011 to Present Day
- Flat 9 – 10/08/2013 to Present Day
- Flat 10 (prior to subdivision) – 22/08/2015 to 08/04/2024
- Flat 10 (post subdivision) – 01/08/2024 to Present Day
- Flat 11 (post subdivision) – 23/08/2024 to Present Day

Statutory Declaration from Sylwia Gorniak

- This person assists with the tenancies and any small repairs which are required to the flats.
- There are currently 9 flats within the building, with two of those on the front floor with an independent access from the front of the building. Each ground floor flat has their own external door access.
- Flats 10 and 11 were originally one flat until August 2024 when it was subdivided into 2 units. At the time of writing the statutory declaration, the occupier of Flat 11 had been served notice to leave the property.
- Except for a short period of vacancy for redecoration, all the flats have been continuously occupied for well in excess of 10 years.

***Statutory Declaration from Edward Gorecki***

- Mr Gorecki's family have owned the site since 1984 where he lived there with his wife, son and mother.
- The living arrangement did not suit the owner's mother, and they converted the former detached garage to a dwelling in 1989.
- In 1993 the owner purchased a plot of land in Winnersh and moved there in 1994. This allowed the mother to move back into the main dwelling on site but as it was too large, it was used for a bed & breakfast from 1994 until September 2005.
- Due to ongoing costs, the building was converted into flats and rented out as such.
- Over this time, the owner has used letting agencies to get tenants.

**Evidence Submitted by the Council:**

Site Visit Photos associated with application 200436 (dated 2<sup>nd</sup> June 2020):





Site Visit Photos dated 9<sup>th</sup> September 2025





### 230133 Officer Report

The Officer Report for application 230133 states the following within the 'Planning History & Context' section:

*"The planning history for the main building on site and the use of the land as a whole is complex and has been subject to several enforcement investigations. In short, the whole site was initially a single dwellinghouse with various ancillary outbuildings until 1991 when consent was granted for a change of use from a dwelling to a guest house. Following this, the main building has been converted, without planning permission, to 2 x 1-bed flats and 6 x studio flats. [officer emphasis] This is noted in the Officer's Report for application ref 200436 and reaffirmed recently in enforcement investigation ref RFS/2021/086714. While a Certificate of Existing Lawful Development application has not been submitted to confirm that this change in use is lawful, recent enforcement investigations have concluded that the flats are immune from enforcement action due to the length of time since they were established (well over four years) [officer emphasis]"*

### Council Tax Records for the application site

The Council's Council Tax team have outlined that they have the following records on the flats within the building:

- Flat 3 (since 30/09/2010)
- Flat 4 (since 30/09/2010)
- Flat 5 (since 06/12/2018)
- Flat 6 (since 06/12/2018)
- Flat 7 (since 18/08/2019)
- Flat 8 (since 18/08/2019)
- Flat 9 (since 10/08/2013)
- Flat 10 (since 01/04/2024)

### **Evidence Submitted by Third Parties:**

2no. objections have been received from local residents. Specifically, their concerns relate to the fact that each flat did not have an independent external access door until 2023/2024. Prior to 2023/2024, the entrance to the bedsits had been via the main door for both ground floor and first floor accommodation. There was also one rear door access.

### **Assessment:**

The tenancy agreements provide a lengthy and consistent timeline for the occupancy of Flats 3-10. This corresponds with the submitted statutory declarations, indicating that the latest date for occupation being 2015 (except for Flat 11).

There are small gaps between tenancy dates, but these are not significant (de minimis) and have been described by the applicant as temporary renovation periods. The tenancy agreements indicate that the same occupants were within the flats both before and after renovations. At the time of visiting the site on 9<sup>th</sup> September 2025,

flats 3 and 4 were under temporary renovations but had active tenancies for both.

The concerns raised by local residents regarding the fact most units did not have independent external access doors until 2023/2024 are acknowledged, but within their comments they also outline that each unit had internal access from both the main front door and rear door prior to their installation. A lack of dedicated external access doors for each flat therefore does not indicate that the flats were not in independent residential use prior to their installation.

Previous involvement by the LPA at the site also indicates that the flats are lawful by the passing of time. As per the excerpt from the 230133 Officer Report, the Case Officer outlined that they had been occupied for a period in excess of four years as of 24<sup>th</sup> March 2023.

Whilst Council Tax records do not align with the length of the tenancies, this is not a sole indicator that the flats were not in use for residential purposes prior to registering with the Council. Regardless, the records for Flats 3-9 indicate that they have been paying Council Tax since 2019 at the latest, a continuous period in excess of four years prior to 25<sup>th</sup> April 2024.

Flat 10's council tax records 'began' in 2024, but this clearly correlates with its subdivision in August 2024 to create Flat 11. Whilst the evidence before the LPA indicates that Flat 10 has been in continuous use for a period in excess of four/ten years, its subdivision to create Flat 11 created a new planning chapter.

Flat 11 has only been occupied for a year and cannot be considered lawful by the passing of time, this is agreed between the applicant and the LPA. Despite this, the proposed plans indicate that Flat 10 encompasses the footprint of both flats. At the time of submission, Flat 11 remained in separate occupation to Flat 10 and divided by a wall, contrary to the floor plans.

The smaller, subdivided Flat 10 has remained in continuous occupancy since before and after the subdivision to create Flat 11 according to the evidence before the LPA.

Upon a further visit to the site on 2<sup>nd</sup> December 2025, the Case Officer was informed that the tenant of Flat 11 had now vacated the property. The doorway seen on the proposed plans had now been installed, and Flats 10/11 had become one flat again (see photo below). This alteration to the flats does not however influence the determination of this certificate, since the assessment is based on the context of the property as of the submission date.



**Case Officer site visit photo showing the doorway installed between Flats 10 and 11 (dated 2<sup>nd</sup> December 2025)**

Therefore, only the subdivided footprint of Flat 10 is considered lawful by the passing of time, even though it is acknowledged that the internal works recently completed to combine Flats 10/11 are not considered development.

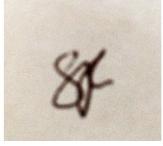
**Conclusion:**

Overall, on the balance of probabilities, based on the evidence provided and the Local Planning Authority's own information, the use of the building for 8no. independent flats has been in continuous residential use for a period more of than four years prior to 25<sup>th</sup> April 2024 and until present day. This certificate is therefore recommended for approval.

**RECOMMENDATION / CONCLUSION**

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 use of the building for 8no. independent flats has been in continuous residential use for a period in excess of four years prior to 25<sup>th</sup> April 2024 and until present day. This certificate is therefore recommended for approval.

<b>Date:</b>	3 December 2025
<b>Earliest date for decision:</b>	14 November 2025

<b>Recommendation agreed by: (Authorised Officer)</b>	
<b>Date:</b>	<b>3.12.25</b>