

DELEGATED OFFICER REPORT



**WOKINGHAM
BOROUGH COUNCIL**

Application Number:	252830
Site Address:	178 Land At, Bearwood Road, Barkham, Wokingham, RG41 4SH
Expiry Date:	13 January 2026
Site Visit Date:	21 July 2023
Proposal: Application for a certificate of existing lawful development for the use of land as residential garden associated with the Lake House.	

PLANNING HISTORY

Application No.	Description	Decision & Date
251248	Application for a certificate of existing lawful development for the use of land as residential garden associated with the Lake House.	Refused: August 2025
231275	Application for a certificate of existing lawful development for the use of a residential dwelling house outlined in red on the attached plan, the use of a wood store and shed outlined in green on the attached plan, and construction of 3no. buildings outlined in blue on the attached plan.	Approved: October 2023

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
- States that the use began more than 10 years before the date of this application.

Statutory Declaration of Christopher Kay dated 27/10/2025 (most relevant extracts covered)

- In 2010, the construction of the Lake House began.
- The construction was completed in 2013 and Joseph Kay moved in. at this time, he began using the garden around the Lake House as the exclusive residential garden associated with the property.
- Joseph Kay began construction of the decking to the north and east of the Lake House which was completed in 2014.
- Joseph has maintained the grassed areas and used these spaces for relaxation and hosting friends and family.
- On 19 November 2018, Joseph and his wife had their first child. As he grew, their use of the garden shifted to include playing and exploring.

- On 8 April 2022, Joseph and his family moved out of the Lake House and Christopher and his wife became permanent residents.
- Since then, Christopher and is responsible for the maintenance of the garden associated with the Lake House.
- He regularly uses the outbuildings so walks across the garden to access these.
- Ultimately, he attests that the garden associated with the Lake House has been a residential garden associated with the property since its construction in 2013 and has had uninterrupted exclusive use by its residents, as detailed in drawings GCLBW003 & GCLBW005.

Statutory Declaration of Joseph Adam Kay dated 27/10/2025 (most relevant extracts covered)

- (Current occupier of no.178 Bearwood Road), confirms the garden layout of no.178 Bearwood Road as per GCLBW002 since 1994 – 2008 having lived and grown up at the property since 1994.
- States the incidental activities that occurred during this time.
- Joseph moved into The Lake House in 2013 and became responsible for the maintenance of the garden as indicated in drawings GCLBW003 and GCLBW005 (and at this point these areas were no longer part of the garden of no.178 Bearwood Road). Since this time, he began using the plot around the Lake House as exclusive residential garden.
- Joseph Kay began construction of the decking to the north and east of the Lake House which was completed in 2014.
- Joseph has maintained the grassed areas and used these spaces for relaxation and hosting friends and family.
- On 19 November 2018, Joseph and his wife had their first child. As he grew, their use of the garden shifted to include playing and exploring.
- On 8 April 2022, Joseph and his family moved out of the Lake House and Christopher and his wife became permanent residents.
- Since then, Christopher Kay and his wife have been responsible for the maintenance of the garden associated with the Lake House.
- Joseph Kay attests that the garden associated with the Lake House has been a residential garden associated with the property since its construction in 2013 and has had uninterrupted exclusive use by its residents, as detailed in drawings GCLBW003 & GCLBW005.

Statement of Truth from Patrick Coghlan dated 09/05/2025

- Corroborates and witnesses that the Lake House and surrounding garden has been occupied since 2013 when Joseph Kay moved in.
- Witnessed and been a part of the incidental use of the decking and garden.
- They regularly park at the Lakehouse when visiting.

Statement of Truth from John Parten 10/05/2025

- Corroborates and witnesses that the Lake House and surrounding garden has been occupied since 2013 when Joseph Kay moved in.
- Witnessed and been a part of the incidental use of the decking and garden.
- They regularly park at the Lakehouse when visiting.

- Aerial Imagery of The Lodge (provided by Google Earth Pro) dated from 2018 to 2025.
- Photographs detailing the Incidental Residential Use of Land, with meta data.
- GCLBW001 - Garden Usage Plan (1958-1994);
- GCLBW002 - Garden Usage Plan (1994-2008);
- GCLBW003 – Garden Usage Plan (2008 – Present);
- GCLBW005 – The Lake House Garden Plan (2013 – Present).
- 251007BWLH – Certificate of Lawfulness Boundary Line
- Certificate of Lawfulness Statement, which details and discusses the validity of the various evidence set out above.

By the Council:

- Aerial images from the Council's mapping.
- Google Earth images.
- Site visit photographs.

By third parties:

- None

SITE DESCRIPTION

The application site is situated to the rear garden of No. 178 Bearwood Road and is accessed via a gravelled track off the access that serves the main property. Due to its location, it is not visible from the highway.

The site is located within countryside and has strong woodland characteristics.

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).

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 *Gabbitas 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 the residential use of land associated with The Lake House. (*Officer Note: The LPA has removed curtilage from the description of development as a Certificate cannot be issued for curtilage as this is not a use of land.*)

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 residential use of land associated with The Lake House has been on-going continuously for at least ten years i.e. since 18 November 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.

This application is a resubmission of a similar Certificate of Lawfulness of Existing Use or Development (CLEUD) (application 251248), which was refused in August 2025. This refused application was in itself a resubmission, following a similar submission which was approved in October 2023 under planning reference 231275, however, a split decision was issued with the residential use of land being omitted from the granted certificate as there was insufficient evidence on the balance of probabilities. It must be noted that any evidence submitted as part of these previous applications cannot be re-used for this application unless it has been specifically re-submitted for consideration.

Application 251248 was refused because it was considered that the applicant had not discharged their burden of proof in evidencing that the land had been in continuous residential use as garden associated with The Lake House for at least ten years prior to the application. The accompanying Officer Report goes into great detail as to why this was concluded to be the case, specifically breaking down the merits of each piece of evidence submitted.

In this resubmission, further evidence has been provided beyond that provided in the 2023 and 2025 submissions. It should also be noted at this stage that the red line now submitted has been reduced from that refused through application 251248, with the removal of the area enclosing the pond and the area to the east. There has not been significant additional evidence to cover the period between the refusal and present day, however, as highlighted below, positive changes have been made to the submission.

This appraisal will not contain excessive commentary on the evidence that was already submitted through the 2025 submission and resubmitted with this application and will instead focus on the new evidence that the applicant has submitted to overcome the refusal reason.

The Planning Statement refers to the difference regarding the evidence submitted between this re-submission and application 251248: *“Meta Data is being provided for photographs, statutory declarations have been updated to include more confirmation on when the decking was built and the use of the garden land relating to the Lake House (this can also be seen in photographs), the area of the application site has been reduced.”*

Statutory Declarations

As with the previous application, this resubmission relies primarily on the statutory declarations provided by Christopher and Joseph Kay. In the earlier submission, the Local Planning Authority (LPA) expressed concerns regarding the precision of these declarations, noting:

“The statutory declarations describe the wider site of 178 Bearwood Road, The Lodge, and The Lake House. There is little differentiation between these properties, which

introduces ambiguity and blurs the distinction as to how this land is residentially associated with The Lake House.”

In response to these concerns, the declarations have been revised to provide a much clearer and more focused account of The Lake House and the historic use of its surrounding land. The amended statements now include more specific references confirming that the land has been used exclusively as residential garden associated with The Lake House since its construction in 2013. These assertions make reference to the appended plans GCLBW003 and GCLBW005, plus an image with meta data.

The revised declarations therefore offer a more precise and relevant body of evidence, addressing the LPA’s previous concerns regarding generality and ambiguity. They now present a detailed narrative of The Lake House and its residential land, significantly strengthening the case.

Reduced Red Line

The reduction in the extent of land now being sought for lawful residential use represents a significant and positive amendment to the certificate submission. The revised red line excludes the south of the pond and a substantial section to the east, previously identified as containing a septic tank and soakaway on earlier plans. These areas were specifically highlighted during the assessment of the previous application as lacking sufficient supporting evidence to demonstrate their use in association with The Lake House.

By contrast, the amended boundary now tightly encloses the physical development already confirmed as lawful under the 2022 certificate (Ref: 231275). This adjustment provides greater clarity and confidence that the land in question is genuinely residential garden associated with The Lake House, thereby addressing previous concerns and strengthening the overall submission.

Photos

No additional photographs have been submitted as part of this resubmission compared to the previous application. However, the original concern was not the quantity or content of the photographs, but rather the absence of metadata to confirm the dates they were taken. This issue has now been addressed, with the amended submission providing the necessary metadata to substantiate the timeline.

While photographs alone cannot conclusively demonstrate continuous and uninterrupted use of the entire garden area over the required 10-year period, given that they represent only isolated moments in time and predominantly appear to relate to parties which could be considered a temporary use of land, however with the metadata, they now carry greater evidential weight. This is because they corroborate the more detailed and focused narrative set out in the amended statutory declarations. Collectively, the photographs and declarations provide evidence that the land has been used for what would reasonably be considered a residential purposes on certain dates between June 2015 and July 2024 only.

Conclusion

While the additional evidence, when considered in isolation, is not entirely conclusive in demonstrating that the land has been continuously used as residential garden associated with The Lake House, it is important to note that the relevant test for establishing lawful use is the 'balance of probability'. The revised and supplementary evidence read alongside the re-submitted evidence now provides a clearer and more focused account of The Lake House and use of its garden land.

Accordingly, in the context of this amended submission and the absence of contradictory evidence, it is considered that the applicant has discharged the burden of proof in demonstrating that the land outlined in red on the submitted Location Plan has been continuously used as residential garden associated with The Lake House for a period of at least ten years prior to the application.

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 that the applicant has discharged their burden of proof in proving the whole incidental residential use of land associated with The Lake House, as outlined in red on the submitted Location Plan, has been on-going continuously for at least ten years.

Date:	12 January 2026
Earliest date for decision:	11 December 2025
Recommendation agreed by: (Authorised Officer)	
Date:	13 January 2026