

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	260070
Site Address:	Secundus, Wargrave Road, Remenham, Wokingham, RG9 3JD
Expiry Date:	11 March 2026
Site Visit Date:	7 May 2025
Proposal: Application for a certificate of existing lawful development for the use of land and buildings as a single residential dwellinghouse (Use Class C3).	

PLANNING HISTORY

Application No.	Description	Decision & Date
250786	Full application for the proposed erection of 1.8m electric entrance gate. (Retrospective)	Under Consideration
250787	Full application for the proposed erection of replacement study outbuilding. (Retrospective)	Under Consideration
211004	Full application for the proposed erection of 1no. dwelling, following demolition of the existing buildings and reconstruction of part of the original dwelling.	Withdrawn – 07/07/2021
201306	Full planning application for the erection of a dwelling. Following demolition of the existing buildings and reconstruction of part of the original dwelling.	Withdrawn – 28/08/2020
F/2012/1846	Change of use of existing leisure mooring to residential use (retrospective application)	Conditionally Approved – 01/02/2013
37702	Proposed realignment of riverbank.	Approved – 31/10/1991
467/55	Wet boat house, store and access	Approved – 11/10/1955

SITE DESCRIPTION

The application site is a plot of land located on the southern side of Wargrave Road (A321) abutting the north-eastern bank of the River Thames to the west of Henley-on-Thames. The site comprises a raised chalet style building sited above a wet dock, as well as a parking area and a cluster of smaller buildings located towards it's north-eastern boundary. The existing mooring benefits from planning consent for residential use.

The site falls within designated countryside and the Metropolitan Green Belt outside of settlement limits. The site also falls within an identified Bat Roost Habitat Suitability Area but is not subject to any other wildlife or habitat designations. There are no listed buildings at the site and the property is not within '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.

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.

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 LPA, 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) then 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.

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
 - States that the use applied for commenced on 04/12/2013.
 - States that there has been no interruption to or material change of use of the land since the start of the use applied for.
- Cover Letter:
 - States that the site has been used by the applicant as a leisure plot which would accommodate overnight stays since their purchase of it in December 2013. Improvements were made to the site to support its use.
 - Refers to relevant case law and appeal decisions.
- Drawing titled 'Location Plan'
- Drawing no. 294-01 (Site/Block Plan)
- Statutory Declaration of G J Rydzinski (the applicant) dated 08/01/2026:
 - Exhibit GR 1 – Official Copy Register and Title Plan
 - Exhibit GR 2 – Application form and Decision Notice relating to application ref F/2012/1846
 - Exhibit GR 3 – Environment Agency Consent to discharge – Notice of transfer form & consent dated 07/11/2008
 - Exhibit GR 4 – Photograph of sun loungers (undated)
 - Exhibit GR 5 – Photographs of Boathouse kitchen (undated)
 - Exhibit GR 6 – Photographs of boats moored at Secundus dated 10/06/2018; 19/10/2014; 01/07/2018; 14/07/2019 and 03/08/2021
 - Exhibit GR 7 – Photographs of boats stored out front of Secundus dated 11/09/2013
 - Exhibit GR 8 – Advertisement of sale of Secundus
 - Exhibit GR 9 – Photographs of Boathouse interior (undated)
 - Exhibit GR 10 – Photographs of furnished Studio (undated)
 - Exhibit GR 11 – Photographs of furnished Cabin (undated)
 - Exhibit GR 12 – Payment form from SGN dated 25/03/2014
 - Exhibit GR 13 – Photo of rear Decking (undated)
 - Exhibit GR 14 – Letter relating to the purchase of garage dated 24/06/2014
 - Exhibit GR 15 – Letter by "Stephen the gardener" dated 24/01/2025
 - Exhibit GR 16 – Photographs of flood dated 06/01/2024 and 11/02/2024
 - Exhibit GR 17 – Receipt for purchase of Log Cabin (undated)
 - Exhibit GR 18 – Copy of drawing no. 294-10 (annotated site plan)

By the Council:

- Planning History Records (see summary above)

- Plans submitted in support of application refs 211004, 201306 and F/2012/1846
- 211004: Email from Council Tax Team dated 02/07/2021 advising that a property at Secundus has been banded for Council Tax since 01/06/2012.
- 211004: Email thread between the Case Officer and the applicant's representative dated 29/06/2021-06/07/2021 discussing the understood lawful use of the site.
- Enforcement History Records – there are no extant Enforcement Notices relating to the site.
 - RFS/2025/090134: Various correspondence between the Case Officer and the applicant's wife dated 02/2025-04/2025, includes advice on planning permission being required for the gate and a replacement outbuilding. Site visit photographs dated 25/02/2025.
- The Case Officer carried out a site visit on 07/05/2025 and the confirmed the presence of the operational development on the locations as shown in the submitted plans and the nature of the use of the land.
- Site visit photos (07/05/2025)
- Aerial images from the Council's mapping system taken from 2003, 2004, 2006, 2010, 2013 and 2015, 2019 and 2022.
- Extracts of Google Earth aerial images dated 01/1/2003, 05/09/2004, 01/01/2010, 06/06/2013, 25/03/2017, 23/06/2018, 15/04/2020, 16/07/2021, 01/08/2023 & 09/05/2025.
- 10/03/2026 email from the Council's Revenues Inspector confirming that the property has been registered for Council Tax since 01/06/2012.

By third parties:

- No third party information received.

APPRAISAL

This application is for a Certificate of Existing Lawful Development to regularise the use of the land and buildings shown on the submitted plans as a residential dwellinghouse. In determining a Certificate of Lawful Existing Development 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 applied for has been on-going continuously for at least ten years prior to the date of this application, the relevant period being from 12/01/2016 to 12/01/2026.

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".

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 does not relate to the erection of a vehicular access gate and an outbuilding referred to as a lounge/study on the submitted plans. As these structures have been erected within the last four years, they are not immune from enforcement action. Full planning applications for these structures are being considered under application refs 250786 & 250787 respectively.

The Applicant's Evidence

The evidence submitted relies heavily on a Statutory Declaration provided by the applicant. This statement refers to 18no. exhibits comprising photographs, letters, communications and other documentation relating to the site. Providing false or misleading information within a statutory declaration constitutes an offence under Section 5 of the Perjury Act 1911. Therefore, the Local Planning Authority should give significant weight to its contents unless there is clear evidence to the contrary.

The applicant states in his declaration that he has owned Secundus since December 2013 and refers to an official copy of register of title which confirms this (Exhibit GR 1). He states that he was advised at time of purchase that the land has residential usage and refers to Exhibit GR 2 which comprises the application form and decision notice relating to consent ref F/2012/1846 dated 01/02/2013. While the applicant may have been incorrectly advised this, it is not clear why this previous application has been referred to as it only relates to the use of the mooring only and not the application site as a whole. Therefore, this Exhibit does not clearly support the applicant's account.

The applicant states that they hold consent to discharge treated sewage, transferred from the previous owner, and that a treatment plant was installed soon after February 2014. Documentation supporting this claim is provided in Exhibit GR 3. He states that they [he and his family] started using the Boathouse, the Studio and the Cabin at Secundus in March 2014 and at around this time started renovating these buildings so that they could be habitable. Works included installing a kitchenette, w/c, shower room and radiators in the Boathouse, roof repairs, deep cleaning and re-decorating all three buildings and re-wiring. The applicant states that by 2015 all buildings were re-decorated and re-furnished with desks, computers and day beds installed in the Studio and Cabin. Photographs (undated) showing the interior of the buildings are shown in Exhibits GR 9, GR 10 and GR 11.

The applicant states that the site was connected to a mains gas supply on 23/05/2013, correspondence relating to this is provided in Exhibit GR 12, and that the three buildings had an existing electricity supply. Decking at the rear of the garden was also erected for safe storage of garden furniture during floods, an undated photograph showing this structure is included in Exhibit GR 13. The applicant states that from early 2014 the mooring alongside and underneath the Boathouse have been utilised for their two slipper launches, supporting photographs are included in Exhibits GR 6 and GR 7.

The applicant states that a private garage with parking on Wargrave Road was purchased and has since been used on a regular basis for parking closer to town [Henley] and for storage purposes. A letter relating to the sale dated 24/06/2014 is included within GR 14. While this is noted, the garage falls outside of the application site and is not directly relevant to the use of the land applied for. The Statutory

Declaration also states that the garden has been maintained since 2014, a letter from a gardener stating that he knows the applicant and his wife is included in Exhibit GR 15.

The applicant states that continuous nights staying at the site turned into months and the Statutory Declaration later goes into detail on stays and events that occurred on the site in 2016, 2017, 2018, 2019, 2020, 2021, summer of 2023 and 2024. This includes stays by familial relatives for extended periods, shielding during COVID-19 and a wedding. The applicant states that the Studio was severely damaged by floods and replaced in June 2024. The current layout of the site is shown in Exhibit GR 18 which clearly shows the Boathouse, the Cabin, the Studio and other structures referred to throughout the account.

Parts of the Statutory Declaration go into detail on irrelevant points and there is some repetition which undermines its cohesiveness. Additionally, some of the attached Exhibits do not provide strong evidence which support's the applicant's version of events. Nonetheless, the presented narrative is sufficiently concise and clear in explaining when occupation of the site commenced and the works carried out over time to improve the quality of the accommodation to make it habitable. The declaration also provides a degree of support to the applicant's claim that the use of the site as a residential dwelling has been continuous.

The Council's Evidence

There is very limited historic planning history relating to the application site. It appears upon reviewing the planning history that the Boathouse referred to in the submission is the same building as was approved under consent ref 467/55 dated 1955 but has been altered over time. Nonetheless, the plans submitted in support of consent ref F/2012/1846 clearly show that the three buildings referred to in the submission were in situ by the date of submission 03/09/2012), notwithstanding the later replacement of the Studio. This supports the applicant's account that the buildings were in situ prior to their occupation of the site. The Officer's Report clarifies that the residential accommodation is contained within the boat moored at the site, and that the structures on site are ancillary to the use of the mooring.

The understood lawful use of the site was also discussed prior to the withdrawal of application ref 211004 on 07/07/2021. Within an email thread between the Case Officer and the applicant's planning agent the Officer reaffirms that the residential use of the site applies to the mooring only, and that there is no planning permission to the use the buildings and the whole site as a residential dwelling. While Council Officers have previously advised on the understood lawful use of the site, this does not contradict the applicant's account that the site as a whole was being used as a residential dwellinghouse during this period.

Furthermore, there are no historic enforcement investigations relating to the use of the site as a whole. The recent enforcement investigation, RFS/2025/090134, concluded that planning permission was required for the gate and replacement Studio outbuilding but did not consider whether the use of the land and buildings was unlawful.

The nature of the use of the land including the buildings was observed on the site visit. There internal and external amenities were observed and there was no evidence to suggest that the residential use of the site has been abandoned. Aerial images and

observations on the site visit also support the applicant's claim that the grassed area has been regularly maintained as domestic garden. The Council's Revenues Inspector has confirmed that the property has been banded for Council Tax since 01/06/2012, covering the relevant period of 12/01/2016 to 12/01/2026. This supports the applicant's claim that the site has been continuously occupied.

Continuous Use

The evidence suggests a use which could be characterised as a 'holiday home' or 'second home' use. The submission does not explicitly provide details of the frequency and duration of stays but overall appears to point to stays during the spring/summer months.

Of relevance is the example given by Lord Mance in *Welwyn Hatfield BC v SSCLG [2011] UKSC 15* at [27]: *"A holiday home visited only yearly remains of and in residential use."*

Lord Mance also stressed that activity did not need to be continuous in order for use to be considered continuous: *"Too much stress has, I think, been placed on the need for "actual use", with its connotations of familiar domestic activities carried on daily. In dealing with a subsection which speaks of "change of use of any building to use as a single dwelling house", it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is"*.

Applying these tests, a second home use carried on with regularity during the spring/summer months would very likely be considered to be continuous. On this basis, the frequency of outlined in the application submission should be considered as "continuous".

Conclusion

Overall, the applicant's evidence is consistent and clear and there is no other information which contradicts or undermines the applicant's version of events. The Council does not hold any information which contradicts the submitted evidence, nor has any third party information been received.

Based on the evidence above, it can be said on the balance of probability that the use of the land and buildings as a single residential dwellinghouse has been occurring continuously for a consecutive period of over ten years. There is no evidence to suggest that the use applied for has been disrupted within the last ten years.

Subsequently the time limit for taking enforcement action had expired under s171B of the TCPA by the date of the application and the use of the land is lawful.

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 use of the land and buildings on the site known as 'Secundus', as shown in the submitted details, as a single residential dwellinghouse has been occurring for a consecutive period of over ten years. It is therefore considered that this application for a certificate of existing lawful use should be **approved**.

Date:	10 March 2026
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Earliest date for decision:	10 February 2026
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Recommendation agreed by: (Authorised Officer)	
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Date:	10/03/26
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