

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	252400
Site Address:	20 Lawrence Place, Shinfield, Wokingham, RG2 9RS
Expiry Date:	5 December 2025
Site Visit Date:	28 November 2025
Proposal: Application for a certificate of existing lawful development for the partial conversion of a garage into an office along with changes to fenestration.	

PLANNING HISTORY

Application No.	Description	Decision & Date
101507	Outline application for a residential development of up to 1,200 dwellings, a further 150 units of specialist housing (including sheltered housing) for elderly persons, a local centre to include a foodstore (2,500 sq.m), and other retail and office uses, a community building, proposed extension of existing primary schools, erection of a new primary school, public open space, sports pavilion, suitable alternative natural greenspace (SANG) and access and landscaping.	Appeal Determined 03/06/2011
161189	Reserved Matters application pursuant to Outline planning permission VAR/2014/0624 (Pursuant to O/2010/1432) for the erection of 517 dwellings including access roads, garages, parking spaces, open space and landscape treatment of Phase 1, Shinfield West. (Access within the site, appearance, landscaping, layout and scale to be considered).	Approved 21/07/2016

SITE DESCRIPTION

The application site is a detached two storey property 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 not subject to any wildlife or habitat designations.

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 11/02/2023.
- Submitted floor plans showing the dimensions of the garage and the use of the space.

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 28/11/2025 and this confirmed the presence of the operational development on the location as shown in the submitted details.
- Site visit photographs (28/11/2025).
- Aerial images from the Council's mapping system taken from 2022.

By third parties:

- Shinfield Parish Council has commented on this application stating that they have no comments.

APPRAISAL

This application is for a Certificate of Lawful Existing Use to regularise the partial conversion of the existing detached garage.

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 partial conversion of the garage was substantially completed 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 part garage conversion 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 submitted application form states that the building works to part convert the garage were substantially complete on 11/02/2023.

This confirms that the part conversion was not substantially complete 4 years prior to the change in legislation of s171B of the TCPA.

Evidence Submitted by the Council:

Condition 4 of application 161189 requires that the garage remains available for the parking of vehicles ancillary to the residential use, and that the garage not be used for any business nor as habitable space. The full wording for condition 4 is copied in below:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the garage accommodation on the site identified on the approved plans shall be kept available for the parking of vehicles ancillary to the residential use of the site at all times. It shall not be used for any business nor as habitable space.

Assessment:

General Permitted Development:

Condition 4 of planning application 161189 requires that the garage accommodation on site remains available for parking at all times and not be used for business or as habitable space. Therefore, the partial conversion of the garage could not be done under Permitted Development rights.

4-year Immunity Rule:

To be considered lawful by the passing of time, the partial garage conversion must have been substantially completed 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 11/02/2023. Therefore, the works were not substantially completed by 24/04/2020.

Conclusion:

Based on the evidence above, it is clear that the partial conversion of the garage is not possible under Permitted Development rights as Condition 4 of planning application 161189 requires the garage accommodation on site to remain available for parking at all times and not be used for business or as habitable space. Additionally, the partial garage conversion, as shown in the submitted details, has not been substantially complete 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.

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 partial garage conversion was substantially completed and in situ for a period of 4 years prior to the change in legislation of the TCPA. Additionally, a restrictive condition was in place that requires the garage to be used for vehicle parking, and not as a business or habitable space.

The Council thus **would** have been in a position to 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:	3 December 2025
Earliest date for decision:	4 November 2025

Recommendation agreed by: (Authorised Officer)	
Date:	04/12/25