

CERTIFICATE OF LAWFULNESS STATEMENT

For

**Establishing the Incidental Use of
Land as Garden Land**

At

Lake House, 178 Bearwood Road,
Wokingham, RG41 4SH



Project No. 2525



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1.0 Summary

This Certificate of Lawfulness Statement has been prepared to accompany the application for a certificate of lawfulness to establish the incidental use of land as residential garden land associated with Lake House, 178 Bearwood Road, Wokingham, RG41 4SH

2.0 The Site

The site is located on Bearwood Road just outside the town of Wokingham as per the image below. It is occupied by a single storey residential dwelling.



Fig 1. The site location marked by the red dot



Fig 2. The front of Lake House and driveway access



Fig 3. The site outlined in Red.

178 Bearwood Road was originally one large plot which over time has been subdivided into four separate properties. This has been established as being lawful through the planning process in recent years. The other three properties (Main House, The Annexe and The Lodge) have recognised areas of incidental garden land associated with them. Refer to submitted drawing GCLBW003 for more information.



Fig 4. Lake House to the left, Main House in the background and The Lodge to the right.

3.0 Planning Statement

3.1 – Introduction

This application follows the previous approval of applications 231275 and 231276. These were approved by the LPA following respective amendments to the development description (omitting the incidental use of land enclosing each dwelling). Further information has been provided to demonstrate that the surrounding land was previously in an incidental residential use associated with no.178 Bearwood Road (part of a single planning unit) and following the separate and sequential erection of 'The Lodge' and 'The Lake House', the land was sub-divided to form 4 separate C3 planning units.

This planning statement will introduce the meaning of development' in accordance with the Town and Country Planning Act 1990, summarises the relevant legal tests and set out the application in light of these. The conclusion reached is that the development is lawful and so no enforcement action can be taken.

It is respectfully requested that the appendices accompanying this report are kept private and confidential for the use of the Local Planning Authority only, as they contain personal and private information about the applicant and occupants. This information is submitted as evidence to support the claims within this report.

In addition to this report, the application is accompanied by the appropriate certificate application forms, appendices and a 1:1250 Site Location Plan.

The application also features 5 site/layout plans which detail features and areas of the land between certain time periods to demonstrate land use. These dates and activities are corroborated by the submitted appendices. For clarity these plans and their relevant 'eras' are:

- GCLBW001 – Garden Usage Plan (1958-1994);
- GCLBW002 – Garden Usage Plan (1994-2008);
- GCLBW003 – Garden Usage Plan (2008 – Present);
- GCLBW004 – The Lodge Garden Plan (2008 – Present);
- GCLBW005 – The Lake House Garden Plan (2013 – Present).

It should be noted the wider red line on GCLBW001 and GCLBW002 denote the ownership of the site within the Applicant's family at the time and is not the extent of the red line being sought by this submission.

The submitted drawings along with the visual and written evidence illustrate how the site layout and features associated with the property have evolved into Lake House becoming the independent residential dwelling of today. These features include:

Access – An independent driveway serves both Lake House and the Lodge, this is a clearly defined route that has been established over a number of years. Both properties are recognised as independent dwellings and the shared use of the driveway is essential to them functioning as such.

Parking – Is provided by the carport, the area to the West of the building and in other informal areas adjacent to the driveway. These areas are in constant use by the residents and regularly by visitors and guests. These arrangements are essential to Lake House functioning as an independent dwelling.

Grassed Area – To the east of the house, it is regularly used for play and entertainment. It is boarded by the recognised garden of the Lodge, which reinforces its use as domestic incidental garden for the Lake House.

Decking – To the North and East, this is also in regular recreational use by the occupants and their guests as can be seen in the submitted photographs and aerial images in appendices 3 & 4.

Septic Tank – Along with the soakaway area, this part of the garden is essential for the Lake House building to be an independent dwelling which Wokingham Borough Council have already recognised in the previous certificates of Lawfulness.



Fig 5. Top left: Car port and wood store Top right: Parking to the West of Lake House.
Bottom left: Driveway access from Bearwood Road shared with The Lodge.
Bottom right: Grass area to the East of Lake House.

3.2 - Town and County Planning Act 1990

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 191(2) of the TCPA states: "For the purposes of this Act uses and operations are lawful at any time if -

(a) no enforcement action may then 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)...".

Section 171.B(3) of the TCPA states: "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 the breach".

Section 171.B controls the relevant timeframe for immunity from enforcement action, which means that a development comprising a material change of use of land becomes immune from enforcement action after 10 years.

Paragraph: 006 Reference ID: 17c-006-20140306 (revision date: 06 03 2014) of the NPPG in relation to Lawful Development Certificates is explicit that the applicant is responsible for providing sufficient information to support an application. However, it goes on to state: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than 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".

It is established case law (F W Gabbitts v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

As per S191, there are multiple ways which a development may be considered lawful, and they are not necessarily exclusive to one another. In this instance it is considered that a Certificate of Lawfulness should be granted as the use of land did not constitute a material change of use of land (and ergo is not development as defined by S55 of the TCPA). In short, the land that Lake House was/is built on, is incidental residential garden land which previously formed part of the planning unit with no.178 Bearwood Road. Therefore, no material change of use has occurred. In the previous application (231276) the LPA had stated the entirety of the wider site did

not form the curtilage of no.178 Bearwood Road. However, the Officer Report does not provide an indication of where the extent of the curtilage ended.

Conversely, if the LPA does in fact consider there to have been a material change of use, then evidence has also been provided that details that the use of the land as incidental to the residential dwelling has existed in situ, and uninterrupted, in excess of 10 years. This is also supported by the LPAs previous conclusions of applications 231275 and 231276, clarifying that The Lodge and The Lake House have existed and been occupied for over 10 years.

3.3 - Assessment of Submitted Evidence

Appendix 1: Statement of Truth of [REDACTED] (dated 10/05/2025): This Statement of Truth is from [REDACTED], who is a close friend and fellow parishioner at the Church of Our Lady of Peace and the Blessed Dominic Barberi. The declaration was signed on 10/05/2025 and details interactions with the Lake House and its occupants as a family home. Crucially, it details how the surrounding land has been used as the garden of the dwelling.

During discussions for the previous submission, it was stated by the LPA the lawful use of the site was unknown, as it used to be a gravel extraction pit and later could have been used for agricultural purposes. No evidence was provided by the LPA to support these conclusions and this appendix has sought to recount the detailed history of the site to demonstrate its incidental residential use since 1957.

[REDACTED] has known the current occupants of Lake House, Christopher Kay [REDACTED] since 1994. He has visited them regularly and has spent time with them and their family in and around the Lake House property. The statement details how garden land has been in constant use as garden space that is independent from the other dwellings at 178 Bearwood Road.

Item 7 talks about the use of parking arrangements which are specific to the Lake House.

Items 8 & 9 talk about specific events which have taken place and are typical of the sort of family gatherings you would expect to happen in a garden area.

Appendix 2: Statement of Truth of [REDACTED] (dated 09/05/2025): This Statement of Truth is from [REDACTED] who is the brother of one of the current Lake House occupants [REDACTED]. The declaration was signed on 09/05/2025 and explains how, as part of the family he has witnessed the evolution of the site over time and has enjoyed the use of the land surrounding Lake House as family garden space by the current and previous occupiers.

Item 7 talks about the use of parking arrangements which are specific to the Lake House.

Items 8 & 9 talk about specific occasions when the garden use around Lake House has been enjoyed.

Items 10 talks about a particular family function involving a bouncy castle and marquee. Photos of this event can be seen in appendix 3.



Fig 6. Deck to the North of Lake House



Fig 7. Deck to the East of Lake House with garden furniture stored ready for use

Appendix 3: Statutory Declaration of Christopher Kay (dated 28/03/2024): This declaration was originally provided to support the application/s to establish the incidental use of garden land for The Lodge. It is being re-submitted to provide a wider context and demonstrates that the garden was in private incidental use before Lake House was built.

This Statutory Declaration is from Christopher Kay, who currently resides at The Lake House. The declaration (including its enclosures) was signed on 28/03/2024 and details the history of the site and the initial occupation of no.178 Bearwood Road by Christopher and his family. Crucially, it details how the surrounding land was used as the garden of the dwelling.

For clarification, a Statutory Declaration is a sworn, written statement of fact voluntarily made and declared to be true in the presence of an authorised witness. It carries significant weight in the determination of applications, as if the declaration is found to be untrue, the defendant making it may be punished for perjury. Consequently, the information contained within the declaration can be relied on as true, clear and unambiguous.

During discussions for the previous submission, it was stated by the LPA the lawful use of the site was unknown, as it used to be a gravel extraction pit and later could have been used for agricultural purposes. No evidence was provided by the LPA to support these conclusions and this appendix has sought to recount the detailed history of the site to demonstrate its incidental residential use since 1957.

Enclosures 1 – 5 of the Declaration detail the plans that have also been submitted with this application, which show the features and areas of the land used as the garden of the property. The declaration states in no uncertain terms, that these plans to the best of the applicant's ability, provide a true representation of the extent of the use of the surrounding land in an incidental residential use during the stated time frames.

The declaration clarifies that a large family unit occupied no.178 Bearwood Road during Christopher's childhood (comprising a number of Christopher's extended family and himself) between 1957 - 1994. Owing to the size of the family unit and their outdoor interests (notably that of his father cultivating a particular species of rhododendron and azaleas), the full extent of the site was used for the enjoyment of the land in a manner incidental to the occupation of the dwellinghouse.

The garden required extensive work to create and maintain its amenities whilst providing produce for the dwelling. Enclosure 6 comprises photographs provided by Christopher which depict him, his family and/or the surrounding land during this period. Owing to the date of these photographs it is impossible to provide any metadata for their capture date, however, the Declaration confirms that the people in the photographs are Christopher and/or his family and an appropriate estimation of the date has been provided based on family records.

The declaration details a number of incidental gardening activities that were undertaken in this period by Christopher and his family however, the declaration also confirms the incidental residential use of the land for activities including, but not limited to, Christopher and his cousins playing in the wider garden and the pond.

Enclosure 6 notably contains details of Christopher playing in the lake and his parents enjoying the plot. Pictures of the incidental 'orchards' and layout are present in this enclosure, as are some images taken aerially to corroborate the submitted plans. All of these photos and information in the Declaration clearly support the conclusion that the site has been in an incidental residential use since 1957.

Christopher, his wife [REDACTED] and children (the latter providing Declarations for Appendices 2 and 3) moved into No.178 Bearwood Road in 1994. The declaration details that owing to the size of the smaller family unit now occupying the dwelling, in addition to work commitments and the interests of their children; the maintenance of the garden was simplified. However, whilst the activities detailed in the declaration had changed the layout of the garden, the activities and use was still that of an incidental residential nature serving the dwelling between 1994 – 2008, across the whole of the site. (Notably, the wider areas would be utilised, as Christopher and his children have a keen interest in camping and enjoying the amenities. It is clear with the other evidence provided, that this is a trait that has endured through all generations of the family).

This arrangement changed in 2008 upon the completion of 'The Lodge'. The Lodge received a Certificate of Lawfulness confirming it is a lawful dwelling having been constructed and occupied in excess of 10 years. Upon the occupation of The Lodge, [REDACTED] began using part of the site as their private garden effectively 'severing' it from the garden of no.178 Bearwood Road. The declaration confirms that this coincided (in 2008) with [REDACTED] maintaining their garden separately and having no responsibility or use of the wider garden of no.178 Bearwood Road, as it was important to Christopher [REDACTED] that [REDACTED] had their own independent life.

Likewise, upon the completion of 'The Lake House' in 2013 and its occupation by [REDACTED] the area around The Lake House was severed from the garden of no.178 Bearwood Road (forming the separate garden of The Lake House). The LPA has granted a Certificate of Lawfulness for the Lake House and its ancillary buildings confirming its existence in excess of 10 years. Christopher can attest to [REDACTED] and his family using the garden areas of the Lake House as per plans GCLBW003 and GCLBW005.

The Declaration details that in 2022, Christopher [REDACTED] moved into The Lake House and vice versa [REDACTED] his wife and children moved into no.178 Bearwood Road. This has resulted in Christopher [REDACTED] using the incidental area (including incidental/ancillary buildings) associated with The Lake House (not retaining any of the garden they benefited from using when occupying no.178 Bearwood Road prior to 2022).

As such, Christopher Kay can confirm that the existing garden layout of the site, as per plan GCLBW003 has existed in situ in excess of 10 years. However, more importantly, the declaration confirms that the use of the land prior to the erection of The Lodge and The Lake House was in an incidental residential use as part of the C3 planning unit with no.178 Bearwood Road. As such, no material change of use of land has occurred and a Certificate of Lawfulness should be granted on this basis alone.

In the absence of any conflicting evidence the Statutory Declaration should be given significant weight in the determination of this application.

Appendix 4: Statutory Declaration of [REDACTED] (dated 28/03/2028): This declaration was originally provided to support the application/s to establish the incidental use of garden land for The Lodge. It is being re-submitted to provide a wider context and demonstrates that the garden was in private incidental use before Lake House was built.

This appendix is a Statutory Declaration from [REDACTED] who currently occupies the main dwellinghouse of 178 Bearwood Road but previously occupied the lake house between 2013 - 2022.

The declaration corroborates Appendix 1 stating that [REDACTED] moved to no.178 Bearwood Road with his family in 1994 and grew up at the property from the age of 15. The declaration also corroborates the accuracy of Plan GCLBW002 as [REDACTED] has witnessed and undertaken the activities described in the plan first hand.

Specifically, the declaration details that [REDACTED] took part in several sporting activities and that whilst the garden was managed to reflect this (providing flat areas) these activities took place across the site. However, the Declaration notably also confirms the activities of his siblings elsewhere utilising the wider area of the plot to find a quieter area (away from sporting activities) or when more interested in exploring the wider amenities. The declaration also details the use of the 'orchards' in this era by his family which further denotes incidental residential activity.

The declaration confirms the incidental use of the wider garden solely associated with no.178 Bearwood Road between 1994 until 2008 when The Lodge was completed and occupied (severing part of the site), and again later in 2013 when The Lake House was completed and occupied.

Explicitly, the declaration from [REDACTED] confirms the severing of the garden from no.178 Bearwood Road in 2013 (paragraph 11 of the Declaration) as previously stated in Appendix 1 and demonstrated on the submitted plans. Specifically, the declaration also details the use of the large decking area and garden incidentally to the occupation of the Lake House.

The declaration details that in 2022, [REDACTED] and his wife and children moved into 178 Bearwood Road and began utilising and maintaining the larger garden associated with the main dwelling of no.178 Bearwood Road. This coincided with them no longer using the garden and parking area associated with the Lake House.

The declaration outlines other activities that [REDACTED] and his family have undertaken within the respective garden of no.178 Bearwood Road and crucially that this does not, and did not, overlap with the garden of The Lake House.

Crucially, the declaration also corroborates the use of the neighbouring land solely associated with The Lake House (and not 178 Bearwood Road) by Christopher [REDACTED] upon their occupation of the Lake House since 2022 and the use of its garden being solely that of its occupiers since this time. This remains the arrangement to this day.

In the absence of any conflicting information the Statutory Declaration should be given significant weight in the determination of this application.

Appendix 5: Statutory Declaration of [REDACTED] (Dated 28/03/2024): This declaration was originally provided to support the application/s to establish the incidental use of garden land for The Lodge. It is being re-submitted to provide a wider context and demonstrates that the garden was in private incidental use before Lake House was built.

This appendix comprises a Statutory Declaration from [REDACTED] who is the current occupier of The Lodge.

The declaration confirms that [REDACTED] moved into no.178 Bearwood Road at the age of 13 with her family in 1994. [REDACTED] can attest to the wider use of the site as the incidental residential garden to the original dwelling during her childhood and that the use of the wider plot as the garden continued until the completion and occupation of 'The Lodge' subject of a different certificate application.

[REDACTED] attests that her brother [REDACTED] moved into the Lake House following its completion in 2013 and became responsible for the maintenance and upkeep of the garden area associated with the Lake House.

The declaration attests that the garden area of the Lake House did not overlap with any of the garden areas of The Lodge and that the arrangement of the submitted plans is a true and accurate representation of the use of the land in this time.

The declaration also corroborates that in 2022, Christopher and Marielle Kay moved into the Lake House whilst [REDACTED] and his family moved into no.178 Bearwood Road. This resulted in Christopher and Marielle utilising the established garden area of the Lake House (no longer using the garden area of no.178 Bearwood Road as this was not used and maintained by [REDACTED] and his family).

[REDACTED] attests that the submitted plans accurately reflect these events (having witnessed them living on the site at The Lodge) and this arrangement has existed in excess of 10 years.

In the absence of any conflicting information the Statutory Declaration should be given significant weight in the determination of this application.

Appendix 6: Series of Photographs detailing the Incidental Residential Use of Land: This appendix details a number of photographs provided by the applicants to support the application. These photographs are from various dates and feature the use of the garden space historically, day to day use of the garden and decking as well as family events and other gatherings. Together they demonstrate the incidental use of the garden land by the Lake House from at least 2013. It should be noted that the previously approved certificate has already approved the incidental use of buildings associated with the Lake House and therefore construction photographs are not provided as part of this appendix.

Should it be required, the original photographs can be provided to the Council in order for the metadata to be verified. The Photographs range in date from 2013 (when J █████ occupied the Lake House) and 2023 (when Christopher occupied the Lake House) and earlier dates to illustrate the use of the garden spaces over time.

Whilst Photographs can only demonstrate a snapshot in time, all photos detail the incidental residential use of the land since the occupation of The Lake House and corroborate the use of land annotated on the provided plans in the absence of any other conflicting evidence these photographs should be given significant weight in demonstrating the incidental residential use of land since 2013.

Appendix 7: Series of Publicly Available Aerial Images: This appendix details aerial imagery of The Lake House attained from Google Earth they include some annotations regarding the use of land for completeness.

The images show the Lake House decking with furniture visible, the shared access driveway also serving The Lodge and the garden buildings and office pod already recognised as serving Lake House.

When taken in conjunction with all the above evidence, it is clear the development is immune from enforcement action, with the decking being completed in excess of four years and the incidental residential use of the land associated with the Lake House in excess of ten years.

3.4 - Conclusion

The relevant test for Lawful Use applications is the 'balance of probability.' Based on the submission of evidence, including and Statements of Truth and Statutory Declarations which can be relied upon as true, clear and unambiguous, it is submitted that the land was previously in an incidental residential use prior to the erection of the Lake House. As such, the 'severing' of the garden to form the garden of the Lake House did not constitute a material change of use of land that requires planning permission.

Should the LPA still consider the previous use of land was not that of an incidental residential use associated with no.178 Bearwood Road, then there is sufficient, clear and unambiguous evidence provided to detail the use of land has been in situ since 2013 and would be immune from Enforcement Action by way of S171(B)(3) of the Act.

The above evidence should also be considered in conjunction with the previously approved certificate for the site (application ref. 231275) which has found the incidental use of buildings beyond the main dwelling – these incidental uses exist within the wider planning unit and serve to further evidence the lawfulness of incidental area of the Lake House. It is also noted that the garden area around Lake House is enclosed by other recognised gardens serving private residential dwellings.

If the Council are in possession of any information that leads them to a different view to that set out above, we ask that we have the opportunity to examine this information to ensure a fair and balanced assessment.

However, it is considered that the submitted evidence meets the tests of being clear and unambiguous. On the balance of probability, based on the submitted evidence, it is therefore requested that the application for a certificate of existing lawful use be approved.