

## **DELEGATED OFFICER REPORT**



**WOKINGHAM**  
**BOROUGH COUNCIL**

|                                                                                                                                                                                                                |                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| <b>Application Number:</b>                                                                                                                                                                                     | 260158                                                     |
| <b>Site Address:</b>                                                                                                                                                                                           | Pound Lane Cottage, Pound Lane, Hurst, Wokingham, RG10 0RS |
| <b>Expiry Date:</b>                                                                                                                                                                                            | 23 March 2026                                              |
| <b>Site Visit Date:</b>                                                                                                                                                                                        | 25 February 2026                                           |
| <b>Proposal:</b> Application for a certificate of existing lawful development for the retention of an existing detached outbuilding used for domestic storage purposes in association with Pound Lane Cottage. |                                                            |

### **PLANNING HISTORY**

| Application No. | Description                                                                                                                                                                                            | Decision & Date                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 160300          | Householder application for a proposed single storey rear link extension and conversion of existing outbuilding to residential accommodation (alteration to previously approved application - 153159). | Approved<br>17/03/2019                 |
| 153159          | Householder application for a proposed single storey rear link extension and conversion of existing outbuilding to residential accommodation.                                                          | Approved<br>08/01/2016                 |
| 152276          | Application for certificate of lawfulness for proposed extension of existing outbuilding.                                                                                                              | Approved<br>22/09/2015                 |
| 150918          | Proposed erection of a single storey link extension and conversion of existing outbuilding into additional residential accommodation.                                                                  | Application<br>Withdrawn<br>27/05/2015 |
| 051296          | Application for a certificate of proposed lawful development for the erection of an outbuilding.                                                                                                       | Approved<br>28/10/2005                 |
| 29706           | Rear extension to existing detached garage to form a garden store.                                                                                                                                     | Approved Feb<br>1988                   |
| 28983           | Construction of a single storey rear extension.                                                                                                                                                        | Approved<br>13/10/1987                 |
| 12291           | (Cross Lanes Cottage, Pound Lane)<br>Demolition of sun room and erection of new garden room.                                                                                                           | Approved<br>07/01/1980                 |

### **INFORMATION PROVIDED**

By the applicant:

- Lawful Development Certificate Application Form states that the building and its use as domestic storage began more than 10 years ago.
- Location Plan.
- Site Plan.
- Outbuilding Plans.
- Planning Statement.
- Planning Statement Appendices: 1 to 5 Sworn affidavits and appendix 6 aerial photographs.

By the Council:

- Planning history records check.
- Planning enforcement history check.
- Officer site visit photographs (dated 25/02/2026).
- Land Registry Search BK71522 (05/03/2026).
- Land Registry Search BK364245 (05/03/2026).

By third parties:

- None – No comment from St Nicholas, Hurst Parish.

**Site Description:**

The application site is located outside settlement limits within designated countryside.

The wider site consists of two separate parcels of land; one parcel of land on the southern side of Pound Lane on the eastern side of a single-track private road to access a second parcel of land to the south of Pound Lane Cottage.

There is an area of hardstanding to the north and west of the outbuilding that leads from an entrance gate off the private road to the west of the site. Google Earth aerial imagery shows that the hardstanding was laid at some point between December 2010 and June 2013. The hardstanding and access from the private road do not benefit from planning permission and are **not** being considered as part of this application.

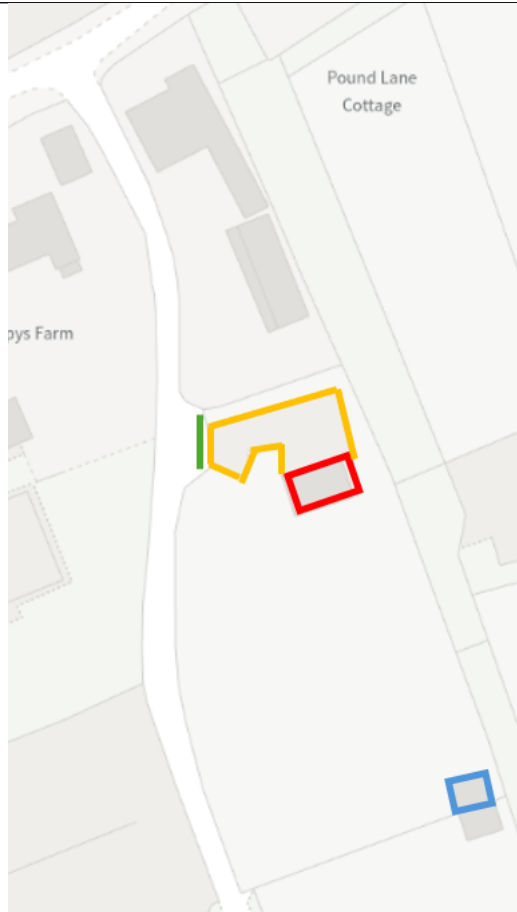


Figure 1: Taken from ArcGIS mapping (05/03/2026)

Green line – access gate

Yellow edging – approximate location of hardstanding

Red edging – approximate location of outbuilding

Blue edging – approximate location of additional outbuilding

The application site has no planning history and according to Google Earth imagery, had never been developed prior to the laying of the hardstanding and the erection of the outbuilding (the focus of this application), with the exception of a smaller outbuilding in the southeastern corner of the field to the south of the outbuilding. Historic aerials appear to conclude that the land around the outbuilding had been used for agricultural purposes as tractor tracks are visible on historic aerials between approximately 2003 and 2013.

## APPRAISAL

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.

**Relevant details of the proposal:**

The erection of a detached outbuilding (barn) measuring approximately 11m in length, 6m in width and 5.05m in height. The outbuilding and the use of the outbuilding for domestic storage does not have planning permission, with lawful development being sought through the passage of time. It is proposed that the outbuilding and domestic storage use was substantially complete on 31 August 2014.

**APPRAISAL:**

The application is for a Certificate of Lawful Existing Development to regularise the erection of the outbuilding and the use as domestic storage through the passage of time. 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.

In most cases, development becomes immune from enforcement if no action is taken:

- within ten 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 ten 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 four years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within four years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024.
- within ten years for any other breach of planning control (essentially other changes of use).

In the case of this Certificate, it must be demonstrated that the barn has been substantially completed for at least four years (operational development), and the use of the outbuilding as domestic storage for at least ten years (material changes of use).

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”.

The Applicant’s Evidence:

The application form states that it seeks to confirm the lawfulness of the following development:

“Retention of an existing building for domestic storage use”.

For this application to be supported, it will be necessary for the Applicant to satisfy the Council on a balance of probabilities that:

The outbuilding was erected on the land and substantially complete on 25<sup>th</sup> April 2024 and used for domestic storage purposes (in association with Pound Lane Cottage) for a period of 10 years prior to the date of the application.

Nature of the outbuilding used for domestic storage

The Applicant’s Evidence:

To support the erection of the barn and use of the building for domestic storage associated with Pound Lane Cottage, a Planning Statement including five Sworn Affidavits and aerial images have been provided by the applicant. Given the assessment carried out above, it must be clearly and unambiguously proven that the outbuilding has been substantially complete and used for the storage of domestic goods for a continuous ten-year period.

Throughout the applicant’s submission, the information is consistent in stating that the barn was completed in 2014 and has always been used for domestic storage from completion to present day.

The application form and Planning Statement states the outbuilding was completed in August 2014, as do the seven Sworn Statements.

Statutory Declarations

Seven statutory declarations have been submitted (Appendices 1 to 5 in the Planning Statement) and are signed in the presence of solicitors at THP Solicitors Ltd, 2 Dukes Street and dated. Two additional statutory declarations were submitted at a later date both signed in the presence of solicitors at THP Solicitors, 9 Chalfont Court and dated.

Tom Ellery

- The statutory declaration states that T. Ellery is the gardener and friend of the landowners.
- It states the barn was substantially complete in August 2014 and used continuously by the landowners to store personal items until present day.
- It states as the gardener, he has maintained the main garden and paddock and made use of the ride on mower and other tools stored in the barn.
- It states T. Ellery has also attended Pound Lane Cottage for social events when the barn was accessed to use the landowner’s personal items such as tables and chairs during the social events.

Ian Phillips

- The statutory declaration states that I. Phillips is the father of the landowner (Mr D. Phillips).
- It states the barn was substantially complete in August 2014 and used continuously by the landowners to store personal items up until present.
- It states that I. Phillips and his wife have lived at Pound Lane Cottage numerous times over the years.
- It states I. Phillips has accessed the barn since 2014 during family gatherings to access items such as garden furniture, personal belongings and garden maintenance items.

#### Elizabeth Phillips

- The statutory declaration states that E. Phillips is the mother of the landowner (Mr D. Phillips).
- It states she visits Pound Lane Cottage on average once or twice a month.
- It states E. Phillips accesses the barn regularly for gardening tools when gardening the main garden.
- It states E. Phillips was living at Pound Lane Cottage during the construction of the barn in 2014 and which was substantially complete in August 2014.
- It confirms that the barn has been utilised for personal storage from completion of the building until present.

#### Alistair Kippax

- The statutory declaration states A. Kippax is a friend of the landowners.
- It states the barn was substantially complete in August 2014 and has been used continuously since then as personal storage of the landowners until present.
- It states A. Kippax regularly accesses the barn to borrow personal items from the landowners such as the lawn mower.
- It states that the barn has consistently been used for the landowners to store personal items such as chairs, clothes and garden tools.

#### Patricia Richards

- The statutory declaration states P. Richards is the mother of the landowner (Ms R. Phillips).
- It states the barn was constructed during 2013 and completed mid to late 2014.
- It states P. Richards visits Pound Lane Cottage three to four times per week to help with childcare.
- It states R. Phillips regularly accesses the barn to retrieve her grandchildren's bicycles which are stored in the barn.
- It states the barn has been used continuously for the purpose of providing additional storage from the date it was built to present.

#### Rhian Phillips

- The statutory declaration states that R. Phillips is the co-owner of the land.

- Land Register BK364245 confirms Rhian Patricia Phillips as co-owner of the Land at Pound Lane Cottage, Pound Lane.
- It states that R. Phillips lives at Pound Lane Cottage, having moved there in 2012.
- It states that R. Phillips built the barn which was completed in August 2014.
- It states that since the barn was constructed, it has been used consistently for personal and private belongings of the family. Items such as furniture, bikes and toys.

#### Daley Phillips

- The statutory declaration states that D. Phillips is the co-owner of the land.
- Land Register BK364245 confirms Daley Ian Phillips as co-owner of the Land at Pound Lane Cottage, Pound Lane.
- It states that D. Phillips purchased the land in May 2012 and moved in at this time.
- It states D. Phillips began to build the barn in April/May 2014 which he completed in August 2014.
- It states the barn has been in use continuously from the date of completion to present date for the purpose of storing the family's personal belongings.
- It states the barn is accessed almost daily to retrieve items such as garden furniture, scooters, bikes etc.

The submitted declarations are clear and unambiguous that the barn was completed in August 2014 and used continuously by the landowners and their family for storage of personal belongings and the use has never ceased. The declarations provide a clear link between the occupiers at Pound Lane Cottage and the barn.

#### Aerial Imagery:

The applicant has submitted aerial images of the outbuilding in situ over a period from March 2017 to May 2025. These are shown below in Figures 2-8, which when contrasted with the LPA's own aerial evidence are consistent. The photographs provide snapshots in time of the site dating back to 2013. Although aerial imagery is unavailable between 2014 to 2016, the sworn declarations provide unbroken narrative evidence covering this period. Aerial imagery from 2017 onwards shows the barn in situ and no aerial evidence contradicts the applicant's account.

June 2013

Application site



Figure 2: 2013 Aerial image showing no outbuilding provided by the applicant

March 2017

Application site



Figure 3: 2017 Aerial Image showing the outbuilding in situ provided by the applicant

June 2018

Application site



Figure 4: 2018 Aerial Image showing the outbuilding in situ provided by the applicant  
May 2019 (street scene view)



Figure 5: 2019 Google Street View showing the outbuilding in situ provided by the applicant

April 2020

Application site



Figure 6: 2020 Aerial Image showing the outbuilding in situ provided by the applicant

July 2021

Application site



Figure 7: 2021 Aerial Image showing the outbuilding in situ provided by the applicant

May 2025



Figure 8: 2025 Aerial Image showing the outbuilding in situ provided by the applicant

The Council's Evidence:

The Local Planning Authority (LPA) carried out its own assessment of aerial imagery using Google Maps and Google Earth. The images are consistent with that of the applicant's images (Figures 2 – 8). The images consistently show the barn in situ from 2017; however, these images do contain gaps in the evidence between 2014 and 2016. In this respect they are not entirely conclusive.

However, to support the aerial photographs, the statutory declarations (seven in total) cover the period from August 2014 (when the breach first occurred).

During the officer site visit on 25.02.2026 the barn was in situ being utilised for the storage of household items (furniture, paint, exercise bike, tools) (see Figure 9).



Figure 9: Planning Officer site visit photos (25.03.26) of the internal storage space in the barn

#### Enforcement History:

No Planning Contravention Notices have been served under any enforcement investigations and no Enforcement Notices have been served on the building.

#### Building Regulations:

Building Control records are consistent with the planning history for the site.

In March 2015 application 150918 was submitted for a single-storey link extension and conversion of the existing outbuilding into residential accommodation. Although this application was withdrawn, it is consistent with the sworn declarations of both Rhian Phillips and Dale Phillips which stated that they purchased and moved into Pound Lane Cottage in 2012 and two years later (2014) they began to develop plans for an extension and outbuilding conversion (the plans which were later submitted under application 150918). The submitted declarations state that as plans were being prepared to convert the existing outbuilding, it was at this time (2014) that Mr D. Phillips began to construct the barn.

The majority of the link extension was approved by virtue of a Certificate of Lawfulness application (152276), bar an increase in length proposed under application 153159. The dates are consistent with Building Regulations submission 162978 for a 'Single storey rear extension and internal alterations' in September 2016.

#### Conclusion:

Having considered the evidence submitted with the application and the LPAs own evidence, the LPA is satisfied on the balance of probabilities that the barn was substantially complete in August 2014 and is linked to the occupiers of Pound Lane

Cottage as it has been used as storage space for the family's personal items since the barn was completed up to present day.

In conclusion, the construction of the building and the change of use of the land for residential storage purposes (associated with Pound Lane Cottage) has been occurring for at least ten years prior to the date of this application and therefore, by the passage of time, the barn and use of the barn is considered immune from enforcement action and is lawful.

**The Public Sector Equality Duty (Equality Act 2010):**

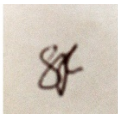
In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. 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 erection of the barn has been substantially complete for more than four years and the use of the barn for domestic storage (associated with Pound Lane Cottage) has been occurring for a consecutive period of over ten years. It is therefore considered that this application for a certificate of existing lawful development be **approved**.

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| <b>Date:</b> | 30 January 2026 |
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| <b>Earliest date for decision:</b> | 19 February 2026 |
|------------------------------------|------------------|

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| <b>Recommendation agreed by:<br/>(Authorised Officer)</b> |  |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------|

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|--------------|----------------|
| <b>Date:</b> | <b>27.3.26</b> |
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