

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	252683
Site Address:	Inverloddon Cottage, Ferry Lane, Wargrave, Wokingham, RG10 8ET
Expiry Date:	14 January 2026
Site Visit Date:	2 December 2025
Proposal: Application for a certificate of existing lawful development for use of The Boathouse within the garden of Inverloddon Cottage as a separate dwelling house (Use Class C3).	

PLANNING HISTORY

Application No.	Description	Decision & Date
002669	Proposed erection of replacement front porch and carport (Retrospective)	Approved 03/01/2001
011301	Proposed erection of single storey boathouse and wet dock to replace existing summer house.	Refused 28/09/2001
021406	Proposed erection of boathouse and wet dock plus new section of brick wall.	Approved 28/04/2003

SITE DESCRIPTION

The application site features a link-detached two-storey property located within a predominantly residential area of Wargrave.

There are no listed buildings at the site, however, the site is located within the Wargrave Conservation Area.

The application site is located within an area that holds the potential to support bat roosts. Additionally, the application site is identified as being a suitable habitat for great crested newts and thus the site is an Amber Risk Zone.

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 *Gabbitts 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 boathouse has been occupied continuously as a separate dwellinghouse since 01/09/2019.
- 3 no. statutory declarations and tenancy agreements from the previous tenants who occupied the boathouse between September 2019 and present day.
 - These clarify the period of time each tenant lived in the boathouse.
- Statutory declaration from the property owner:
 - This states the boathouse has been in use as a separate dwelling since the beginning of September 2019, with its own separate access.
- Submitted location plan, block plan, floor plan, roof plan and elevations.
 - Proposed plans showing the boathouse and its dimensions.
- Internal photos of the boathouse.
 - Showing the boathouse as fully furnished.
- Supporting Statement

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 02/12/2025 and this confirmed the presence of the boathouse as shown in the submitted details.
- Site visit photographs (02/12/2025).
- Aerial images from the Council’s mapping system taken from 2022, 2019 and 2004, confirming the presence of the boathouse as shown in the submitted details.
- Google Earth aerial images dated 2025, 2020 and 2004.

By third parties:

- No third parties have commented on this application.

APPRAISAL

This application is for a Certificate of Lawful Existing Use to regularise the use of the existing boathouse, located within the garden of Inverloddon Cottage, as a separate dwelling.

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 the Certificate, it must be demonstrated that the use has been on-going continuously for at least four years prior to the change in legislation of s171B of the TCPA on 25/04/2024.

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 change of use of the boathouse to use as a single dwelling began more than four years before the date of the application. The application form elaborates on this and also states that “*The use of The Boathouse changed use to a single dwelling house from the 1st September 2019*”.

The submitted statutory declarations and tenancy agreements, notably for Charles Nicholls (the first tenant), demonstrate that The Boathouse was in use as a single dwelling from 01/09/2019. The statutory declarations also state that the Boathouse was used as the tenant’s only residence during their tenancy periods.

The evidence submitted by the applicant is based heavily on the demonstration that the use has been on-going continuously for at least four years prior to the change in legislation of s171B of the TCPA on 25/04/2024.

Evidence Submitted by the Council:

Google Earth aerial images dated 23rd June 2018 (left) and 18th March 2025 (right).



In the images above it is clear that the boathouse has remained in situ and nothing in the images indicates that the use is not as described by the applicant.

The council has no evidence contrary to that provided by the applicant.

Assessment:

4 Year Immunity Rule:

To be considered lawful by the passing of time, the boathouse must have been in use as a separate dwelling house 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 provided evidence that the use as a separate dwelling has been ongoing since 1st September 2019, and the council has no evidence contrary to this. Therefore, it is deemed that the use as a separate dwellinghouse has been ongoing for longer than 4 years prior to the change in legislation on 25/04/2024.

Conclusion:

Based on the evidence above, it can be said on the balance of probability that the use of the Boathouse as a separate dwelling has been continuously ongoing for more than four years prior to the change in legislation (s171B of the TCPA). There is no evidence to show that the boathouse was in any other use during this time.

Subsequently the time limit for taking enforcement action has expired under s171B of the TCPA and the use as a separate dwelling is lawful. A plan is attached to the draft decision notice demonstrating the area that this certificate applies to.

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, use of the boathouse as a separate dwelling has been ongoing for over four years prior to the change in legislation. It is therefore considered that the application for a certificate of existing lawful use should be approved.

Date:	6 January 2026
--------------	----------------

Earliest date for decision:	27 November 2025
------------------------------------	------------------

Recommendation agreed by: (Authorised Officer)	
---	---

Date:	06/01/26
--------------	----------