

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	241969
Site Address:	Land adjacent to Westwood Cottage, Sheerlands Road, Arborfield, Wokingham, RG40 4QX
Expiry Date:	23 October 2024
Site Visit Date:	4 October 2024
Proposal: Application for a certificate of existing lawful development for the use of Buildings 1 & 2 as storage and workshop use; Building 3 as office use, and land as storage use.	

PLANNING HISTORY

Application No.	Description	Decision & Date
241639	Application for a certificate of lawfulness for the proposed temporary stationing of a mobile home for residential purposes.	Approved: September 2024
172689	Application for a certificate of existing lawful development for the use of site for B1(a) business and ancillary storage uses.	Not proceeded with: November 2017
40052	Refurbishment works.	Approved: February 1993
35339	Change of use from garage to office and part of the garden to storage.	Refused: April 1990
R/263/65	Demolition of garage and outbuildings and erection of two bedrooms and new garage.	Approved: October 1965

SITE DESCRIPTION

Westwood Cottage is a Listed Building within countryside.

The wider site includes a large area of open land and 3no. buildings, all of which are located to the northwest of the Cottage and accessed via the same entrance used by the dwellinghouse from Sheerlands Road.

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 (formerly four) years beginning with the date on which the operations were substantially completed.

Section 171B (2) provides 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 four 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 ten (formerly four) years prior to the date of application in order for the change to have become lawful.

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.

In this case the application is for the continued use of land for storage, and the use of 3no. buildings, two for workshop & storage purposes, and one for office purposes. Evidence must show on the balance of probabilities that the uses described have been in place within the identified site (red line) for a continuous 10-year period.

INFORMATION PROVIDED

By the applicant:

- Application Form (dated: 31/07/2024).
- Certificate Statement (dated: 29/07/2024).
- Statutory Declaration by Keith Ray (dated: 16/07/2024).
- Series of Invoices addressed to S G Ray & Co Ltd (The company operating on the site).
- Companies House Information.

By the Council:

- Planning History Records (see above).
- Aerial Photos dated from 2013 onwards.
- Site Visit Photos (dated: 04/10/2024).

By third parties:

- None.

APPRAISAL

This application is for a Certificate of Lawful Existing Use to regularise:

1. the use of land for storage and;
2. the use of 3no. buildings, two for workshop and storage purposes, and one for office purposes.

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 use of the land for storage has been on-going continuously for at least 10 years prior to the date of this application, and that the specified uses of the buildings have also been on-going continuously for at least 10 years, covering the same period as above. The relevant period being between 28/08/2014 & 28/08/2024.

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”*.

Where the burden of proof is on the applicant, the relevant test of the evidence on such matters is 'the balance of probability.' 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 section of the report will first outline and describe in further detail both the applicants and councils’ evidence, with a subsequent assessment of each component of the existing development, applying the evidence as described.

Applicant’s Evidence:

Statutory Declaration

The evidence submitted is based somewhat heavily on the Statutory Declaration from Keith Ray (dated: 16/07/2024) whom has an interest in the land. The Local Planning Authority should accept this unless there is evidence to the contrary.

The statutory declaration from Keith Ray states that:

- He has lived at Westwood Cottage since 1972 and owned the site since this date.
- He is the former co-director of S G Ray & Co Ltd and provided a statutory declaration through the previously refused certificate application (ref: 172689) which stated that a number of buildings and uses at the site had then existed since 1994. He reiterates that S G Ray & Co Ltd have operated from the site as outlined in blue (enclosure 1 of the declaration) since 1994.
- The adjoining land, known as ‘land adjoining Westwood Cottage’, comprising a part lawful use as a builder’s yard, has been associated with S G Ray & Co Ltd since 1983.
- The use of the land relevant to this certificate application is completely separate to the adjacent land.
- Building 3 has been the head office for S G Ray & Co Ltd since 1994 and is where all invoices and deliveries are address to. Staff regularly attend the office, and he has been paying business rates to WBC for this building.
- The other uses on site have resulted from S G Ray & Co Ltd operations being present on the site since 1994, which is why invoices are addressed to ‘Sheerlands House’

(building 3) while deliveries would be delivered to and stored on the area of land numbered 5 in enclosure 1.

- The use of land numbered 5 has been used for open storage since building 3 has existed. As the business grew, this required more vehicles and materials to be stored on the site.
- Building 1 was originally an open roofed structure used for storage until a roof was added in 2013 and has since been used as a workshop and for storage.
- Building 2 is a garage which has been used for the storage of vehicles. This building features a small workshop which is used on an ad hoc basis. It is attached to building 1 and was built at the same time as Sheerlands House.
- He can confirm that the buildings and uses have existed and continue to do so in excess of 10 years from the date of writing the declaration.

The statutory declaration is supported by a plan titled 'Enclosure 1'. This shows which parts of the site have been used for the varied uses. This plan is attached below.

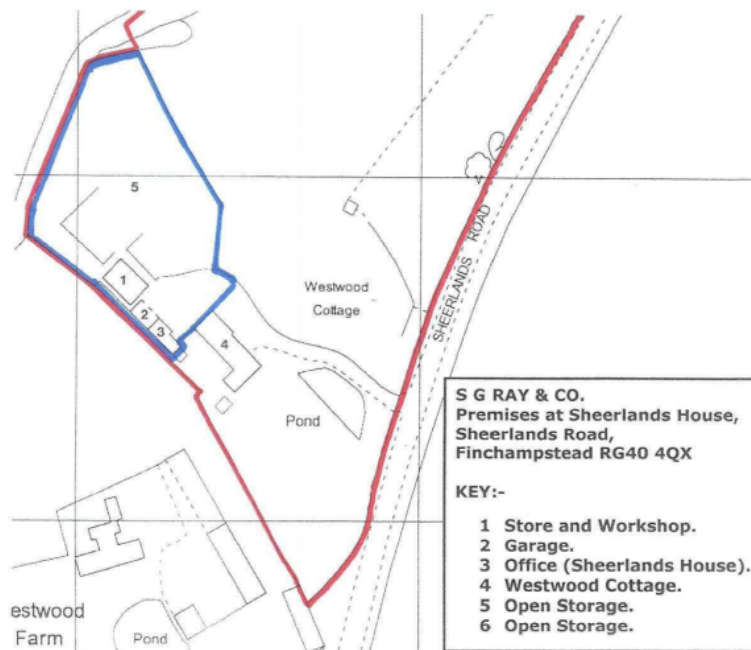


Figure 1 – Enclosure 1 of the Statutory Declaration

Invoices

A series of invoices addressed to S G Ray & Co Ltd (dated 27/03/2014 – 25/04/2024) have been submitted as evidence. These all address Sheerlands House, Sheerlands Road, Finchampstead.

These invoices include a range of services and provide further weight to the use of Sheerlands House (building 3) as an office within the dates that the invoices were sent.

Companies House Document

The document included in appendix 5 comprises an annual return from 1995 and confirms the registered office of S G Ray & Co Ltd as 'Sheerlands House, Sheerlands Road, Finchampstead, Wokingham, Berks RG11 4QX'. This attributes further weight to the statutory declaration as it partly corroborates claims that the company has been operating on the site since 1993. However, there is no indication that Sheerlands House has any geographical relationship to this site or Westwood Cottage.

Other

The invoices and council house document provide a strong basis to the claims regarding the use of Sheerlands House as an office since 1993. There is less support for the use of the workshops and adjacent land for storage, however, in line with previous statements, there is a lack of conflicting evidence.

When exploring the council's own records, it is clear from the refused planning application in 1990 (ref: 35339), in which the applicants were listed as S G Ray & Co Ltd, that there was an intention to use the site to help with the operation of the business. The application was refused three years prior to the date that Keith Ray states the various uses commenced on the site.

The Council's Evidence:

Site Visit Observations & Photographs

A site visit was carried out on 4 October 2024, with a number of photos and observations taken during the visit. Although the site visit process is unable to provide any context to the historical use of the buildings and land, it provided evidence as to the current uses.

Aerial Imagery

The aerial imagery provides a snapshot in time, it cannot deal with the use of the buildings as this cannot be seen, however, the use of the open land can be observed in these photographs, as well as the physical development on the site.

Planning History

A certificate of existing lawful development was refused on 8 September 2017 (reference: 172689), which was for the use of the site for B1(a) business uses and ancillary storage uses.

This previous application contains statutory declarations which state that the land edged in blue, and the buildings numbered 1-3 have been continuously occupied by S G Ray & CO Ltd for business purposes since 1994.

The Council initially considered there to be minor contradictions in these statutory declarations compared to the one submitted in support of this application. As such, additional information on this matter was requested and subsequently provided on 11 November 2024.

Assessment:

Before considering the evidence submitted concerning the use of the buildings and land, it is worth firstly considering the buildings themselves and any evidence regarding their construction. This is especially important as not all of the buildings subject to this application benefit from planning permission.

It is stated in the Certification Statement that buildings 2 & 3 are well established, while building 1 was an open roofed structure until 2013, when a roof was added to the structure that was previously connecting walls enclosing two portacabins.

The aerial images available to the council appear to concur with the information regarding building 3, which shows the building as it stands today, present in 2013. Likewise, historic planning documents demonstrate the presence of buildings 2 & 3 in the late 20th century.



Figure 2 – Aerial Image of the Site (2013)

Overall, from aerial photos, as well as the information provided by the applicant and the council's own information, it has been appropriately demonstrated that the buildings as shown in the submitted details have been substantially completed for the requisite period, and as such, the operational development is immune from enforcement action.

Buildings 1:

The Affidavit states that building 1 has been used as a store and workshop for metal welding since 2013. The onus is on the applicant to demonstrate, on the balance of probabilities, that the building has been continuously used for workshop and storage purposes for at least 10 years prior to this application. The Planning Statement highlights that the LPA had refused the previous certificate application (ref: 172689), explicitly owing to the fact it had not found the storage use ancillary to the business use that was being sought, but instead it was considered to be a use in its own right. In any case, it is not considered that the uses applied for previously to now are distinct from one another, and therefore the refusal of the previous application does not result in an in-principal objection.

As discussed previously, there is limited support for the use of buildings 1 & 2 provided by the applicant, however, in line with previous statements, there is a lack of conflicting evidence. The site visit conducted on 4 October 2024 demonstrated that building 1 had all the facilities associated with a store and workshop, and in line with the information provided within this application.

Building 2:

The Affidavit states that building 2 is a garage used for the storage of vehicles with a small workshop used on an ad hoc basis. It is not clear which part of the building is in each use and an ad-hoc use does not indicate a continuous use. As such, despite it being considered there was a lack of contrary evidence to dispute the storage element of the building, concern was raised to the applicant regarding the workshop component. In response, it was stated that the term ad hoc had been stated as the workshop is only used when a particular type of welding is required, that is not undertaken in building 1. As such, whilst the workshop is secondary in nature, there is a lack of conflicting evidence to demonstrate that building 2 has been in use as both a store and workshop, such that there is no good reason to refuse the application on this basis.

Building 3:

The Affidavit states that building 3 has been used as an office since 1994. It has not been used as a home office incidental to the Westwood Cottage and became known separately as Sheerlands House in 1994. This is consistent with the Affidavit submitted by Keith Ray through the refused certificate in 2017. The Council also note that through the assessment of the previous application, the Planning Officer raised no specific concern as to the use of building 3 as an office, but instead was refused on the basis of the wider business and storage uses that were applied for.

The associated site visit demonstrated that the building features facilitates typically associated with an office, such as computers, desks, toilets and a kitchen area.

Use of Land as Storage:

With regard to the use of the open land as storage, it was noted through the previous application that aerial images in 1999 and 2003 appeared to show this area of the site as grassland, whereas the 2010 image was inconclusive. Notwithstanding, it was also stated that there had been some physical change in the land by 2013, as shown through the aerial imagery. With relevance to the current application, it must be demonstrated that the use of the land for storage has been on-going continuously for at least 10 years. Whilst the scale of storage has clearly increased over the last decade, the aerial images demonstrate the applied for parcel of land has been used for storage in this timeframe.

Conclusion

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.

The local planning authority has limited evidence of its own, or from others, to contradict that of the applicant or make his version of events less than probable. The applicant's evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the entire site has been used in conjunction with the applied uses, for at least 10 years prior to the application.

Evidence has been submitted to prove that the land and buildings (as shown on the red line plan) have been used in accordance with the submitted uses for a continuous period of 10 years prior to this application. The council's own evidence, comprising site visit photos, aerial images and planning records, is unable to demonstrate this has not been the case.

Based on the above, it can be said on the balance of probability that the site as shown in the submitted details has been in use as the specified uses for a consecutive period of more than 10 years. Subsequently, the time limit for taking enforcement action has expired under s171B of the TCPA 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, as shown in the submitted details, has been for storage, storage & workshop, and office purposes, and has been occurring for a consecutive period of over ten years. It is therefore considered that that the application for a certificate of existing lawful use should be approved.

Date:	7 February 2025
Earliest date for decision:	18 September 2024
Recommendation agreed by: (Authorised Officer)	
Date:	14.02.25