

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251231
Site Address:	Winnersh Garden Centre, 656 Reading Road, Winnersh, Wokingham, Berkshire
Expiry Date:	12 September 2025
Site Visit Date:	4 August 2025
Proposal: Application for a certificate of existing lawful development for additional hardstanding to the east of the main car park. *	

*The application form description was "*Application for a certificate of existing lawful development for an additional car parking area to the east of the main car park.*" After discussion with the applicant, the description was revised to describe the operational development more succinctly, i.e. the laying of additional hardstanding to the east of the main car park.

PLANNING HISTORY

Application No.	Description	Decision & Date
T/1996/64105	Application for temporary permission for use of greenhouse for display of Christmas Goods	Temp permission given for 5 years 07/08/91996
F/1996/64571	Proposed erection of greenhouse area and retrospective approval of part of existing greenhouse area	Conditional approval 16/12/1996
F/1996/64671	Proposed Site Access Improvements	Approved 31/01/2001
O/1998/68661	Outline Application for proposed redevelopment of site for mixed A3 and D2 Use with car parking and new access	Refused 25/02/2000 Appeal dismissed 27/09/2000
TP/2001/4709	Application for temporary permission for use of greenhouse for display of Christmas goods	Conditional approval 05/10/2001
VAR/2005/6241	Variation of Condition 1 of consent F/1996/64671 to vary time limit for the implementation of planning permission for a further 3 years.	Conditional approval 13/01/2006
153195	Application for change of use of part of site to car wash and valet service, installation of double canopy, wash screen and cabins for customer waiting, office/rest room and secure storage, landscaping and fences (retrospective)	Refused 21/01/2019

200560	Full application for the proposed extension and reconfiguration of the existing car park.	Approved 15/04/2020
201545	Application for submission of details to comply with the following condition of planning consent 200560 (dated 15/04/2020) 3. External materials 6. Electric Vehicle Charging 7. Landscaping	Approved 28/07/2020
202668	Full application for the change of use of part of site to car wash and valet service, installation of double canopy, wash screen and cabins for customer waiting, office/rest room and secure storage, landscaping and fences, and modification of drainage to link to that of the car park. (Retrospective)	Refused 09/02/2021
214114	Full application for the part change of use application for relocation, replacement and reconfiguration of existing car wash & valet service including retention of the canopy and wash screens, with proposed modification to link surface water run off to that of the proposed drainage of car park. (Retrospective)	Approved 06/04/2022
223124 Appeal Ref: APP/X0360/X/23/3314918	Application for a certificate of existing lawful development for the use of land to sell and display goods (sheds).	Allowed on Appeal 11/09/2024

INFORMATION PROVIDED

By the applicant:

- Appendix 1
Invoice dated 8th April 2020: *Norwich Buildbase*. Toone of Loose MOT Type 1 Roadstone. £360.
- Appendix 2
Invoice dated 30th November 2020: *GPC74*. Ground worker/plant operator*16 days, accommodation, trapped yard gully and concrete kerb, Type 1 Roadstone. £17,155.90.
- Appendix 3
Invoice dated 3rd March 2020: *Tradevault*. Heras temporary fencing, vehicle gate and pedestrian gate. £2,400.
- Appendix 4
Invoice dated 31st October 2020: *FKS Buildbase*. Twin drum ride on roller. £198.
- Appendix 5

Invoice dated 17th November 2020: *FKS Buildbase*. Twin drum ride on roller. £198.

- Appendix 6
Invoice dated 31st March 2020: *J. Spence Ltd*. Hire of Excavator, manpower and accommodation. £8,063.40.
- Appendix 7
Invoice dated 12th November 2020: *Travis Perkins*. Tool hire. £629.90.
- Appendix 8
Invoice dated 26th October 2020: *Keyline*. Woven Geotextile black. £351.50.
- Appendix 9
Invoice dated 12th November 2020: *Tax Invoice*. Fencing to Car Park. £3,864.
- Appendix 10
Invoice dated 18th November 2020: *Travis Perkins*. Tool hire and gas oil. £353.51.
- Appendix 11
Invoice dated 23rd November 2020: *J. Spence Ltd*. Hire of Excavator, manpower and accommodation. £9696.00.
- Site Plan reference A-PL-201 Rev P-01
- Location Plan reference A-PL-200 Rev P-01

By the Council:

Planning History Records (see above)

Application Form ref 251231 dated 21/05/2025 states that “*the subject works were completed in November 2020.*”

Land Registry Register and Plan Numbers: BK372974 and BK524320.

Enforcement History Records:

RFS/2025/090118: *Unauthorised use of dwelling as yoga studio*. Closed 5th March 2025 as No Breach.

RFS/2025/090117: *Unauthorised erection of a building*. Closed 4th September 2025 as Application Submitted.

RFS/2024/089968: *Hard standing without planning permission*. Closed 10th June 2025 as Application Submitted.

RFS/2024/089562: *Carpark storing cars without permission* Closed 2nd December 2024 as Voluntary Compliance.

RFS/2022/087201: *Unauthorised expansion of the external parking area to a sales display for sheds*. Closed 31st October 2022 as application submitted.

RFS/2022/08783: *Non-compliance with condition 4 of planning permission 211108 (obscured glaze)* Closed 14th December 2023 as Voluntary Compliance.

RFS/2020/085964: *Landscaping and car park not in accordance with permission 201545*. Closed 11th December 2020 as Voluntary Compliance.

RFS/2019/084835: *Planning Permission 153195 refused*. Closed because Application 202668 submitted 9th October 2020 for change of use of part of site to car wash and valet service, installation of double canopy, wash screen and cabins for customer waiting, office/rest room and secure storage, landscaping and fences, and modification of drainage to link to that of the car park (Retrospective)

RFS/2015/082370: (1) *Sheds displayed in designated car park* - No breach. (2). *Car Valeting service* – application submitted, and case closed on 4th January 2016.

PCN ref RFS/2024/089562: Without planning permission, the material change of use of the Land to use for the long-term storage of vehicles un-associated with the use of the Garden Centre. PCN Response received from David Lazenby on 30th September 2024:

- BGC South Ltd Winnersh Garden Centre are leaseholders of the site.
- The Garden Centre are not responsible for the parked cars.
- The car park is open during the Garden Centre trading times.
- Rental income for the car park is £10,909 per annum.
- No waste or scrap generated from the storage of cars.

Site Visit Photos

Dated 4th August 2025. Unauthorised hardstanding observed and no parked vehicles.



Figure 1 Hardstanding and application site Image taken 4th Augst 2025

Dated 28th November 2024. On the day of the site visit there were no cars parked on the unauthorised hard standing.

Dated 22nd October 2024. On the day of the site visit, the hard standing area was packed with cars and vans. Two officers spoke to a man who confirmed that he rented the area from Winnersh Garden Centre to sell cars and car parts for his company called London Autos.



Figure 2 Unauthorized vehicle parking

Image taken 22nd October 2024



Figure 3 Location of unauthorised vehicle parking

22nd October 2024

Google Earth/Streetview timeline



Figure 4: April 2020 Screenshot taken from Google Earth and annotated with red line to show the grassed area prior to the laying of hardstanding for overflow carpark.



Figure 5 April 2021 Screenshot taken from Google Earth to show the hardstanding for overflow carpark

By third parties:

- Winnersh Parish Council's Planning and Transport Committee note that the additional car parking area to the east of the main car park is already in place. Furthermore, the committee supports a request from a member of the public to reinstate the bike parking that was previously removed.
- Ward Councillor requests the cycle parking is reinstated that was removed in 2022.

Officer response: The provision of cycle parking is not a material consideration of this application and will be discussed with the Garden Centre as a separate request.

LEGISLATIONTown 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.

In the case of *Burdle & Williams v SSE & New Forest RDC* [1972], the inspector concluded that the planning unit should be determined by identifying the unit of occupation and whether there is physical and/or functional separation of primary uses as a matter of fact and degree. The judge suggested three broad categories of distinction:

- 1) A single planning unit where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary.
- 2) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another.
- 3) The unit of occupation comprises two or more physically separate areas that are

occupied for different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

In this case, the proposed overflow car park previously had an ancillary connection to the Winnersh Garden Centre. However, on 4th August 2025 a site visit confirmed that the unauthorised hardstanding was being used for independent business purposes that were not related to the Garden Centre. Therefore, interrupting the incidental use of the overflow car park and opening a new planning use chapter.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise the operational development to lay a hardstanding to the east of the existing car park at Winnersh Garden Centre. 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 has been ongoing continuously for at least four years prior to 25th April 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”.

The Applicant’s Evidence

- 11 no. invoices dated between 3rd March 2020 and 28th November 2020 for building materials, plant hire (e.g. roller, dumper truck and digger) and miscellaneous services. Total value: £43,270.20. Furthermore 8 no. invoices are dated later than 25th April 2020.
- Scaled site plan and location plan showing the overflow car park

By third parties:

Winnersh Parish Council have commented that the hard standing is already in place.

The Council’s evidence

- Planning Enforcement records include dated site visit images and written notes confirming that unauthorised storage of cars and vans was occurring in September 2024. Therefore, the ancillary use of the overflow car park was interrupted at this time.
- Land Registry Titles and Plans confirm that the land associated with Winnersh

Garden Centre is leased by BGC South Limited

- Google Earth images provide evidence that the hardstanding for overflow car parking was implemented later than April 2020.
- Application form ref 251231 dated 21/05/2025 states that *“the subject works were completed in November 2020.”*
- Of the 11 no. invoices submitted by the applicant, 8 no. invoices were dated were dated October 2020 or November 2020, and later than 25th April 2020. Also, the total value of the invoices (£43,270.20), would appear excessive to lay a hardstanding of this size (approximate area 0.19 hectares).
- PCN response dated 30th September 2024 stated that the Garden Centre were not responsible for the parked cars; and the rental income for the car park was £10,909 per annum.
- 2 no. Planning Enforcement Officers inspected the site on 22nd October 2024 and found that the use of the hardstanding was not ancillary to the Winnersh Garden Centre. They observed cars and vans parked on the hard standing that had been rented to an independent company (London Autos) for use as car storage, thus creating a new planning chapter.

Conclusion

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.

In this case, the applicant's evidence does not demonstrate that the hardstanding for overflow car parking was implemented prior to 25th April 2020; and more than four years before the 25th of April 2024 is not demonstrated. Also, no evidence was submitted to demonstrate that the car parking was implemented more than ten years before the date the application was submitted on 22nd May 2025.

Furthermore, the Council holds information which contradicts some of the submitted evidence and undermines the applicant's version of events that the use of the hardstanding as ancillary parking had been continuous for at least ten years.

It can therefore be said on the balance of probability the operational development to lay a hardstanding for ancillary overflow car parking was not implemented within the last four years.

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 operational development to lay a hardstanding to the east of the main car park at Winnersh Garden Centre, has not occurred more than four years before 25th April 2024, or more than 10 years before 22nd May 2025. It is therefore considered that the application of a certificate of existing lawful use should be refused, and a draft certificate is set out below.

Date:	12 September 2025
Earliest date for decision:	30 June 2025
Recommendation agreed by: (Authorised Officer)	Refuse 
Date:	12/09/25