

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251779
Site Address:	37 Shefford Crescent, Wokingham, Wokingham, RG40 1YP
Expiry Date:	24 September 2025
Site Visit Date:	26 August 2025
Proposal: Application for a certificate of existing lawful development for the erection of single storey rear extension under permitted development.	

PLANNING HISTORY

Application No.	Description	Decision & Date
251778	Application for a certificate of existing lawful development for a change of use of the existing building to HMO (Use Class C4) under permitted development.	Live application
B/17/71	Construction of 138 No. dwellings and garages together with all necessary estate roads and sewers.	Approved 16/09/1971

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form states that the single-storey rear extension was constructed under permitted development.
- Plans.
- Site Plan.
- Agency Property Management Agreement dated 25/11/2020.
- Wokingham Borough Council Notice of decision to grant a licence for a house in multiple occupation Letter (dated 19th August 2022).
- HMO Licence Certification HIU500 issued 19/08/2022.

By the Council:

- Planning History Records check:
- Planning Consent Decision Notice B/17/71.
- Building Regulations Application 20/2135/DEXBN – Domestic Extension Building Notice. Received 9th September 2020. Completed 6th August 2021.
- Planning Enforcement Records Check:
 - RFS/2020/085838 (Unauthorised building works and conversion to HMO) and associated documents which include:
 - Officer photographs (dated 29/09/2020).
 - Officer email to complainant to close the enforcement case as no breach as the change of use to a small HMO (Class C4) and single-storey rear extension were lawful under permitted development (dated 06/10/2020).

- The Case Officer carried out a site visit on 26/08/2025 and observed the nature of the use of the Land as shown in the submitted details.
- Site visit photos (26/08/2025).
- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1, Class A.

By third parties:

- None.

APPRAISAL

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 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 single-storey rear extension measuring approximately 2.44m in width, 2.58m in length and 2.5m in height. The extension does not have planning permission, with lawful development being sought under permitted development. The extension was substantially completed on 01/11/2020.

APPRAISAL

The application is for a Certificate of Lawful Existing Development to regularise the single-storey rear extension under permitted development. 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 extension meets the requirements of Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). 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 evidence submitted includes a ‘Notice of decision to grant a licence for a house in multiple occupation’ letter from Wokingham Borough Council (dated 19/08/2022), which includes the granted HMO Licence (Licence Number: HIU500). Page 6 of the Licence shows the property floor plans. The ground floor plan shows the rear extension to ‘Room 2 – Be Brave’:

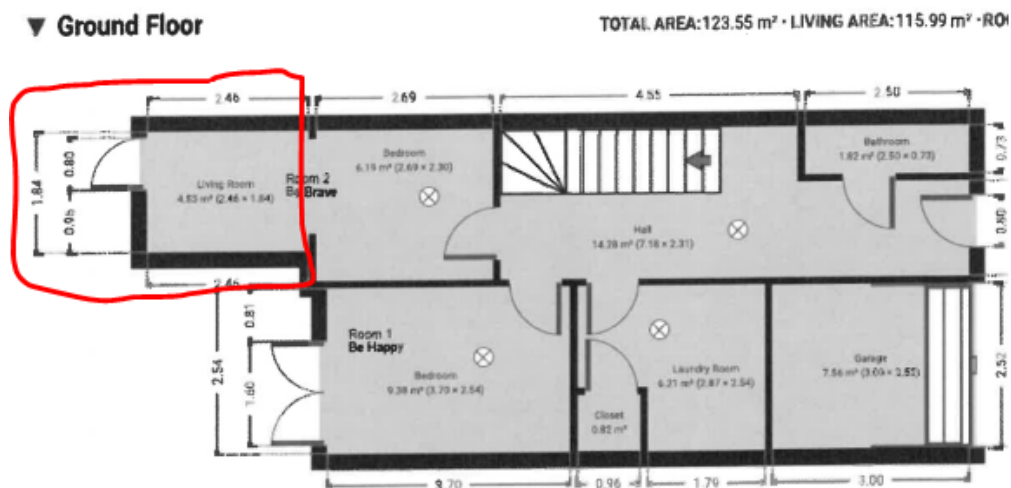


Figure 1: Ground floor plan from HMO Licence HIU500

The floor and elevation plans are shown on the submitted plans by ‘The Planning Studio’. The extension measures approximately 2.44m in width, 2.58m in length, 2.5m in height and has a flat roof form with one set of patio doors.

The Council’s Evidence:

The case officer site visit (dated 26/08/2025) confirmed the single-storey rear extension had been completed and the room occupied. Photographic evidence of the development was taken during the site visit.

Enforcement case RFS/2020/085838 was raised on 14/09/2020 for ‘Unauthorised building works and conversion to HMO’ in relation to the application site. Associated documents include the case officer photographs (dated 29/09/2020) which evidence that the rear extension to enlarge ‘Bedroom 2’ had commenced.



Figure 2: Enforcement Case Officer photograph of rear extension (29/09/2020)

Other relevant documents include an email from the enforcement officer to the case complainant (dated 06/10/2020) to close the case providing the following reasons:

- *"The building works that are being carried out to the rear of the property do not represent a breach of planning control as the owner has Permitted Development Rights under 'The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)' to build a single storey rear extension within the limitations of the GPDO.*
- *Secondly, there is no material change of use to the house as the possible use of a HMO is allowed if under 6 occupants which I have been assured by the developer is the case. They are seeking a license from the Council but this is not a planning matter. If there is a material change of use then this is a planning matter but on my visit this was not the case".*

The information supports that construction of the extension had commenced in September 2020 and was deemed lawful under permitted development.

The erection of the extension constitutes development and requires permission. Permission is available under Article 3 of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO), Schedule 2 (Part 1) (Class A).

In the case of this Certificate, it must be demonstrated that the extension complies with the requirements of Schedule 2, Part 1, Class A of the GPDO:

Land/ Property Designations

- There are no listed buildings at the site and the property is not within 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order 2015).
- The site is not subject to any wildlife or habitat designations.

Legislation

Town and Country Planning Act 1990 (as amended)

s.55 Provides that 'development' includes the carrying out of building operations on land, and 'building operations' includes structural alterations or additions to buildings.

s.57 Planning permission is needed for all development of land.

s.187a Enforcement for breach of conditions

s.192 Applications for Certificates of Lawfulness of proposed use or development.

s.191 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.

Town and Country Planning (General Permitted Development) Order 2015 (GPDO)

Article 3 In conjunction with Schedule 2 (Part 1) (Class A) grants planning permission for the "enlargement, improvement or other alteration of a dwellinghouse".

Article 4 Provides that the planning authority may give direction to restrict the effect of Article 3.

Assessment against legislation:

			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3 (4)	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted?		✓
Art.3 (5)	4	Are the building operations involved in the construction of the original building lawful?	✓	
Art.3 (6)	5	Does it involve the formation, laying out or material widening of a means of access to an existing highway which is a trunk or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons?		✓
Art.4	6	Is there an 'Article 4 Direction' in effect for the site?		✓
Sch.2 Pt.1 A	7	Does it consist of enlargement, improvement or other alteration of a dwellinghouse?	✓	

A.1(a)	8	Has permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)?		✓
A.1(b)	9	Would the total area of ground covered by buildings (other than the original dwelling) exceed 50% of the total area of the curtilage?		✓
A.1(c)	10	Would the height of the part of the dwellinghouse enlarged, improved or altered exceed the height of the highest part of the roof of the existing dwellinghouse?		✓
A.1(d)	11	Would the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse?		✓
A.1(e)	12	Would the enlarged part of the dwellinghouse extend beyond a wall which - (i) fronts the principal elevation of the original house; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse?		✓
A.1(f)	13	If the enlarged part of the dwellinghouse is single storey, would it either: (i) extend beyond the rear wall of the original dwellinghouse by more than: 4 metres in the case of a detached dwellinghouse 3 metres in the case of any other dwellinghouse; or (ii) exceed 4 metres in height		✓
A.1(g)	14	For a dwellinghouse not in article 2 (3) land (incl conservation area) if the enlarged part of the dwellinghouse is single-storey, would it either (i) extend beyond the rear wall of the original dwellinghouse by more than: 8 metres in the case of a detached dwellinghouse 6 metres in the case of any other dwellinghouse; or (ii) exceed 4 metres in height NB: As per Para A.4 of Part 1 of for development that exceeds the limits in para A.1 (f) (question 13) but is allowed by para A.1 (g) (question 14) <u>Prior Approval via the 'Neighbours Notification Scheme' is required</u>		✓
A.1(h)	15	If the extension would be more than a single storey would it: (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or (ii) be within 7 metres of the rear boundary of the curtilage.	NA	NA
A.1(i)	16	Would the enlarged part of the dwellinghouse would be within 2 metres of the boundary with an eaves height in excess of 3 metres?		✓

A.1(j)	17	Would the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse and: (i) exceed 4 metres in height, (ii) have more than a single storey, or (ii) have a width greater than half the width of the original dwellinghouse		✓
A.1(k)	18	Would the development consist of or include: (i) the construction or provision of a verandah, balcony or raised platform, (ii) the installation, alteration or replacement of a microwave antenna, (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or (iv) an alteration to any part of the roof of the dwellinghouse.		✓
A.2(a)	19	Article 2(3) land (inc. conservation areas): a. Would the development consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles?	NA	NA
A.2(b)	20	b. Would the extension extend beyond a wall forming a side elevation of the original dwellinghouse?	NA	NA
A.2(c)	21	c. Would the extension have more than a single storey and extend beyond the rear wall of the original dwellinghouse?	NA	NA
	22	Would it affect or be within the Root Protection Area of a TPO'd tree? <i>* Does not affect Article 3 permission but separate TPO approval will likely be needed.</i>		✓

Conclusion:

The erection of the extension constitutes development and requires permission. Permission is available under Article 3 of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO), the development being in accordance with Schedule 2 (Part 1) (Class A) of the Order:

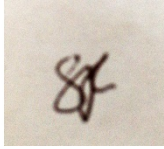
The Public Sector Equality Duty (Equality Act 2010):

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 single-storey rear extension is lawful under permitted development, the development being in accordance with Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) Order

2015 (as amended). It is therefore considered that the application of a certificate of existing lawful use should be approved and a draft certificate is set out below.

Date:	18 September 2025
Earliest date for decision:	21 August 2025
Recommendation agreed by: (Authorised Officer)	
Date:	18.9.25