

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	243034
Site Address:	The Cedar Bungalow, Crazies Hill, Wargrave, RG10 8LT
Expiry Date:	29 January 2025
Site Visit Date:	13 January 2025
Proposal: Application for a certificate of existing lawful development for the occupation of the dwelling without compliance with condition 1 of 98/68189/V (6th October 1998).	

PLANNING HISTORY

Application No.	Description	Decision Date &	Relevant Conditions
85/64	Farm bungalow with garage and office at Hennerton Farm, Crouch End, Wargrave.	Approve 20 th May 1964	Condition 1: The occupation of the dwelling shall be limited to persons employed or last employed in agriculture as defined in Section 221 (1) of the Town and Country Planning Act (1968) and the dependents of such persons.
98/68189/V	Variation to condition 2 on approval of O/313/63 and 85/64 to remove restriction of occupation by agricultural worker only.	Approve 6 th October 1998	Condition 1: Allow the occupation of the dwelling to persons solely or mainly working, or last working in the locality in agriculture, or in forestry, or in the adjoining Golf Course and its associated ancillary uses, or a widow or widowers of such a person, and to any resident dependents.
F/2003/8447	Hennerton Golf Club: change of use of land from agriculture to form extension of 9-hole golf course to form 18 holes.	Approve 5 th November 2003	

SITE DESCRIPTION

The application site comprises a detached bungalow located adjacent to the entrance to Hennerton Golf Club in Wargrave. The dwelling house benefits from three bedrooms, a

lounge, bathroom and kitchen/dining area, car port and an enclosed garden. Access to the property is via an unadopted road off Crazies Hill.

The application site falls within designated Countryside. There are no listed buildings at the site and the property is not within a Conservation Area or other 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order 2015).

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." In this case, the occupation of a dwelling by a person that is not a farm worker or employee of the adjacent Golf Club represents a material change of use of land and thus constitutes development requiring planning permission.

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 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 ten years beginning with the date of the breach.

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 the period of ten years beginning with the date of the breach.

In this case, the applicant is required to demonstrate on the balance of probabilities that the occupation commenced and has been continuous for 10 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.

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
 - States that the use in breach of condition, began more than 10 years before 1st December 2024.
- Supporting Statement:
 - 1966: Cedarwood Bungalow was built to provide onsite accommodation for farm workers at Hennerton Farm.
 - 1990: Planning Permission was granted on Appeal for a 9-hole golf course and clubhouse on agricultural land at Hennerton Farm.

- 1998: Planning Permission was granted to allow use of Cedarwood Bungalow by golf course workers as well as farm employees.
- 2000: The owner of Cedar Bungalow began renting it to tenants that were in breach of the occupancy Condition 1 ref. 98/68189/V.
- 2011: The ownership of The Cedar Bungalow changed to Cedar 2011 Trust.
- Occupancy since 2011:
 - March 2011 to March 2018: Tenant 'A'
 - March 2018 to August 2018 bungalow unoccupied for renovation
 - August 2018 to April 2019: Tenant 'B'
 - May 2019 to date: Tenant 'C'
- Appendix 1 – Location plan showing the position of the bungalow applied for.
- Appendix 2 – Signed Statutory Declaration of Peter Hearn dated 15/11/2024:
 - Mr Hearn was the owner of the bungalow until 2011 when it transferred to The Cedar Trust 2011.
 - States that the bungalow was built in 1965 as the primary residence of his father who was the owner and manager of Hennerton Farm.
 - States that the bungalow has been rented continuously since 2000, except between 5th March 2018 and 31st August 2018 when it was renovated.
 - States that his daughter who is the current owner, lives in Scotland and so he continues to oversee the property.
- Appendix 3 –
 - Signed Assured Shorthold Tenancy Agreement for Term 16/11/2000 to 14/11/2001 and dated 16/11/2000.
 - Valley Estates Statement of Account and Payment Advice to owner dated 15th June 2002.
 - Council Tax Reminder Notice to tenant dated 24/05/2001.
 - Copy of email between owner and tenant to share bank account details dated 12th May 2001.
 - Signed Assured Shorthold Tenancy Agreement for Term 06/07/2001 to 04/07/2002 and dated 26/06/2001.
 - Tenancy Schedule 16th November 2000 to 14th November 2001 and dated 16th November 2000.
 - Annotated Tenancy Schedule 16th November 2000 to 14th November 2001 signed and not dated
 - Valley Estates invoice dated 15th June 2002.
 - Council Tax reminder dated 24th May 2001.
 - Copy of email dated 31st May 2001.
 - Signed Assured Tenancy Agreement 6th July 2001 to 4th July 2002 and dated 26th June 2001.
 - Residential Lettings Agreement signed and dated 14th May 2002.
 - Rentsure Certificate of Insurance dated 12th June 2002.
 - Signed Tenancy Schedule June 2002 to December 2002.
 - 2002 Tenant occupation information on Companies House confirming not farm worker.
 - 2011 Tenant occupation information on Companies House confirming not farm worker.
 - Tenancy Agreement signed and dated April 2015.

- Cessation of Tenancy Letter signed and dated 23rd February 2018.
- Signed letter confirming tenancy agreement and dated 3rd April 2011.
- Email from landlord to tenant confirming tenancy arrangement and dated 14th April 2011.
- Tenancy Agreement commencing 5th March 2011 and signed March & April 2011.
- Cessation of Tenancy Letter signed and dated 23rd February 2018 and email correspondence with Landlord.
- July 2018 Tenancy Agreement and signed.
- Email correspondence between departing tenant and Landlord and dated 1st May 2019.
- Email correspondence between current tenant and Landlord and dated 29th April 2019.
- Tenancy Agreement commencing 1st May 2019, signed and dated 1st May 2019.
- Letter to current tenant dated 14th July 2022.
- Appendix 4
 - Valley Estates correspondence with Landlord dated 23rd November 2005 and 24th January 2006 relating to letting agent fees and gas certificate for the bungalow.
- Appendix 5
 - Email dated 24th November 2024 from previous tenant confirming his occupation of The Cedar Bungalow from 31st August 2018 until 30th April 2019. Also confirmed that his occupation is related to Information Technology and that he has never been a farm worker or worked at the Golf Course.

By the Council:

- Planning History Records (see above)
- Enforcement History Records:
 - No Enforcement Notices relating to the application site.
- Confirmation from the Council Tax Office that the address is registered on the Council Tax List and has been charged since 1993.
- The Case Officer carried out a site visit on 13/01/2025 and met with the owner and the occupier of the bungalow who confirmed that she is the tenant.
- Site visit photos (13/01/2025).
- Google Earth/Streetview timeline 2009 - 2023



Figure 1: 2009 Screenshot taken from Google Earth showing front driveway of The Cedar Bungalow and manicured gardens to the front including section delineated by a hedge to the south of the driveway.



Figure 2: 2018 Screenshot taken from Google Earth showing front driveway of The Cedar Bungalow and manicured gardens to the front including section delineated by a hedge to the south of the driveway.



Figure 3: September 2023 Screenshot taken from Google Street View showing manicured lawn enclosed by a hedge to the south of the driveway at the Cedar Bungalow.

The information submitted by the applicant does not specifically refer to the amenity space within the red line. However, Figures 1-3 clearly show that the front driveway and front manicured gardens have been ancillary to the dwelling house for more than 10 years. Furthermore, on the site visit there was evidence that the rear garden is being used for recreation by the tenant and is ancillary to the dwelling.

It is noted that the area of garden shown in Figure 3 is separated from the driveway and is accessed via an opening in the hedge. This area of garden to the south of the dwelling has been well maintained to blend with the rest of the frontage and provides further evidence that it is part of the residential garden of The Cedar Bungalow.

By third parties:

- No information received.

APPRAISAL

This application is for a Certificate of Existing Lawful Use to regularise the occupation of the dwelling shown on the submitted details that is occurring without compliance with condition 1 of 98/68189/V (6th October 1998). 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 occupancy has been on-going continuously for at least 10 years prior to the date of this application, the relevant period being from 02.12.2014 to 02.12.2024.

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.

The Applicant’s Evidence

The evidence submitted includes 1 no. Statutory Declaration provided by the Landlord of the dwelling which the Local Planning Authority should accept unless there is clear evidence to the contrary. The declaration states that the landlord was the owner of the bungalow until 2011 when it transferred to The Cedar Trust 2011. It states that the bungalow has been rented continuously since the year 2000, except between 5th March 2018 and 31st August 2018 when it was renovated.

The declaration is supported by signed tenancy agreements since 2011: from March 2011 to March 2018, from August 18 to April 2019 and from May 2019 to date. Supporting email correspondence between the Landlord and tenants, and with the Letting company is also provided. The Council does not hold any information which contradicts this evidence.

The evidence submitted states that there have been no periods where the bungalow has been unoccupied, except for renovation in 2018, and this is supported by Council Tax records.

The current occupant of the dwelling is not an agricultural worker or employed by the adjacent golf course. Furthermore, the submitted evidence implies that occupation in breach of Condition 1 ref. 98/68189/V began in 2000. Subsequently it is clear that the occupancy of the property since the year 2000 has been in breach of Condition 1 ref 98/68189/V. It can therefore be said on the balance of probability that the occupation of The Cedar Bungalow by tenants who are not farm workers or employed by the adjacent golf course, has been taking place for over ten years.

Conclusion

The applicant’s evidence is consistent and clear, and there is no other information which contradicts or undermines the applicant’s version of events. The Council does not hold any information which contradicts the submitted evidence, nor has any third-party information been received.

Based on the evidence above, it can be said on the balance of probability that the occupation of The Cedar Bungalow by tenants who are not farm workers or employed by the adjacent golf has occurred for a consecutive period of more than ten years. There is no evidence to suggest that the use applied for has been disrupted within the last ten years, apart from a 5-month period in 2018 when the bungalow was vacated whilst renovation works were undertaken.

Subsequently the time limit for taking enforcement action has expired under s171B of the TCPA and the use of the land is lawful. A plan is attached to the draft decision notice demonstrating the development this certificate applies to.

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 occupancy of the dwelling, as shown in the submitted details, has been occurring for a consecutive period of over ten years. It is therefore considered that this application for a certificate of existing lawful use should be approved.

Date:	22 January 2025
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Earliest date for decision:	n/a
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Recommendation agreed by: (Authorised Officer)	
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Date:	28/01/25
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