

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251358
Site Address:	19 Beech Lane, Earley, Wokingham, RG6 5PT
Expiry Date:	8 August 2025
Site Visit Date:	19 June 2025
Proposal: Application for a certificate of existing lawful development for the conversion of garage into ancillary residential accommodation.	

PLANNING HISTORY

Application No.	Description	Decision & Date
44477	Two storey side extension to form kitchen and garage with two bedrooms and bathroom over. Single storey rear extension to form enlarges living room.	Approved 31/07/1995

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form states that the use, building works or activity in breach of condition began more than 10 years before the date of this application.
- Plans.
- Photographs.
- Lodger Agreements:
 - N Sultana: 01/01/2013 to 31/07/2014
 - M Cofie: 03/08/2014 to 27/08/2016
 - J Firouzi: 03/09/2016 to 31/03/2017
 - P Prusaczyk: 02/04/2017 to 25/07/2020
 - J Rozwadowska: 31/07/2020 to 23/04/2021
 - J Forshaw: 29/04/2021 to 28/12/2021
 - S Collins: 11/01/2022 to 20/08/2023
 - S Parsons: 29/08/2023 to present.
- Lodger References.
- Agent email (30/06/2025) confirming dates of tenancy agreements and completion date for the installation of the utility and bathroom within the converted garage as December 2012.
- Screenshot of Zoopla Property Lising from February 2012.

- Copy of Invoice (22/12/2012) for works to install a bathroom and replacement utility area.

By the Council:

- Planning History Records (see above).
- Enforcement History Records:
- 083012 – Complainant email (22/07/2016) stated ‘Very concerned that property is being further extended for further space to let. Parking is affected at times already due to road parking of rented space at the property already’.
- 089961 – Site Visit with the property owner (application applicant) on 04/02/2025 confirmed the garage was being used as living accommodation and rented to a lodger (site visit photos and notes 04/02/2025).
- There is no Enforcement Notice
- Completed Planning Contravention Notice (Owner 1, 18/03/2025).
- Completed Planning Contravention Notice (Owner 2, 18/03/2025).
- Email from Building Control (25/06/2025) confirming no record of any Building Control records for a garage conversion.
- Rightmove Sold History.
- Google Street View Images – 2008, 2009, 2012, 2016, 2018, 2019, 2021, 2023, 2024 showing the front elevation has remain unchanged with covered side access.
- The Case Officer carried out a site visit on 19/06/2025 and observed the nature of the use of the land as shown in the submitted details.
- Site visit photos (19/06/2025).

By third parties:

- Earley Town Council – No objection.

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 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 *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.

Relevant details of the proposal:

The change of use of the garage to ancillary residential accommodation to provide rented accommodation. The garage conversion does not have planning permission and is in breach of Condition 3 of permission 44477. The condition states:

‘Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), the garage accommodation on the site shall not be used for any purpose, other than as garage accommodation unless permission has been granted by the Local Planning Authority on an application made for the purpose’.

Reason:

‘To ensure that garage accommodation is retained on the site in accordance with the Local Planning Authority’s Vehicle Parking Standards’.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise for the use of attached converted garage as ancillary residential accommodation. 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 on-going continuously for at least ten years. 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”.

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 relevant period for this existing certificate application to demonstrate the use of the garage as ancillary residential accommodation is 06/06/2015 to 06/06/2025.

The evidence submitted relies heavily on signed Lodger Agreements and Lodger References for a continuous period from 01/01/2013 to present.

The agreements are for the renting of the converted garage and use of the main kitchen. These are supported by an email from the agent (30/06/2025) confirming dates of tenancy agreements:

- Lodger 1: 01/01/2013 to 31/07/2014
- Lodger 2: 03/08/2014 to 27/08/2016
- Lodger 3: 03/09/2016 to 31/03/2017
- Lodger 4: 02/04/2017 to 25/07/2020
- Lodger 5: 31/07/2020 to 23/04/2021
- Lodger 6: 29/04/2021 to 28/12/2021
- Lodger 7: 11/01/2022 to 20/08/2023
- Lodger 8: 29/08/2023 to present

Breaks between tenancies (each less than one month), are for short periods and do not amount to an abandonment of the use.

The email from the agent also confirmed the date that the bathroom and utility were installed within the converted garage (December 2012). This is supported by the submitted invoice dated 22/12/2012 from Boby and Sons for internal works to the converted garage. Works included *'To supply and fit shower, basin and toilet in the garage room', 'Removing and disposing of old worktop and storage units from utility area in the garage room. Installing new worktop, sink and storage units in utility area'*.

The applicant's state that the garage had already been converted to habitable accommodation before the property was purchased in 2012. A screenshot of the property listing on Zoopla was submitted to evidence that the conversion had already taken place by the time of the 2012 sales listing. The screen shot includes a summary of the property and further details about the property – see Figures 1 and 2 below.

Figure 1: Screenshot of Zoopla property listing from February 2012, 'About this property'.

About this property

- | | |
|--------------------------------|--------------------------------|
| ✓ Character Semi Detached Home | ✓ Cloakroom |
| ✓ Two Reception Rooms | ✓ Kitchen |
| ✓ Master Bedroom with Ensuite | ✓ Three Further Bedrooms |
| ✓ Study | ✓ Garage Converted into a room |
| ✓ Driveway Parking | |

Figure 2: Screenshot of Zoopla property listing from February 2012, property details.

Garage 12' 8" x 10' 10" (3.86m x 3.30m)

The garage has been converted into a room, light and power.

The Council's Evidence:

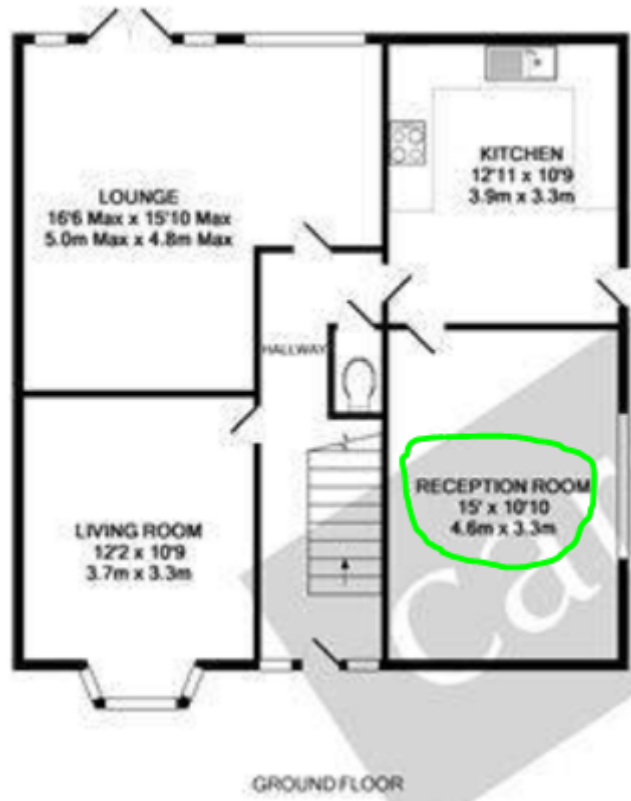
The site visit confirmed the position of the converted garage and change of use to habitable accommodation as shown in the submitted Ground Floor Plan (144_BL_SU01). This is also supported by the site visit photos and notes (04/02/2025) from enforcement case RFS/2024/089961. The site visit with the enforcement Case Officer and property owner on 04/02/2025 confirmed that the garage was being used as rented living accommodation with shared access to the main kitchen and accessed via a side entrance.

Google Street View images support that the side covered access to the room appear to have been in situ since at least October 2008. It appears from assessing the images that there have been no alterations to the side covered access since its construction.

Two Planning Contravention Notices (PCNs) completed on 18/03/2025 by the two property owners (enforcement case RFS/2024/089961) confirmed that the property was purchased in July 2012 and the garage had already been converted to habitable living accommodation. The PCNs confirmed that the alterations to the converted garage (installation of utility and bathroom) were carried out in December 2012 and rented out from 2013. This is supported by the submitted Lodger Agreement and Lodger Reference and the submitted screenshot from Zoopla showing details of the property listing from February 2012.

The Case Officer carried out further research on Sold house price history on Rightmove which further supports that the garage had already been converted when the current occupiers purchased the property in 2012.

Figure 3: Rightmove image of the ground floor plan from the property listing in July 2012.



The original garage is marked as 'Reception Room'.

Planning Unit

The concept of a planning unit is central to determining whether a material change of use has occurred. Judgement is a matter of fact and degree. The definition of planning unit is found in *Burdle v SSE* (1972) where the court held there are three issues to consider:

1. Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.
2. Consideration of the entire unit of occupation when the occupier carries out a variety of activities but it is not possible to say that one is incidental or ancillary to another.
3. It may frequently occur that within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

Although the converted garage is rented out to persons unrelated to the owners, it is not separate to the main house. There is still an ancillary connection through the use of the shared kitchen facilities within the main house and driveway. Therefore, the dwelling and converted garage still read as one planning unit with the converted garage ancillary to the main house. The primary residential function has not changed and the converted residential accommodation integral to the dwellinghouse it is associated with.

Conclusion

The applicant's evidence is consistent, and there is no other information which contradicts or undermines the applicant's version of events. The Council does not hold any information (including the third-party comments received from Earley Town Council) which contradicts the submitted evidence.

Based on the evidence above, it can be said on the balance of probability that the converted garage for the purposes of ancillary residential accommodation, as shown in the submitted details has been in use 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.

The conversion of the garage to habitable accommodation is in breach of Condition 3 of permission 44477. Based on the evidence, it has been demonstrated that the ancillary use of the converted garage to residential accommodation has been occurring for a continuous period of ten years and the ten-year immunity rule applies.

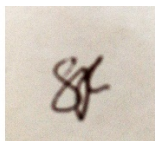
Subsequently, the matter is lawful and no enforcement action could be taken under s171B of the TCPA. A plan is attached to the draft decision notice demonstrating the development this certificate applies to.

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 converted garage containing rentable living accommodation has been occurring for a consecutive period of ten years. 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:	21 July 2025
Earliest date for decision:	4 July 2025
Recommendation agreed by: (Authorised Officer)	
Date:	29.7.25