

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251663
Site Address:	Tintagel Farm, The Old Stables, Sandhurst Road, Wokingham, Wokingham, RG40 3JD
Expiry Date:	8 September 2025
Site Visit Date:	29 July 2025
Proposal: Application for a certificate of existing lawful development for the use of Unit 3 as a self-contained residential dwellinghouse and the use of land for residential purposes in connection with Unit 3.	

RELEVANT PLANNING HISTORY

Application No.	Description	Decision & Date
072973	Application for a certificate of lawful existing use for the siting of mobile home as living accommodation.	Refused 23/03/2007
232220	Application for a certificate of existing lawful development for use of the building as a self-contained dwelling.	Approved 07/11/2023
241227	Application for a certificate of existing lawful development for the incidental residential use of land within the curtilage of 'Unit 3' (also known as 'The Old Stables').	Refused 17/07/2025

RELEVANT ENFORCEMENT HISTORY

Reference No.	Description
RFS/2011/00298	<i>"The unauthorised material change of use of the Land from a lawful mixed use consisting of woodland and the stationing of one mobile home for human habitation to an unlawful mixed use consisting of the aforementioned uses and in addition residential, business, and storage uses (shown as Buildings A-F and Enclosures 1-3 on the attached site plans 1 and 2), and the stationing of two further mobile homes (shown as Mobile Home A and B on the attached site plan 1) for human habitation ("The Unauthorised Use")."</i> - Enforcement Notice was appealed (APP/X0360/C/14/2215438) and allowed by the Planning Inspectorate on 20 November 2014, with the Enforcement Notice subsequently quashed.

INFORMATION PROVIDED

By the applicant:

- Statutory Declaration of Mr Christopher Dutton
- Statutory Declaration of Mr Marco Henriques
- 2019/20 Council Tax Bill
- 2020/21 Council Tax Bill
- 2021/22 Council Tax Bill
- 2022/23 Council Tax Bill
- 2023/24 Council Tax Bill
- 2024/25 Council Tax Bill
- 2025/26 Council Tax Bill
- Council Tax Summary
- Council Tax Letter from Wokingham Borough Council
- Tenancy Agreement
- Witness Statement of Christopher Dutton in relation to appeal ref. APP/X0360/C/14/2215438
- Witness Statement of Mr Marco Henriques in relation to appeal ref. APP/X0360/C/14/2215438
- Witness Statement of Paul Roberts in relation to appeal ref. APP/X0360/C/14/2215438

By the Council:

- Case Officer Site Visit Photos
- 19 June 2024 Case Officer Site Visit Photos
- 29 July 2025 Case Officer Site Visit Photos
- 232220 Case Officer Site Visit Photos
- APP/X0360/C/14/2215438 Appeal Decision

By third parties:

- None received

LEGISLATION

Town and Country Planning Act 1990 (as amended) (TCPA)

Section 57 requires that planning permission is needed for development of land.

Section 55 provides that development includes any *material change in the use* of land.

Timescale

Section 171.B(1) 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. However, The Act includes transitional provisions which provide that, where operational development was substantially completed before the 25 April 2024, the 4 year period will continue to apply.

Section 171B(2) 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) 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.

Section 171B(4)(b) does not prevent the taking of further enforcement action within 4 years if the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful, he 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:
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 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 and Newham LBC* [1985] JPL 630 that the relevant test of the 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 to be accepted. If the Local Planning Authority have 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 the 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.

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 accurately describes the nature of the use, the decision

maker must modify/substitute each description so as to accurately describe the nature of the material change of use which occurred.

The Panton case was considered further by the Courts in *Secretary of State for the Environment, Transport, and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten-year period of unlawful use the Local Planning Authority, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example the unauthorised use had temporarily ceased) then any such period could not count towards the ten-year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten-year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

APPRAISAL

Proposal Description:

The application is for a Certificate of Lawful Existing Use to regularise the following:

- The use of Unit 3 'The Old Stables' as an independent residential dwellinghouse.
- The use of land for residential purposes in association with Unit 3.

It is noted that the applicant originally applied for a 'garden' use of the land to the rear of Unit 3. This is not a recognised use in the planning discipline, and therefore the description has been updated to refer to its use for residential 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 uses have been on-going continuously for at least ten years prior to the submission of this application (14th July 2025).

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”.

Site Description:

The application site consists of the dwellinghouse known as Unit 3 ‘The Old Stables’ at Tintagel Farm, as well as approximately 700sqm of land to the rear of the dwelling. The site is well enclosed with several tall, mature trees present on the land and the western border is lined with dense vegetation.

Unit 3 ‘The Old Stables’ is a historic stable building that was converted to a residential dwelling in the early 2010s. It has a simple rectangular form and internally it provides one bedroom, a living area and a small kitchen. The dwelling’s recognised external curtilage/garden is located to the immediate south of the building and is approximately 53sqm (approx. 7.7 x 7 metres) in size. The garden area is partly grassed/partly laid with patio and is enclosed by timber fencing which includes a small gate that accesses the application site. Paraphernalia in the garden area consists of a shed, lean-to storage area and potted plants.

Site History:

The Council served an Enforcement Notice on 12 March 2013 for:

“the material change of use of land from woodland and the stationing of one mobile home for residential purposes to woodland and the stationing of three mobile homes for residential purposes along with the installation of services and the formation of hardstanding. (The two unauthorised mobile homes are annotated MOBILE HOME A and MOBILE HOME B on the plan attached to the notice) In addition, the erection of a wooden building for office and storage uses and the installation of services.”

An appeal against the Enforcement Notice was submitted, however the Enforcement Notice was withdrawn on 12 November 2013 at the appeal Inquiry as an additional residential use was brought to the Council’s attention at a late stage and the notice was not capable of correction.

Following this, a new Enforcement Notice was served on 30 January 2014 for *the unauthorised material change of use of the Land from a lawful mixed use consisting of woodland and the stationing of one mobile home for human habitation to an unlawful mixed use consisting of the aforementioned uses and in addition residential, business, and storage uses (shown as Buildings A-F and Enclosures 1-3 on the attached site plans 1 and 2), and the stationing of two further mobile homes (shown as Mobile Home A and B on the attached site plan 1) for human habitation (“The Unauthorised Use”)*.

An appeal against this enforcement notice was submitted; the appeal was allowed, and the enforcement notice quashed on 20 November 2014 (APP/X0360/C/14/2215438).

An Enforcement Letter dated 6 January 2016 was sent to owner regarding

outstanding issues at the site including the use of Building C (Units 1,2,3) for storage, office, and residential purposes. No applications following this letter were submitted.



Figure 1.0 - Plan that established each planning unit during the APP/X0360/C/14/2215438 appeal (drawing no: 13_544_014).

CLUED application 232220 was submitted to regularise Unit 2 for use of the building as a self-contained dwelling. This application was approved on 7th November 2023.

Most recently, application 241227 was submitted to for the incidental residential use of land within the curtilage of Unit 3/The Old Stables. This application was refused by the Council on 17th July 2024 as whilst it was accepted that the land was in residential use, it was not considered to be within the residential curtilage of Unit 3, nor alternatively had the residential use been occurring for a minimum of 10 years.

Evidence submitted by the Applicant:

Statutory Declaration of Mr Christopher Dutton

- Mr Dutton has lived at Tintagel Farm since 1975 and currently resides in a mobile home on the site.
- Mr Dutton is the owner of the stables buildings which are located at Tintagel Farm. The stable buildings features multiple independent residential dwellinghouses and a storage use. Unit 3 (also referred to as The Old

Stables), is a dwelling currently occupied by Mr Marco Henriques.

- Mr Dutton gave evidence in association with APP/X0360/C/14/2215438 which confirmed that the erection of the stable buildings are and were lawful, and at the time the lawful uses (multiple planning units) of the units comprised of a single dwellinghouse (Unit 3), business storage and an office use.
- Unit 3, the subject of the current Certificate of Lawfulness (as demonstrated by the submitted site location plan), was in use as a dwelling since April 2012 by Paul and Michelle Roberts till the end of July 2014, when they relocated to Tingdene mobile home at Tintagel Farm.
- Marco Henriques with his wife and son were living in Tingdene mobile home since January 2014, until their relationship broke down and subsequently, in August 2014 Marco downsized by moving into Unit 3/The Old Stables.
- Originally, I entered into a verbal Tenancy Agreement with Mr. Henriques on 01/08/2014. As such, Mr. Henriques has resided at Unit 3, Tintagel Farm, Sandhurst Road since 01/08/2014 and continues to do so to this day. Proof of Council Tax paid by Mr Henriques is shown in Exhibit A.
- Mr Dutton subsequently agreed a written tenancy agreement with Mr Henriques running from 1st January 2015 on a rolling yearly basis. This is shown in Exhibit B.
- Unit 3 is fully self-contained and features a bedroom, open plan living space/kitchen and bathroom with shower and toilet.
- The enclosed garden to the side of the building, as identified on the site location plan, has been solely used by tenants of the Unit 3 since April 2012.
- The extended garden to the rear of the building was created in February 2015 with the planting of the bamboo screening and creating the access gate from the enclosed garden.
- The extended garden area has been used solely by Mr Henriques and his family since Easter 2015 for leisure and recreation, including barbeques, gatherings, gardening and other outdoor activities.
- There is a wide entrance without a gate to the extended garden which allows a ride-on mower to access for maintenance.
- Mr Dutton confirms that Unit 3 has been solely used by Mr. Henriques as a fully self-contained dwellinghouse with associated garden space since April 2015.

Statutory Declaration of Mr Marco Henriques

- Mr Henriques is the current occupier of The Old Stables/Unit 3, Tintagel Farm, Sandhurst Road, Wokingham, RG40 3JD.
- 'The Old Stables' is a dwelling which comprises one block of a building originally collectively known as the stable buildings located on Tintagel Farm.
- The dwelling Mr Henriques occupies is also known as 'Unit 3' and for the sake of clarity they refer to their dwelling as 'Unit 3'. Unit 1 is used for business storage and the remaining unit ('Unit 2') is a separate dwelling occupied by Mr. Joao Louro.
- Mr Henriques gave evidence in association with APP/X0360/C/14/2215438.
- Mr Henriques has lived at Unit 3 as his permanent residence since 1st August 2014.

- During my occupation of Unit 3, Mr Henriques soon realised that the garden space was inadequate for his family's needs so he approached Mr Dutton and asked if we could somehow extend the garden to the back of the property.
- Work started on this in February 2015 with the planting of the bamboo screen, erection of the fencing and creating the access from the enclosed garden area. This now suited me perfectly. Exhibit A shows the work being done to create the garden space, edged red at Exhibit B.
- These exhibits show the digging out of the garden, to place weed membrane down that the bamboo screen was then placed in to screen the back of the garden.
- The removal of Rhododendron to facilitate the garden extension was also required.
- The photos in Exhibit A are from 12th February 2015.
- Mr Henriques was able to use the garden from the Easter Holidays 2015, planting some vegetable beds and moving his garden furniture into the new area.
- Mr Henriques asserts that Unit 3 has been occupied as a fully self-contained dwellinghouse continually by himself since August 2014 to the present day.

Exhibit A:

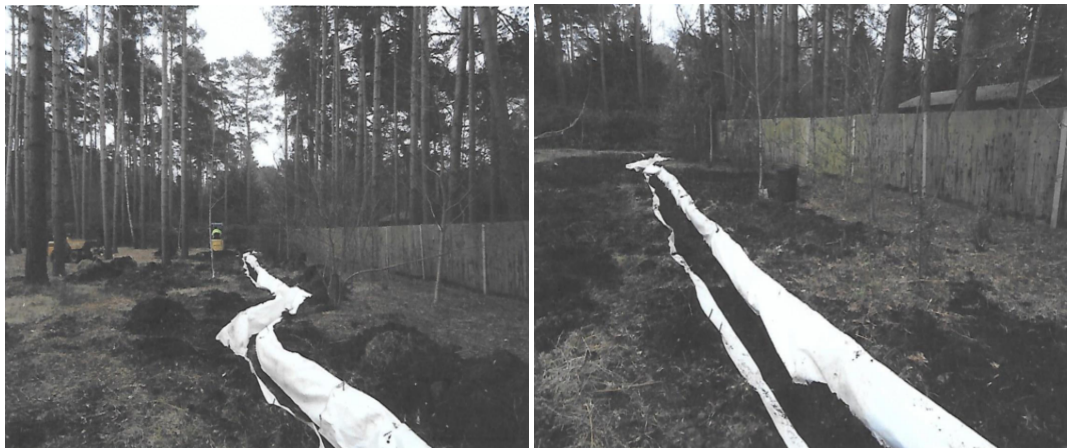


Exhibit B:

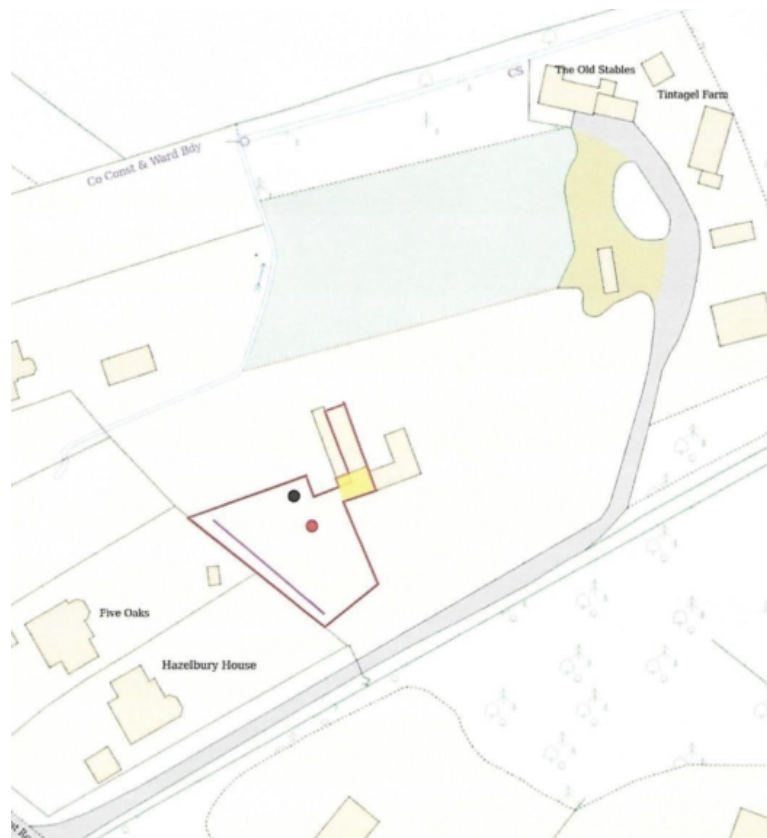


Exhibit C:



2019/2026 Council Tax Bills

These bills all relate to Unit 3 'The Old Stables' between the period of 2019 and 2026.

Council Tax Summary

This image summarises the total payments for the Council tax bills between 2019 and 2026.

Council Tax Letter from Wokingham Borough Council

This is a letter from the Council's Council Tax Team confirming that Council Tax has been paid consistently for The Old Stables/Unit 3 since 01/08/2014.

Tenancy Agreement

This tenancy agreement is dated 27/12/2024 and includes Mr Henriques as the tenant, with Mr Dutton as the landlord.

Witness Statement of Christopher Dutton in relation to appeal ref. APP/X0360/C/14/2215438

To summarise, this statement (dated 15th October 2014) confirmed that that the erection of the stable buildings are, and were lawful, and at the time the lawful uses (multiple planning units) of the units comprised of a single dwellinghouse (Unit 3), business storage and an office use.

Witness Statement of Mr Marco Henriques in relation to appeal ref. APP/X0360/C/14/2215438

To summarise, this statement clarified that Mr Henriques has been living at The Old Stables/Unit 3 since 1st August 2014 and pays Mr Dutton rent every month.

Witness Statement of Paul Roberts in relation to appeal ref. APP/X0360/C/14/2215438

Mr Roberts moved to Tintagel Farm April 2012, initially within The Old Stables but then swapped with Mr Henriques and moved into Tingdene mobile homes on 1st August 2014.

Evidence submitted by the Council:

19 June 2024 Case Officer Site Visit Photos



232220 Case Officer Site Visit Photos



29 July 2025 Case Officer Site Visit Photos





Assessment:**The use of Unit 3 'The Old Stables' as an independent residential dwellinghouse**

The Council acknowledge that there is a substantial amount of evidence pointing to the fact that Unit 3/The Old Stables has been occupied for residential purposes since April 2012. This was acknowledged by the Inspector during the determination of APP/X0360/C/14/2215438, as well as previous Case Officers dealing with applications 072973, 232220 and 241227.

Council Tax records are consistent since 1st August 2014 and are verified by the tenancy agreement since the same time period. The statutory declarations from the landowner, current and previous occupants also corroborate the conclusions listed above. In this regard, the Council have no evidence on the contrary.

As a result of the notable evidence pool submitted by the Appellant and the lack of contrary evidence submitted by the Council, it is considered that on the balance of probabilities, Unit 3/The Old Stables has been in use as an independent residential dwellinghouse for a continuous period of at least 10 years.

The use of land for residential (garden) use in association with Unit 3

Figure 2.0: Case Officer site visit photos of the existing outdoor curtilage.



Figure 3.0: Case Officer site photos of the area adjacent to the south-western boundary of the site.

In determining application 241227, the Council accepted that at the time of assessment, the land to the rear of the Unit 3 was in residential use in association with the dwellinghouse, forming a large extension of the originally designated outdoor space for the unit (seen in figure 1.0 above). From the Case Officer's visit to the site on 29th July 2025, the characteristics of the site had not changed.

The Case Officer's site visits made note of several elements of residential paraphernalia including a climbing frame to the rear of the garden, a hammock fixed to two trees, tables and chairs on a woodchipped area, raised planters and potted plants. The area was mown apart from legible sections of shrubbery planting surrounding the existing trees.

The originally recognised outdoor curtilage of the dwelling is confined to the garden space located to the immediate south of the dwelling and is accessed via gates within the main courtyard. The total outdoor curtilage (including the shed and lean to storage) is approximately 53sqm in size.

As seen in figure 2.0 and the Case Officer site visit photos above, this area is enclosed by tall timber fencing from the application land, with the application land accessed through a small gate in the fencing. Access to the land is also available via a pathway adjacent to the south-western boundary of the site (see figure 3.0 below), which the applicant states remains open for the purposes of accessing the garden with a mower. The fencing that delineates the ownership of the Unit 3 from Units 1 and 2 is comprised of short, thin bamboo fencing. Overall, there is clear delineations between the residential plots despite the boundary treatment heights.

The statutory declarations state that the use of the land for residential (garden purposes) was first facilitated in February 2015, with its occupation for residential purposes first occurring during Easter 2015 (Easter Sunday was 5th April in 2015). Historic aerial mapping of the site does not demonstrate anything contrary to these assertions; this is largely due to the substantial areas of tree coverage screening any aerial viewpoints.

Despite a notable amount of enforcement work being conducted in previous years at the site (most notably RFS/2011/00298), this was concluded in 2014 and therefore prior to the use of the land for residential purposes. Council Officers were yet to visit again until approximately 8 years later in 2023 when Unit 2 was regularised under application 232220 as a dwellinghouse.

Concerns had previously been raised during the determination of 241227 that the access seen in figure 3.0 above indicated a lack of an intimate connection between the land and Unit 3. Upon further review, considering that this access only leads to a dead end, that being the designated garden space for the Unit, its stated use for garden maintenance purposes is understandable and not contested by any contradictory evidence from the Council. From the visit to the site on 29th July 2025, this access has been cordoned off with the same fencing used to delineate the application site from Unit 2.

Overall, the Council have previously accepted that the land is within residential use, and this not changed since the determination of 241227. The Council have little evidence on the contrary to demonstrate that this use has not been occurring since April 2015, with substantial weight afforded to the assertions within the statutory

declarations submitted.

Therefore, on the balance of probabilities, based on the evidence provided and the Local Planning Authority's own information, the use of the land for residential purposes in association with Unit 3/The Old Stables has been occurring for a consecutive period of at least 10 years.

The Public Sector Equality Duty (Equality Act 2010):

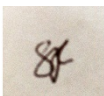
In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. 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

CONCLUSION & RECOMMENDATION

The use of Unit 3 'The Old Stables' as a self-contained residential dwellinghouse has been occurring for a consecutive period of ten years based on the applicant's own case; evidence provided and the Local Planning Authority's own information.

The material change of use of the land for residential purposes in association with Unit 3 has also been occurring for a consecutive period of ten years based on the applicant's own case; evidence provided and the Local Planning Authority's own information.

This application is therefore recommended for approval.

Date:	6 August 2025
Earliest date for decision:	6 August 2025
Recommendation agreed by: (Authorised Officer)	
Date:	6.8.25