

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	243085
Site Address:	16 Welford Road, Woodley, Wokingham, RG5 4QS
Expiry Date:	3 February 2025
Site Visit Date:	7 January 2025
Proposal: Application for a certificate of existing lawful development for the erection of a single storey front extension with canopy roof.	

PLANNING HISTORY

Application No.	Description	Decision & Date
180989	Householder application for the proposed erection of single storey front extension to dwelling.	C/A – 20/06/2018
53/69	Semi-Detached House	C/A – 07/08/1969

SITE DESCRIPTION

The application site is a semi-detached dwelling on a late 1960s residential development in Woodley. The site sits on a prominent corner plot at the junction of Welford Road and Gorse Drive with the site's frontage facing Welford Road.

The site is within a Major Development Location (Woodley) and is not subject to any wildlife or habitat 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)).

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.

*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). In this case, the operations (the erection of a single storey front extension with canopy roof) were substantially completed before the amendment came into force **and therefore the four year rule still applies in this case.***

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 building works were substantially completed in September 2018.
 - States that the development was built in accordance with drawing numbered 1809-P-01 Rev.A, instead of drawing numbered 1809-P-01 Rev.B which were the approved drawings attached to consent ref 180989 (condition 2).
- Copy of Decision Notice for application ref 180989 dated 20/06/2018
- Drawing numbered 1809-P-01 Rev.A (development as built)
- Drawing numbered 1809-P-01 Rev.B (development as approved)
- Drawing titled 'Site Plan'
- Drawing titled 'Location Plan'
- Timestamped photos dated 03/11/2018, 09/11/2018 and 12/01/2019 showing the development.

By the Council:

- Planning History Records (see summary above)
- Enforcement History Records – there are no extant Enforcement Notices relating to the site.
- The Case Officer carried out a site visit on 07/01/2025 and confirmed the presence of the operational development on the location as shown in the submitted details.
- Site visit photos (07/01/2025)
- Aerial images from the Council's mapping system taken from 2019 and 2022 confirming the presence of the operational development on the location as shown in the submitted details.
- Google Maps Street View images taken from July 2019, August 2021, November 2022 and September 2023.

By third parties:

- No third party information received.

APPRAISAL

The application is for a Certificate of Lawful Existing Development to regularise the

erection of a single storey front extension with canopy roof to the existing dwelling. In determining a Certificate of Lawful Existing Development 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 operational development was substantially complete at least 4 years prior to the date of this application, i.e., by 6 December 2020.

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 evidence submitted is based heavily on a set of timestamped photographs taken between November 2018 and January 2019 showing the completion of the extension. These photographs demonstrate that the operational development was substantially complete by 12 January 2019.

The Council’s Evidence

The site visit confirmed the position of the operational development as shown in the submitted details. Crucially, aerial images and Google Street View images demonstrates that the development has been in situ since at least July 2019, and that there have been no alterations to the extension since its erection. It is therefore clear that the development has been in situ for over 4 years.

Is the Operational Development Lawful?

The applicant has stated that the extension as built is not in accordance with the plans approved under consent ref 180989 dated 20/06/2018. As such, the development is in breach of condition 2 (approved plans) of planning permission 180989. However, it needs to be assessed as to whether the planning permission has been lawfully implemented.

Implementation of a planning permission for operational development takes place when the development has commenced. Section 56(2) of the TCPA 1990 states that development shall be taken to be begun (commence) on the earliest date on which any material operation comprised on the development begins to be carried out. If a development is not built in accordance with the approved plans, it needs to be assessed as to whether:

- (a) Implementation has taken place so that the permission is live but in breach or condition or
- (b) The permission has not been implemented at all because the initial steps were not comprised in the development for which permission was obtained but rather a different development.

Commercial Land Limited v Secretary of State for Transport, Local Government and the Regions [2002] clarifies that if there are material differences between what was permitted and what was built, there is no commencement and no implementation of said planning permission. If the differences between the approved plans and what has been built are non-material, then immaterial changes are within the scope of the permission itself. This is so even when there is no minor amendment permission under s96A of the TCPA 1990.

In this case, the development 'as built' materially differs from any planning permission that has been granted at the site. This is in the sense of what has been physically built, rather than the description of development. The extension as built is larger in footprint and depth than the approved development and incorporates a porch canopy roof.

In this case, the entirety of the operational development (as shown on the approved plans for planning consent ref 180989) has not been implemented at all as the development carried out is materially different than what was approved. Therefore, the development as built can not be considered to be in breach of condition 2 and must be considered as a wholly separate development.

On this basis, the development as built is lawful as it has been in situ for more than 4 years.

Conclusion:

Based on the evidence above, it can be said on the balance of probability that the single storey front extension with canopy roof, as shown in the submitted details, has been in situ for more than 4 years. There is no evidence to suggest that the development has been adapted within the last 4 years.

Thus, the Council would not have been in a position to take enforcement action on the date of the application and the development would have been lawful. A plan is attached to the draft decision notice demonstrating the operational 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 the single storey front extension with canopy roof, as shown in the submitted details, has been in situ for more than 4 years. On this basis it is recommended that the application for a lawful development certificate be **approved**.

Date:	3 February 2025
Earliest date for decision:	2 January 2025
Recommendation agreed by: (Authorised Officer)	<i>HMM</i>
Date:	3 February 2025