

## **DELEGATED OFFICER REPORT**



**WOKINGHAM**  
**BOROUGH COUNCIL**

|                                                                                                                                               |                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>Application Number:</b>                                                                                                                    | 242019                                                              |
| <b>Site Address:</b>                                                                                                                          | 1 Hill House Cottages, Milley Lane, Hare Hatch, Wokingham, RG10 9TH |
| <b>Expiry Date:</b>                                                                                                                           | 7 October 2024                                                      |
| <b>Site Visit Date:</b>                                                                                                                       | 11 September 2024                                                   |
| <b>Proposal:</b> Application for a certificate of existing lawful development for the erection of an outbuilding to the rear of the dwelling. |                                                                     |

### **PLANNING HISTORY**

| Application No. | Description                                                                                                                                                             | Decision & Date         |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 971631          | Proposed Erection Of Conservatory                                                                                                                                       | Refused<br>24/10/1997   |
| 060938          | Proposed 2 storey side extension to dwelling.<br>Demolition of existing garage.                                                                                         | Refused<br>10/07/2006   |
| 062763          | Application for a certificate of lawful proposed use for the erection of single storey building within residential curtilage ancillary to the dwelling house.           | Refused<br>21/11/2006   |
| 070174          | Proposed application for a certificate of lawfulness for a proposed use or development for the erection of a detached building to be used a games room/garage/workshop. | Refused<br>05/12/2007   |
| 070472          | application for a certificate of lawfulness for the proposed erection of a single storey building to be used as gym plus snooker/games room.                            | Refused<br>25/01/2008   |
| 090577          | Proposed erection of single storey side extension to dwelling. Demolition of existing garage and leant-to.                                                              | Refused<br>21/02/2010   |
| 151022          | Application for a certificate of lawful proposed use for the erection of a single storey side and rear extensions to dwelling.                                          | PD<br>30/06/2015        |
| 151780          | Proposed erection of a single storey side extension to dwelling.                                                                                                        | Withdrawn<br>15/04/2015 |
| 220526          | Householder application for the proposed erection of a single storey rear extension. (Retrospective)                                                                    | Approved<br>13/05/2022  |

|        |                                                                                                                                                                                                         |                        |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 223289 | Householder application for the proposed triple detached garage following demolition of existing garage.                                                                                                | Refused<br>09/02/2023  |
| 232932 | Application for a certificate of lawfulness for the proposed erection of a single storey garage changes to landscape and boundary treatments following demolition of the existing single storey garage. | Approved<br>16/02/2024 |

### Site Description

The application site is on the end of a row of four houses, and it is located within the Hare Hatch and Wargrave Area of Special Character.

The site is located within designated countryside and green belt.

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).

The site is subject to wildlife and habitat designations being located in an area that holds the potential to support bat roosts, and is a highly suitable habitat for great crested newts.

### LEGISLATION

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

Section 55(1) of the TCPA 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 TCPA requires that planning permission is required for the carrying out of any development of land.

Section 171B (1) of the TCPA 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 in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed. It is important to note that on the 24<sup>th</sup> of April 2024, the TCPA referred to 4 years and not 10, and the legislation was updated to 10 years on the 25<sup>th</sup> of April 2024.

Section 171B (2) states 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, in the case of a breach of planning control in England, ten years beginning with the date of the breach. The applicant is required to demonstrate on the balance of probabilities that the use commenced and has been continuous for 10 years prior to the date of

application in order for the change to have become lawful. It is important to note that on the 24<sup>th</sup> of April 2024, the TCPA referred to 4 years and not 10, and the legislation was updated to 10 years on the 25<sup>th</sup> of April 2024.

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 on 27/08/2024.
- Covering Statement:
  - States that the outbuilding had been substantially completed by 27/08/2024 and provides a photo to evidence this in 'Exhibit 6'.
  - States that the use of the outbuilding is a home office and study and is therefore wholly incidental to the residential use of the dwelling house.
  - States that the outbuilding had been in place in its current form for over four years prior to the 24<sup>th</sup> April 2024.
  - States that the outbuilding has remained the same up to the current time since it was substantially completed.

### By the Council:

- Planning History Records (see above).
- Enforcement History Records – confirms no extant Enforcement Notices on the application site.
- The Case Officer carried out a site visit on 11/09/2024 and confirmed the presence of the operational development on the location as shown in the submitted details.
- Site visit photos (11/09/2024).
- Aerial images from the Council's mapping system taken from 2015, 2019 & 2022 confirming the presence, or lack of, the operational development on the location as shown in the submitted details.
- Google Earth aerial images dated 09/03/2014 & 25/03/2017.

### By third parties:

- Sebastian Charles, acting on behalf of a neighbour, has stated the following in response to the applicant's statement and has provided the following information:
  - The declaration confirms this is for a commercial use, it is separate from and not in any way connected or ancillary to the cottage.  
*Officer comments: The declaration states that the outbuilding is used as a home office and study. This is deemed as being an incidental use to the dwelling.*
  - The outbuilding is the registered office for two businesses.  
*Officer comments: The businesses could be registered to the dwelling, the registering of them to the outbuilding does not stop the use from being incidental.*
  - The outbuilding is not within the residential curtilage.  
*Officer comments: Following a site visit on 11/09/2024 it appeared that the outbuilding fell within the residential curtilage of the site.*
  - The relevant time period is 10 years and not 4, and the statement confirms the use did not commence more than 10 years ago.  
*Officer comments: Evidence has been provided by the applicant that the outbuilding was substantially completed on 27/08/2016. Legislation*

*changes introduced on 25/04/2024 altered Section 171(B) of the TCPA so that the 4 year rule became 10 years. Given that the outbuilding had been substantially completed for over 4 years prior to 24/04/2024, the 4 year rule is what applies in this case.*

- Cars are parked on the land which are also for sale through the applicant's business. This being commercial use, not residential use.

*Officer comments: This was raised with the applicant, and they stated that only one car from the business may be there at a time and that is because they would drive it to and from work.*

- A photograph of a vehicle being listed on the applicant's businesses' website was provided, and a photograph of this vehicle on the driveway of the property was provided.

*Officer comments: Only one vehicle associated with the business appears to be on the driveway at any one time and therefore it is not deemed that the vehicles are being sold from the property. The vehicle is being used by the applicant for commuting as stated above.*

## **APPRAISAL**

The application is for a Certificate of Lawful Existing Use to regularise the existing outbuilding which is incidental to the dwellinghouse.

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 four years prior to the change in legislation of s171B of the TCPA on 25/04/2024.

Alternatively, if the 4 year immunity rule is not satisfied, it must be demonstrated that the outbuilding benefits from permitted development rights under Schedule 2, Part 1, Class E of the General Permitted Development Order.

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".

### **Evidence Submitted by the Applicant:**

The evidence submitted is based heavily on Exhibit 6 of the applicant's statutory declaration. Exhibit 6 is a photograph dated 27<sup>th</sup> August 2016 that shows that the outbuilding had been substantially completed. The applicant states in their declaration that construction work of the outbuilding started in July 2016, and Exhibit 2 of the declaration is a photograph dated 3<sup>rd</sup> July 2016 which shows the ground preparation for the outbuilding.



*Exhibit 2 (left) and Exhibit 6 (right) from the statutory declaration.*

**Evidence Submitted by the Council:**

*Aerial images from the Council's mapping system taken from 2015, 2019 & 2022.*

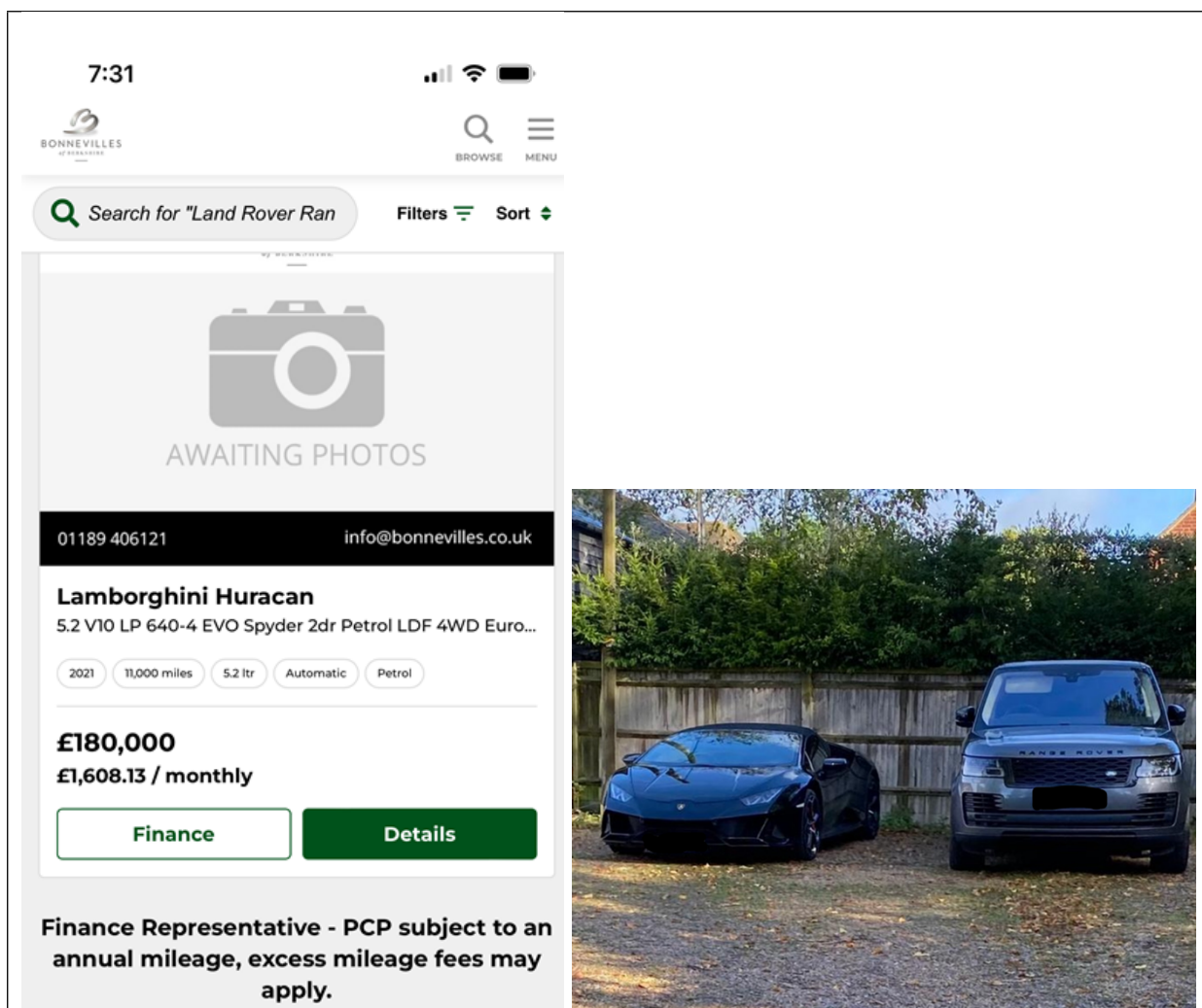




In the images above, the outbuilding can be seen in 2019 and 2022, but it is not present on site in 2015, thus demonstrating it was erected sometime after 2015.

**Evidence Provided by Third Parties:**

Evidence has been put forward by Sebastian Charles that states cars that form part of the applicant's business are being stored on the site and a photograph of one of these cars on the applicant's driveway was provided.



*The image above shows the listing of a Lamborghini on the applicant's businesses' website (left) and the same Lamborghini on the applicant's driveway (right).*

### **Assessment:**

#### ***4 year immunity rule:***

To be considered lawful by the passing of time, the outbuilding must have been on site since at least 24/04/2020 as this is 4 years prior to the change in legislation changing the rule from 4 years to 10 years. The applicant has provided evidence that the outbuilding was substantially finished on 27/08/2016. Additionally, the outbuilding is visible in aerial imaging dated 2019 and therefore the outbuilding had been present on site for longer than 4 years prior to the change in legislation on 25/04/2024. As the outbuilding has been on site since at least 24/04/2020, it is therefore lawful by the passing of time.

#### ***Conclusion:***

Based on the evidence above, it can be said on the balance of probability that the outbuilding, which is incidental to the dwellinghouse, as shown in the submitted details, has been in situ for more than four years prior to the change in legislation (s171B of the TCPA). There is no evidence to show that the outbuilding has been adapted by any means within its lifetime.

Subsequently the time limit for taking enforcement action has expired under s171B of the TCPA and the operational development is 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 outbuilding, as shown in the submitted details, has been in situ for over four years prior to the change in legislation. It is therefore considered that the application for a certificate of existing lawful use should be approved.

|                                                           |                                                                                     |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------|
| <b>Date:</b>                                              | 21 October 2024                                                                     |
| <b>Earliest date for decision:</b>                        | 4 September 2024                                                                    |
| <b>Recommendation agreed by:<br/>(Authorised Officer)</b> |  |
| <b>Date:</b>                                              | 21/10/24                                                                            |