

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	250226
Site Address:	Laburnum, Sussex Lane, Spencers Wood, Wokingham, RG7 1BY
Expiry Date:	1 April 2025
Site Visit Date:	20 February 2025
Proposal: Application for a certificate of existing lawful development for the change of use of land to residential garden.	

PLANNING HISTORY

Application No.	Description	Decision & Date
16744	Extension to kitchen/diner, new conservatory and conversion of roof space to provide 2 no. bedrooms and bathroom.	Approved 15/01/1982
36454	Single storey side extension to form dining room	Approved 18/09/1990

SITE DESCRIPTION

The application site features a two storey detached dwelling located within a predominantly residential area of Spencers Wood.

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.

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 24th of April 2024, the TCPA referred to 4 years and not 10, and the legislation was updated to 10 years on the 25th 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 24th of April 2024, the TCPA referred to 4 years and not 10, and the legislation was updated to 10 years on the 25th 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 land has been in use as a garden since 01/01/2005.
- Statutory Declaration – Simon Peterson
 - States that the property was purchased in April 2000.
 - States that 'land adjoining Laburnum' was purchased in June 2004.
 - States that part of 'land adjoining Laburnum' was converted to garden and formed part of the curtilage of the residential property known as Laburnum in 2004.
 - States that the family have lived at Laburnum and used the area shown edged red on plan SP1 as part of the garden since 2004 until present.
- Statutory Declaration – Fergus Hodge
 - States that he has known Simon Peterson for over 20 years.
 - States that he has visited the application site multiple times since 2012.
 - States that the area edged red on plan SP1 has been used as garden and formed part of the curtilage of the residential property Laburnum during all visits.
- Google Earth aerial images dated 2003, 2010, March 2014, June 2018, and July 2021.

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 visit on 20/02/2025 and this confirmed that the land appeared to be in use as garden space.
- Site visit photos (20/02/2025).
- Aerial images from the Council's mapping system taken from 1999, 2003, 2004, 2006, 2010, 2013, 2019 & 2022.
- Google Earth aerial images dated December 2003, September 2004, December 2005, December 2010, March 2014, March 2017, June 2018, April 2020, July 2021, February 2022.

By third parties:

- Shinfield Parish Council have no comments to make.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise the use of the land shown on the submitted details for residential garden associated with the dwellinghouse known as 'Laburnum'.

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 prior to the date of this application, the relevant period being from 31/01/2015 to 31/01/2025.

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.

Evidence Submitted by the Applicant:

The evidence submitted by the applicant relies on the two statutory declarations, one from the applicant (Mr Peterson), and the other from the planning agent (Mr Hodge). The statements have been made in the knowledge of the penalties for providing false or misleading information as set out in S194 of The Act. The Local Planning Authority should accept its contents unless there is clear evidence to the contrary.

Mr Peterson's statutory declaration states that the property 'Laburnum' shown on Title BK126732 was purchased in April 2000. The property known as 'land adjoining Laburnum' shown on Title BK389272 was purchased in June 2004. Part of Title BK389272 was converted to garden space in 2004. Mr Peterson has confirmed in his declaration that the area shown outlined in red on the submitted Site Plan has been used as part of the garden of Laburnum continuously since 2004 until present.

Mr Hodge's statutory declaration states that he has known the applicant (Mr Peterson) for more than 20 years. He also states he has visited the application site, Laburnum, on numerous occasions since 2012, a number of these visits were for South Berkshire Agricultural Association committee meetings, these were between 1st October 2012 and 24th May 2022. Mr Hodge has confirmed in his declaration that the area shown edged red on the submitted Site Plan has been used as garden space for Laburnum during all of his visits to the property.

A further part of the evidence is in the form of Google Earth imagery dating from 2003 to 2021. The submitted 2003 aerial image (Figure 1 below) shows that the land in question clearly did not form part of the garden space of Laburnum. The hedgerow

surrounding the property that can be seen in the 2003 image also appears to closely match the red line on Title BK126732. The submitted 2010 aerial image shows that a fence has been erected to extend the garden both to the south and west, and it appears that the whole area shown within the red line is maintained and mowed garden space. The submitted Google Earth aerial images from 2014, 2018 and 2021 also show the land in question as forming part of the garden of Laburnum.



Figure 1 – Google Earth 2003 aerial image (provided by applicant)



Figure 2 – Google Earth 2010 aerial image (provided by applicant)

Evidence Submitted by the Council:

The Council's evidence also consists of aerial images taken from Google Earth, but in addition to these, there are also aerial photos taken from the Council's mapping system (see Figures 3 and 4 below). The aerial photos from the Council's mapping system

show that the garden space of Laburnum was enlarged between 2003 and 2004, and this is in-line with the evidence provided by the applicant. Additionally, a site visit carried out on 20/02/2025 confirmed that the land was in use as garden space.



Figure 3 – Council's mapping system aerial images (2003 & 2004)



Figure 4 – Council's mapping system aerial images (2006 & 2022)

Evidence Submitted by Third Parties:

Whilst Sinfield Parish Council have commented on the application (with no objection). No evidence has been put forward that is contrary to the evidence provided by the applicant.

Assessment:

The evidence provided by the applicant is consistent and clear, and there is no other evidence 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 site as shown in the submitted details has been in use as a residential dwelling and its

associated residential garden 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.

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 the use of the land on the site known as 'Laburnum', as shown in the submitted details, as a residential dwelling and its associated residential garden 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:	8 April 2025
Earliest date for decision:	25 February 2025
Recommendation agreed by: (Authorised Officer)	
Date:	08/04/25