

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	252143
Site Address:	14 Archer Grove, Arborfield, Wokingham, RG2 9TB
Expiry Date:	4 November 2025
Site Visit Date:	8 October 2025
Proposal: Application for a certificate of existing lawful development for erection of an outbuilding to the rear.	

PLANNING HISTORY

Application No.	Description	Decision & Date
140977	OUTLINE PERMISSION FOR: Demolition of buildings and phased redevelopment of Arborfield Garrison and adjoining land for: Up to 2,000 new dwellings (including up to 80 units of extra care housing). District centre comprising a foodstore up to 4,000 sq m gross with up to a further 3,500 sq m (gross) floor space within Classes A1, A2, A3, A4, A5, B1, D1 and D2 (with residential above - Class C3)), and transport interchange, village square, car parking, servicing and drop off area. Up to a further 1,500 sq m (gross) floor space within Classes D1 and D2. Neighbourhood centre to provide up to 300 sq m (gross) floor space within Classes A1, A2, A3, A4, A5, B1, D1 and D2, with parking/servicing area. Secondary school for up to 1,500 pupils (Class D1) including sports pitches, flood-lit all-weather pitch, and indoor swimming pool and parking areas. Up to three-form primary school (Class D1) with sports pitch and parking areas. Associated phased provision of: car parking; public open space including sports pitches, informal/incidental open space, children's play areas including multi-use games area (MUGA), skate park, community gardens/allotments; landscaping/buffer areas; boundary treatments; new roads, footpaths, cycleways and bridleways; sustainable urban drainage systems, including flood alleviation works. PART 2 - FULL PERMISSION FOR phased development of: Creation of two new areas of Suitable Alternative Natural Greenspace (SANGS) (In the north-eastern part of the application site ("Northern	Approved 02/04/2015

	SANGS") and at We st Court ("West Court SANGS") including car parking areas, path/walkways, fencing and associated landscaping; re-use of existing MoD gymnasium for sports/community uses/centre (Classes D1/D2; new roundabout junction to A327 Reading Road; junction improvements to Langley Common Road, Baird Road and Biggs Lane; junction improvements and new access at Biggs Lane/Princess Marina Drive; re-use and improvements to existing site accesses from Biggs Lane.	
161536	Application for Reserved Matters for the erection of 127 dwellings together with access from Princess Marina Drive with associated internal access roads, landscaping, open space, footpaths and sustainable urban drainage (SUDS), relating to (parcel T) land.	Approved 14/09/2016

SITE DESCRIPTION

The application site is a detached two storey property located within a predominantly residential area of Arborfield Garrison.

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 not subject to any wildlife or habitat designations.

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 *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.

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
 - States that the building works were substantially completed on 01/04/2020.
- Submitted Floor Plans and Elevations
 - Proposed plans showing the outbuilding and its dimensions.

By the Council:

- Planning History Records (see above).
- Enforcement History Records – confirms no extant Enforcement Notices on the application site.
- A site visit was carried out on 08/10/2025 and this confirmed the presence of the operational development on the location as shown in the submitted details.
- Site visit photographs (08/10/2025).
- Aerial images from the Council's mapping system taken from 2022 and 2019 confirming the presence, or lack of, development on the location as shown in the submitted details.
- Google Earth aerial images dated 15th April 2020 and 16th July 2021.

By third parties:

- No third parties have commented on this application.

APPRAISAL

This application is for a Certificate of Lawful Existing Use to regularise the existing single storey outbuilding that is located at the bottom of the rear garden.

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 single storey rear extension benefits from permitted development rights under Schedule 2, Part 1, Class A of the General Permitted Development Order.

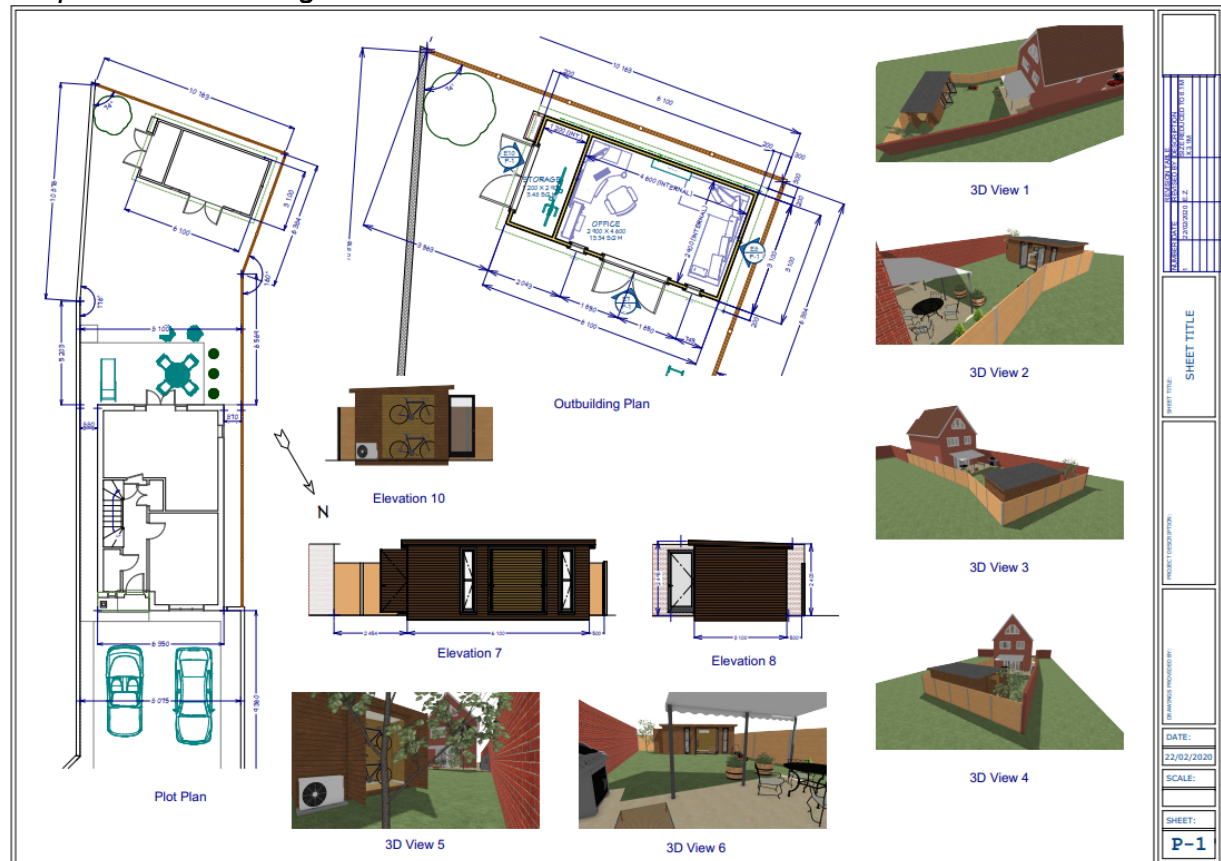
Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. The National Planning Policy Guidance (NPPG) sets

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 submitted application form states that the single storey outbuilding was substantially completed on 01/04/2020, however, another section of the application form states that the outbuilding was completed in May 2020. A photograph of the outbuilding has been submitted, but it is not dated. Additionally, the proposed plans for the outbuilding are dated 22/02/2020. The evidence submitted by the applicant is based heavily on the application form and the submitted plans.

Proposed Outbuilding Plans:



Evidence Submitted by the Council:

Google Earth aerial images dated 15th April 2020 (left) & 16th July 2021 (right).



In the images above, it is clear that works had not commenced on the outbuilding as of 15/04/2020, however, the works appear to have been completed by 16/07/2021. This demonstrates that the works commenced after the 15th of April in 2020.

Planning History Records

Condition 11 of application 140977 removed permitted development rights relating to outbuildings. The full wording for condition 11 is copied in below:

“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no buildings, extensions or alterations permitted by Classes A, B, C, D and E, of Part 1 of the Second Schedule of the 1995 Order (or any order revoking and re-enacting that order with or without modification) shall be carried out.”

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 stated on the submitted application form that the works were substantially completed either in May of 2020 or on 01/04/2020. However, the aerial images from Google Earth demonstrate that no works had commenced by 15/04/2020, and therefore it is highly unlikely that the outbuilding had been substantially completed by 24/04/2020 and no other evidence has been submitted with this application to demonstrate this point.

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 not been in situ for more than four years prior to the change in legislation (s171B of the TCPA). Therefore, enforcement action could be taken under s171B of the TCPA.

General Permitted Development:

Condition 11 of planning application 140977 has removed permitted development rights for outbuildings at the application site. The outbuilding therefore cannot benefit from permitted development rights under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.

On this basis, the application for a certificate of existing lawful use is recommended for **refusal**.

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 has not been demonstrated that the outbuilding has been substantially completed and in situ for a period in excess of 4 years prior to the change in legislation of the TCPA. Additionally, permitted development rights for outbuildings have been removed from the site and planning permission is not available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015.

The Council thus **would** have been in a position to take enforcement action on the date of the application and the development thus **would not** have been lawful. On this basis, it is recommended that the application for a Lawful Development Certificate be **refused**.

Date:	28 October 2025
Earliest date for decision:	1 October 2025
Recommendation agreed by: (Authorised Officer)	
Date:	28/10/25