

SUPPORTING STATEMENT
For a Lawful Development Certificate (Existing Use)

**LAND AT LABURNUM,
Sussex Lane,
Spencers Wood
Reading
RG7 1BY**

Appraisal by:

SIMMONS & SONS

12 Wote Street
Basingstoke
Hampshire
RG21 7NW

FH 2012.136

1.0 Introduction

- 1.1 This statement is in support of an application for a Certificate of Lawful Use for the use of land as garden adjacent to the house known as Laburnum, under Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991). Attached as Appendix 1 is a plan of the land used as garden and within the curtilage of Laburnum, this is the application site. This application is to show beyond all reasonable doubt that the land has been used as garden forming part of the curtilage of the Laburnum for a continuous period of 10 years prior to the date of this application.
- 1.2 There has been no enforcement action by Wokingham Borough Council during the previous 10 year period.

2.0 Planning History

- 2.1 There is no planning history relevant to this application.

3.0 Breach of Planning

3.1 Section 171A of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991):

For the purposes of this Act—

- (a) carrying out development without the required planning permission; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

3.2 Section 171B of the Town and Country Planning Act 1990 as amended:

- (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.
- (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.

3.3 Section 191 of the Town and Country Planning Act 1990 as amended:

- (1) If any person wishes to ascertain whether—
 - (a) any existing use of buildings or other land is lawful;

- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

- (2) For the purposes of this Act uses and operations are lawful at any time if—
 - (a) no enforcement action may then 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.
- (3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
 - (a) the time for taking enforcement action in respect of the failure has then expired; and
 - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
- (3) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

3.4 Government Advice

3.4.1 The Planning Practice Guidance outlines the process for determining applications for Lawful Use Certificates in accordance with section 191 of the 1990 Town and Country Planning Act. The Planning Practice Guidance further states that if the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

3.4.2 The Planning Practice Guidance further states that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold

about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

3.4.3 The Planning Practice Guidance states that in summary, 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.

3.5 *Balance of Probability*

3.5.1 To establish proof for a Lawful Development Certificate, the case law has held that “the balance of probability” is relevant. The applicant’s own evidence does not need to be validated by independent evidence to be accepted, therefore “on the balance of probability” the local planning authority should grant a certificate. Case Law evidence of this is provided by *F W Gabbitas v Secretary of State for Environment and Newham LBC 1985*.

3.6 “*The 10 year Stop Clock*”

3.6.1 Since 2005 the land edged red on the plan attached as Appendix 1 has been continuously used as garden for the benefit of the property known as Laburnum and there has been no enforcement action by the local authority. The 10-year period for the purposes of the application under the Town and Country Planning Act 1990 (amended) has therefore been achieved.

4.0 Applicant’s Evidence

4.1 The land shown edged red on the attached plan has been used for a period of at least 10 years prior to the date of this application. Below is a timeline of the use of the land.

Date	Event
April 2000	Simon ██████ Peterson purchase Laburnum, Title BK126732
Prior to 2004	Title BK389272 is used as a paddock for rough grazing
2004	Application site converted to garden forming part of curtilage of Laburnum
2005 to the present	Application site continuously used as part of curtilage of Laburnum and used as garden

4.2 Statutory Declaration

4.2.1 Simon Peterson has completed a Statutory Declaration attached as Appendix 4. The statutory declaration confirms the continuous use of the application site as part of the curtilage of Laburnum and use as garden.

4.2.2 Fergus Hodge of Simmons & Sons has completed a Statutory Declaration attached as Appendix 10. Fergus Hodge has visited the site on a number of occasions since 2012. The applicant Simon Peterson and Fergus Hodge are on the committee for the South Berks Agricultural Association and a number of the committee meetings have been held at Laburnum. Fergus Hodge is able to confirm use of the application as part of the garden of the property for over ten years.

4.3 Google Earth Photography

4.3.1 Attached Appendices 5 is a Google Earth extract from 2003 showing the use of the application site as a paddock.

4.3.2 Attached as Appendix 6 to 9 are Google Earth extracts from 2010 to 2021 showing that the application site has been used as part of the curtilage of Laburnum and can be seen to be used as garden.

5.0 Possible Issue of Deliberate Concealment

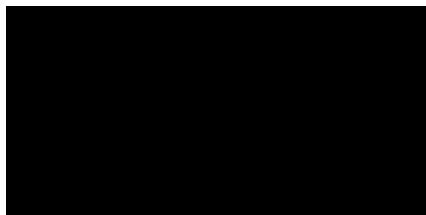
5.1 It is important to consider the issues resulting from the Localism Act 2011 and consequential additions to Section 181 of the Town and Country Planning Act 1990 that addresses deliberate concealment of a breach of planning conditions.

5.2 Certificates of Lawful Development can be unsuccessful where there has been to any extent deliberate concealment.

5.3 At no point has the applicant, or anyone else made any attempt to conceal the breach of planning conditions set out in the appeal decision.

Conclusion

- 5.4 Based on the evidence submitted above the council should be satisfied that the applicant's evidence is sufficiently precise to prove that, on the balance of probability, the application site adjacent to Laburnum has been continually used as part of the curtilage of Laburnum and as garden for 10 years or more prior to the submission of this application. Accordingly, the provisions of Section 171B and Section 191 of the Town and Country Planning 1990 Act have been satisfied.
- 5.5 Wokingham Borough Council as the Local Authority has not at any point instituted enforcement action during the last 10 years. The last 10 years prior to the date of application represents the period of time that a breach of the planning condition has continuously occurred in order to justify a certificate.
- 5.6 The government's guidance and case law have held that the "balance of probability" is an evidential test useful in ascertaining whether that a breach has continuously occurred for at least the last 10 years. The burden of proof is provided by the applicant in this case.
- 5.7 The evidence included within this supporting statement does not need to be verified by further independent evidence in order to be accepted. However, additional evidence has been provided to solidify this case further.
- 5.8 If the Local Authority has no evidence of its own, or from other, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.
- 5.9 Evidence provided by the applicant goes beyond the standards required by previous case law (*F W Gabbitas v Secretary of State for Environment and Newham LBC 1985*).
- 5.10 A Certificate of Lawful Development regarding existing use, should be granted in accordance with the Town and Country Planning Act 1990 Section 191 (amended), as the local authority has been provided with sufficient information to satisfy them of the lawfulness at the time of the application of the use.



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Fergus Hodge MRICS FAAV
Partner
Simmons & Sons LLP
27th January 2025