

ET Planning

Certificate Statement

Client:

Philippa Kay and Luke Sanders

The Lodge

178 Bearwood Road, Barkham, RG41 4SH

*S191 Application for the incidental residential use of
land and septic tank*

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01 Introduction

- 1.1 This statement is produced to support a planning application for a Certificate of Lawful Development to establish the incidental use of land as residential garden (Use Class C3) associated with 'The Lodge', 178 Bearwood Road, Wokingham, RG41 4SH.
- 1.2 This application follows the previous approval of applications 231275 and 231276. These were approved by the LPA following respective amendments to the development description (omitting the incidental use of land enclosing each dwelling). Further information has been provided to demonstrate that the surrounding land was previously in an incidental residential use associated with no.178 Bearwood Road (part of a single planning unit) and following the separate and sequential erection of 'The Lodge' and 'The Lake House', the land was sub-divided to form 3 separate C3 planning units.
- 1.3 This planning statement will introduce the meaning of 'development' in accordance with the Town and Country Planning Act 1990, summarises the relevant legal tests and set out the application in light of these. The conclusion reached is that the development is lawful and so no enforcement action can be taken.
- 1.4 It is respectfully requested that the appendices accompanying this report are kept private and confidential for the use of the Local Planning Authority

only, as they contain personal and private information about the applicant and occupants. This information is submitted as evidence to support the claims within this report.

1.5 In addition to this report, the application is accompanied by the appropriate certificate application forms, appendices and a 1:1250 Site Location Plan.

1.6 The application also features 5 site/layout plans which detail features and areas of the land between certain time periods to demonstrate land use. These dates and activities are corroborated by the submitted appendices. For clarity these plans and their relevant 'eras' are:

- GCLBW001 – Garden Usage Plan (1958-1994);
- GCLBW002 – Garden Usage Plan (1994-2008);
- GCLBW003 – Garden Usage Plan (2008 – Present);
- GCLBW004 – The Lodge Garden Plan (2008 – Present);
- GCLBW005 – The Lake House Garden Plan (2013 – Present).

It should be noted the wider red line on GCLBW001 and GCLBW002 denote the ownership of the site within the Applicant's family at the time and is not the extent of the red line being sought by this submission.

1.7 The relevant application fee will be submitted by the applicant separately.

02 Town and Country Planning Act 1990

- 2.1 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"*.
- 2.2 Section 191(2) of the TCPA states: *"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)..."*.
- 2.3 Section 171.B(3) of the TCPA states: *"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach"*.
- 2.4 Section 171.B controls the relevant timeframe for immunity from enforcement action, which means that a development comprising a material change of use of land becomes immune from enforcement action after 10 years.

- 2.5 Paragraph: 006 Reference ID: 17c-006-20140306 (revision date: 06 03 2014) of the NPPG in relation to Lawful Development Certificates is explicit that the applicant is responsible for providing sufficient information to support an application. However, it goes on to state: *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability"*.
- 2.6 It is established case law (*F W Gabbittas v SSE and Newham LBC [1985] JPL 630*) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.
- 2.7 As per S191, there are multiple ways which a development may be considered lawful, and they are not necessarily exclusive to one another. In this instance it is considered that a Certificate of Lawfulness should be granted as the use of land did not constitute a material change of use of land (and ergo is not development as defined by S55 of the TCPA). In short, the land 'The Lodge' was/is built on, is incidental residential garden land which previously formed part of the planning unit with no.178 Bearwood Road. Therefore, no material change of use has occurred. In the previous application (231276) the LPA had stated the entirety of the wider site did

not form the curtilage of no.178 Bearwood Road. However, the Officer Report does not provide an indication of where the extent of the curtilage ended.

- 2.8 Conversely, if the LPA does in fact consider there to have been a material change of use, then evidence has also been provided that details that the use of the land as incidental to the residential dwelling has existed in situ, and uninterrupted, in excess of 10 years. This is also supported by the LPAs previous conclusions of applications 231275 and 231276, clarifying that The Lodge and The Lake House have existed and been occupied for over 10 years.

03 Assessment of Submitted Evidence

- 3.1 **Appendix 1: Statutory Declaration of Christopher Kay (dated 28/03/2024):** This Statutory Declaration is from Christopher Kay, who currently resides at The Lake House. The declaration (including its enclosures) was signed on 28/03/2024 and details the history of the site and the initial occupation of no.178 Bearwood Road by Christopher and his family. Crucially, it details how the surrounding land was used as the garden of the dwelling.
- 3.2 For clarification, a Statutory Declaration is a sworn, written statement of fact voluntarily made and declared to be true in the presence of an

authorised witness. It carries **significant weight** in the determination of applications, as if the declaration is found to be untrue, the defendant making it may be punished for perjury. Consequently, the information contained within the declaration can be relied on as **true, clear and unambiguous.**

3.3 During discussions for the previous submission, it was stated by the LPA the lawful use of the site was unknown, as it used to be a gravel extraction pit and later could have been used for agricultural purposes. No evidence was provided by the LPA to support these conclusions and this appendix has sought to recount the detailed history of the site to demonstrate its incidental residential use since 1957.

3.4 Enclosures 1 – 5 of the Declaration detail the plans that have also been submitted with this application, which show the features and areas of the land used as the garden of the property. The declaration states in no uncertain terms, that these plans to the best of the applicant's ability, provide a true representation of the extent of the use of the surrounding land in an incidental residential use during the stated time frames.

3.5 The declaration clarifies that a large family unit occupied no.178 Bearwood Road during Christopher's childhood (comprising a number of Christopher's extended family and himself) between 1957 - 1994. Owing to the size of the family unit and their outdoor interests (notably that of his father

cultivating a particular species of rhododendron and azaleas), the full extent of the site was used for the enjoyment of the land in a manner incidental to the occupation of the dwellinghouse.

- 3.6 The garden required extensive work to create and maintain its amenities whilst providing produce for the dwelling. Enclosure 6 comprises photographs provided by Christopher which depict him, his family and/or the surrounding land during this period. Owing to the date of these photographs it is impossible to provide any metadata for their capture date, however, the Declaration confirms that the people in the photographs are Christopher and/or his family and an appropriate estimation of the date has been provided based on family records.
- 3.7 The declaration details a number of incidental gardening activities that were undertaken in this period by Christopher and his family however, the declaration also confirms the incidental residential use of the land for activities including, but not limited to, Christopher and his cousins playing in the wider garden and the pond.
- 3.8 Enclosure 6 notably contains details of Christopher playing in the lake and his parents enjoying the plot. Pictures of the incidental 'orchards' and layout are present in this enclosure, as are some images taken aurally to corroborate the submitted plans. All of these photos and information in the

Declaration clearly support the conclusion that the site has been in an incidental residential use since 1957.

3.9 Christopher, his wife Mary Elisabeth Kay, and children (the latter providing Declarations for Appendices 2 and 3) moved into No.178 Bearwood Road in 1994. The declaration details that owing to the size of the smaller family unit now occupying the dwelling, in addition to work commitments and the interests of their children; the maintenance of the garden was simplified. However, whilst the activities detailed in the declaration had changed the layout of the garden, the activities and use was still that of an incidental residential nature serving the dwelling between 1994 – 2008, across the whole of the site. (Notably, the wider areas would be utilised, as Christopher and his children have a keen interest in camping and enjoying the amenities. It is clear with the other evidence provided, that this is a trait that has endured through all generations of the family).

3.10 This arrangement changed in 2008 upon the completion of 'The Lodge'. The Lodge received a Certificate of Lawfulness confirming it is a lawful dwelling having been constructed and occupied in excess of 10 years. Upon the occupation of The Lodge, Philippa Kay and Luke Sanders began using part of the site as their private garden effectively 'severing' it from the garden of no.178 Bearwood Road. The declaration confirms that this coincided (in 2008) with Philippa and Luke maintaining their garden separately and having no responsibility or use of the wider garden of no.178 Bearwood

Road, as it was important to Christopher and Mary that Philippa and Luke had their own independent life.

3.11 Likewise, upon the completion of 'The Lake House' in 2013 and its occupation by Joseph Kay, the area around The Lake House was severed from the garden of no.178 Bearwood Road (forming the separate garden of The Lake House). The LPA has granted a Certificate of Lawfulness for the Lake House confirming its existence in excess of 10 years.

3.12 The Declaration details that in 2022, Christopher and Mary Elisabeth Kay moved into The Lake House and vice versa Joseph Kay, his wife and children moved into no.178 Bearwood Road. This has resulted in Christopher and Mary Elisabeth Kay using the incidental area (including incidental/ancillary buildings) associated with The Lake House (not retaining any of the garden they benefited from using when occupying no.178 Bearwood Road prior to 2022).

3.13 As such, Christopher Kay can confirm that the existing garden layout of the site, as per plan GCLBW003 has existed in situ in excess of 10 years. However, more importantly, the declaration confirms that the use of the land prior to the erection of The Lodge and The Lake House was in an incidental residential use as part of the C3 planning unit with no.178 Bearwood Road. As such, no material change of use of land has occurred and a Certificate of Lawfulness should be granted on this basis alone.

3.14 In the absence of any conflicting evidence the Statutory Declaration should be given **significant weight** in the determination of this application.

3.15 **Appendix 2: Statutory Declaration of Philippa Rose Kay (dated 28/03/2028)**: This statutory declaration, submitted under this appendix is a Declaration from Philippa Rose Kay who is the applicant for this submission.

3.16 The declaration corroborates Appendix 1 stating that Philippa moved to no.178 Bearwood Road with her family in 1994 and grew up at the property from the age of 13. The declaration also corroborates the accuracy of Plan GCLBW002 as Philippa has witnessed and undertaken the activities described in the plan first hand.

3.17 The declaration details that whilst sporting activities took place at particular parts of the site by her siblings, Philippa and her younger siblings would often utilise the wider area of the plot to find a quieter area or would be more interested in exploring the wider amenities. The declaration also details the use of the 'orchards' in this era by her and her father which further denotes incidental residential activity in itself.

3.18 The declaration confirms the incidental use of the wider garden solely associated with no.178 Bearwood Road until 2008 when The Lodge was

completed and occupied. The declaration from Philippa confirms the severing of the garden from no.178 Bearwood Road in 2008 as previously stated in Appendix 1 and demonstrated on the submitted plans. Specifically, the declaration also details the area of the orchard and fruit trees which were severed from the garden of no.178 Bearwood Road.

3.19 The declaration also details the presence of a septic tank which was required in order to provide an operational dwellinghouse, this was omitted from the previous Certificate issued by the Council. However, this should also be included should this Certificate be recommended for approval (as it has existed in situ in excess of 4 years).

3.20 The declaration details the use of the site by Philippa and Luke to entertain friends and practice martial arts and gymnastics. Other activities included trampolining and attaching swings to trees in the garden area.

3.21 Notably, the activities in the garden changed in 2012 owing to the birth of Philippa and Luke's daughter Frida, but remained in a use incidental to the dwellinghouse. Whilst a range of activities were undertaken with Frida notably it is stated she would use the garden to its full extent (as outlined on the submitted plan). The declaration specifically notes birthday parties have taken place in this regard and photographs of these events have been provided as part of Appendix 6.

3.22 Notwithstanding the enjoyment of the garden the declaration and submitted plans detail the location and use of log stores, a building used for general storage (granted as part of application 231276), and a compost heap which food waste from The Lodge is deposited to. These would also comprise activities described as part of the daily incidents intimately associated with The Lodge.

3.23 The declaration also details the creation of several vegetable patches on site. These were maintained between 2010-2012 and 2019-2022 (no longer present on site) to grow vegetables not provided by the orchards available to The Lodge.

3.24 The enjoyment of the garden by Philippa and her family continues to this day. The Declaration details clearly and precisely the incidental residential use of the land intimately associated with The Lodge since 2008. Likewise, it also attests to the incidental residential use of land since 1994 and therefore, a material change of use did not occur during the construction of The Lodge itself and its wider use within the plot.

3.25 Finally, the declaration also corroborates the use of the neighbouring land solely associated with The Lake House (and not 178 Bearwood Road) upon its occupation in 2013 and the use of its garden being solely that of its occupiers since 2013.

- 3.26 In the absence of any conflicting information the Statutory Declaration should be given **significant weight** in the determination of this application.
- 3.27 **Appendix 3: Statutory Declarations of Joseph Adam Kay (dated 28/03/2023)**: The declaration from Joseph Adam Jay (current occupier of no.178 Bearwood Road), confirms the garden layout of no.178 Bearwood Road as per GCLBW002 since 1994 – 2008 having lived and grown up at the property since 1994.
- 3.28 The declaration corroborates the incidental activities that occurred during this time. For the sake of brevity this is not to be repeated, as it is already detailed in the Declaration itself and partly in the previous commentary regarding Appendices 1 and 2.
- 3.29 It also confirms, that Joseph moved into The Lake House in 2013 and became responsible for the maintenance of the garden as indicated in drawings GCLBW003 and GCLBW005 (and at this point these areas were no longer part of the garden of no.178 Bearwood Road). The declaration also details that the activities undertaken by occupiers and areas occupied by The Lake House also did not overlap with the resultant garden area of no.178 Bearwood Road, nor that of The Lodge.

3.30 The declaration corroborates the other declarations in confirming that in 2022, Joseph and his family moved out of The Lake House and into no.178 Bearwood (whilst Christopher and Mary moved into the Lake House). This coincided with all the garden areas remaining the same (with garden areas not changing as they are associated with their dwellings and not their occupiers).

3.31 Having resided at the Lake House since 2013 and being a close family member, Joseph is able to attest that Philippa and Luke have lived at The Lodge since 2008 and have had their own separate garden area, which does not overlap with the gardens of The Lake House nor 178 Bearwood Road.

3.32 In the absence of any conflicting information the Statutory Declaration should be given **significant weight** in the determination of this application.

3.33 **Appendix 4: Statement of Truth from Mike Powell (Dated 04/04/2024):** This appendix comprises a Statement of Truth from Mike Powell who is a friend of Philippa and Luke, having met them both in 2006. Whilst a Statement of Truth is not provided as much weight as a Statutory Declaration it is still a form of evidence to be weighed in the Balance of Probabilities.

3.34 The Statement is clear that Mike has visited The Lodge and its garden regularly since 2008. The Statement corroborates and witnesses a number of the activities and features described in Appendix 2 largely pertaining to outdoor sports, attending parties, socialising.

3.35 The statement is clear that the garden of The Lodge has in no way overlapped with the garden of The Lake House nor no.178 Bearwood Road.

3.36 **Appendix 5: Statement of Truth from Shaini Patel (Dated 05/04/2024):** This appendix comprises a Statement of Truth from Shaini Patel a friend of Philippa and Luke since 2015.

3.37 Shaini is able to corroborate the incidental residential use of the garden surrounding The Lodge since 2015. This involves socialising and attending parties. Notably, Shaini's daughter has attended a number of birthday parties at The Lodge and confirms both of her children have played in The Lodge garden with Philippa's daughter Frida.

3.38 The Statement is clear that The Lodge garden does not overlap with the gardens of no.178 Bearwood Road or The Lake House.

3.39 Notably, the statement corroborates a number of features detailed in GCLBW003 and GCLBW004 including swings, a zip line, a splash pool and games taking place including hide and seek in the wooded areas.

3.40 **Appendix 6: Series of Photographs detailing the Incidental**

Residential Use of Land: This appendix details a number of photographs provided by the applicants to support the application. These detail a range of activities being undertaken in the garden of The Lodge (and the Septic Tank).

3.41 Should it be required, the original photographs can be provided to the Council in order for the metadata to be verified. The Photographs range in date from 2005 – 2023.

3.42 Photographs also detail the installation of the Septic Tank in 2008 as this was omitted from the previously approved Certificate application.

3.43 Whilst Photographs can only demonstrate a snapshot in time, all photos detail the incidental residential use of the land since the occupation of The Lodge, various photos detail the activities described in the previous appendices and notably corroborate the features annotated on the provided plans in the absence of any other conflicting evidence these photographs should be given **significant weight** in demonstrating the incidental residential use of land since 2008.

3.44 **Appendix 7: Series of Publicly Available Aerial Images:** This appendix details aerial imagery of The Lodge attained from Google Earth and is the

same appendix provided as part of the previous submission, but includes some annotations regarding the use of land for completeness.

3.45 The provided images span from 2010 – 2021. The 2017 image shows the dwelling but also a swimming pool adjacent to the dwelling and a trampoline to the west. The 2018 image shows the pool and trampoline in the same locations, but also shows the occupiers cars clearly parked adjacent to the dwelling. The remaining images corroborate the built form of The Lodge (extension and decking) however, notably the 2020 image shows the decking in use.

3.46 When taken in conjunction with all the above evidence, it is clear the development is immune from enforcement action, with the buildings being completed in excess of four years and the use of the dwelling and land as a single family dwellinghouse in excess of ten years.

04 Conclusion

4.1 The relevant test for Lawful Use applications is the 'balance of probability.' Based on the submission of evidence, including a Statutory Declaration which can be relied upon as true, clear and unambiguous, it is submitted that the land was previously in an incidental residential use prior to the erection of the Lodge. As such, the 'severing' of the garden to form the

garden of The Lodge did not constitute a material change of use of land that requires planning permission.

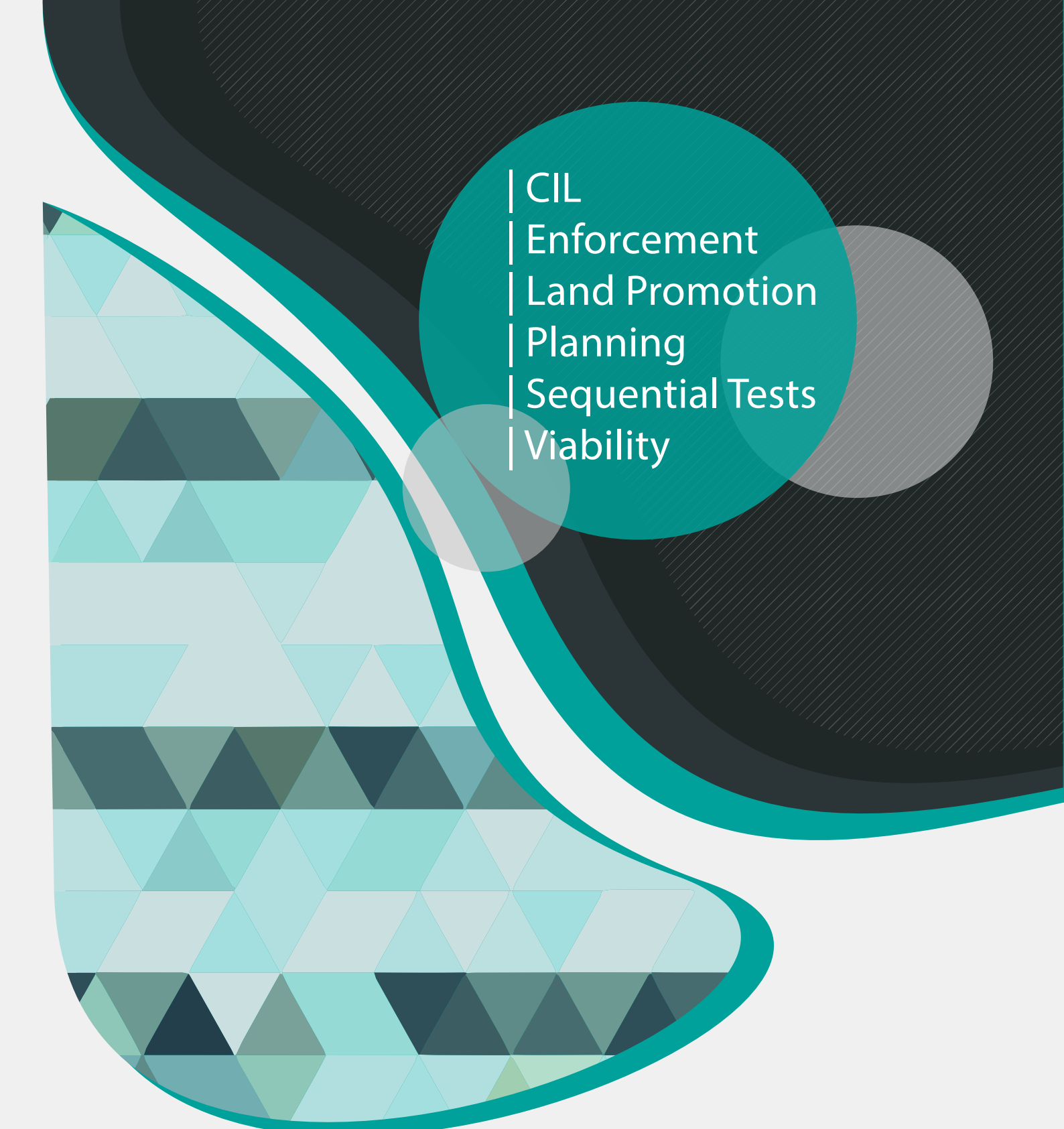
- 4.2 Should the LPA still consider the previous use of land was not that of an incidental residential use associated with no.178 Bearwood Road, then there is sufficient, clear and unambiguous evidence provided to detail the use of land has been in situ since 2008 and would be immune from Enforcement Action by way of S171(B)(3) of the Act.
- 4.3 If the Council are in possession of any information that leads them to a different view to that set out above, we ask that we have the opportunity to examine this information to ensure a fair and balanced assessment.
- 4.4 However, it is considered that the submitted evidence meets the tests of being clear and unambiguous. On the balance of probability, based on the submitted evidence, it is therefore requested that the application for a certificate of existing lawful use be approved.

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