

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	252932
Site Address:	35 Old Wokingham Road, Crowthorne, Wokingham, RG45 6SS
Expiry Date:	23 February 2026
Site Visit Date:	14 January 2026
Proposal: Application for a certificate of existing lawful development for 2 no. outbuildings consisting of a garden room (Outbuilding A) and a garden kitchen (Outbuilding B).	

PLANNING HISTORY		
Application No.	Description	Decision & Date
19003	Demolish existing garage and single storey side extension to form new garage and enlarged dining room.	Approved 14/03/1983
39438	Single storey rear extension to form dining room.	Approved 22/06/1992
173561	Householder application for the proposed erection of a two storey side extension, rear dormers and roof extension and alterations to roof of existing single storey rear extension.	Withdrawn 27/03/2018
181307	Householder application for the proposed erection of single storey sides extensions, two storey rear extension to dwelling plus insertion of new chimney.	Approved 12/07/2018
182676	Householder application for a two storey rear and single side storey extension. Loft conversion to create habitable accommodation. Plus the addition of four further roof lights.	Approved 12/11/2018
190896	Proposed Lawful Development Certificate for a loft conversion to include 2 bedrooms and shower room, rear mansard dormer with 3no windows and insertion of 4no equal size and spaced roof windows to the front elevation. Rebuild 2no previously removed chimneys	Approved 10/05/2019
191845	Application for a Non-material Amendment to planning consent 182676 (12/11/2018) to omit the second storey part of the extension, amend the single storey extension and add a single lantern	Refused 12/07/2019

SITE DESCRIPTION

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

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 application site is located in an area identified as having 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 building works were substantially completed on 01/09/2025.
- Submitted plans and elevations
 - Site Plan indicating the location of the outbuildings on the site.
 - Elevations plans demonstrating the height and dimensions of the two outbuildings.

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 14/01/2026 and this confirmed the presence of the operation development on the location as shown in the submitted details.
- Site visit photographs (14/01/2026).
- Aerial images from the Council's mapping system taken from 2022 confirming the lack of the development on the location as shown in the submitted details.
- Google Earth aerial images dated August 2023 and May 2025.

By third parties:

- Crowthorne Parish Council have reviewed the application and have no comments to make.
- Bracknell Forest Council have no objection to the development provided that it complies with Class E, Part 1, Schedule 2 of the TCPA.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise the existing 2 no. outbuildings located within the rear garden.

In determining a Certificate of Lawful Existing Use a Local Planning Authority need 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 the Certificate, it must be demonstrated that the use has been on-going continuously for at least ten years prior to the change in legislation of s171B of the TCPA on 25/04/2024.

Alternatively, if the 10-year immunity rule is not satisfied, it must be demonstrated that the outbuildings benefit 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 submitted 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 provide 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 outbuildings were substantially completed on 01/09/2025. It is therefore apparent that the 10-year immunity rule cannot be satisfied in this instance, and therefore it must be demonstrated that the outbuildings

benefit from permitted development rights under Schedule 2, Part 1, Class E of the General Permitted Development Order.

Therefore, the evidence submitted by the applicant is based heavily on the submitted plans and elevations so that the assessment can be made against Class E.

Evidence Submitted by Council:

Google Earth aerial images dated August 2023 (left) and May 2025 (right).



In the images above, it is clear the outbuildings are not present in either image, however, it appears that as of May 2025 works were being done to the garden, demonstrating that the outbuildings were installed after this.

Assessment:

10 Year Immunity Rule

From the Google Earth aerial images above, it is clear that works had not started by May 2025. Thus, demonstrating that the 10-year immunity rule cannot be satisfied.

Notwithstanding the failure to meet the 10-year immunity rule, the proposal is assessed below in respect of Schedule 2, Part 1, Class E of the General Permitted Development Order:

			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted?		✓
Art.3 (5)	4	Are the building operations involved in the construction of the dwellinghouse lawful?	✓	
Art.4	5	Is there an 'Article 4 Direction' in effect for the site?		✓
Art.4	6	Is it within the curtilage of the dwellinghouse?	✓	

Fuel storage

Sch.2 Pt. 1 E.b	7	Does the development consist of a container used for the storage of oil or liquid petroleum gas?	N/A	N/A
Sch.2 Pt. 1 E.b	8	Is the storage for domestic heating purposes?	N/A	N/A
E.1(j)	9	Would the capacity of the container exceed 3,500 litres?	N/A	N/A

Outbuildings and pools

Sch.2 Pt. 1 E.a	10	Does the development comprise a building or enclosure, swimming or other pool, or the maintenance, improvement or other alteration of such a building or enclosure?	N/A	N/A
Sch.2 Pt. 1 E.a	11	Is the building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such?	N/A	N/A

Fuel storage and outbuildings

E.1(a)	12	Has permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)?		✓
E.1(b)	13	Would the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) exceed 50% of the total area of the original curtilage (excluding the original dwelling)?		✓
E.1(c)	14	Would any part of the building, enclosure, pool or container be situated on land forward of a wall forming the principal elevation of the original dwellinghouse?		✓
E.1(d)	15	If it is a building would it have more than one storey?		✓
E.1(e)	16	Would the height of the building, enclosure or container exceed: (i) Four metres in the case of a building with a dual-pitched roof		✓
		(ii) 2.5 metres in the case of a building, enclosure or container within two metres of the boundary of the curtilage of the dwellinghouse?		✓
		(iii) Three metres in any other case?		✓
E.1(f)	17	Would the height of the eaves of the building exceed 2.5 metres?		✓
E.1(g)	18	Would the building, enclosure, pool or container be situated within the curtilage of a listed building ?		✓
E.1(h)	19	Would the development include the construction or provision of a veranda, balcony or raised platform?		✓
E.1(i)	20	Would it relate to a dwelling?		✓
E.1(i)	21	Would it relate to a microwave antenna?		✓
E.3	22	Article 2(3) land (World Heritage Sites, National Parks, AONBs & the Broads): Would any part of the building, enclosure, pool or container be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse?		✓
	23	Would it affect or be within the Root Protection Area of a TPO'd tree? <i>* Does not affect Article 3 permission but separate TPO approval may be needed</i>		✓

The above table demonstrates that the proposal fully complies with the requirements of Schedule 2, Part 1, Class E of the General Permitted Development Order and therefore would have been permitted at the time of construction.

Conclusion:

Based on the evidence above, whilst the proposal does not satisfy the 10-year immunity rule, the 2 no. outbuildings fully comply with the requirements of Schedule 2, Part 1, Class E of the General Permitted Development Order. Therefore, the operational development is lawful, and 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

Based on the evidence provided in the form of the submitted plans and elevations, the 2 no. outbuildings fully comply with the requirements of Schedule 2, Part 1, Class E of the General Permitted Development Order. It is therefore considered that the application for a certificate of existing lawful use should be approved.

Date:	13 February 2026
Earliest date for decision:	22 January 2026
Recommendation agreed by: (Authorised Officer)	<i>BJC</i>
Date:	18.02.26