

## **DELEGATED OFFICER REPORT**



**WOKINGHAM**  
**BOROUGH COUNCIL**

|                                                                                                                                                                                                                                                                                                       |                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <b>Application Number:</b>                                                                                                                                                                                                                                                                            | 251142                                                         |
| <b>Site Address:</b>                                                                                                                                                                                                                                                                                  | Highland House, Highlands Avenue, Barkham, Wokingham, RG41 4SP |
| <b>Expiry Date:</b>                                                                                                                                                                                                                                                                                   | 8 July 2025                                                    |
| <b>Site Visit Date:</b>                                                                                                                                                                                                                                                                               | 20 June 2025                                                   |
| <b>Proposal:</b> Application for a certificate of existing lawful development for the use of the land shaded in GREEN as residential garden and the use of Building A as a Gym/Swimming Pool; Building B as a Garage and Building C as ancillary living accommodation associated with Highland House. |                                                                |

### **PLANNING HISTORY (Highland House)**

| Application No. | Description                                                       | Decision & Date                        |
|-----------------|-------------------------------------------------------------------|----------------------------------------|
| F/2002/7723     | Proposed erection of detached triple garage.                      | Refused –<br>13/11/2002                |
| F/2001/4486     | Proposed erection of detached garage with playroom in roof space. | Refused –<br>14/09/2001                |
| 29434           | Erection of a four bedroom chalet bungalow.                       | Conditionally Approved –<br>18/01/1988 |

### **SITE DESCRIPTION**

The application site comprises a late 1980s detached chalet bungalow style dwelling located within a cluster of development fronting Highlands Avenue, Barkham. The site's eastern and northern boundaries adjoin a large commercial scrapyard/car spares business.

The site falls within designated countryside and is partly covered by Woodland Tree Preservation Order no. 20/1973. The site also falls within an identified Bat Roost Habitat Suitability Area but is not subject to any other wildlife or habitat designations. There are no listed buildings at the site and the property is not within 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order 2015)).

### **LEGISLATION**

#### **Town and Country Planning Act 1990 (as amended)**

Section 55(1) of the Town and Country Planning Act 1990 (as amended) 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 Town and Country Planning Act 1990 (as amended) requires that planning permission is required for the carrying out of any development of land.

Section 171B (1) 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 ten years (formerly four years) beginning with the date on which the operations were substantially completed.

Section 171B (3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of ten years beginning with the date of the breach.

*Regarding the above, Section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 states that the amendments made to the 1990 Act by section 115 of the 2023 act (time limits for enforcement) do not apply where in respect of a breach referred to in section 171B(1), the operations were substantially completed before the day on which that section comes into force (25/04/2024). This means that where operational development has been carried out before 25/04/2024 **the four year rule still applies** (except where the operations has facilitated a material change of use).*

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 06-06-2013.
- Supporting Statement:
  - Describes the use of the three buildings and states that they are used solely for purposes incidental to or ancillary to the enjoyment of the main dwellinghouse.
  - States that buildings A and B were substantially complete in 2004 with building C substantially complete in 2013, and that all buildings have been in situ since their construction.
  - States that building C (the Log Cabin) provides residential accommodation for the applicant’s father and this is ancillary to the use of the main dwellinghouse.
  - States that building C has formed part of the residential curtilage of Highland House for over 10 years, with the main access to the Log Cabin being directly from the main dwelling’s driveway.
- Extracts of Google Earth aerial images dated 05/09/2004, 06/06/2013, 23/06/2018 and 01/08/2023.
- Extracts of Google Maps Street View images dated September 2016, May 2018, June 2019, September 2023 and September 2024.
- Site Plan – drawing no. 24624.dwg
- Drawing titled ‘Location Plan’

By the Council:

- Planning History Records (see summary above)

- Enforcement History Records – there are no extant Enforcement Notices relating to the site.
- The Case Officer carried out a site visit on 20/06/2025 and confirmed the presence of the operational development on the locations as shown in the submitted plans.
- Site visit photos (20/06/2025)
- Aerial images from the Council's mapping system taken from 2003, 2004, 2006, 2010, 2013 and 2015, 2019 and 2022.
- Extracts of Google Earth aerial images dated 01/01/2003, 05/09/2004, 01/01/2010, 06/06/2013, 25/03/2017, 23/06/2018, 15/04/2020, 16/07/2021, 01/08/2023 & 09/05/2025.

By third parties:

- No third party information received.

## **APPRAISAL**

This application is for a Certificate of Existing Lawful Development to regularise the erection of 3no. detached outbuildings (referred to in the submitted information as buildings A, B & C) and the use of these buildings and the land shown on the submitted details for incidental or ancillary residential purposes associated with the dwellinghouse known as "Highland House". In determining a Certificate of Lawful Existing Development 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 operational development was substantially complete at least 4 years prior to the date of this application, i.e., by 13 May 2021, and that any material change of use of the land to residential garden has been on-going continuously for at least ten years prior to the date of this application, the relevant period being from 13/05/2015 to 13/05/2025.

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".

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 Applicant's Evidence

The evidence submitted relies heavily on a series of aerial images obtained from Google Earth as well as Street View images. The submitted Supporting Statement also states when the buildings were erected and describes their uses. However, no statutory declarations or other formal statements produced by either the applicants or any other interested parties have been submitted to support their evidence.

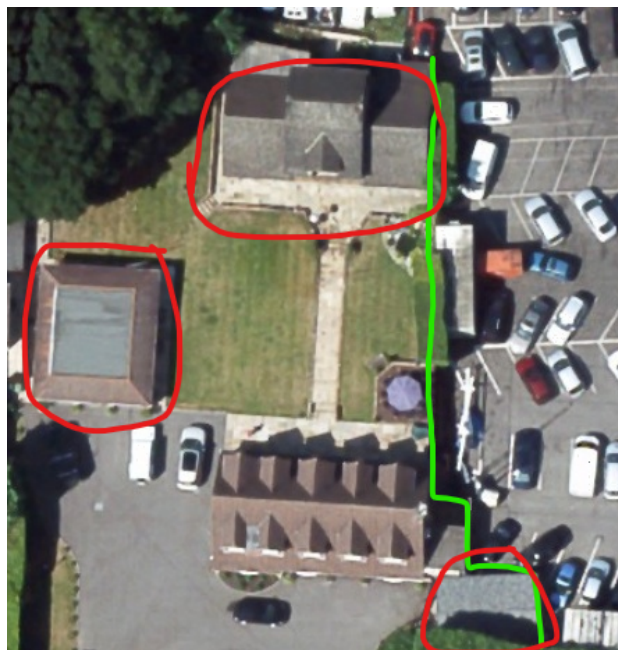
### The Council's Evidence

The site visit confirmed the position of the operational development (buildings A, B and C) as shown in the submitted site plan. No floorplans or elevations have been submitted. Crucially, aerial images support the applicant's submission in that Buildings A & B appear to be in situ since at least 2004 and Building C since at least 2013. It appears from assessing these images that there have been no alterations to these buildings since their construction. It is therefore clear that the development applied for has been in situ for over four years.

**Figure 1: Extract of an aerial image from the Council's mapping system dated 2004 with Buildings A & B highlighted in red and the eastern boundary of the dwelling in highlighted in green.**



**Figure 2: Extract of an aerial image from the Council's mapping system dated 2022 with Buildings A, B & C highlighted in red and the fenceline highlighted in green.**



#### The use of the buildings and the eastern part of the site

No floor plans have been submitted to support the applicant's evidence. Nonetheless, the submitted supporting statement describes the use of the three buildings as for purposes ancillary to the enjoyment of the main dwellinghouse since their erection ("Highland House"). Building A is within the rear garden and comprises a swimming pool and gym, Building B is within the rear garden and comprises a garage for parking and domestic storage and Building C comprises ancillary living accommodation.

On the site visit the use of all three buildings was observed and there is no evidence to suggest that the buildings are used for any purpose other than incidental/ancillary uses in connection with the use of the main dwellinghouse. Regarding Building C, the internal layout comprises a bedroom/living area, a shower room and a kitchenette. As observed, it is considered that the internal facilities are akin to a residential annex ancillary to the use of the main dwellinghouse which retains a functional and physical link with the main dwellinghouse. The building is used by the applicant's elderly father and is not used for independent day-to-day private domestic existence (*Gravesham Borough Council v Secretary of State for the Environment (1982) P&CR 142*).

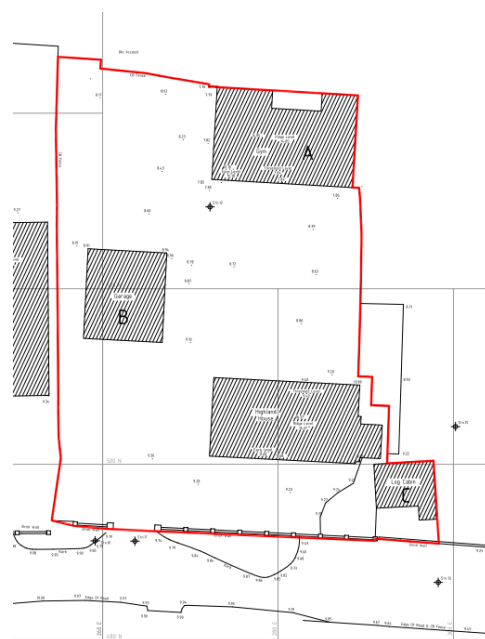
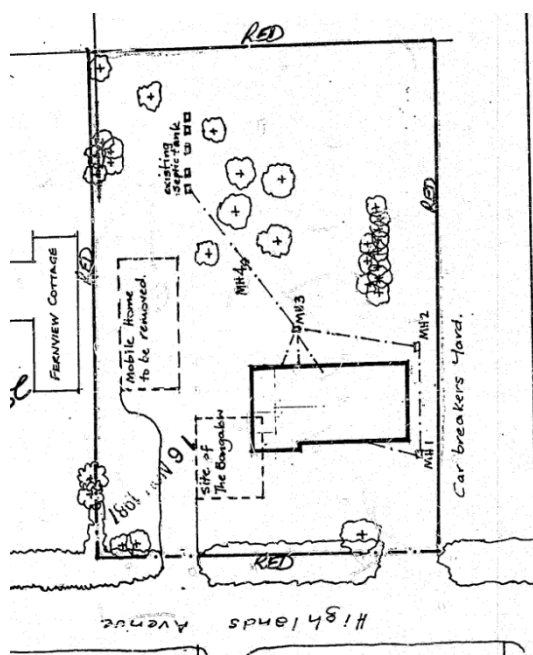
Building C is also located in close proximity to the main dwellinghouse with no segregated access, and the occupation of the building was observed on the site visit. No physical or use characteristics have been observed which would indicate that Building C is tantamount to a separate, self-contained dwelling. There is therefore sufficient evidence that that buildings A and B have been used for purposes incidental to the main dwelling and building C has been used for purposes ancillary to the enjoyment of the main dwellinghouse.

It is clear when assessing the site's planning history and the submitted information that Building C is positioned outside of the original residential plot associated with Highland House, and that the previous fenceline has been moved eastwards to subsume part of the adjoining scrapyard/commercial premises. It is understood that the adjoining commercial site also falls within the applicant's ownership.

When assessing the aerial images (see Figures 1 & 2 above), it appears that an existing fence on the shared boundary between the sites was partially removed to facilitate the erection of Building C. It also appears that the original boundary fencing has been moved out to the east to accommodate a small extension to the main dwelling, although this has not been applied for under this application and no evidence has been submitted to demonstrate this. The aerial images suggest that the enlargement of the site's eastern boundary took place between 2010 and 2013, there is no evidence to suggest that the boundary has been enlarged since.

The Council does not hold any information which contradicts this evidence. Following the enlargement, it appears that the land (on which the operational development comprising Building C sits and area to the south of this abutting the road) has been maintained as domestic garden and that there has been no disruption to the maintenance of the land or the nature of its use. It can therefore be said on the balance of probability that the use of this part of the site as residential garden/driveway has been continuous for 10 years prior to the application for residential purposes associated with the use of 'Highland House' has been taking place for over ten years.

**Figure 3 (Left): Extract of Site Plan approved under application ref 29434 showing the original residential plot boundaries & Figure 4 (Right): Extract of submitted Site Plan.**



It is noted that to the north of building C the red line boundary differs and there is a side extension to the dwelling in this location, however this area has not been applied for as part of this Certificate (see application form and evidence).

### **Conclusion:**

The applicant's evidence is consistent, and there is no other information 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 Buildings A, B & C, as shown in the submitted details, has been in situ for more than four years and used continuously for purposes incidental (A & B) or ancillary (C) to the enjoyment of the main dwellinghouse. It can also be said on the balance of probability that the use of the land identified in green on the site known as 'Highland House', as shown in the submitted details, has been in use as residential garden for a consecutive period of more than 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.

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**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 Buildings A, B & C, as shown in the submitted details, have been in situ for more than four years and consecutively used for purposes incidental (A & B) or ancillary (C) to the enjoyment of the main dwellinghouse. It is also considered to have been demonstrated that the use of the land identified in green on the site known as 'Highland House', as shown in the submitted details, has been in use as residential garden for a consecutive period of more than ten years. On this basis it is recommended that the application for a lawful development certificate be **approved**.

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| <b>Date:</b> | 9 July 2025 |
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| <b>Earliest date for decision:</b> | 5 June 2025 |
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| <b>Recommendation agreed by:</b><br><b>(Authorised Officer)</b> |  |
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|--------------|---------------------|
| <b>Date:</b> | <b>11 July 2025</b> |
|--------------|---------------------|