

OFFICER REPORT

Application Number:	152003
Site:	Land adjacent to Merchiston, Blakes Lane, Wargrave, RG10 9TA
Expiry Date:	18 th August 2015
Proposal:	Application for a Certificate of Lawfulness for existing use for the use of the land for storage associated with a nursery business.
Site Description:	Plot of land adjacent to dwelling with shed/polytunnel used as storage on it. Significant vegetation in and around site.

INFORMATION PROVIDED

1. By the Applicant:

The applicant has submitted the following in support of their application:

- A location and block plan showing the land in question outlined in red;
- A site plan showing the buildings in question outlined in red and the surrounding land in blue;
- A planning statement supporting the application including pictures of the site
- A statutory declaration by the applicant in support of the application
- Copies of water and electricity bills for the site

2. By the Council:

The Council has the following information regarding the application:

- Aerial photos dating 1981, 1996, 1999, 2003 and 2010; and,
- Planning history for the site showing an outline application for a new dwelling was refused and dismissed at appeal in 2002 (O/2002/6493) and a similar certificate application was submitted but withdrawn earlier in the year (CLE/2015/0858)
- Opinion from the Council's legal department.
- Site visit made by the case officer on 30th September 2015

3. By Third Parties:

The Council has received the following through a consultation process:

- A comment from the Parish Council stating neighbours indicate the site is derelict and that the previous planning history should be considered
- Three letters from local residents indicating very little occurs at the site and it appears to be little used. In particular, no vehicle movements are seen and the gates do not appear to be open at any time

APPRAISAL

The proposal is for a Certificate of Lawful Existing Use for the use of the land as storage associated with a nursery business. 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 ten years. 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.

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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”.

The applicant has provided evidence in support of the fact that the land has been used for storage associated with a nursery business for more than ten years. From the evidence submitted, it appears that the applicant, Mr Graham, has used the since in associated with a nursery business since owning the site 35 years ago. This involved a mix of horticulture, storage and contracting with the business being involved in floral displays at events such as Royal Ascot or Queens Club tennis. Originally, the site was used more intensively with employees visiting the site and horticulture occurring on land to the east. However, this has now reduced considerably due primarily to the applicant’s personal circumstances. Also, the business is now based in Maidenhead and owns a small unit there but this does not cater for all the storage needs. As a result, the previous uses of the site have declined with the exception of the storage use which has remained. This is the reason the previous Certificate application was withdrawn and the current resubmitted with a much reduced red line.

The applicant has submitted a planning statement which sets out the history as above and elaborates on the case. To corroborate this, a statutory declaration has been submitted by the applicant stating the site has been used for 35 years in association with the floral business and that despite the horticultural aspect stopping, the site has been used for storage purposes. Supporting this are copies of water and electricity bills which show both water and electricity on the site was used but currently it is not. However, standing charges are still being billed and paid for.

The Council have aerial photographs for a number of years showing the site. In them, it can be deduced three structures are present on the site with vegetation around them. Whilst hard standing is apparent earlier on, over time, the vegetation has increased and hard standing reduced. A site visit was made by the planning officer and it is noted the site is effectively overgrown and little activity currently takes place. The structures on the site are noted to be in poor repair but still capable of storing items. The items inside the structures were not ordered but a range of different items associated with the use (i.e. stands, poles, boxes, buckets, flower pots) could be seen. Through the course of the application, an opinion from the Council’s legal department has been received and this has informed the decision as per the below. Additionally, it is noted three comments from neighbouring properties have been received with neighbours commenting they have resided there for a long time. These all attest to the fact the site is little used and some people have seen no activity at all. One neighbour notes that they have never seen the gate open.

The evidence submitted needs to demonstrate, clearly and unambiguously, that the land has been used for storage purposes associated with the nursey business for a consecutive period of ten years. The applicant states that the site has been used in this way for 35 years but since moving to the Maidenhead shop, the way the site has been used has changed. Primarily, this is the cessation of all other uses but the storage aspect associated with the business. The statutory declaration adds weight to this argument and it is certainly feasible that items associated with the business have been stored there. Indeed whilst the water and electricity bills do not by themselves evidence the use of the structures they do suggest this is the case. It is noted that it makes no business sense to continue to pay standard charges for a site that is not used at all.

Comments from neighbouring properties are noted particularly that very little activity has been seen. However, this in itself does not confirm no storage use has taken place. It is feasible that limited activity takes place resulting in very few, if at all, vehicle movements. For instance it is

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WOKINGHAM DISTRICT COUNCIL

TOWN & COUNTRY PLANNING ACT 1990, SECTION 191 AS AMENDED BY SECTION 10 OF THE PLANNING AND COMPENSATION ACT 1991

TOWN & COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER, 1995: ARTICLE 24

Wokingham Borough Council hereby certify that on 23rd June 2015 and subject to the conditions detailed in the informative below the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, and edged red is ~~not~~ lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Reason

Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated, on the balance of probability, that the land has been used as a storage associated with a nursery business for ten consecutive years.

Signed

Justin Turvey

Team Manager - Development Management

On behalf of Wokingham District Council, Shute End, Wokingham, Berkshire RG40 1WH

Date: 28/10/15

FIRST SCHEDULE

The use of the land for storage associated with a nursery business as described in the application form and accompanying documents.

SECOND SCHEDULE

Land adjacent to Merchiston, Blakes Lane, Wargrave, RG10 9TA

INFORMATIVE

This certificate is issued on the basis of the following:

1. The certificate relates solely to the site identified by the red line as shown on plan MW/HH/04 and the structures (and land between them) contained within it.
2. The certificate relates solely to a storage use associated with a nursery business. It does not give permission for the production or sale of any horticultural product.
3. The certificate does not give permission for works to the structures on the site. Any alterations to these may require planning permission.

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possible to walk to the site. Indeed this raises the question of whether or not it is possible to abandon a storage use. From visiting the site, it is clear that items are stored within the structures. Although from a business point of view it makes sense to have items ordered or perhaps boxed and labelled, this is not required to simply store something. Indeed the current appearance of the site is owed to the applicant's current circumstance. Whilst not suggesting that only a few visits a year may continue the use, the fact that neighbours have not seen much activity does not by itself fully demonstrate a storage use hasn't occurred.

It is considered that the site clearly has items being stored on it within the structures and these appear to be associated with the nursery business. This is corroborated by the statutory declaration which adds significant weight. The site is little used at the moment resulting in its current appearance but items have been stored for some time. On this basis therefore, whilst not overwhelming evidence, there is sufficient unambiguous evidence for the Council to conclude that the land has been used for storage purposes associated with a nursery business for ten consecutive years. Therefore it is considered that a certificate of lawful use be approved. It should be noted that the description makes reference to an office. However, this is considered to be ancillary to the main use of storage and therefore has been removed from the description.

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, on the balance of probability, the land has been used as storage associated with a nursery business for ten consecutive years. It is therefore considered that the application of a certificate of existing lawful use should be approved and a draft certificate is set out below.

SITE VISIT NOTES AND RECORD

REFERENCE NO:	152003
SITE ADDRESS:	Land Adjacent to Merchiston, Blakes Lane, Wargrave, Wokingham, RG10 9TA
DATE OF VISIT(S)	30/9/15

DESCRIPTION OF SITE/BUILDING

Overgrown site 3 Structures
Shed in poor repair - lot

DESCRIPTION OF SURROUNDINGS/LOCAL CHARACTER

Here - rural - sig veg

RELATIONSHIP WITH ADJOINING PROPERTIES

Very on boundaries Merchiston nearby

SITE CONSTRAINTS AND OTHER PLANNING MATTERS:

(E.g. parking, access, trees, levels, boundary treatments, other)