



7 August 2026

Planning Department
Reading Borough Council
Civic Offices
Bridge St,
Reading RG1 2LU

Dear Planning Department

Cover letter and Statement

Application for Certificate of Lawfulness

Park Day Nursery, 8 College Road, Reading, RG6 1QB

1.0 Introduction and Background

- 1.1 This Statement accompanies an application for a Certificate of Lawful Existing use submitted on behalf of the owners of Park Day Nursery, 8 College Road, Reading, RG6 1QB to Reading Borough Council (the Council).
- 1.2 This application contains
- This Covering Letter and Statement
 - The Application Fee (to be paid separately by the applicants)
 - Statutory declarations (to follow directly to the case officer once allocated)
 - Legal statement from Ros Andrews
 - Location plan
- 1.3 The application site comprises the property as shown edged red on the submitted location plan.
- 1.4 The application site consists of a four-storey semi-detached building located on the southern side of College Road. The property has operated as a day nursery since 1989 and continues to provide childcare facilities for the local area.
- 1.5 The certificate is sought to confirm that condition 6 of planning permission for '*Change of use to day nursery with ancillary residential accommodation*' (REF:PL/14/1836) has been breached for more than ten years. The condition (which can be seen on the decision notice at Appendix A) is as follows:

'The number of children accommodated at the nursery shall at no time exceed 50.'

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Reason: in order to protect the amenities of adjacent residents. Policies CS31 (Additional and Existing Community Facilities) and DM4 (Safeguarding Amenity).'

- 1.6 The application itself is made under s191(1) (c) of the Town and Country Planning Act 1990 on the basis that the time limit for enforcement action against the breach of condition 6 has passed.
- 1.7 The relevant time periods are set out in s171B (3) of the Town and Country Planning Act 1990 which states that in the case of any other breach of planning control (which includes conditions);

"no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

- 1.8 This application follows the submission of an application for a Certificate of Lawfulness (REF:PL/25/1743), which sought to demonstrate that the condition 6 of planning permission PL/14/1836 had been breached continuously for a period of more than ten years.
- 1.9 During the previous certificate application determination, the Council concluded that the evidence submitted did not demonstrate a continuous breach of the condition of the requisite ten-year period. The Council cited certain days (for example during COVID 19) where numbers of children were lower than 50. The Council alleged that this amounted to 'gaps' in the breach of condition and their conclusion was that this meant the breach was not continuous. The Certificate of Lawfulness application was subsequently withdrawn.
- 1.10 The applicant has reviewed the position and sought further legal and planning advice and is making a fresh submission on the basis of this advice. That advice confirms (on the basis of appeal decisions and case law) that although there are a handful of specific dates during the 10-year period where less than 50 children attended the nursery, the number of children registered and places available was continuously more than 50 and therefore the brief instances of less than 50 children attending should not justify a refusal of a certificate of lawfulness. This is discussed in more detail below.
- 1.11 Additional evidence is also provided with this application compared to the previous submission.
- 1.12 Other relevant planning history is as follows:
- **PL/14/1222** - Application for variation of conditions 4 and 5 of planning permission 10/00068/VARIAT (100328). Opening hours to be amended to 0730-1800 Mondays to Fridays with no more than 16 children allowed to arrive before 8am and number of children not to exceed 50. **(Withdrawn)**
 - **PL/10/0328** - Use of part of house as day nursery school (Continued Use) without complying with Conditions 3 and 5 of planning permission 92/0678/FD (partly retrospective) (Resubmission of 09/01585/VARIAT) **(Permitted subject to Legal Agreement)**

- **PL/05/1343** - Retrospective application for the replacement of the flat roof to the rear extension with pitched roof. **(Approve)**
- **PL/92/0514** - Erection of extra living room to rear of property. **(Approve)**
- **PL/92/00678** - Use of part of house as day nursery school for 18 children (continued use). **(Approve)**
- **PL/88/01528/FUL** - Change of use of part of house from dwelling to day nursery school. **(Approve)**

2.0 **Evidence**

- 2.1 The following evidence demonstrates that condition 6 of planning application PL/14/1836 has been breached for a period of more than 10 years.
- 2.2 Evidence (to be submitted directly to planning officers following validation of the application) will be provided by way of statutory declarations from Jacqueline Brown, (owner), Simon Brown (owner/director) and Emma Rapley (deputy manager in 2016 and manager from 2017 onwards).
- 2.3 Collectively, along with the accompanying exhibits, the statutory declarations confirm the following;
- Jacqueline Brown and Simon Brown purchased 8 College Road, Reading, RG6 1QB in June 2013.
 - Due to the high demand for places at the day nursery, the nursery has consistently accepted 51 or more children since May 2015.
 - The Ofsted reports confirm the nursery is registered to accept up to 90 children per day.
 - The same reports confirm 98 on the roll at the date of the last inspection (124 on the roll at the 2017 inspection).
 - Accompanying each declaration are records of child numbers for each day between August 2016 and August 2026. The records have been extracted from the nursery's management software system (Parenta) using the Abacus reporting function.
 - The occupancy records demonstrate that the number of children attending the nursery has consistently exceeded the limit of 50 children imposed by condition 6 of planning permission PL/14/1836.
 - The evidence demonstrates that the nursery has operated at a level above the planning condition maximum of 50 children 98.5% of the days it was open over the last ten years and in most cases the number of children was substantially above 50.
 - The records show that the maximum number of children who have attended the nursery is 92 on a single day.
 - The daily mean average number of children is 70.
- 2.4 The Ofsted inspection report (dated 2023) attached to all three submitted statutory declarations confirms that the nursery is registered to provide 90 childcare places which is relevant to a longstanding breach of condition 6.

- 2.5 In addition, each declaration includes all child numbers for every day the nursery was open across the 10 year period, some of this is summarised above but the figures can also be broken down as set out below.
- 2.6 The nursery was open a total of 2463 days across the period shown and on 2427 days there were more than 50 children meaning that (as stated above) on 98.5% of the days the nursery was open there were more than 50 children.

Dates covered	Comment
Aug 2016 – Dec 2016	The highest number of children was 70 on 16 th November 2016
Jan 2017 – Dec 2017	The highest number of children was 85 on 12 th July 2017
Jan 2018 – Dec 2018	All 253 days had more than 50 children The highest number of children was 86 on 14 th June 2018
Jan 2019 – Dec 2019	All 249 days had more than 50 children The highest number of children was 91 on 3 rd July 2019
Jan 2020 – Dec 2020	The highest number of children this year was 87 on 26 th February 2020
Jan 2021 – Dec 2021	All 250 days had more than 50 children The highest number of children this year was 92 on 30 th June 2021
Jan 2022- Dec 2022	All 248 days had more than 50 children The highest number of children this year was 91 on 30 th June 2022
Jan 2023 – Dec 2023	All 254 days had more than 50 children

	The highest number of children this year was 80 on 5 th December 2023
Jan 2024 – Dec 2024	All 254 days had more than 50 children The highest number of children this year was 85 on 2 nd July 2024
Jan 2025 – Dec 2025	All 255 days had more than 50 children The highest number of children this year was 76 on 22 nd July 2025
Jan 2026 – Aug 2026	All 155 days had more than 50 children The highest number of children this year was 79 on 29 th April 2026

*note for all years, the week commencing date has been used to determine which year the days in that week fell into.

2.7 Below are the mean average numbers of children by weekday across 10 year period.

Monday	67
Tuesday	74
Wednesday	74
Thursday	71
Friday	65

2.8 It is important to note that for any given date, the applicants can provide the Council with a redacted attendance register showing each child's initials and date of birth if it is necessary to do so. Full names cannot be disclosed due to data protection requirements.

3.0 **Discussion**

- 3.1 It is clear that a breach of condition on 98.5% of days is significant. It is considered that the Council would have been able to take enforcement action against the breach of condition on this basis if the time for taking enforcement action had not passed (in May 2025). The evidence is considered compelling and a certificate of lawfulness should be granted. The relevant tests are considered in section 4 below.
- 3.2 We note the previous reasons that our client was encouraged to withdraw the previous certificate application, however, as previously stated we consider that the very small number of days where the condition was complied with is not sufficient to say that the breach has not been continuous.
- 3.3 Appendix B includes an appeal decision (reference 3331411). This decision concerned an almost identical scenario where a condition had been attached restricting the number of children to 30 per day. The inspector confirmed that the relevant test is whether the condition had been breached continuously for any ten-year period without significant interruption (paragraph 7). The appellants submitted a similar breakdown of children numbers as the applicant has for this certificate application. As with the present case, the Council argued at appeal that dates where the condition had been complied with meant that the breach was not continuous.
- 3.4 Firstly, in respect of the period during COVID 19, there were, as in the current case, a number of closures. At paragraph 15 of the decision, the inspector confirmed that *"this period of non-operation cannot be considered an interruption to continuous use, having regard to the principles established in Thurrock"*.
- 3.5 There is a legal statement accompanying this submission which examines relevant case law in more detail to confirm that the closure during COVID does not affect the continuous period of non-compliance with the condition.
- 3.6 Regarding those days where there were less than 30 children, the inspector noted at paragraph 25:
- "this is a case where the breach has occurred throughout the immunity period, subject to short periods of a day or half-day when there was compliance with the condition. During the relevant period, I consider the Council would have been able to take enforcement action. This is because the breach was continuing throughout, during periods of normal operation. In my opinion, the short periods where occupancy was at 30 or below did not amount to discontinuance of the offending activity bringing the breach to an end. Overall, I find the periods of non-compliance did not amount to separate breaches as a matter of fact and degree."*
- 3.7 In the appeal case, the condition had been complied with on many more occasions than the applicants have shown in the evidence accompanying the certificate application. 222 days across the 10-year period had seen numbers at 30 or less (and the number of half day sessions where 30 or fewer children attended was 865). Put another way during the normal operations, the nursery breached the condition 91% of the time using the daily measure and around 83% of the time using the half day measure. Comparatively the

applicants have confirmed in this application that the breach has occurred 98.5% of the time.

- 3.8 As is the case with the application numbers, the days when the condition was complied with were primarily around summer holidays and COVID 19. Like the present case, the instances of condition compliance were distributed across the 10-year period. In the appeal case, there was a reasonably consistent pattern of condition compliance during COVID 19 which is not the case for the application (there being only a few days where the condition was complied with during that time).
- 3.9 The appeal and relevant case law demonstrate that very small periods of compliance with a condition are not fatal to the grant of a certificate of lawfulness and this is something the Council did not take into account for the previous certificate application.
- 3.10 Accordingly, whilst no situation is identical, the appeal case is sufficiently similar to be relevant to the present case and for the legal principles discussed in this appeal to be applied to this certificate of lawfulness application. We consider that it would be lawful and reasonable to take the same approach. As confirmed above, the legal note submitted with this application provides further information including with reference to the case law discussed in the appeal.
- 3.11 As suggested in the supporting legal statement submitted with this application, a revised ceiling can be considered for children numbers. Above is a Monday – Friday average and the overall daily average is also calculated, along with maximum numbers in each year. Our suggestion would be to use the M-F averages however we are open to discussion. This wouldn't mean that any breach of these figures would automatically trigger possible enforcement action and loss of the benefit of the certificate; the Council would of course need to review fact and degree of non-compliance with the new figures to ascertain whether there had been a material change.
- 4.0 Determination of the application
- 4.1 In relation to whether the level of evidence is sufficient to enable a positive decision from the Council, the 'balance of probabilities' test must be applied. This is a civil standard of proof, and there is no requirement for the applicant to prove their claim beyond all reasonable doubt. There can also be no consideration of Planning Policy.
- 4.2 'Balance of probabilities' has been found to mean 'more likely than not'. Therefore, if the decision maker considers that the occurrence of the event was more likely than not on the evidence available, the decision maker can be satisfied that an event occurred.
- 4.3 Local Planning Authorities are advised in at Paragraph 006 [Reference ID: 17C-006-20140306] of the National Planning Practice Guidance (PPG) that:

"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 certificate on the balance of probability."

4.4 In addition, *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630 found that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted although in case, evidence from both owners and the nursery manager has been provided.

5.0 Conclusion

5.1 On the basis of the above, it follows that unless the Council has any evidence to the contrary¹, the information submitted as part of this application provides clear evidence that the nursery has continuously breached condition 6 of planning permission PL/14/1836 for over 10 years.

5.2 The reasons given by the Council which led to the withdrawal of the Previous Certificate Application have been found to represent a misunderstanding of the term 'continuous' when it comes to a breach of condition restricting numbers of children. It is apparent that 'continuous' does not have to mean literally every day and it can be sufficient for the number of places to simply be available every day for that 10 year period, and for there to be a consistent pattern of (in this case) more than 50 children per day in order for a breach of condition to be out of time for enforcement.

5.3 A certificate of lawful existing use should therefore follow.

5.4 We understand that the legal team will be involved in the determination of this certificate application. We ask that if they have any questions or concerns with this application or the accompanying evidence, please get in touch and we can arrange a discussion with our client's legal advisor if necessary.

5.5 In any event, if the Council intends to do anything other than approve the certificate application via delegated authority, please let us know at the earliest opportunity.

Yours faithfully

Liz Shield MRTPI

SF Planning Ltd

¹ Paragraph 006 [Reference ID: 17c-006-20140306] of the PPG advises that 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.