CASE OFFICER'S REPORT

Application Reference:	**PL/2023/1120**
Description	**CLE - Use of building as a self-contained dwelling (Use Class C3) Lodge Farm, Giles Lane, Landford, SP5 2BG**
Date of Inspection:	N/A
Date site notice posted:	10/2/24
Publicity Expiry:	4/3/24

POLICIES

Town and Country Planning Act 1990 as amended ("the 1990 Act")

APPLICATION DETAILS AND PLANNING UNIT

The applicants seek a Lawful Development Certificate pursuant to Section 171B (3) and 191 (1) (a) of the 1990 Act for use of the agricultural building as a self contained dwelling, over the 4 year period without any enforcement action against the use, and that the use as a single dwelling house began more than four years before the date of this application.

The application form states that the CLE is sought for: *Use of building as a self-contained dwelling (Use Class C3).*

For consideration of the access and curtilage, the applicant has stated:

We have an unusual situation here that the building outlined in red is where the certificate is sought for the dwelling however there is no actual curtilage or parking area in close proximity to the building and the red line shows how the occupiers of the building take a vehicle from the county highway and generally where they park it. We would be happy to remove the red line showing the access because this is the access to the wider land which does not in itself require a certificate and simply seek the certificate around the building itself.

Therefore, the planning unit is the extended timber lodge building only.

LEGISLATION

Section 191 of the Town and Country Planning Act 1990 allows a person to make a formal application for a certificate of lawful existing use ("CLE") to determine whether an unauthorised development has become lawful through the passage of time, and can be continued without the need for planning permission.

Obtaining a CLE will have the effect of proving that the development is lawful, and protect the development from enforcement action.

The onus is on the applicant to prove the case by supplying sufficient clear and precise evidence to satisfy the Authority that a CLE - the test to be applied to that evidence is the 'balance of probability'. The application is assessed purely on the evidence; the planning merits of the development are irrelevant.

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.

Withdrawn Circular 10/97 para 2.81 still provides useful *guidance* in the absence of updated guidance in the PPG. It includes a description of the "use" of a building as a dwellinghouse. It concludes that premises can properly be regarded as being used as a single dwellinghouse where they are:

• a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them;

• designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse

RELEVANT TIME LIMIT

Taking into consideration the relevant time period for enforcement action in respect of breaches of planning control, Section 171 B of the 1990 Act specifies these time-limits as follows:

(1) 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 four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) 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.

(4) The preceding subsections do not prevent -

(a)the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b)taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

CONSULTATION RESPONSES

Parish Council – *Landford Parish Council has no information or evidence to contribute regarding the existing and former use of the site.*

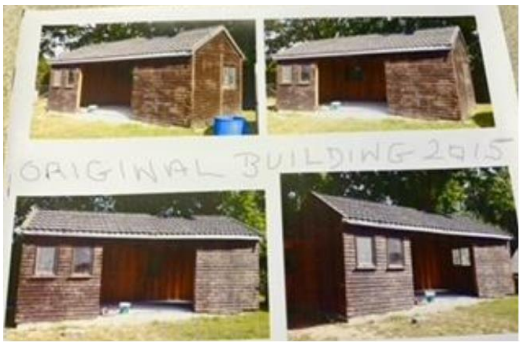
Neighbour consultees/notification responses – None

PLANNING HISTORY None

From the Planning Statement:

Planning Permission has not been granted for the building the subject of this application The most recent planning permission on the overall site was granted under LPA S/2005/2437 to erect an agricultural barn for the storage and packing of produce.

In overview of the building the subject of this application this was originally used a field shelter and then a potting shed and prior to its conversion to residential images of it are shown:



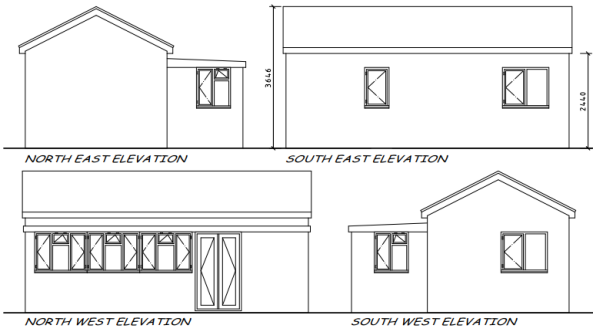


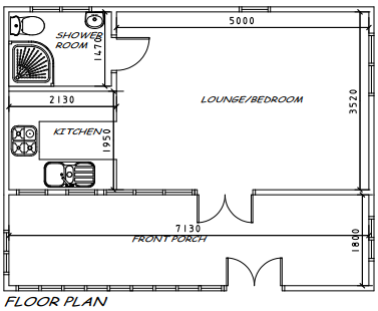
The change of use and works to the building to create a separate residential dwelling was undertaken in the summer of 2016 without the benefit of planning permission and has been occupied as a separate dwelling from August 2016.

Enforcement history - **ENF/2023/00921** Unauthorised residential accommodation

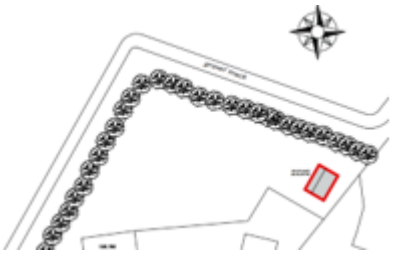
EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

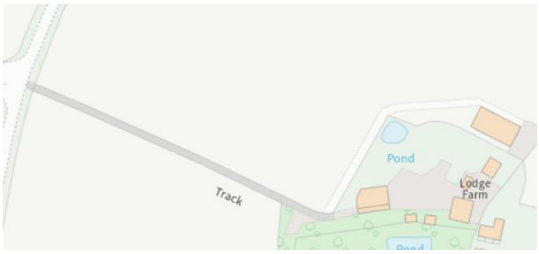
1. Application form
2. Planning Statement by Allen Planning Ltd
3. Numbered photographs with explanatory datasheet
4. Existing Elevations and floorplan
5. Proposed Elevations and floorplan





6. Site Plan and Location Plan







7. **Statutory Declarations**

- **Appendix AP1 Statutory Declaration - site occupiers**
- **Appendix AP2 Statutory Declaration - Wheeler Osman**
- **Appendix AP3 - Statutory Declaration- Codling**
- **Appendix AP4 Statutory Declaration - Tizard**
- **Appendix AP5 - Statutory Declaration Mrs. Debra Timms**

8. **Photos, invoices and statements**

- Appendix AP6 – 07/2016 Gas Invoice for Wilson, Lodge Farm
- Appendix AP7- 08/2016 Kitchen fitment invoice for Holdup, Lodge Farm
- Appendix AP8 - Sales receipt for shower unit 07/2016, Lodge Farm
- Appendix AP9 - Driving Licence C Wilson, Lodge Farm, 11/2016
- Appendix AP10 Water Invoice 7/2016 to 6/2017 R Holdup, Lodge Farm
- Appendix AP11 - Electricity Invoices 9/2017-12/2017 R Holdup, Lodge Farm
- Appendix AP12 Car Insurance 10/2017-10/2018 R Holdup, Lodge Farm
- Appendix AP13- HMRC 4/2018 C Wilson, Lodge Farm
- Appendix AP14 - Bank Statement 5/2018-8/2018 R Holdup, Lodge Farm
- Appendix AP15 - MPM Wet Waste Invoice 07/2018 Wilson, Lodge Farm
- Appendix AP16 - Insurance for Cabin 08/2018-2019 R Holdup & C Wilson, Lodge Farm
- Appendix AP17 - TV Licence invoice 2/2018-2019 C Wilson, Lodge Farm
- Appendix AP18 - Gas Delivery Invoice 9/2019, Wilson, Lodge Farm
- Appendix AP19 - NHS outpatient appointment letter 7/2019, C Wilson, Lodge Farm
- Appendix AP20 - Shotgun licence 05/2020-05/2025 Mr Holdup, Lodge Farm
- Appendix AP20a - internal photos dated 2015-2023

PRESENTATION OF THE EVIDENCE

i) Applicant's planning statement

The applicant seeks a Lawful Development Certificate for the use of the land (Site plan submitted) as a domestic garden. For a certificate of lawfulness to be issued the applicant would have to provide evidence that, on the balance of probabilities, that the use of the building as a self-contained dwelling (Use Class C3) had taken place for a continuous period of not less than 4 years. (i.e. not less than the time limit for immunity from enforcement action prescribed under Section 171B (3) (Time Limits) of the 1990 Act whereby the time limit for taking enforcement action had expired).

To explain their evidence, the applicant has submitted a Planning Statement which explains:

In order to achieve a Certificate the Applicant must demonstrate that: -

"(i) the use actually occurred and therefore that the building on Lodge Farm, Giles Lane, Landford, Salisbury as shown on the accompanying plans has been in use as a separate dwellinghouse as identified on the site and floorplans which accompany this application and that such contains all of the necessary facilities for day-to-day living;

(ii) the use of this former agriculture building as a dwellinghouse is independent from any other dwelling and

(iii) the use of this identified area, namely the former agricultural building, as an independent dwellinghouse has occurred for a continuous period of four years such that immunity accrues under s171B(2) TCPA 1990."

The building which forms this application has been laid out and used as a "studio" independent dwellinghouse and contains all the normal facilities for day-to-day use (facilities for cooking, eating, sleeping and washing): as established in Gravesham BC v SSE (1984) 47 P&CR 142.

The "studio" dwelling which is the subject of this application, is clearly a single household dwelling Under section 258 of the Housing Act. The description of the layout of the building in Section 3 above, together with the photographs, defines the facilities and layout of this "studio" dwelling which clearly identifies that this building the subject of this application, constitutes a self-contained dwellinghouse possessing all the normal facilities for cooking, eating, sleeping and bathing associated with use as a separate dwelling.

The Issue of Independent use

The unit of occupation in this case is the building on this site, identified in the relevant plans, that has been in use as a studio dwelling as clearly indicated on the submitted floor plan.
The building is single storey with an open plan kitchen/dining room and sitting room, with a separate shower room and a front porch area extending across the building's frontage.
Importantly, and as set out within the supporting evidence, this dwelling is occupied separately from the other dwelling and has been the only residence of its occupiers since August 2016 up to the present day. Given the evidence submitted in support of this application and the physical layout of this building the Local Planning Authority should rely on the "unit of occupation".
In any event, for the reasons set out above, the use of this building of this overall site (as set out within this application) plainly functions as an independent dwelling separate from the other dwellinghouse.

Evidence

In overview of the submitted evidence the current owners and occupiers of this building Ms Carol Wilson and Mr Richard Holdup undertook works to this building ***and began occupying this building as their sole residence in August 2016***

The owner/occupiers of the building, within their Statutory Declaration ***AP1****, identify the layout of the dwelling and also confirm from personal experience that this has been the layout and that this building and that it has been occupied by them as a dwelling, and their sole place of residence since August 2016.*

In overview Appendices AP2-AP5 inclusive contain Statutory Declarations from friends and family of the owner/occupiers which verify the fact that Ms Carol Wilson and Mr Richard Holdup have been residents in the building the subject of this application as their only dwelling for a period in excess of four years.

The remaining "bundle" contain numerous invoices from 2016 to the present day containing the address of the building which is the subject of this application including the invoices for the fitting of the kitchen and shower/wc in 2016 when the building was converted from its previous use to residential dwelling.

It is submitted that this evidence collectively establishes beyond reasonable doubt that the dwelling located within the building which forms this application has existed and has been occupied as an independent dwelling for a period in excess of 4 years namely from 1st August 2016.

The evidence submitted with this application, in the form of the Statutory Declarations, and the additional exhibits, clearly supports substantial evidence that the use of this building as an independent studio dwelling has been for over a four year period from 1st August 2016 to the present day.

In this respect the Statutory Declarations ***(Appendix AP1 and AP5)*** *supporting this application confirm that the building was converted into a residential use before August 2016 and used as a separate dwelling from the 1st August up to and including the present day.*

The dwelling has remained occupied since its formation on the 1st August 2016 up to and including the present day by Ms Carol Wilson and Mr Richard Holdup as set out in their Statutory Declaration and supported by others.

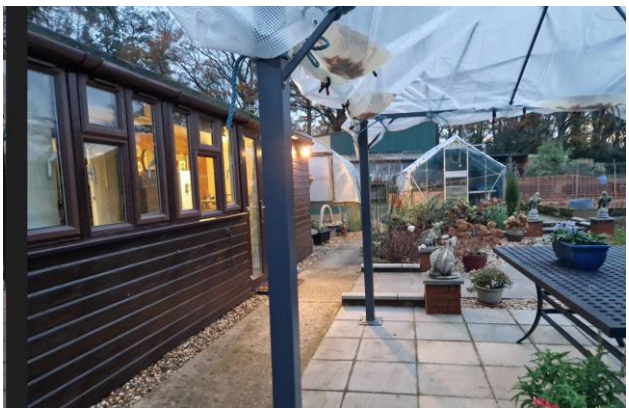
The dwelling which is the subject of this application, has been occupied for more than four years from the date of this application as an independent dwelling, as confirmed by the Declarations supported by further documents which confirms occupation of the building the subject of this application as a dwelling.

...this weight of evidence leads to a conclusion that the dwelling located within this building has been in "continuous" use as an independent residential unit of occupation for all of the period identified in the application, since the 1st August 2016. Indeed the continuous occupation of the building by Ms Carol Wilson and Mr Richard Holdup as their only home has been for a period in excess of four years in itself.

It is concluded therefore that the Statutory Declarations and the associated supporting paperwork establishes on the "balance of probability" that the four year "rule" has been passed in this case for the use of this building as an independent dwelling, the subject of this application.

ii) Site Photos November 2023





iii) The Statutory Declarations

C Wilson and R Holdup

1. We moved onto Lodge Farm on August 1st 2016 and initially we resided in a touring caravan on the site whilst we adapted the existing agricultural/smallholding building on the site to form a small dwelling.

The works undertaken in August 2016 to this building comprised of the installation of a new kitchen and also a bathroom with a living area and bedroom formed which are "open plan".

In addition, we also added a porch area and all of these works were completed by August of 2016.

Since the completion of the adaption of the existing building on-site in the summer of 2016 this has been our only place of residence since August of that year to the present day.

All utilities, electric, gas (bottles) and water plus car insurance, bank statements and Mr Holdup's, shotgun licence are registered to Lodge Farm, Giles Lane, Landford, Salisbury, SP5 2BG.

S Wheeler Osman

I have known Mr.Richard Holdup for most of my life , as do my parents who also knew Richard's parents prior to Richard inheriting the land at Lodge Farm upon the death of said parents. Part of Lodge Farm land runs directly adjacent to my parents land on which I keep my horses. I can confirm that Richard & Carol have been living at Lodge Farm in a small wooden building since 2016.

P&N Codling

We have known Richard Holdup & Carol Wilson for approx.10 years.

We have visited them quite frequently over the past 7 years at Lodge Farm, Giles Lane, Landford,SP5 2BG. & can confirm this is their only place of residence.

A Tizard

Mr.Richard Holdup of Lodge Farm, Giles Lane, Landford, Salisbury SP5 2BG is my father & Carol Wilson is my step-mother. Since 2016 myself, my husband & son have visited them on a regular basis in their home at Lodge Farm.

D Timms

Carol Wilson is my mother & Richard Holdup is my step-father.

My husband & I visit them regularly at their home at Lodge Farm, Giles Lane, Landford, SP5 2BG, where they have lived for the past 7 years. I can confirm this is their only place of residence.

EVIDENCE AGAINST THE SUBMISSION

1. **Aerial photography inconclusive for 2021**

Google Maps 2024 - building and paths visible



Wiltshire Council Aerial 2023 – building and paths visible



May 2023 – building and paths visible:



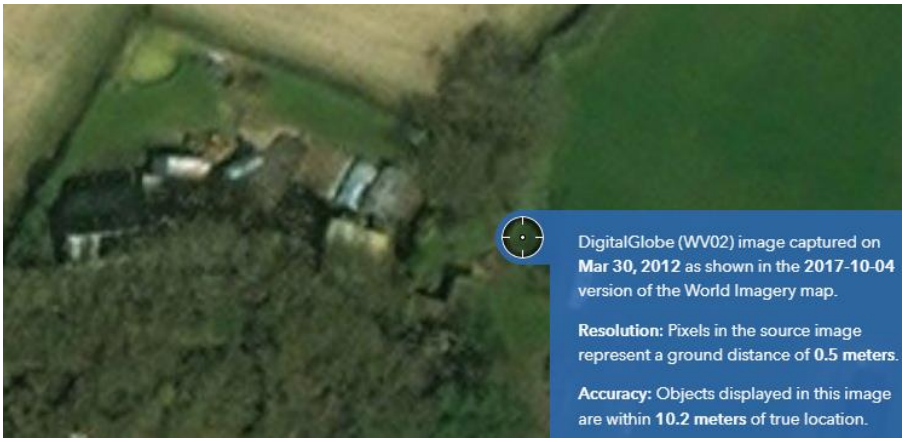
2021 – building and paths not clearly visible



2018 - building visible



2012 – site area is smaller, building and paths not clearly visible



2. **No available Council Tax bills or records**

ANALYSIS OF THE EVIDENCE

Whilst the 2021 photograph is unclear regarding the presence of the building on site, the available aerial photography shows that the building was on site in 2018 and not in 2012. However, there is no available aerial photography for 2016 and therefore, the LPA has no evidence to counter the applicant's statements regarding the works that took place to the building in that year.

Notwithstanding the absence of a 2016 aerial photograph, the applicant has submitted sufficient evidence in the form of statutory declarations, utility bills, letters and invoices to demonstrate that the original agricultural building likely existed on the site prior to 2016, on the balance of probabilities.

In 2016, the applicants extended the building and fitted a kitchen and bathroom. Since August 2016, the building is identified on utility bills and correspondence as The Lodge, Giles Lane, Landford.

No Council Tax records are available. There are no other dwellings on the site.

However, overall, the evidence is comprehensive and is sufficient to demonstrate that on the balance of probabilities, The Lodge has been occupied by the two applicants for a continuous period of four years as a residential dwelling since 2016.

No material evidence to the contrary has been submitted to the LPA to challenge this assertion.

CONCLUSION

Taking into consideration the evidence put forward by the applicant in support of their application, the aerial photography, and that there is no available contrary evidence held by or submitted to the Council, it is considered the applicant has adequately demonstrated, clearly and precisely on the balance of probabilities, that the existing lawful use of the building, as extended in 2016, is as a dwelling house.

The Council is satisfied that the use of the extended building as a dwellinghouse has occurred for a continuous period of four years and immunity from enforcement action accrues under s171B(2) TCPA 1990.

A certificate should therefore be issued.

RECOMMENDATION: Approve

Schedule 1: Use of the building as a self-contained dwelling (Use Class C3)

Schedule 2: Lodge Farm, Giles Lane, Landford, SP5 2BG

