APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2023/06962
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Weathercock Stables, Stoke Common Lane, Purton Stoke, Wiltshire, SN5 4LL
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness for the use of part of an existing stable block as a dwelling.
RECOMMENDATION:	Refuse

SITE DESCRIPTION AND PROPOSAL

This application is for a Certificate of Lawfulness for an Existing Use or Development (CLUED) under Section 191 of the Town and Country Planning Act 1990 (as amended). The applicant seeks to establish the lawfulness of the use of part of an existing stable block as a dwelling, which is claimed to have been in operation at the site since June 2018.

The application site is Weathercock Stables, Stoke Common Lane, located west of the village of Purton Stoke. It is a rural location and without any site-specific designations.

There is an established private equestrian use at the site and there have been planning permissions granted for stables, horse walker, a sand school and associated lighting in 2017 and 2019.

Planning permission was granted for a hay barn under application reference N/01/00457/FUL and a stable block (hardstanding and change of use of land to equestrian) was consented under application reference N/99/01045/COU. From a review of the approved plans, none of the buildings previously consented relate to the building subject to this application. The application building was an unauthorised building erected more than ten years ago as evidenced by satellite imagery. This is considered further in the assessment section of the report.

RELEVANT LEGISLATION AND CONSIDERATIONS

The statutory framework governing Certificates of Lawfulness for Existing Use or Development (CLUED) is primarily set out in Section 191(2) of the Town and Country Planning Act 1990 (as amended). This section establishes that "lawful development" refers to development against which no enforcement action may be taken and where no enforcement notice is in force, or development for which planning permission is not required.

Section 191(4) of the Town and Country Planning Act 1990 (as amended) further stipulates that a Local Planning Authority (LPA) shall issue a Certificate of Lawfulness upon request, provided that, on the balance of probabilities, the LPA is satisfied that the existing development

or use described in the application is lawful. The time limits for taking enforcement action are set out in s171B of the Act.

The Planning Practice Guidance (PPG) on Lawful development certificates clarifies that the burden of proof lies with the applicant. It is the applicant's responsibility to provide sufficiently clear, precise, and unambiguous evidence to demonstrate the lawfulness of the existing development or use.

In considering whether the use or development has become immune from enforcement action, the test for granting a Certificate of Lawfulness is whether, on the balance of probabilities:

a) the works were substantially completed, or,
b) the use has been continuous for the required time period without interruption.

The applicant must prove that the use or development has occurred for the necessary period. A continuous use must be demonstrated without significant interruption.

It is important to note that when determining a CLUED application, the LPA must focus solely on whether, based on the facts and applicable planning law, the specific use or development is lawful. Planning merits or considerations relating to the quality or suitability of the development are not relevant.

REPRESENTATIONS

Purton Parish Council – *"At the full Purton Parish Council meeting held on 11 September 2023, no objections were raised. But comments to be noted that the stable block dwelling should be for family use only and remain auxiliary to the building."*

Greenacres, Purton Stoke – *"The Application and Evidence Required*
The application is for a Certificate of Lawfulness. A Certificate should only be given if, on the balance of probabilities taking into account all the evidence, the breach has taken place continuously (ie no intervening use for more than four years).

The breach alleged is the change of use of a building from a stable block to a dwelling house. A dwelling house should contain all the facilities required for day to day private existence.

For a Certificate of Lawfulness it has to be shown that a building has been used as a dwelling house. It is not enough, for example, to simply state that something has happened. There must be evidence to show that, on the balance of probability, the use took place.

It must also be the primary use, such that had an enforcement officer visited at any time he/she would have been aware this was a dwelling and could have taken action. It is not enough to have used a building for occasion sleeping. Therefore sleeping in your office does not change the use

Evidence Presented
The evidence presented takes the form of a Statutory Declaration from Ms Jemma Colborne. In this Statutory Declaration she states (point 5) that the dwelling was completed in 2018 and

has been used since. In respect of evidence, paragraphs 6-9 inclusive explain why they might need to be on the site, but provide no evidence of any kind that they have been living on the site.

The only "evidence" is that there is an electricity supply to the premises (heavily redacted, but showing the address), and that horses have been treated by veterinary surgeons. This evidence does not demonstrate that a building is being used as a dwelling house. The Southern Electric connection identifies the "type" of connection as "agricultural."

Comments
The evidence does not demonstrate that the stable has been used as a dwelling house. There is no evidence of use, or of any works to convert the building. There is no explanation of how the applicant, who has signed a Statutory Declaration that swears she is at Church Cottage, Sapperton, could also have been living at Weathercock Stables. The Statutory Declaration confirms that the Applicant and her partner have four children.

The simple statement that "we have been using part of the stables as a dwelling since June 2018" falls very far short of demonstrating a change of use. The CLEUD cannot be granted on the basis of this evidence.

Comments and Likely Use
I live in the property to the immediate west of Weathercock Stables, Whilst I do not have direct sight into their yard, I walk my dogs almost every evening and we turn round on the lane directly outside Weathercock Stables. I have on a few occasions looked through their gate when I have heard horses banging stables, just to check all seemed OK. I have been to the yard, to the building next to the stated dwelling to collect a saddle horse. At no point, on no evenings have I seen lights or heard noises that you would expect from a dwelling house use, such as televisions, radios, talking, dogs barking, outside lights, cars entering or leaving.

The immunity period includes Covid. At that time, perhaps more than any other, a person/persons living in the building is likely to have been noticed. I think that the Applicant has made a day room space, that they use when they are at the stables. They may have stayed over occasionally but that is not enough to create a dwelling. The use is ancillary to the stable use. It is not a separate dwelling house.

Should it be argued that it is possible to simply fit out a building for residential use and, after four years that becomes a lawful dwelling house whether or not it is lived in, then anybody could establish a lawful use easily. But that is not, in any event being argued here.

Conclusions
A Certificate of Lawfulness can only be issued if there is clear evidence.

There is almost no evidence in this case. The building has not been shown to have been used as a dwelling house, and no evidence to establish the dates, beyond a single sentence. It is possible that a day room has been slept in occasionally, but even that is not evidenced.

The Certificate should not be issued."

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary

- Current application Location Plan (for comparison)



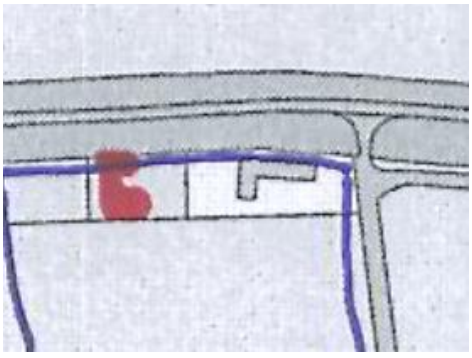
- 19/07943/FUL - Single Additional Stable on Block of Existing of Stables and 4-Horse Walker – Approved with Conditions



- 17/08736/FUL - Construction of sand school on equestrian land for private use – Approved with Conditions



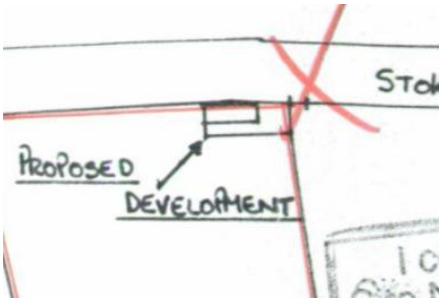
- N/10/03719/FUL - Erection of Hay Storage Building – Approved with Conditions



- N/01/00457/FUL – HAY BARN FOR ADDITIONAL STORAGE OF HAY – Approved with Conditions



- N/99/01045/COU - ERECTION OF STABLE BLOCK, HARDSTANDING & CHANGE OF USE OF LAND TO EQUESTRIAN – Approved with Conditions



ASSESSMENT

Evidence Submitted by the Applicant

The applicant has submitted the following evidence to support the application:

- Statutory Declaration dated 15.8.23 relating to larger red line plan
- Statutory Declaration dated 22.8.25 relating to the reduced red line plan
- Photographs of horses, a kitchen, children, snow and outside space.
- Quote from SSE to supply electricity connections & design document
- Land Registry Title
- Electricity payment notification email 26/03/2018, 11/04/2018, 25/01/2018, 16/02/2018
- Electricity bills for Weathercock Stables dated: June 2025 – July 2025, April – May 2025, February – March 2025, December 2024 – January 2025, October – November 2024, July – August 2024, and April – May 2024.
- Electricity bills 26/02/2020, 26/03/2020, 26/04/2020, 26/08/2020, 26/05/2021, 26/03/2021, 26/08/2021, 26/09/2021, 03/12/2021, 27/02/2022, 31/05/2022, 31/08/2022, 01/10/2022, 31/10/2022, 31/12/2022, and 31/03/2023.
- Certificates relating horses
- Vet reports dated 02/12/19, 18/10/19, 30/10/19 & 14/02/20

Consideration of evidence

This Certificate of Lawfulness application looks to confirm that the change of use of part of a stable building to a dwelling at Wethercock Stables constitutes lawful development. This application deals with the query whether it is a lawful use. This application is assessed against the criteria set out in Section 191 of the TCPA 1990.

Section 191 of the TCPA 1990 allows an application to be made to establish the lawfulness of such a breach of planning control. Enforcement action in respect of all breaches of planning control is subject to time limits. Section 171 B (2) of the Act sets out that for the change of use/breach of planning condition to be considered legally acceptable, it must have occurred in excess of 10 years from the date of the breach, after which no enforcement action can be undertaken.

The time limit relating to the change of use of a building to a dwelling was changed on 24 April 2024 to 10 years, from a 4 year rule. In most cases it is now 10 years, however provided that the works were substantially complete by 25 April 2024 a four year period may still apply. This planning application was made valid 23 August 2023 and consequently, if it were considered a change of use only, the 4 year rule applies. A review has been undertaken of the planning history. The application building appears unauthorised development, but is visible on Google Earth in 2014, and consequently has existed for in excess of 10 years and is lawful as a stable. Consequently, the applicant has applied for the 4 year rule for the change of use of the stable to a dwelling.

For a certificate of lawfulness to be issued, the onus is on the applicant to provide evidence that, on the balance of probabilities, the change of use occurred not less than the time limit for immunity from enforcement action prescribed under Section 171 B (Time Limits) of the Town and Country Planning Act 1990 (as amended), whereby the time limit for taking enforcement action had expired.

The applicant is accompanied by two statutory declarations. When the application was first submitted this included a larger redline. The original case officer for the application had agreed to this being reduced in size to include only the part of the building the proposal relates to. There was a statutory declaration submitted at the time the original application was submitted, and another submitted with the revised location plan. The statutory declarations are the virtually the same aside from revised dates and age of the applicant.

The statutory declarations include the follow details relevant to the claim:

- The applicant is listed at living at another address
- The N/99/01045/COU permission was implemented by the previous owners.
- The application site ownership changed in 2017, purchased by Ben Whitwell's parents.
- Utilities were installed on the land and utility bills are provided.
- The applicant states the dwelling was substantially complete in 2018 and it has been used as a dwelling since June 2018.
- The land involves the keeping of horses for personal use by their family.
- Over the last five years the applicant has had to regularly reside overnight at the property (this statement was included on both stat decs).

The statutory declarations provide some context on the history of the site and why they wish to have a dwelling at this location, but there is limited evidence in support of the claim that the application building has been used as a dwellinghouse. The statutory declarations state that the building has been used for regular overnight stays. However, from the evidence provided,

there is no indication that this has been used as a dwelling house. The applicant has a different address listed as her main address.

Evidence has been provided in relation to energy usage at the site. A quote for the installation of services and plan have been provided from 2018 and utility bills are provided for various periods of time.

1) There are some screenshots of electricity payments in January – April 2018. However, these bills are redacted and do not have any details of the address. Consequently, these would fail to demonstrate any evidence.
2) Electricity bills from Bulb have been provided dated February, March, April and August 2020; March, May, August, September and December 2021; February, May, August, October and December 2022; and March 2023. These reference Weathercock Stables, however all other details such as how much has been used has been redacted. This provides evidence that some energy has been used within these select months during 2020-2023.
3) Electricity bills from Octopus Energy have been provided dated April-May 2024, June-July 2024, October-November 2024, December 2024 – January 2025, February-March 2025, April-May 2025, June-July 2025. These bills show that energy has been used within these months in 2024 and 2025.

The SSE quote and utility bill evidence demonstrates that there has been energy usage at the site from February 2020 until the present day. There may have been energy usage in 2018, but there is a lack of detail within the evidence submitted. It is not possible to understand what use the energy usage has been associated with. It is entirely reasonable to expect that this energy usage could be associated with the equestrian use or a mixed use, and it does not provide any evidence of residential use. Furthermore, some of the SSE correspondence refers to the connection as agricultural.

Some evidence has been submitted relating to horses vet reports and certificates. The application site has planning history for equestrian use. The horse related evidence submitted does not provide any evidence in support of a dwelling at the site. There is no dispute in respect of horses being at the application site given the previous consent. The statutory declaration together with this evidence builds a picture of the applicant having to stay overnight at the application site to care for the horses when there is a need.

Photographs have been provided of horses, a kitchen, children, snow and outside space. These are primarily close up shots and other views that do not provide any substantive evidence to demonstrate that the site is being used as a dwelling. While the kitchen photograph indicates the presence of facilities at the site, this could reasonably be ancillary to the existing use rather than indicative of a dwelling. Given there are a number of horses at the site, it is expected that the applicant spends time at the site regularly, and the provision of facilities would be a reasonable expectation.
The Land Registry Transfer documents are presumably provided for context, but they do not provide any justification in relation to demonstrating a dwelling at the site.

The only substantive evidence provided is the statutory declaration, and the content of this is of limited merit. It lists the applicants address as living elsewhere but claims that the applicant

regularly resides at the application site to look after the horses. While the energy bills indicate some level of energy consumption at the site, this is not evidence of residential occupation, as the energy usage could reasonably relate to the stables or mixed use rather than independent domestic use. Other evidence is provided for context, but does not provide any convincing arguments in favour of the claims.

A representation has been made by a neighbour whom lives in the property immediately west of Weathercock Stables. It is understood this neighbour does not have direct sight into their yard, but they walk past the application site "almost every evening". At no point have they observed lights or heard noises that you would expect from a dwellinghouse e.g. televisions, radios, talking, dogs barking, outside lights, cars entering or leaving.

The neighbour questions that the applicant has been staying at the site permanently. They highlight that whilst the statutory declaration provides some justification for why they may need to be on site, there is no evidence to demonstrate that they have been living on the site. The neighbour states how the evidence does not demonstrate that the building has been used as a dwelling house. It is observed that the statutory declaration has the applicant living at an alternative address. The neighbour states that they believe a day room has been created and that the applicant may have stayed over occasionally but that this is not enough to create a dwelling – the use is ancillary to the stable use, and not a separate dwelling house.

The neighbour's comments and observations contradict the applicant's assertion that the building has been used as a dwellinghouse. Some of the application's own evidence corroborates that they have not been living at the application site, rather they claim to have been regularly residing there.

<u>Whether the building is a dwellinghouse – the Gravesham test</u>

The LPA has assessed the characteristics of the building based on the information submitted in the application and what LPA officers have viewed on site. Following a thorough assessment of the facts, it is considered that the building fails the test under *Gravesham BC v SSE (1984)* and cannot be described as a dwellinghouse.

The facts in this case are –

- The building/site has an electricity and water supply.
- The building is basic timber framed structure with metal sheet roofing
- The application relates to two rooms which are accessed individually from the stable yard and are not internally connected:

    - The Kitchen/living room contains a bench, table and chairs, shelves, fridge, small kitchen cabinets and washing machine. There is a window to this room.
    - The bathroom/bedroom contains a day bed, bath, toilet and sink. The only natural light to this room is via a translucent agricultural style rooflight.

- Access to both rooms are through the stable yard, reinforcing their association with the stables.
- The building is part of a stables and has no residential appearance.

- The applicant lives at another address.
- The applicant states that they regularly reside overnight at the property in order to care for the horses.
- The building has no postal address.
- Council tax has never been paid.
- There is no associated garden or parking space

The application claims that this part of the stable building is a dwelling. Having visited the site, this area of the stable block comprises two individual rooms. While the two rooms provide some residential facilities, they are not interconnected and require external access through the external stable yard. This configuration does not constitute to self-contained dwellinghouse. Based on the evidence provided and observations during the site visit, the use of the land and buildings arrangement is mixed, comprising equestrian with some ancillary residential use for overnight stays when care is required for horses. It does not constitute an independent self-contained dwellinghouse.

The applicant is shown to be living elsewhere in the statutory declaration, and the neighbour has not observed a dwellinghouse at this location. While there is evidence in the statutory declaration which claims the applicant regularly resides overnight at the property, this appears to be ancillary to the care of the horses at the site (as per the veterinary documents provided and statutory declaration), rather than for independent residential occupation. No council tax has ever been paid, and the absence of a postal address further supports the conclusion that the building has not been used as a dwellinghouse. The energy bills provided do not demonstrate an independent residential use

Given the configuration of the two rooms, location within the stable yard, and clear association with the equestrian use, the two rooms cannot reasonably be regarded as a dwellinghouse and as such, cannot benefit from the four-year rule immunity. Access to these rooms requires passing through the stable yard, and past the horses. There is a clear functional link with the stables evident from a site visit, and corroborated within the submitted evidence. The appearance and context strongly indicate that they form part of the equestrian facilities. The two rooms are intrinsically linked to the equestrian use at the site and very much appear as part of the stables.

Withdrawn Circular 10/97 (Circular 10/97) makes the point that if no reasonable person would look at a particular structure used as a dwellinghouse, and identify it as such, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse. In this case the proposal is the conversion of part of a stables in the form of two separate rooms accessed from a stable yard, with the building presenting as stables rather than a dwelling house. There is a window to the living/kitchen room, but there is only an agricultural translucent rooflight to the bedroom/bathroom. There did not appear to be any associated garden space or allocated parking for the alleged independent use.

The correct period of immunity for a mixed-use site would be ten years. The applicant has confirmed they started using the site for overnight stays from June 2018, which is less than the required ten-year period, and moreover, not what the applicant has applied for.

CONCLUSION

On the balance of probabilities, the two rooms have been used in association with the stables, and do not constitute a separate residential unit. The layout, combined with the requirement to access each room through the stable yard, and the evidence provided, demonstrate that the use is connected to the private equestrian use at the site. Furthermore, the evidence submitted by the applicant does not sufficiently demonstrate that the two rooms amount to a dwellinghouse. Rather, the two rooms are used to stay overnight when the horses at the site require care. Consequently, the application should be refused.

The site is considered to be in mixed use, comprising equestrian activities, with ancillary accommodation when horse care is required. For a Certificate of Lawfulness for a mixed use, a continuous use for a period of ten years would have to be demonstrated. The applicant has stated that the residential use commenced in June 2018, which falls short of the required period. Accordingly, the application for a Certificate of Lawfulness for an Existing Use is recommended for refusal.

RECOMMENDATION: That the Certificate of Lawfulness be refused for the following reason:

Based on the evidence available, the Local Planning Authority is not satisfied that the part of the building in question constitutes a dwellinghouse, nor that a continuous relevant period of occupation for residential purposes has been demonstrated. The evidence provided in support of the applicant's claim is not considered to be sufficiently clear, precise or factual to demonstrate that, on the balance of probability, that a continuous use as a single dwellinghouse has occurred. Accordingly, the Local Planning Authority cannot grant a Lawful Development Certificate, and the application is refused.