

Planning Statement Ref: s191-2512-v-1

Requesting a Certificate of Lawful Use under s191

for

Use of Dairy Cottage as a separate and independent single dwellinghouse

for the dwelling known as

Dairy Cottage, Pinkney, Sherston, Malmesbury SN16 0NZ

Prepared by

PARSONSON PLANNING CONSULTANCY Ltd

The Malt House

Wyre Piddle

Pershore WR10 2HU

on behalf of the Applicant

Mrs P Livingstone-Learmonth

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Supporting Evidence and Application Documents

- *Statutory Declaration Ref: s-d2512-pll dated 27/08/2025*
- *Supplemental Statement of Truth dated 30/01/2026*
- *Council Tax Listing with effect from 5 December 1999*
- *Original Location Plan Scale 1:1250 identifying Dairy Cottage*
- *Location Plan Scale Scale 1:1250 Ref: 2512-03*
- *Block Plan Scale 1:500 Ref 1512-04*
- *Google Earth imagery identifying Dairy Cottage's rear garden over time*

Introduction

- Parsonson Planning Consultancy has been instructed to prepare and present an application under Section 191 of the Town and Country Planning Act, 1990, seeking a CLEUD.
- The Certificate is sought to acknowledge the existing lawful use of Dairy Cottage as a single dwellinghouse.
- This is intended to add support to current Application, Ref: PL/2025/07381, which seeks to discharge Section 106 planning obligations which refer to Dairy Cottage.
- This follows communications with the Case Officer suggesting that establishing that the site is in use as an independent dwelling is likely to form a stronger case for the discharge of the planning obligations.
- Accordingly this Section 191 application, through this Planning Statement and its associated documents, provides evidence to demonstrate the lawful dwellinghouse use of Dairy Cottage from December 1999 to the present day.

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1.00 The Application

1.01 We submit this application on behalf of the applicant:

Mrs P Livingstone-Learmonth

1.02 It is submitted under:

Section 191(1) of the Town and Country Planning Act 1990, as amended

and requests a Certificate of Lawful Existing Use or Development (*CLEUD*) in relation to an existing use of a building as a single dwellinghouse.

1.03 The building/single dwellinghouse in question is:

Dairy Cottage

Pinkney

Sherston

Malmesbury SN16 0NZ

1.04 The planning merits of the case are not a material consideration in seeking to demonstrate that, *on the balance of probability*,

The use of Dairy Cottage as a separate and independent single dwellinghouse

is a permitted use and this use has subsisted and continued for a period in excess of the *relevant period*.

1.05 The permitted use, as per *Planning Permission 98/02279/FUL* allowed:

Change of Use from Stables to Residential Accommodation

on the 01/07/1999.

1.06 The planning permission was implemented shortly thereafter and the Residential Accommodation created, known as Dairy Cottage, was substantially completed by 05/12/1999.

- 1.07 From the 05/12/1999 to the present day, the occupants of Dairy Cottage have used the Residential Accommodation permitted, as a separate and independent single dwellinghouse, with no reliance upon Park Farm for their day to day needs.
- 1.08 There are two 'branches' to this CLEUD request:
- a. *The use of Dairy Cottage as a separate and independent single dwellinghouse is the use permitted by Planning Permission 98/02279/FUL;*
or
 - b. *The use of Dairy Cottage as a separate and independent single dwellinghouse has become lawful through the passage of time;*
- 1.09 Evidence is provided which supports both positions and this is primarily set out within a Statutory Declaration sworn by the applicant, being the owner of Dairy Cottage and owner/occupier of the neighbouring property, Park Farm.
- 1.10 Statutory Declarations carry substantial weight due to their legal standing. The Declaration appears to be sufficiently precise and unambiguous in the recounting of the facts, providing compelling first-hand witness evidence to make the case within the evidential test.

2.00 The Permitted Use

- 2.01 a. *The use of Dairy Cottage as a separate and independent single dwellinghouse is the use permitted by Planning Permission 98/02279/FUL;*
- 2.02 In 1999, the Local Planning Authority expressed its willingness to grant planning permission for the *Change of Use from Stables to Residential Accommodation* (Dairy Cottage).

- 2.03 Within the Description of Development, the term *Residential Accommodation* is not qualified or limited. For example, the description does not include terms such as *Additional* or *Ancillary* and nor does it reference *Park Farm*.
- 2.04 The Red Outline on the Location Plan, which formed part of the application and therein forms part of the Planning Permission, encompasses Dairy Cottage only. It does not include Park Farm
- 2.05 There are no Planning Conditions seeking to control occupancy of the *Residential Accommodation* and therein, no reference to *Additional* or *Ancillary Accommodation* or to a *host dwelling*.
- 2.06 The *Residential Accommodation* permitted contained all things required for day to day living including an Entrance, Kitchen/Diner, Bedroom and Bathroom.
- 2.07 In addition to this there is a notable and clear physical separation between the *Residential Accommodation* provided by Dairy Cottage and its neighbour, Park Farm.
- 2.08 Whilst it is acknowledged that the LPA wished to avoid the creation of a separate, independent dwelling, an unfettered Planning Permission was granted allowing *Residential Accommodation* containing all things required for separate and independent day to day living, located at a notable distance from the intended host dwelling and forming a separate planning unit.
- 2.09 For these reasons it is advanced that:
- *Planning Permission 98/02279/FUL granted consent for a C3 single dwellinghouse use; and further*
 - *the resulting single dwellinghouse (Dairy Cottage) was not capable of functioning as ancillary/incidental/additional accommodation;*

3.00 Lawful Use - Considerations

3.01 The second position advances the *lawful use* of Dairy Cottage, in the event that such use constitutes a breach of planning control. Before so doing, consideration will be given to the *relevant period* and the *relevant test of evidence*.

Relevant Period

- 3.02 Section 171A(1) defines two types of breach of planning control:
- (a) *carrying out development without the required planning permission;*
or
 - (b) *failing to comply with any condition or limitation subject to which planning permission has been granted;*
- 3.03 Assuming the first premise is not accepted i.e. *that the planning permission granted consent for a single dwelling*, the breach of planning control in this case falls under Section 171A(1)(a).
- 3.04 Enforcement Action in respect of all breaches of planning control is subject to time-limits. Section 171B 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 -*
 - (a) *in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and*
 - (b) *in the case of a breach of planning control in Wales, 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 dwellinghouse, no enforcement action may be taken after the end of the period of -*
 - (a) *in the case of a breach of planning control in England, ten years beginning with the date of the breach, and*

(b) *in the case of a breach of planning control in Wales, 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.*

3.05 Section 171(B)(2)(a) refers to the change of use of any building to use as a single dwellinghouse in England. However, as the use began before the 25 April 2025 the *time limit* within which to take Enforcement Action against it is *4 years*. Accordingly, this is the *relevant period* for the purpose of this application.

3.06 It is well established that in order to show that a use is lawful upon the expiration of the time limit, it is necessary to show that it continued throughout the *relevant period* from when it began. The use survives through the period unless there is a clear change of circumstances by the introduction of another use or the use is abandoned.

3.07 Upon the expiry of the relevant time limit, the use becomes immune from enforcement action and is then treated as *lawful at any time*.

3.08 Accordingly, the applicant must identify when the breach of planning control began so that we may identify when the time for taking enforcement action against it expired. This is when the *use right* will have become established, specifically when the change of use of the building to use as a single dwellinghouse, without the benefit of planning permission, will have become *unenforceable* and “*lawful*” for planning purposes.

Relevant Test of Evidence

3.09 The standard or burden of proof is the level of evidence required to convince that a given proposition is true.

3.10 The test to be applied in an application seeking a Certificate of Lawfulness is within ‘*the balance of probability*’.

- 3.11 An application should not be refused because the applicant has failed to discharge the stricter 'criminal' burden of proof, namely '*beyond reasonable doubt*'.
- 3.12 Simply put, if the proposition put forward has a greater than 50% chance of being true (*more probable than not*) then the evidential test is satisfied.
- 3.13 The onus is upon the applicant to provide sufficiently precise and unambiguous evidence which identifies the breach of planning control and makes the case *within the balance of probability*.
- 3.14 Through *Gabbittas v SSE and Newham LBC [1985]* the Court has held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted.
- 3.15 In this case, evidence is presented within a sworn Statutory Declaration by a first-hand witness. This carries significant legal weight. A supplemental Statement of Truth is also provided for context.
- 3.16 If there is no cogent information or evidence which contradicts the applicants' version of events, or which makes it less than probable, the Certificate requested should be issued.

4.00 The Continued/Lawful Use

- 4.01 b. *The use of Dairy Cottage as a separate and independent single dwellinghouse has become lawful through the passage of time;*
- 4.02 Notwithstanding Section 2. above, it is noted that at the time of granting consent, the LPA wished to avoid the creation of a separate, independent dwellinghouse. However, from first occupation to the present day, Dairy Cottage has been used and occupied as a separate and independent dwellinghouse.

4.03 Significantly, Dairy Cottage has been registered for Council Tax since 05/12/1999 which provides us with a *commencement date* of any breach of planning control. This also provides independent evidence to corroborate the single dwellinghouse use.

4.04 Whilst there is no statutory definition of the ordinary word *dwellinghouse*, planning guidance, Appeals and Case Law authorities provide us with the following interpretation:

Dwellinghouse:- where a self-contained set of premises comprises a unit of occupation, which can be regarded as separate from any other part of a building containing them, are designed or adapted for residential purposes containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse and they are used as a dwelling by a single person or by more than one person living together as or like a single family, those premises can be properly regarded as being in use as a single dwellinghouse for the purposes of the Act.

4.05 Drawing from the sworn evidence, *Statutory Declaration Ref: s-d2512-pll*, following the 1999 planning permission, the building was converted and residential accommodation was created containing the normal facilities for cooking, eating and sleeping by providing all things required for day to day living, including an Entrance to a Kitchen/Diner, a Living Room, Bedroom and Bathroom, commensurate with the interpretation above.

4.06 To sit alongside the sworn Statutory Declaration, the Applicant also provides a *Statement of Truth, dated 30/01/2026*. This confirms who has occupied Dairy Cottage from its substantial completion in December 1999 to the present day and is intended to provide additional context in identifying the continued use as a separate and single dwellinghouse.

4.07 Dairy cottage is set within a courtyard of outbuildings, having its own vehicular access off of the public highway. It has allocated parking, a private garden identified over time through Google Earth imagery, and its own septic tank.

- 4.08 The applicant confirms that all occupiers have always been responsible for their own tele-coms, ISPs and for holding their own TV Licenses.
- 4.09 Whilst some occupants lived within Dairy Cottage whilst employed as the applicant's full-time or part-time Groom, *all* parties have occupied the dwelling entirely separately and independently, with no reliance upon Park Farm dwellinghouse for their day to day needs. NB Since 2015, the Applicant has had no horses and thus no one who has occupied Dairy Cottage has been employed by her.
- 4.10 It is clear through the evidence that Dairy Cottage was permitted with, and contains, all things required for day to day living consistent with the interpretation of the word *dwellinghouse*. When occupying the cottage, there is no need for reliance upon Park Farm to meet ones domestic needs.
- 4.11 Whilst the two dwellings neighbour one another, they are two physically separate and unconnected properties, sitting within entirely separate plots in what would appear to be separate planning units.
- 4.12 The evidence makes it clear that Dairy Cottage has not provided *ancillary/incidental/additional accommodation* to Park Farm and, significantly, that it is not capable of so doing. When occupying the cottage, it is neither possible or feasible to rely upon Park Farm to meet ones domestic needs.
- 4.13 An *incidental use* should be within the curtilage of a 'host' dwellinghouse and serve it by providing it with such things as storage, a gym, a greenhouse, a swimming pool, a stable or such like. An *incidental use* is connected with the running of a dwellinghouse rather than its use for providing ordinary living accommodation.
- 4.14 *Ancillary accommodation* also needs to be within the curtilage of a 'host' dwellinghouse and usually provides additional bedrooms, part and parcel of the primary use.

4.15 Fundamentally, to be an *ancillary use*, this is contingent upon those using the ‘*ancillary accommodation*’ remaining reliant upon the host dwellinghouse for some of their day to day needs, such as for the preparation and eating of meals, washing facilities, laundry facilities and so on.

4.16 In this instance:

- *Dairy Cottage is not within the curtilage of Park Farm;*
- *Materially, it provides more than simply additional bedrooms;*
- *It is not, it has never been and nor could it realistically be reliant upon Park Farm for meeting the day to day needs of its occupants;*

4.17 The evidence is sufficiently precise and unambiguous in demonstrating that:

- *Dairy Cottage is a self-contained set of premises, designed for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse;*
- *Dairy Cottage has been registered for Council Tax since the 5th December 1999;*
- *Dairy Cottage has been used and occupied in a manner consistent and commensurate with use as a single dwellinghouse from December 1999 to the present day;*

4.18 The use of Dairy Cottage as a separate and independent dwellinghouse commenced in December 1999, subsisted throughout the relevant period and continues to the present day. This use has not been supplanted by another use and nor has it been abandoned.

4.19 For the purposes of Section 191(2) of the Town and Country Planning Act, *uses and operations are lawful at any time 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.*

- 4.20 As prescribed by Section 171B(2)(a), the evidence confirms that the time for taking enforcement action against any breach of planning control will have expired during December 2003 and, to the best of the applicant's knowledge, there are no Enforcement Notice in force. As such, the *use right* has been established and, in planning terms, this is now *lawful at any time*.
- 4.21 The use of Dairy Cottage as a separate and independent dwellinghouse is lawful for planning purposes and a Certificate is specifically requested to formally acknowledge this already lawful status.

5.00 In Conclusion

- 5.01 This Application advances two positions in its request for a CLEUD to recognise:
- The use of Dairy Cottage as a separate and independent single dwellinghouse;***
as, either
- a. *This use is permitted by Planning Permission 98/02279/FUL;*
or
- b. *This use has become lawful through the passage of time;*
- 5.02 A consideration of the Description of Development, along with an overview of the accommodation it provided, would suggest that a single dwellinghouse was permitted by the 1999 planning permission.
- 5.03 Equally, what is perceived to be sufficiently precise and unambiguous sworn evidence is provided with this application and this confirms that Dairy Cottage has been used and occupied as a single dwellinghouse by successive tenants, living there separately and independently of Park Farm, from 1999 to the present day.
- 5.04 The continued use of Dairy Cottage is commensurate and consistent with the interpretation of the word *dwellinghouse*. The use does not align with that of an *ancillary use* or *incidental use*.

- 5.05 Based upon the evidence, any such use in breach of planning control will have become lawful through the passage of time.
- 5.06 As previously stated, the evidential test is within *the balance of probability* and the applicant's own evidence does not need to be corroborated in order to be accepted.
- 5.07 Unless there is cogent information or evidence which makes the applicant's version of events less than probable, the Certificate requested should not be withheld.
- 5.08 The applicant requests a Certificate of Lawful Use to reflect this established lawful use right, specifically:

The use of Dairy Cottage as a separate and independent single dwellinghouse.

Statement completed by

Caroline G Parsonson (Miss)

Parsonson Planning Consultancy

Occupancy Condition Specialists

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