

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2025/08655
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Oak Tree Acres (known as Vardorosa Villa), Sodom Lane, Dauntsey, SN15 4JA
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness for Existing Use to confirm a material start of the development approved under PL/2023/02836
RECOMMENDATION:	Approve

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 commencement of development approved under PL/2023/02836, which the planning statement asserts was initiated in 2025. The application (PL/2023/02836) relates to the re-submission of planning permission reference (17/08314/FUL) as a full planning application for the proposed change of use from a former agricultural building to Class C3 (dwellinghouses), and associated conversion works.

The application relates to establishing whether groundworks undertaken on site amounts to a material start in the construction of the proposed change of use from a former agricultural building to Class C3 (dwellinghouse).

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.

Having regard to s.56 of the Town and Country Planning Act 1990 'Time when development begun', paragraph (1) states that:

"Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated –

- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
- (b) if the development consists of a change in use, at the time when the new use is instituted;
- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b)."

S.56(2) goes on to clarify in explicit terms that:

"For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out..."

with s.56(4) stating

"In subsection (2) "material operation" means... [inter alia] (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building."

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.

CONSULTATIONS

There is no legal obligation to consult third parties for this type of application, including Town/Parish Councils or neighbouring properties. However, the PPG recognises that it may be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application.

Dauntsey Parish Council: No comments received.

REPRESENTATIONS

Neighbouring properties have been consulted, and no letters of representation have been received.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
14/11611/PNCOU - Notification Decision - Prior Notification Refused Date: 30/1/2015 – Prior Approval Application for the change of use of an agricultural building to a dwelling (Class C3) and for Associated Operational Development.
15/03158/PNCOU - Notification Decision - Prior Approval Required Date: 26/5/2015 – Prior Notification Under Class MB - Proposed Conversion of Agricultural Building into Single Dwellinghouse
16/00401/PNCOU - Notification Decision - Prior Approval Granted Date: 22/2/2016 – Change of use of Agricultural Building to a Dwelling House (Use Class C3)
17/08314/FUL - Full planning permission Decision - Approve with Conditions Date: 11/10/2017 – Proposed Change of Use from a former Agricultural Building to Class C3 (dwellinghouses), and associated conversion works
PL/2023/02836 - Full planning permission Decision - Approve with Conditions Date: 2/10/2023 – Re-submission of planning permission ref; 17/08314/FUL as a full planning application for the proposed change of use from a former agricultural building to Class C3 (dwellinghouses), and associated conversion works
PL/2025/02499 - Approval of details reserved by a condition Decision - Approve Date: 9/5/2025 – Discharge of condition 9 (Cycle parking details submitted & implemented - WD24) & 10 (Ecology) for PL/2023/02836 - Re-submission of planning permission ref; 17/08314/FUL as a full planning application for the proposed change of use from a former agricultural

ASSESSMENT

The applicant must demonstrate with unambiguous evidence, on the balance of probabilities, that the use or development is lawful by providing sufficient and clear evidence.

This Certificate of Lawfulness application seeks confirmation from the LPA that the development approved under application ref; PL/2023/02836 has been implemented.

Evidence submitted by the applicant:

- Covering Letter / Planning Statement
- Location plan, dated August 2017, with the application site outlined in red
- A signed Statutory Declaration of Mr R. Eustace: dated 27th October 2025
- Appendix A - Planning Permission ref; PL/2023/0283
- Appendix B - Discharge of Condition Approval ref; 2025/02499

- Appendix C - An e-mail from a Wiltshire Council Building Control Officer dated 7th October 2025

Consideration of submitted evidence:

In this instance, the development comprises of the carrying out of operations in respect of the commencement of permission (PL/2023/02836).

A statutory declaration has been submitted in support of this application. Statutory Declarations are afforded the highest weight in the evidential hierarchy in terms of this assessment as they have the force of law behind them. The evidence submitted by the applicant listed above demonstrates, on the balance of probabilities, that there has been a material start to work on PL/2023/02836.

The Planning Practice Guidance makes clear that the onus of proof lies with the applicant, and:

'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'.

Appendix B confirms the discharging of condition 9 and 10 of PL/2023/02836 in respect of submitting additional information prior to commencement of works and occupation. Appendix C of the evidence submitted contains an email where the building control surveyor confirms that following a site visit made on 3rd October 2025, the foundation excavations were found to be satisfactory and suitable to build upon, subject to conditions outlined in the email response remaining consistent.

No evidence disputing this through representations from members of the public or interested parties have been received. The application for a Certificate of Lawfulness for an Existing Use is recommended for approval. Specifically, the evidence submitted confirms that groundworks undertaken on site amount to a material start in the construction of (*PL/2023/02836 – Re-submission of planning permission ref; 17/08314/FUL as a full planning application for the proposed change of use from a former agricultural building to Class C3 (dwellinghouses), and associated conversion works*).

Therefore, the 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.

CONCLUSION

On the balance of probability, sufficient evidence has been provided to demonstrate that groundworks undertaken on site amount to a material start in the construction of PL/2023/02836, dated 3rd October 2025.

As there is no clear or unambiguous evidence to the contrary submitted to or readily available to the Council, and as no formal enforcement action has been taken by the Council, it is recommended that on the balance of probability, a certificate of lawfulness be issued.

RECOMMENDATION

It is recommended that a Certificate of Lawfulness for Existing Use or Development be granted.