

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/00413
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Fair View, Sundays Hill, Brinkworth, Chippenham, SN15 5AS
DEVELOPMENT DESCRIPTION:	Lawful development certificate for the erection of a building for purposes ancillary to the residential use of the dwellinghouse, pursuant to planning permission 14/00984/FUL in breach of Condition 2 (minor departures from the approved plans in respect of internal layout and elevational design)
RECOMMENDATION:	APPROVE

PROPOSAL

The application form gave a description of the development in respect of which a certificate is sought as *“Use of swimming pool enclosure with offices above, for purposes ancillary to the use of the main dwelling”*. Upon review of the submitted information, the Local Planning Authority discussed and agreed with the applicant an alternative description to be used to appropriately describe the development, this being *“Lawful development certificate for the erection of a building for purposes ancillary to the residential use of the dwellinghouse, pursuant to planning permission 14/00984/FUL in breach of Condition 2 (minor departures from the approved plans in respect of internal layout and elevational design)”*.

The application seeks 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 a building erected for purposes ancillary to the residential use of the dwellinghouse where minor departures in terms of the internal layout and elevational design have resulted in a development not in accordance with the approved plans, and therefore in breach of Condition 2 of 14/00984/FUL.

SITE DESCRIPTION

The application site comprises a dwellinghouse within its established curtilage, and known as Fair View. It is located in Brinkworth Parish.

REPRESENTATIONS

There is no statutory requirement to consult third parties on applications for a CLUED, which includes parish councils or neighbours, as the main issue is whether, on the facts of the case, the matter is or would have been lawful at the time the application is made. Nonetheless, in this case the Local Planning Authority carried out a limited consultation exercise during which the following representations were received:

- Wiltshire Council Highways Team – No comment (04/03/2026).

RELEVANT SITE HISTORY

14/00984/FUL - Erection of Swimming Pool Enclosure with Office Over with Attached Double Garage & Pitched Roof to Existing Porch (APPROVED WITH CONDITIONS 25/03/2014).

ASSESSMENT

Section 191 of the Town and Country Planning Act 1990 (TCPA) allows any person who wishes to determine the lawfulness of an existing use, operations that have been carried out, or a failure to comply with a condition or limitation of planning permission, to make an application to the Local Planning Authority (LPA).

If the LPA, upon application, are satisfied that the information provided is sufficiently precise and unambiguous and demonstrates, on the balance of probabilities, that the development is lawful, a certificate is to be issued to that effect; otherwise, the application is to be refused.

Lawful development is defined as development against which no enforcement action may be taken and where no enforcement notice is in force, or for which planning permission is not required. The time limits for taking enforcement action are set out in S171B of the Act.

The Planning Practice Guidance (PPG) 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 for Existing Use or Development (CLUED) 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, and 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.

Evidence Submitted by the Applicant

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

- Cover Letter. Received 21 January 2026.
- Proposed Floor Plan. 0026/13/B. Received 21 January 2026.
- Proposed Elevations. 0026/13/C. Received 21 January 2026.
- Building Regulations Certificate. Received 21 January 2026.

- Site Plan. 0026/13/A. Received 4 February 2026.
- Karndeen Flooring Invoice. Received 4 February 2026.
- Electrical Connection Letter. Received 4 February 2026.
- Letter from Katherine Francis (Daughter). Received 4 February 2026.
- Janjer Company House records. Received 4 February 2026.
- History of The Barn's use. Received 4 February 2026.
- 16 Nov 2014 Patio Doors. Photo. Received 4 February 2026.
- 30 July 2015 Front Elevation. Photo. Received 4 February 2026.
- 15 February 2015 Floor Down. Photo. Received 4 February 2026.
- 14 Sept 2014 Pool breeched. Photo. Received 4 February 2026.
- 15 Feb 2015 Internal fittings going in. Photo. Received 4 February 2026.
- 27 Oct 2014 Suspended Floor. Photo. Received 4 February 2026.
- 15 Feb 2015 Front Elevation. Photo. Received 4 February 2026.

Whether the development is lawful

S55 of the Town and Country Planning Act 1990 defines that “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

It is evident that the matters under consideration comprise development within the meaning of the Act and consists of operational development. For avoidance of doubt, the applicant confirms the building is being used ancillary to the use of the dwellinghouse within land which forms part of its established curtilage, therefore there has been no material change in use of buildings or land.

It is clear from the evidence submitted that the building materially differs from the approved plans, externally and internally, but that its use remains tied to the use of the main dwellinghouse. The development is therefore in breach of Condition 2 of 14/00984/FUL which required that the development be carried out in accordance with the approved plans.

As of 25 April 2024, S171B of the TCPA 1990 states that no enforcement action can be taken against (1) operational development, including building, engineering, mining or other operations in, on, over or under land, or (2) the change of use of any building to a single dwellinghouse, or (3) any other breach of planning control (including development in breach of a condition of planning permission), after 10 years of the date of the breach. Transitional arrangements apply to ensure fairness in cases where breaches occurred prior to the legislative change, however this is not relevant to the case under consideration.

The applicant's evidence is sufficient and unambiguous enough for the Local Planning Authority to be reasonably certain that, on the balance of probabilities, the breach of planning control has persisted form over 10 years and has become lawful through the passage of time. In particular, the development appears substantially complete at latest by 30 July 2015.

CONCLUSION

The applicant has provided sufficient and unambiguous evidence such that the Local Planning Authority can be reasonably certain, on the balance of probabilities, that the development in respect of which a CLUED is sought is or would have been lawful at the date on which the application was made. This is because the development has persisted on the site in breach of a condition for in excess of 10 years, attracting immunity from enforcement action under S171B (3) of the Town and Country Planning Act 1990. Therefore, a CLUED can be issued for the development as per the description that has been agreed between the applicant and Local Planning Authority.

RECOMMENDATION

It is recommended that the application for the issuing of a Certificate of Lawfulness for Existing Use or Development be APPROVED for the following use/development:

Reason for approval: The operational development consisting of the erection of a building for purposes ancillary to the residential use of the dwellinghouse pursuant to planning permission 14/00984/FUL in breach of Condition 2, had persisted in breach of planning control for in excess of 10 years on the date of the application having been made. It therefore attracts immunity from enforcement action under S171B (3) of the Town and Country Planning Act 1990 and has become lawful through the passage of time.