

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2025/08762
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Annexe, Kays Cottage, 489 Semington Road, Melksham, SN12 6DR
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness for use of existing annexe as separate dwellinghouse (Revised Application)
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 an annex as a dwellinghouse, which it is claimed has been used as a dwelling since 2021. The application relates to a building located on the rear elevation of the above-named property.

This application seeks confirmation of the lawful existing use of an annex to be used as a separate dwelling on the basis that it is stated it has been used as a separate dwelling house for a period in excess of four years.

The site comprises an attached ancillary annex located on the east elevation of the rear extension of Kays Cottage, at No. 489 Semington Road, Melksham.

No's 489 and 489a Semington Road were formerly one dwelling that were sub divided to two dwellings (reference 14/08915/CLE refers)

The application site fronts the east side of Semington Road. The neighbouring dwellings contain a mix of properties differing in age and style. To the south of the application site lies a consented scheme for 4 dwellings (18/07286/FUL refers).

This application submission follows previous refusals for similar applications on the same site (the annex referred to as Kays Cottage) for Certificates of Lawful Existing Use for self-contained accommodation (ref's: PL/2022/08476 and PL/2023/02893) and includes a dismissed appeal APP/Y3940/X/23/3328012 in 2023. The most recent Certificates of Lawful Existing Use for the same premises were submitted under PL/2024/04135) refused 29.08.2024 and (ref: PL/2024/11639) which was refused 02.04.2025.

The submission documents in each case failed to evidence that the annex had been in continuous use as a separate dwelling throughout the requisite period, prior to the submission of the applications.

In line with the Levelling-up and Regeneration Act, which came into force in October 2023, the previous 4-year rule effectively became obsolete (except for LDCs that relate to a timeframe that predate the enacted change date of 25 April 2024 – which imposed the 10-year rule as the test period. However, it essential to note that the new legislation applies only to breaches

that occurred on or after 25 April 2024, and in cases where a LDC is submitted pursuant to a use or development that took place before 25 April 2024, the 4-year rule would still apply.

The most recent application that was refused (PL/2024/11639) failed to satisfy the essential requirement of submitting sufficiently precise and unambiguous evidence to confirm there was a continuous use of the annexe as a separate dwelling.

The applicant has now lodged a fresh Lawful Development Certificate for the ancillary accommodation known as 'The Annex' as a separate dwelling and has provided additional evidence. For a certificate of lawfulness to be issued the applicant would have to provide evidence that, on the balance of probabilities, the premises had been occupied as a separate dwelling unit continuously for a period of not less than the time limit for immunity from enforcement action prescribed under Section 171B (Time Limits) of the Town and Country Planning Act 1990 (as amended), whereby the time limit for taking enforcement action had expired.

The question posed by the LDC is whether The Annex has been occupied as a dwelling for 4 years or more prior to the date of the application on 4 November 2025. The LDC application has been submitted with evidence which concentrates on the time period dating back to 5 April 2021.

The Feb 2024 issued appeal (as referenced on page 1) concluded that there was no dispute between the main parties "that No. 489 was rented out to tenants from at least 2018 onwards...and that the applicant had converted the 'annexe' to separate residential use during 2018, when the connecting door to No.489 was blocked up and separate utilities were installed, as well as fencing to delineate a separate outdoor area, and *"the annexe was converted into a dwellinghouse and was furnished and available for occupation for more than the required 4 years"*. There was also substantive evidence that the applicant also resided in the premises at times, however, the Council successfully challenged at appeal, the applicant's main residence was abroad and the previous LDC evidence indicated long periods when the premises were vacant.

In the 2024 appeal decision, the appointed inspector concluded that

"...the evidence from the statutory declarations is that the appellant lives in The Annex, but this is not in dispute. As far as I can see the only evidence for living abroad is a single page from an email to the appellant concerning his residential status for tax purposes. This is dated March 2020 and concerns the tax year 2019-20. The e-mail says is that he was a UK resident for 2017/18 and 2018/19. For 2019/20 because he stayed in the UK for more than 120 days during that period, has an accommodation tie here (The Annex) and stayed in the UK for more than 90 days in the previous 2 tax years he is considered resident for tax purposes.

It is not clear from the e-mail how long the appellant actually stayed in the UK in any of the years it mentions but it is quite clear from the e-mail, that the appellant himself considers his family home to be abroad. It seems to me there would not be a query about his residential status if he were not absent for considerable periods of time. If those absences had been just a few weeks at a time, such as for a holiday, or visiting relatives, then that would have been made clear, either in the e-mail or by the appellant subsequently. It is my view, therefore, on the balance of probabilities, the appellant was absent in 2019/20 for periods of time that are

considerably more than de minimis and this is possibly the case also for the 2 previous tax years.

The question is, therefore, does this matter? The appellant refers to the judgement in Swale (Swale BC v FSS and Lee QBD 4.3.05 Evans-Lombe J s.288 & 289 [2005] JPL 1523 and CoA 17.11.05 Keene, Sedley, Chadwick LJs [2006] JPL 886), which is the leading judgement in these issues. He quotes from the High Court judgement that, and I paraphrase here, unless there has been a clear-cut change in the planning circumstances, once a residential use has begun it continues through time. It notes that an occupier does not have to be continuously or even regularly present to establish an unbroken use as a dwelling.

However, the appellant does not refer to the subsequent Court of Appeal judgement that overturned the High Court. The Court of Appeal held that it was incorrect to consider the question of whether there had been a clear-cut change in planning circumstances, the key test is whether at any time the Council could have issued an enforcement notice. In Swale the Inspector failed to address the question of what was happening when the building was not physically occupied and whether the periods of non-occupation were more than de-minimis. The thinking behind this is that if the building was unoccupied for significant periods of time, even if it was capable of occupation, it would be difficult for the Council to allege a material change of use had taken place. A building with the characteristics of a separate dwelling need not be used for that purpose but could be used for a number of other purposes that did not amount to a material change of use, such as a granny annex, or staff quarters and so on. Consequently, if there are significant gaps of occupation then the Council may well not have been able to issue an enforcement notice alleging a material change of use, the continuous use has not been demonstrated and the LDC cannot be issued.

This is quite different from the use of second homes for example, where that use has already been lawfully established, then Swale does not apply. But in the case of an unlawful use, such as the subdivision of a single dwelling into two, such as here, the unlawful use only subsists for as long as it is being actually carried out. Hence the concept of a 'continuous use' in Swale.

Once the use ceases, because for example, the occupant goes abroad, the unlawful use reverts back to its previous lawful use, and the re-occupation, when the person returns, starts the clock again" (officer emphasis added).

Consequently, the applicants appeal was dismissed,

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

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.

Melksham Without Parish Council – Objects ‘As per the previous application (PL/2024/11639), Melksham Without Parish Council maintain their objection to the application on the grounds that they cannot identify any change from the previous application. Members recommend that Wiltshire Council’s legal team review the legal case carefully. Members also noted that the division of the property to create the Annex as a separate dwelling is in contradiction with the conditions of 14/08915/CLE’.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
PL/2024/11639 - Lawful development: Existing use Decision - Refuse Date: 2/4/2025 – Certificate of Lawfulness for use of existing as separate dwellinghouse (Revised Application)
14/07526/OUT - Outline Planning Decision - Refused Date: 21/1/2015 – Erection of up to 150 dwellings with access, new village hall and areas of open space
14/08915/CLE - Lawful development: Existing use Decision - Approved Date: 12/12/2014 – Certificate of Lawfulness for use of property as 2 dwelling houses

17/04649/FUL - Full planning permission Decision - Refused Date: 9/8/2017 – Erection of 4 no. terraced dwellings
18/07286/FUL - Full planning permission Decision - Approve with Conditions Date: 15/11/2018 – Erection of 4 no. dwellings (Resubmission of 17/04649/FUL)
19/09839/DOC - Approval of details reserved by a condition Decision - Approved Date: 6/1/2020 – Discharge of conditions 22 (emergency access) & 24 (pedestrian crossing) of application ref: 17/10416/VAR -Variation of the approved site access plan and associated amendments to conditions 4, 20 and 21 of outline permission 16/00497/OUT (Erection of up t
ENQ/2025/01496 - Pre-Application enquiry Decision - Pre-App Response Date: – Change of Use - amend the temporary use of the property whilst supporting works site adjacent 489A Semington Road, to C3 permanent residential dwelling separate to the host building of 489A Semington Road – i.e. non ancillary.
PL/2021/03989 - Non-Material Amendment Decision - Approve Date: 4/5/2021 – NMA application pursuant to application 18/07286/FUL (Erection of 4 no. dwellings (Resubmission of 17/04649/FUL)
PL/2021/06818 - Householder planning permission Decision - Withdrawn by Applicant Date: 28/3/2022 – First floor rear extension over existing single storey extension.
PL/2021/06824 - Householder planning permission Decision - Approve with Conditions Date: 3/10/2022 – Erection of detached double garage and home office.
PL/2022/08476 - Lawful development: Existing use Decision - Refuse Date: 1/2/2023 – Certificate of Lawfulness for existing separate annexe
PL/2022/08518 - Householder planning permission Decision - Approve with Conditions Date: 10/1/2023 – It is proposed to build over part of the existing single-storey rear extension. The proposed first floor extension extends to the end of the two-storey dwelling immediately to the north (488 Semington Road). There are no overlooking/over-shadowing issues
PL/2023/02893 - Lawful development: Existing use Decision - Refuse Date: 1/8/2023 – Certificate of lawfulness for existing separate annex (Resubmission of PL/2022/08476)
PL/2024/04135 - Lawful development: Existing use Decision - Refuse Date: 29/8/2024 – Certificate of Lawful Existing Use for an annexe as a separate dwellinghouse (Use Class C3)
PL/2024/09323 - Full planning permission Decision - Approve with Conditions Date: 10/1/2025 – Retrospective use of building as a site office/store/welfare facilities and residential accommodation for a temporary period of three years by the owner/project manager in connection with the on-going development of the adjacent sites.
W/07/00150/FUL - Full planning permission Decision - Refused Date: 27/6/2007 – Proposed first floor side and single storey rear extension

W/08/00353/FUL - Full planning permission Decision - Refused Date: 31/7/2008 – Extensions and replacement of extensions
PL/2022/08476)- Refuse - Subsequently dismissed at Appeal (ref: APP/Y3940/X/23/3328012) 26 February 2024
W/12/01964/CLE - Lawful development: Existing use Decision - Approved Date: 14/12/2012 – Certificate of Lawfulness for the existing use of land as a domestic garden
W/84/01092/FUL - Full planning permission Decision - Approve with Conditions Date: 9/10/1984 – Extension

ASSESSMENT

Time Limits for immunity for enforcement action

4 years applies for:

*Change of use of a building to a dwelling where the breach occurred **before** 25 April 2024*

Continuous Use:

For a change of use, the use must have been continuous for the required time period without interruption e.g., periods of inactivity or abandonment, temporary changes in the use of the property (e.g., a commercial premises used for residential purposes), actions such as enforcement notices or formal closures. This ensures that the use has been established over a sustained period of time.

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. Planning merits are not considered during this process—only the lawfulness of the existing use or development.

Evidence Submitted by the Applicant

Planning Statement

1. Inspection Reports
2. Planning Correspondence and engagement with Wiltshire Council
3. Timeline of absences – Mr Paul Williams
4. British Gas bills covering the dates from 10/04/2021-03/01/2024
5. 6 month rent agreement for 489 Semington Road Rebecca Soady- signed 8/03/2021
6. 6 month rent agreement for 489 Semington Road Cripps – signed 06/09/2023
7. Rent invoices for 489 Semington Road (Tenant Soady and then Cripps)– sent to Mr Paul Williams at the address of The Annex from 15/03/2021 – 26/12/2023
8. Back dated rent invoices for 489 Semington Road (tenant Soady) and rent invoices for 489 Semington Road (tenant Cripps) sent to Mr Paul Williams at the address of The Coach House 04/02/2024 – 06/05/2025
9. No.489 Semington Road listing on Rightmove for rent
10. 6 month rent agreement for The Annex Gusu – signed 19.12.2023
11. Rent invoices – addressed The Annex Gusu from 27/12/2023- 26/10/2025
12. Council Tax Payment - addressed The Annex 2023/2024
13. Location and Site Plan DWG No PW-JH-01

14. Statutory Declaration Wrights Residential – signed 28/10/2025
15. Statutory Declaration Brenda Cross – signed 20/10/2025
16. Statutory Declaration Patrick Ryan – signed 23/10/2025

The assessment is also based on an email from Wiltshire Council's Council Tax Department that formed part of the assessment of the previous application submission dated 13.01.2023.

Assessment

The applicant has submitted supporting documents pursuant to the use of The Annex as a separate dwelling for the stated period of April 4 2021 until the May 1 2025 and up until the date the application was submitted in November 2025, and the evidence submitted within this application will be appraised upon that basis. The onus entirely rests on the applicant to demonstrate by precise and unambiguous evidence that on the balance of probabilities he is entitled to the certificate for the existing use in question within this relevant time frame.

Planning Statement

The Statement sets out the contents of the accompanying documentary evidence, contained within this submission.

Inspection Reports

The submitted inspection report sets out the applicant's documentary evidence for the subdivision of The Annex from the rear elevation of No. 489 Semington Road and when it first became to be used as a separate residential unit. The evidence is accompanied by photographic evidence dating from March 12, 2021, through to the August 28 2025. The Report also includes floorplans illustrating the lack of any internal doorway from the property at No.489 Semington Road through to the subject property.

Planning Correspondence

The submitted documents set out a series of dates of emails received by the applicant from various departments within Wiltshire Council in relation to a number of separate planning applications submitted over the years. The documents set out the substantive level of interaction between the applicant and the Council, which afforded the Council the opportunity to instigate enforcement action.

Timeline of Absences

The applicant sets out the periods when he was absent from residing at the subject property and these broadly correlate with documentary evidence that was submitted within the previous Lawful Development Certificates. Of particular note is the reason for refusal for application PL/2023/02893 and the subsequent Appeal APP/Y3940/X/23/3328012 that was dismissed, as the 4-year requisite period that was considered in this submission has a period of overlap with the dates being considered within this fresh Lawful Development Certificate.

Within the Appeal Decision APP/Y3940/X/23/3328012 the dates of occupation for the period of the 11th of April 2019 until the 11th of April 2023 were considered. Therefore, the periods of occupation previously considered within that Appeal and the dates to be considered within this Lawful Development Certificate overlap for the time period from the 5 April 2021 until 11 April 2023. The evidence relating to absences within that time period have previously been

considered, which broadly amount to two of the four years being considered within this submission.

The Ferb 2024 appeal Inspector identified that the applicant had spent extended periods of time abroad, which ultimately evidenced that the time spent abroad was more than a few weeks at a time, such as holidays or visiting relatives and concluded as follows:

'There is also no dispute that the appellant lived in The Annex from time to time, but the Council argue his main residence was abroad and The Annex was empty for long periods. Again, this is not disputed by the appellant (except perhaps for the word 'long'), he did live abroad but also in England and when here he lived in The Annex. No-one else lived in The Annex in the meantime and it remained ready for the appellant to resume living there whenever he was in England. The only matter of substance between the parties therefore, and on which this appeal turns, is whether living in The Annex for periods of time is sufficient to demonstrate a material change of use to a dwelling.

*The evidence from the statutory declarations is that the appellant lives in The Annex, but this is not in dispute. As far as I can see the only evidence for living abroad is a single page from an email to the appellant concerning his residential status for tax purposes. This is dated March 2020 and concerns the tax year 2019-20. The e-mail says is that he was a UK resident for 2017/18 and 2018/19. **For 2019/20 because he stayed in the UK for more than 120 days during that period, has an accommodation tie here (The Annex) and stayed in the UK for more than 90 days in the previous 2 tax years he is considered resident for tax purposes.***

*It is not clear from the e-mail how long the appellant actually stayed in the UK in any of the years it mentions but it is quite clear from the e-mail, that the appellant himself considers his family home to be abroad. It seems to me there would not be a query about his residential status if he were not absent for considerable periods of time. If those absences had been just a few weeks at a time, such as for a holiday, or visiting relatives, then that would have been made clear, either in the e-mail or by the appellant subsequently. **It is my view, therefore, on the balance of probabilities, the appellant was absent in 2019/20 for periods of time that are considerably more than de minimis and this is possibly the case also for the 2 previous tax years.***

Within this submission the applicant sets out the time periods that he was absent from the UK and these periods extend to 79 days in 2021 (two periods of residence in Jeddah) 77 days in 2022 (two periods of residence in Jeddah) and 49 days in 2023 (two periods of residence in Jeddah)

This would amount to an absence from residing at The Annex within the requisite four years as 205 days. This equates to just under 7 months of absence from residing in The Annex (approximately 14%) of four years and officers would consider this period of time of in-occupation, for holidays abroad and hospital stays, as part and parcel of the use of a dwellinghouse.

British Gas Bills

The gas bills submitted evidence that bills have been addressed to Mr Williams at The Annex since December 8, 2022. Prior to this date bills were addressed to the supply postcode of SN12 6DR. The applicant explains that this was updated to The Annex when a new system was introduced by British Gas in 2022.

The evidence also shows a screenshot of an email from British Gas (dated October 2025) to the applicant with a snipped image of an online account record with the account referenced as 489/ Kays Cottage, The Annex, with dates for the account commencing in December 2014 and ending in December 2022.

6 Month Rent Agreements

The rent agreements evidence the long term let of both 489 and 489a Semington Road and also the tenancy agreement with Mr and Mrs Guso residing in The Annex commencing in December 2023 until October 2025.

Rent Invoices

The rent invoices from Wrights Residential for the tenancy agreements at 489 Semington Road, were addressed to Mr Williams residing at The Annex from 15/03/2021 – 26/12/2023 and then The Coach House 04/02/2024 – 06/05/2025. These documents would seem to corroborate the applicant's statement that he was residing at The Annex during the necessary time period followed by Mr and Mrs Guso who rented the property from December 2023.

Rightmove Listing

The document relates to the listing of 489 Semington Road as a rental property available for rent from July to September 2023. The hyperlink within the document provides photographic evidence that the ground floor accommodation of the property was separated from The Annex, as previously shown in the Inspection Report.

Council Tax Payment

The Local Authority Council Tax team have confirmed that
'The Annexe has been registered for Council Tax since 13 January 2023. Council Tax has been paid. Owner Mr P Williams was liable from this date until 26 Dec 2023, and a single person discount was granted as he confirmed the periods, he was the sole occupier. Since 27 Dec 2023 we have tenants registered for Council Tax at this property Mr & Mrs Gusu'.

Statutory Declarations

Three Statutory Declarations have been received all setting out that Paul Williams resided at The Annex from 5th April 2021 until 26th December 2023 apart from 'brief' periods away for holidays, religious observance and family support. From 27 December 2023 Mr Williams relocated to The Coach House until the date of the Declaration, the submitted declarations are dated 20/10/2025, 23/10/2025 and 28/10/2025.

The Statutory Declarations from Brenda Cross and Patrick Ryan have not formed part of the previous Lawful Development Certificate submissions. It is noted that the Declaration of Truth from Adam Wright is a duplicate Statement of Truth that has been submitted within previous applications.

Mr Wright states that he had been managing the rental properties of 489 and 489a Semington Road since early 2018 and that he was aware that Paul Williams and Dr Sawsan Rahimuddin resided at Kays Cottage, Semington Road shown edged red on the plan number PW-JH-01 (the red line relates to area occupied by The Annex). Mr Wright confirmed that he has been sending statements for the tenanted houses (489 and 489a Semington Road) to Mr Williams at Kays Cottage since April 3, 2018 (as evidenced in documents).

Other Matters

The Parish Council maintain their objections to the application on the basis that they cannot identify any change from previous applications. However, officers are cognisant that this latest Certificate of Lawfulness application relates to different four-year period that has not been assessed previously.

New evidence has been submitted which supports the claim that The Annex has been in use as a separate dwellinghouse and occupied either by the applicant or rented out by Mr and Mrs Guso. Additional bills have been submitted and two Statutory Declarations, which had previously not been added, support this latest LDC submission.

The Parish Council have requested that the Council's legal team review the proposal, and officers can confirm that the legal team have been consulted and have raised no objection to the issuing of a certificate based on the submitted evidence.

The Parish Council have also brought it to officer's attention that the subdivision of the property appears to conflict with the conditions of 14/08915/CLE (Certificate of Lawfulness for use of property as 2 dwelling houses – No.489a Semington Road). However, the decision notice does not set out any such condition.

Summary

Officers are cognisant that the latest submission follows a number of lawful development certificates that have been received by the Council since November 2022, albeit for a different requisite time period; and with the passage of time, additional documentary evidence has been collated by the applicant to support this latest LDC submission.

Within this lawful development certificate additional documentary evidence has been submitted which supports the applicant's submission that it has been in continuous use as a standalone dwellinghouse for the requisite period.

The documents that have been posted to the applicant at the address seem to corroborate that the use has been ongoing since 2021. Whilst officers are cognisant that there have been periods of time when The Annex was unoccupied when the applicant spent time abroad, the periods are not considered substantive, which would 'restart the clock' in terms of requisite periods and therefore the use as a separate dwellinghouse is deemed lawful.

The Statutory Declarations from Wrights Residential, Brenda Cross and Patrick Ryan hold substantive weight in the planning balance and corroborate that the applicant resided at The Annex from 5 April 2021 until 26 December 2023, and the rental statements confirm that from December 2023, the subject property has been rented to Mr & Mrs Guso.

Conclusion

The applicant has under this latest LDC submitted sufficient evidence to demonstrate, on the balance of probabilities, that the use of the subject property as a separate residential unit of accommodation has been continuous for the required 4-year period prior to the date of the application. There is sufficient documentation and information to confirm the lawful use over the requisite period. As such, a Certificate of Lawfulness can be issued for this case.

RECOMMENDATION

It is recommended that a Certificate of Lawfulness for Existing Use be granted for the following use:

The use of the existing annexe as separate dwellinghouse

Reason for Approval:

On the balance of probabilities, the evidence submitted demonstrates that The Annex subject property, has been occupied and used as a separate dwelling for a period exceeding four years prior to the date of the application. This satisfies the requirements of Section 191 and Section 171B of the Town and Country Planning Act 1990 (as amended), meaning the use is immune from enforcement action and is therefore lawful.