

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/01434
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	White Gates, Netherhampton Road, Salisbury, SP2 8NG
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness to confirm that planning permission PL/2021/05759, as amended by NMA PL/2025/02492, was implemented before 7 March 2026 and is therefore extant
RECOMMENDATION:	Approve

PROPOSAL

This application seeks a Certificate of Lawfulness (CLP) under Section 192 of the Town and Country Planning Act 1990 (as amended) to establish the lawfulness of the commencement of works in relation to Planning application PL/2021/05759 for the construction of a new dwelling, widening existing access and associated works which was granted consent on the 7th of March 2023.

The application is seeking confirmation from the Local Authority that the works commenced on site before the expiration of three years from the date of the permission (07.03.2023) and therefore comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

RELEVANT LEGISLATION AND POLICY

The statutory framework governing CLP's is set out in Section 192 of the Town and Country Planning Act 1990 (as amended). This section establishes that a proposed development or use is "lawful" if it would not constitute a breach of planning control. A CLP can be granted if the Local Planning Authority is satisfied, on the balance of probabilities, that the proposed development or use would not require planning permission.

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.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
S/1985/1512 - Full planning permission Decision - Approved Date: 8/1/1986 – RENEWAL OF PLANNING PERMISSION FOR CONVERSION AND EXTENSION OF STABLES INTO PRIVATE DWELLING AND
S/1989/1760 - Outline Planning Decision - Approve with Conditions Date: 15/11/1989 – O/L APPLICATION - FOR ONE DWELLING AND CONSTRUCTION OF VEHICULAR ACCESS
PL/2021/05759 - Full planning permission Decision - Approve with Conditions Date: 7/3/2023 – Construction of new dwelling with widening existing access and associated works.
PL/2025/02492 - Non-Material Amendment Decision - Approve Date: 7/4/2025 – Non Material Amendment to PL/2021/05759 to We therefore wish the NMA to confirm that the access - as shown on WG 04 BP rev C - and in more detail on engineering drawing BR 5967/002 rev - shall be constructed before occupation, in the interests of highway
PL/2026/01171 - Approval of details reserved by a condition Decision - No Objection Date: 4/3/2026 – Discharge of condition 4 (Tree Protection) on PL/2021/05759

ASSESSMENT AND CONCLUSION

Evidence Submitted by the Applicant

This assessment is based on all the evidence that the LPA has including site history, submission documents, decision notices and officer reports from previous applications associated with the application site as well as the following submitted evidence from the applicant:

Appendix 2 PL/2025/02492 NMA Decision Approval 07.04.25 Received: 02 March 2026

Appendix 4 - Record of Arboricultural Site Monitoring Received: 02 March 2026

Site photos taken 28.02.26 Received: 02 March 2026

Principle of Development

The applicant has submitted documents to demonstrate the commencement of works on site which render the consented application PL/2021/05759 as being valid and not lapsed. The evidence seeks to support the claim that the development has commenced on site which deems the permission as being implemented.

The statement from the agent dated 02.03.2026 notes that the tree protection fencing was installed on 12 January 2026 with substantial engineering works beginning on 17 February 2026 which constituted the laying out/construction of the access road, sub-base, kerbing, surfacing and drainage soakaway works. The onus is on the applicant to demonstrate by precise and unambiguous evidence that on the balance of probabilities they are entitled to the certificate for the existing use in question within this relevant time frame.

Post planning approval of PL/2021/05759, a Non-material amendment with reference PL/2025/02492 was applied for and subsequently approved which allowed for a slight shift in the proposed access to the site. The LPA's highways officer assessed the application and allowed this change.

The approved application PL/2021/05759 consists of 8 conditions. Condition 4 is a pre-commencement condition with states that no demolition, site clearance or development shall commence on site until protective fencing is erected around the retained trees. A discharge of condition application with reference PL/2026/01171 was submitted to the LPA on 19 February 2026 with the LPA's arb officer attending site on 4 March 2026 to inspect the positioning of the fencing. This condition was discharged on 04 March 2026. The other conditions tied to the application are not pre-commencement. At the time of writing this report, no other conditions have been sought to be discharged.

Note

The submitted statement says that the construction of the access road began on 17 February 2026, this was prior to the discharge of condition 4 which is a pre-commencement condition. However, it is not considered that condition 4 goes to the heart of the permission. The proposed new dwelling would not be unacceptable in principle if the condition to protect the existing retained trees were not met. However, while this condition was not discharged prior to commencement of works to the access, the fences to protect the retained trees were in

place prior to works starting on site. These fences were subsequently approved by the LPA's arb officer on 4th March 2026. Therefore, in this instance, while a formal DOC was not submitted prior to the works to the access road commencing, the fencing in accordance with the condition was in place. In the end the DOC was discharged on 04 March 2026, prior to the 3-year expiry of the original application. On 4th March 2026, the tree officer confirmed that the access works had commenced when he visited the site.

Summary

Section 56 of the Town and Country Planning Act 1990 requires confirmation that a material operation, which include engineering operations and the laying out or construction of a road or part of a road, has been carried out to validate the claim that the permission has begun, and therefore the three-year date has not expired. There is no reasonable basis to conclude that development had not begun by 17 February 2026.

The documentary evidence that has been submitted supports the agent's claim that the development at White Gates, Netherhampton Road, Salisbury, SP2 8NG for the construction of a new dwelling, widening existing access and associated works has commenced works and therefore the extant planning permission PL/2021/05759 is still valid.

CONCLUSION

On the balance of probability, sufficient evidence has been provided to demonstrate that commencement of works in relation to planning application PL/2021/05759 is valid.

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 for the commencement of works in relation to planning application PL/2021/05759.

RECOMMENDATION

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

The commencement of works in relation to planning application PL/2021/05759.

Reason for approval: The evidence submitted satisfies the criteria set out in the Town and Country Planning Act 1990 (as amended), and the development meets the relevant time limits and planning law requirements.