

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/01441
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Lodge, Clearway Garage House, Firsdawn, Salisbury, SP4 6DT
DEVELOPMENT DESCRIPTION:	Positioning and use of a twin-unit as a residential dwelling.
RECOMMENDATION:	Approve with Conditions

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 a mobile home used as a residential dwelling, which has been in operation at the site for at least 10 years. The application relates to the siting of a twin unit residential dwelling located to the rear of Clearway Garage House currently occupied by the applicants mother.

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.

- Firsdown Parish Council object on the grounds that planning permission for the siting and use of 2 mobile homes for residential use was refused under application 14/06525/FUL and an appeal dismissed following the refusal.
- Highways – No objection.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
13/03984/FUL - Full planning permission Decision - Approve with Conditions Date: 20/11/2013 – Retrospective Change of Use of section of petrol shop as café instead of burger van currently on forecourt
14/06525/FUL - Full planning permission Decision - Refused Date: 9/9/2014 – Retrospective application for the siting and use of 2 mobile homes as residential
17/08686/FUL - Full planning permission – Container/shed as pet crematorium
S/1988/1103 - Full planning permission Decision - Refused Date: 10/8/1988 – CHANGE OF USE OF LAND TO CAR SALES
S/1988/1104 - Full planning permission Decision - Refused Date: 10/8/1988 – LEVELLING OF PASTURE TO FORM PRIVATE RECREATION AREA
S/1990/0260 - Consent to display an advertisement Decision - Approve with Conditions Date: 4/4/1990 – A/D APPLICATION - INTERNALLY ILLUMINATED FORECOURT SIGN
S/1993/1618 - Full planning permission Decision - Refused Date: 23/2/1994 – CHANGE OF USE FROM OFFICE TO SHOP
S/1999/0767 - Full planning permission Decision - Approve with Conditions Date: 26/7/1999 – EXTENSION FOR CAR REPAIRS

S/1999/1540 - Full planning permission Decision - Approve with Conditions Date: 10/7/2000 – CONVERSION OF FILLING STATION SHOP TO THREE BEDROOMS FOR BED AND BREAKFAST CAR SALES AREA WITH PORTACABIN

S/2001/1690 - Full planning permission Decision - Approve with Conditions Date: 17/12/2001 – OF BARN AND FIELD FROM AGRICULTURAL TO BOARDING KENNELS

S/2010/1142 - Full planning permission Decision - Refused Date: 30/9/2010 – TEMPORARY USE OF LAND FOR STORAGE OF CARAVANS

S/2012/0043 - Full planning permission Decision - Approve with Conditions Date: 30/3/2012 – Siting of a mobile catering van

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

The application has been submitted claiming that the area of land outlined in red below has been in residential use for a period greater than 10 years (from 2009) with the siting of a mobile home/s, most recently occupied by the applicant's mother.



Evidence Submitted by the Applicant

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

- *A signed declaration from Mr & Mrs Adamson (Applicants) confirming various tenants living on site from 2009*
- *A signed declaration by Carolyn Jsne Haynes (current occupier since 2019)*
- *Aerial photographs dated from 2017-2025*
- *Council tax receipt from 2019*
- *Receipt of purchase of the twin unit mobile home dated 2019*

Assessment

The signed declarations state that two units were on site within the area outlined in red and occupied by various tenants since 2009.

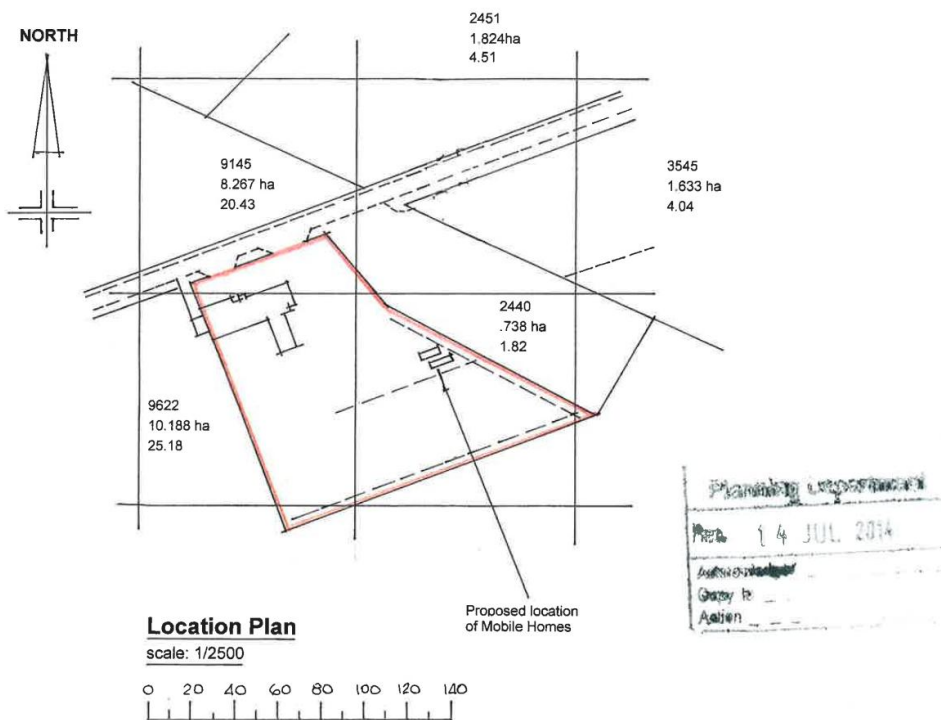
Although the applicants have only submitted aerial photographs dating back as far as 2017 it is evident from the Councils mapping system that units have been in situ since 2013.



2013 aerial image

It is noted that since 2019 the two units were replaced with the current twin-unit now occupied by the applicant's mother. The twin unit is positioned in the same location and is of a similar footprint of the two single units combined.

The Parish Council has raised an objection due to the retrospective application which was submitted and refused in 2014 with an appeal being later dismissed in 2015, stating 'The current application circumstances are no different to those of 2014'. Officers have carefully considered this. However, from reviewing the case file for that application, that was a full retrospective planning application for two units located further Southeast within the site as per the 2014 submitted plan below:



These units and the refusal of their retention are a separate matter to the current submission. The current CLE relate to different units, in a different location, with a differing red line boundary, and the requirements of a CLE are entirely separate to the requirements of a full planning permission in that its determination is purely down to the evidence submitted/gathered and whether it meets the time limitations.

Specifically, the aerial photography alongside the signed declarations confirms that units have been present in this location on site and used for residential accommodation. There are no apparent gaps in the evidence or contradictions that would cast doubt on the lawfulness of the development. 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

The evidence submitted by the applicant demonstrates, on the balance of probabilities, that the use of the land/building has been continuous for the required 10 year period immediately prior to the date of the application, and therefore complies with the relevant provisions of the Town and Country Planning Act 1990 (as amended). As there are no other factors to suggest that the use is unlawful, the application for a Certificate of Lawfulness for an Existing Use is recommended for approval.

RECOMMENDATION: EXISTING USE IS LAWFUL - APPROVE

The evidence submitted by the applicant demonstrates, on the balance of probabilities, that the use of the land/building has been continuous for the required 10 year period immediately

prior to the date of the application, and therefore complies with the relevant provisions of the Town and Country Planning Act 1990 (as amended).