

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2025/09645
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Restrop Farm, Restrop, Purton, Swindon, SN5 4LW
DEVELOPMENT DESCRIPTION:	Change of use of agricultural land to residential garden
RECOMMENDATION:	Approve

SITE DESCRIPTION AND PROPOSAL

This 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 application relates to the use of land as residential garden land incidental to the host dwelling. The site comprises a parcel of land located to the north of the dwellinghouse, which is physically contiguous with the established residential curtilage to the south and west of the main built form. The land is separated from other cultivated areas, including a kitchen garden to the south-east, by an access point. The land in question appears as a coherent extension of the residential garden and has been maintained and used as such.

The proposal does not involve operational development but instead seeks to regularise the existing use of the land, which has changed from its former agricultural use to residential garden use. The applicant contends that this use has occurred continuously for a period in excess of ten years prior to the date of the application.

The application is supported by detailed evidence, including a narrative account, photographic records, and corroborative statements, which demonstrate that the land has been used for incidental residential purposes, including routine garden maintenance and domestic enjoyment, for the required period. On that basis, the applicant seeks confirmation that the use is lawful through the passage of time.

No relevant planning history has been identified that would interrupt or render unlawful the claimed continuous use of the land as part of the residential garden.

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.

Purton Parish Council: Parish council withdrew original no objection.

- Concerns that allowing the change of use could prejudice the retention of the historic drovers' route and harm the associated right of way.
- Concern is raised that a Certificate of Lawfulness may not apply where listed building controls are engaged, and that Listed Building Consent may instead be required, potentially invalidating the application.
- They consider that changing the land from agricultural to residential would harm the setting of the listed buildings at Restrop Farm and the wider historic landscape.
- Reference is made to a 2012 public inquiry, where an Inspector supported retention of the right of way in its original route as part of the historic setting.

Conservation Officer:

- The domestication of the land, including fencing, garden paraphernalia, and removal of hedgerows (particularly along Mud Lane), has altered the historic character of the site and harmed the setting of the listed building.
- The Conservation Officer considers that there is no clear evidence of domestic use prior to 2002, and that continuous residential garden use is more likely to date from around 2012–2014 based on available evidence.

- While harm to the setting of the listed building is identified, it is acknowledged that this is a subjective planning consideration and not determinative in a CLUED, which is a legal test based on evidence of use.
- The presence and potential diversion of the bridleway (Mud Lane) is noted, with concern that its diversion could further impact the setting, but this is not directly relevant to determining the lawfulness of the use in this application.

Rights of Way Officer: No objection with informative regarding right of way must be kept open at all times.

Third party objections summarised:

- Concerns that the application is intended to facilitate closure or diversion of the historic Mud Lane drovers' route.
- Strong emphasis on harm to the historic environment, including the setting of Restrop Farm (Grade II listed) and the wider landscape.
- Repeated references to the 2012 public inquiry, which supported keeping the right of way on its original alignment.
- Claims that lawful development (10-year rule) should not apply due to listed building constraints and that Listed Building Consent is required, potentially invalidating the application.
- Allegations that agricultural land has been altered without consent (e.g. removal of hedgerows, enclosure) and calls for reinstatement and enforcement action.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
There is no relevant planning history for the application site, aside from applications relating to the associated residential dwelling.

ASSESSMENT

Evidence Submitted by the Applicant

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

- A Planning Statement setting out the case for lawful use
- A Statutory Declaration detailing the history of the site and its use
- Photographic evidence showing the condition and use of the land
- Supporting documentation and corroborative statements
- Aerial imagery referenced within the submission

This evidence seeks to demonstrate that the land has been used as residential garden land, including enclosure, maintenance, and domestic paraphernalia, for a continuous period in excess of 10 years.

Assessment

The evidence submitted by the applicant demonstrates, on the balance of probabilities, that the use of the land 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).

The applicant states that the land has been used as residential garden land for a period exceeding 10 years, including activities such as maintenance, enclosure, and domestic recreational use.

Whilst historic mapping and aerial imagery indicate that the land was formerly in agricultural use and that a transition to domestic use has occurred over time, the evidence provided demonstrates that this change took place over timeframe which meets the required 10-year period.

The submitted statutory declaration provides a clear and consistent account of the use of the land, supported by photographic evidence showing its integration with the residential curtilage and its use for incidental domestic purposes. The corroborative material further supports this position. As sworn statements these are afforded significant weight, particularly in the absence of other evidence which undermines the case in terms of precision or corroboration.

Although there is some variation in how the land has appeared over time, this does not negate the overall conclusion that the land has been used as garden land for a continuous period exceeding 10 years. There is no evidence of any material interruption in this use.

Importantly, the local planning authority has no substantive evidence of its own, nor from third parties, that clearly contradicts the applicant's account or demonstrates that the use has not been continuous for the required period.

The evidence is therefore considered sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the use has been continuous for the requisite period.

OTHER MATTERS

A number of objections have been received from neighbouring properties raising concerns in relation to the impact of the development on the historic environment, the setting of the listed building, the status and alignment of Mud Lane (the historic drovers' route), and the potential implications for the public right of way. Concerns have also been raised regarding the requirement for Listed Building Consent and the validity of the application under Section 191.

Whilst these concerns are acknowledged, it is important to emphasise that an application for a Certificate of Lawfulness for an Existing Use is a legal determination based on the facts of the case. The assessment is confined to whether the use or development described has occurred and continued for the requisite period, such that it is immune from enforcement action under Section 171B of the Town and Country Planning Act 1990.

Matters relating to the planning merits of the development, including impacts on heritage assets, landscape character, residential amenity, or public rights of way, are not relevant considerations in the determination of this type of application and cannot be taken into account in reaching a decision.

Similarly, issues regarding potential enforcement action, alleged unauthorised works, or the diversion or status of public rights of way fall outside the scope of this assessment and would need to be considered under separate legislative or regulatory regimes where relevant.

For the purposes of this application, the local planning authority must assess only whether the evidence submitted demonstrates, on the balance of probability, that the use has been continuous for the required period. Accordingly, the objections raised, while duly acknowledged, cannot influence the outcome of this application.

CONCLUSION

On the balance of probability, sufficient evidence has been provided to demonstrate that the change of use of the land from agricultural land to residential garden land incidental to the host dwelling has occurred, and that the land identified on the site plan has been used continuously for a period in excess of 10 years.

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, a certificate of lawfulness be issued for the use of the land as residential garden land incidental to the host dwelling.

RECOMMENDATION

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

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