

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2025/09152
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	295 Sandridge Common, Wiltshire, SN12 7QS
DEVELOPMENT DESCRIPTION:	Certificate of lawfulness (Existing Use) to confirm that extensions constructed in 2019 were built lawfully
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 a single storey extension to the rear of the dwelling house, which has been in operation at the site since 2020. The application relates to the construction of a flat roofed single storey rear extension.

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 have been consulted and they have raised no objection.

ASSESSMENT

Time Limits for immunity for enforcement action

10 years applies for:

- *Existing uses, the applicant must demonstrate that the use has been continuous for 10 years or more without interruption*
- *Operational development that was **not** substantially completed before 25 April 2024*
- *Change of use of a building to a dwelling where the breach occurred **after** 25 April 2024*

4 years applies for:

- *Operational development that was substantially completed **before** 25 April 2024*
- *Change of use of a building to a dwelling where the breach occurred **before** 25 April 2024*

Evidence Submitted by the Applicant

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

- A supporting statement with a number of aerial photographs showing the site from 2018-2021, showing the extension in place.
- A copy of the Building Regulations competition certificate

Assessment

The evidence submitted by the applicant demonstrates, on the balance of probabilities, that the development (including any associated building works) was substantially completed at least 4 years prior to the application date, and does not contravene any planning conditions or restrictions. The development is therefore lawful under the provisions of the Town and Country Planning Act 1990 (as amended). The application for a Certificate of Lawfulness for an Existing Development is recommended for approval.

Specifically, the evidence submitted confirms that the proposal has been completed and in place since at least September 2020. There are no apparent gaps in the evidence or contradictions that would cast doubt on the lawfulness of the development.

CONCLUSION

On the balance of probability, sufficient evidence has been provided to demonstrate that the single storey flat roofed extension identified on the site plan has been used continuously for a period in excess of 4 years substantially complete at the point of submitting the application for a period in excess of 4. 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.

RECOMMENDATION

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

That the flat roofed rear extensions constructed in 2019 were built lawfully

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.