

## APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING DEVELOPMENT

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| <b>APPLICATION REFERENCE:</b>   | PL/2026/02792                                                        |
| <b>APPLICATION TYPE:</b>        | Certificate of Lawfulness                                            |
| <b>SITE ADDRESS:</b>            | Lintrathen, Rectory Hill, West Dean, Salisbury, SP5 1JL              |
| <b>DEVELOPMENT DESCRIPTION:</b> | Certificate of Lawfulness for erection of garage                     |
| <b>RECOMMENDATION:</b>          | That a Certificate of Lawfulness for Existing Development be GRANTED |

### 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 the erection of a garage, which was constructed and completed at the site in the year 2000. The application relates to operational development consisting of the erection of an attached flat roof garage on the east facing end of the main dwelling known as Lintrathen. This application does not seek to confirm the lawful use of the garage.

The site is a detached part 1.5 storey and part 1 storey dwelling house located in the northern end of the built up area of the Small Village of West Dean, which itself has no defined settlement boundary as per Core Policies 1, 2 and 23 of Wiltshire Core Strategy.

### 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 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.

## **DEFINITION OF DEVELOPMENT**

Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines “development” as including the carrying out of building, engineering, mining or other operations in, on, over or under land. The erection of the attached garage at Lintrathen constitutes ‘building operations’ and therefore meets the definition of development within the meaning of Section 55. In the absence of any evidence to demonstrate that the works were permitted development, the construction of the garage would have required planning permission at the time it was carried out.

## **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.

Neighbouring dwellings in the locality, West Dean Parish Council and the Local Ward Member were all written to about the CLUED application and a site notice was also put up outside Lintrathen. The following representations were received.

### **West Dean Parish Council – no objection – with the following text received:**

*‘West Dean Parish Council has no objection to this application.’*

### **Three representations from the occupiers of neighbouring dwelling were received, they are listed below.**

*‘As owner/occupier of the property adjacent to Lintrathen, I can confirm use of the garage is long established and has no impact on the surrounding environment.’*

*‘I live at 2 Rectory Hill, which is directly opposite Lintrathen. I have lived at this address since March 2011, and I can confirm that the garage was in existence on that date.’*

*‘This is a very fair application and I see no problem with it.’*

## **RELEVANT SITE HISTORY**

The site has the following relevant planning history:

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|---------------------------|
| <b>Proposal / Summary</b> |
|---------------------------|

S/2001/0073 - Lawful development: Existing use Decision - Withdrawn Date: 25/7/2003 – FOR EXISTING USE FOR CONCRETE BLOCK BUILT CAR PORT TO END OF ANNEX (SPACE FOR TWO CARS)

S/2000/2125 - Full planning permission Decision - Approve with Conditions Date: 10/1/2001 – ERECTION OF ALUMINIUM FRAME GREENHOUSE (RETROSPECTIVE)

S/78/0128 - Historic apps 1974 to 1983 Decision - Approve with Conditions Date: 20/4/1979 – Erect granny flat and garage and alterations to existing access

## ASSESSMENT

The time limits for taking enforcement action were amended on 25 April 2024 by the Levelling-up and Regeneration Act 2023, which replaced the former 4-year and 10-year enforcement periods with a single 10-year period for most breaches of planning control. However, transitional provisions apply to unauthorised operational development that was substantially completed before 25 April 2024, in which case the former 4-year immunity period remains applicable. Therefore, the assessment below considers, on the balance of probabilities and having regard to the evidence submitted, whether the operational development was substantially completed before 25 April 2024, as this will determine whether the relevant immunity period is 4 years or 10 years.

### Evidence submitted by the applicant

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

- A completed CLUED application form
- Location and block plan
- Supporting statement containing a detailed account of the relevant planning history and historic photos of the garage in question
- Floor plans and elevations of the existing garage
- Supporting evidence from 2 neighbours

### Photos enclosed within the supporting statement



A detailed and thorough supporting statement prepared by the agent was submitted as part of the application. This states that the garage in its current form, comprises a brick frame, flat roof and two sets of double doors, was erected in the year 2000. Various photos from 2001, 2003, 2014 and 2016 further support this. A location plan, block plan and scale elevation drawings of the current garage were also submitted. One supporting letter from a next door neighbour confirms the garage in its current form was in situ in 2002, this being the year the neighbour moved into the village. The other supporting statement, from a former parish councillor, confirms the garage to have been in place since the year 2000.

#### Evidence received during the consultation process

Two of the comments from neighbours note the garage has been in existence for a considerable amount of time, with one noting it was in situ in March 2011 when this neighbour moved into the village. This evidence further supports the statements provided by neighbours which were submitted with the application and do not suggest there was a period in time since 2000 where the garage was not in situ.

#### Evidence sourced from Google Streetview

The case officer has also gathered evidence from Google Streetview (below) using the tool to look back over the past 17 years where street scene photography shows the garage in situ.



Streetview imagery from 2016 shows the most complete view of the garage given the limited boundary treatments at the time. Streetview also provides no evidence to suggest the garage was not in situ at any point over the last 17 years.

#### Assessment of evidence

The evidence submitted by the applicant, received during the consultation process and as observed on Google Streetview, demonstrates on the balance of probabilities, that the development was completed in the year 2000 and therefore at least 4 years prior to the CLE application date and the development is therefore lawful under the provisions of the Town and Country Planning Act 1990 (as amended).

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 probabilities, the evidence demonstrates that the attached flat roof garage at Lintrathen, as shown on the submitted plans, was substantially completed in the year 2000. This conclusion is supported by photographic evidence dating from 2001 onwards, corroborated by third party statements and further reinforced by historic Google Street View imagery which consistently shows the structure in its completed form.

Whilst no single piece of evidence conclusively establishes the precise date of completion, the test is not one of certainty but whether the evidence, when considered as a whole, demonstrates the facts on the balance of probabilities. In this case, the submitted evidence provides a clear, consistent and credible chronology which indicates that the garage was in place by at least 2001 and had therefore been substantially completed before that date. There are no material inconsistencies within the evidence submitted, nor is there any contradictory evidence before the Local Planning Authority to suggest a later completion date.

Having regard to the evidence as a whole, it is therefore considered more likely than not that the garage was substantially completed in or around 2000. The operational development was consequently substantially completed more than four years prior to 25 April 2024 and, by virtue of the transitional provisions of Section 171B of the Town and Country Planning Act 1990 (as amended), benefits from the former 4-year immunity period. As no enforcement action has been taken and there is no evidence to indicate that the development remains liable to enforcement action, the development is lawful and a Certificate of Lawfulness for an Existing Development should be granted.

#### **RECOMMENDATION**

**It is recommended that a Certificate of Lawfulness for Development be granted for the following development:**

*‘Certificate of Lawfulness for erection of garage.’*

**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.

**SCHEDULE 1:** Certificate of Lawfulness for erection of garage.

**SCHEDULE 2:** Lintrathen, Rectory Hill, West Dean, Salisbury, SP5 1JL