

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/02726
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Unit 6 Yard, Chelworth Lodge, Cricklade
DEVELOPMENT DESCRIPTION:	Commercial Storage facility and associated access to it
RECOMMENDATION:	That the Certificate is Refused

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 use of the building, area of hardstanding and associated access, as shown in the highlighted land edged red on the drawing (Location Plan; HP-CR-01; received 28 April 2026) for commercial purposes falling only within B8 (Storage and Distribution). The application does not seek to establish the lawfulness of any operational development or engineering works. The submitted information states that the claimed use commenced on 30 May 2014 and has continued since that date.

The land historically formed part of an agricultural holding and was used as farmland and pasture. The applicant states that ownership of the land was acquired in 2013. Planning permission was granted in 2014 for the erection of an agricultural building on part of the site.

The application site comprises two distinct parcels of land. The first parcel consists of the access route extending from the public highway, through Chelworth Lodge Industrial Estate, to the principal part of the application site. This parcel also includes a section of the watercourse crossing separating the two parcels, which consists of an unauthorised bridge providing access to the principal part of the site. The second (principal) parcel comprises approximately 0.2 hectares of land located immediately south of Chelworth Lodge Industrial Estate and includes part of a field, a limited area of hardstanding, and the building. The applicant has stated in writing that the entirety of the submitted red line area forms one planning unit.

The access is shared with Chelworth Industrial Estate, which contains a dwelling and an established range of commercial uses, including industrial units, workshops, vehicle storage areas and depot operations. The principal area of the application site lies beyond the established industrial estate and historically formed part of a larger agricultural field of approximately 0.65 hectares.

The submitted location plan includes a blue line identifying additional land within the applicant's ownership. This includes the wider field to the south of Chelworth Lodge Industrial Estate and a separate parcel of land to the west. The applicant has also confirmed within the supporting Statutory Declaration that ownership extends to Chelworth Lodge Industrial Estate.

The application site differs from that submitted under previous Certificate of Lawfulness application PL/2025/04540. That application included land, hardstanding and the building, overlapping the current application site, but excluded the access route from the public highway. The application was refused and is currently the subject of an ongoing appeal at the time of writing. Evidence submitted as part of that appeal forms part of the planning history of the wider site.

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.

No comments made by members of the public were received from the public consultation. The following is a summary of responses. Comments in full are published online.

Cricklade Town Council: Objection

- fails to demonstrate for entire parcel of land

WC Highways: No objection

RELEVANT SITE HISTORY

The site has the following relevant planning history:

The previously refused planning application for a certificate of lawfulness under reference PL/2025/04540 relates to the 0.65 hectares of field including and surrounding the current application site's red line. The application was refused because the evidence submitted failed to demonstrate, on the balance of probabilities, that the entirety of the land within the application boundary had been used continuously for commercial purposes for a period of ten years or more.

Proposal / Summary
PL/2025/04540 - Lawful development: Existing use Decision - Refuse Date: 14/7/2025 – An application is respectfully submitted for a Certificate of Lawfulness for Existing Use or Development to regularise the existing use of a parcel of former agricultural land for commercial purposes.
14/02108/FUL - Full planning permission Decision - Approved Date: 17/4/2014 – Erection of Agricultural Building
14/10152/PREAPP - Pre-Application enquiry Decision - Pre-App Response Date: 26/11/2014 – Form hardstanding for the storage of shopping trolleys in connection with the existing business
15/08925/FUL - Full planning permission Decision - Approve with Conditions Date: 17/11/2015 – Change of Use of Small Area of Land for Equestrian Purposes and Construction of a Menage 30m x 33m.
PL/2024/09385 - Full planning permission Decision - Refuse Date: 31/1/2025 – Change of use of agricultural land for commercial purposes and associated operational development (Retrospective)
PL/2026/02565 - Change of use of land formerly in agricultural use for commercial purposes together with the removal of temporary buildings – Under Consideration

ASSESSMENT

Evidence Submitted by the Applicant

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

- Location Plan (drawing number: HP-CR-01) confirming the extent of the land in question;
- Planning Statement prepared by Heal Planning Ltd, including aerial photographs of the site dating the years 2017, 2018, 2019, 2020, 2021, 2024, confirming the planning history of the agricultural building to support the application;
- Statutory Declaration of Michael Douglas Lindsey dated 22 April 2026 signed by Michael Douglas Lindsey and countersigned by Roger John Bird, solicitor of Tanners Solicitors LLP, confirming ownership of the adjacent industrial estate, the site in question, and the events associated with the use of the site since end of 2014.

The application form indicates that a Certificate of Lawful Existing Use is sought on the basis that the claimed use has subsisted continuously for a period exceeding ten years. Accordingly, the burden of proof rests with the applicant to demonstrate, on the balance of probabilities, that the use commenced on the claimed date and has continued without material interruption throughout the relevant ten-year period.

In determining an application under Section 191 of the Town and Country Planning Act 1990, the evidence submitted must be sufficiently precise and unambiguous to demonstrate the lawfulness of the claimed use. Where a Local Planning Authority has no evidence of its own, nor any evidence from others, which contradicts or otherwise renders the applicant's account less probable, there is generally no reason to refuse an application provided the applicant's evidence is itself sufficiently clear, precise and credible.

The evidence submitted in support of this application has been considered under the headings below, following which an overall assessment and conclusion are provided.

Planning Unit

It is relevant to have regard to case law, in particular that of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, which is a leading case for determination of the planning unit.

It is noted that the application site is set off the highway, and contains two parcels of land, one within the adjacent site known as Chelworth Lodge Industrial Estate (CLIE), and one forming part of a wider parcel of land to the south of this industrial land. It is also noted that based on the information submitted, that the applicant owns all of the land aforementioned, as well as the land to the west of the wider field.

The wider area of land known as CLIE may be regarded as a single unit of occupation, within it there appears to be a number of uses, including a dwelling, commercial uses, including industrial units, workshops, vehicle storage areas and depot operations.

Based on the evidence available to the LPA, including details declared and evidence submitted to support previous planning applications considered, photographs captured during site visits carried out by the Council's enforcement team, and received Planning Contravention Notices (PCN) over time, the wider area of land to the south of CLIE appears to be used for:

- Storage of Heavy Goods Vehicles (HGVs), smaller vehicles, agricultural goods and associated commercial or agricultural paraphernalia;

- ancillary parking of HGVs and smaller vehicles;
- depot operations; and
- access to the wider agricultural land.

The evidence is considered further below in the assessment.

The application site occupies an area of land within CLIE and part of the land to the south that is clearly defined and physically separated from the CLIE. The principal parcel forms an arbitrary 0.2 hectares area of the wider 0.65 hectares of field, with no clear defined boundary separating the two, as seen from the applicant's own submitted photographs in their planning statement. Nor is there any difference in the uses between the two confirmed in recent site visits by the Council. It can therefore be reasonably concluded that the wider 0.65 hectares of land, naturally bounded by trees and hedgerows, would form a single planning unit, or an ancillary unit which serves the CLIE. Therefore, the boundary of the site identified in red on the site location plan submitted within this application does not align with the planning unit in this case. The red line excludes the remainder of the 0.65 hectares of land that is within the planning unit, but includes an area of land of the adjoining CLIE which appears to have been used for an array of other purposes described above.

Having regard to the above, the LPA has sought for clarifications from the agent on behalf of the applicant. Confirmation in writing was received on 20 July 2026, stating that it is the applicant's position that the entire red line included within the location is one planning unit, and states it consists of the commercial building itself, the parking and storage area to the front of the building, and the access way leading from the adopted highway to serve the commercial building and parking/storage area.

The LPA has therefore determined the application for an LDC for the land identified on the site location plan submitted.

Photographic Evidence

The submitted Planning Statement includes aerial photographs dated 2017, 2018, 2019, 2020, 2021 and 2024. Whilst the aerial photographs illustrate the birds-eye-view physical appearance of the site at the dates the images were captured. The applicant also suggests within the statement, storage use as claimed is primarily active over night and at weekends when vehicles are not being used by their respective owners so that the aerial photography cannot always show vehicles in situ. This would in itself suggest a primary ancillary parking of vehicles usage rather than storage. But furthermore, they do not provide conclusive evidence regarding the nature, extent or continuity of the use taking place within the building. In addition, no aerial photographs have been provided for certain years within the required period, including from April 2016, 2022, 2023 and 2025. As such, the aerial photography does not, in itself, demonstrate the continuous use of the land and building throughout the entirety of the period relied upon by the applicant.

The Planning Statement also includes more recent photographs of the building and surrounding land. These photographs predominantly show the exterior of the building, together with limited views of the interior through an open entrance. However, the photographs do not clearly identify the nature of any materials, equipment or items stored within the building, nor

do they demonstrate that the building is being used solely for the purposes claimed within the application or for the required 10-year period.

The photographs additionally show areas of vehicle parking and a shipping container located partially within the application site. No supporting information has been provided explaining the purpose of the container, the relationship between the container and the claimed B8 use, or whether the vehicles shown are being stored as part of the use of the building, are ancillary to that use, or are associated with other activities occurring within the wider site.

Consequently, whilst the photographs provide evidence of activity occurring on the land, they do not clearly establish the precise nature, extent or continuity of the claimed use. Taken as a whole, the photographic evidence leaves a degree of uncertainty regarding the use of both the building and the associated hardstanding throughout the relevant period.

Statutory Declaration

The Statutory Declaration of Michael Douglas Lindsey, dated 22 April 2026, is afforded significant evidential weight. As a sworn statement made before a solicitor, it constitutes the applicant's formal account of the ownership and use history of the land and building which form the subject of this application.

Within the declaration, the applicant states that he has owned Chelworth Lodge Industrial Estate for approximately 28 years and has owned the application site since 2013. The declaration further states that planning permission was granted for the agricultural building in April 2014 and that, from that time, the building and surrounding land have been used for commercial purposes, including the storage of commercial vehicles. The applicant therefore contends that the claimed use has subsisted continuously for a period exceeding ten years.

Notwithstanding the weight that must be attached to a Statutory Declaration, there remains a duty on the decision-maker in a Section 191 application requiring careful scrutiny of the evidence submitted. It is relevant to highlight the principles derived from case law, in particular *F W Gabbitts v Secretary of State for the Environment and Newham LBC [1985] JPL 630*, where it finds that an applicant's evidence does not require independent corroboration in order to be accepted. However, its findings are equally clear that statutory declarations and witness evidence must be sufficiently precise, unambiguous and credible when considered alongside all other available evidence. Such evidence may be afforded reduced weight where there is contemporaneous evidence that undermines, contradicts or otherwise renders the claimed version of events less probable.

In this regard, the Local Planning Authority has identified a number of inconsistencies and contradictions between the matters asserted within the Statutory Declaration and other evidence available in relation to the application site.

The declaration gives rise to uncertainty regarding the ownership and occupation history of the land. In particular, the assertion that CLIE has been under the applicant's ownership for approximately 28 years appears difficult to reconcile with the separate assertion that the application site, including land forming the access route, was only acquired in 2013. Given that the current application site includes part of the access serving CLIE, these differing accounts introduce uncertainty as to the historical extent of ownership and control of the land.

Nevertheless, this is afforded very limited weight, as it refers to a time period that is outside the required 10-year period for the purposes of this Certificate of Lawfulness application.

In assessing the Statutory Declaration and the wider evidential case advanced by the applicant, the Local Planning Authority has considered all relevant information available to it, including planning history records, evidence held by the Council's enforcement team, and site observations.

The following evidence available to the Local Planning Authority demonstrate inconsistencies and contradictions against the version of events advanced within the submitted Statutory Declaration:

- The application form submitted under reference 14/02108/FUL declared the existing use of the site as agricultural. The red-line boundary associated with that application corresponds with the area now subject to this application.
- The application form submitted under reference 15/08925/FUL likewise declared the existing use of the land as agricultural. The application site included land which now forms part of the access route subject to this current application.
- Site inspection photographs taken by the Local Planning Authority on 12 July 2024 recorded a range of activities and materials across the wider 0.65 ha of land, including HGVs, private vehicles, soil mounds, pallets, large plastic tanks storing unidentified liquids, loose tyres, construction materials, shipping containers and a portacabin used as an office. These features were observed across the wider site which includes the principal area of land forming part of the current application.
- A PCN response, signed by the applicant and returned on 19 August 2025, stated that the building (that is within this application site) was occupied by Trolley Maintenance Services (TMS) and used for both the storage of shopping trolleys and seasonal storage of hay. The response stated that the use commenced following the construction of the building in 2014. The same response also described the remainder of the site as being used for HGV parking and referred to storage containers associated with vehicle maintenance together with the portacabin for office accommodation.
- The Planning Statement submitted in support of application PL/2024/09385 described the proposal as the retrospective change of use of agricultural land for commercial purposes, specifically as a lorry depot and storage facility. The application site included land forming part of the current application site.
- The Statement of Case submitted in support of the appeal against the refusal of application PL/2024/09385 described the wider 0.65-hectare site, including land within the current application boundary, as being used for a mixture of agricultural and commercial storage activities. Furthermore, the planning inspector stated in paragraph 22 of the appeal decision that, during the inspector's site visit on 3 December 2025, it was observed that the site was being used for HGV parking, with the existing building being used for a mixture of agricultural and commercial storage purposes.
- A further Planning Contravention Notice response, signed by the applicant and returned on 9 March 2026, described the 0.65 ha site as accommodating commercial vehicle parking, employee parking and flexible storage uses.
- Additional Statutory Declarations submitted in connection with application PL/2025/04540, together with further declarations submitted during the ongoing appeal

process, describe a variety of activities occurring across the 0.65 ha site at different times. These activities include parking of vehicles akin to a vehicle depot, the storage of vehicles by various companies, office use on the site, and to provide overflow parking and storage in connection with the business of CLIE. In a number of instances, the precise area of land to which the declarations relate is not clearly defined. It must be noted that the wider 0.65 ha includes the principal area of this current application, including the building and the hardstanding area up to the stream.

The above evidence individually does not necessarily demonstrate that the applicant's account is wholly incorrect. However, when assessed collectively, it presents a materially different picture of the historical use of the land from that now advanced in support of the application.

The inconsistencies identified relate directly to the nature, extent and continuity of the use occurring within the application site, including the building, the hardstanding and the access route. Taken together, the evidence indicates that the site has accommodated a range of activities at various occasions during the relevant period, including agricultural uses, vehicle parking, office accommodation, storage activities and ancillary operations associated with the wider industrial estate.

Whilst some of the evidence relates to the wider 0.65-hectare parcel of land, it is important to note that this wider area incorporates the principal part of the land subject to the present application. The evidence therefore remains directly relevant to an assessment of the claimed use history of the application site.

In respect of the access route, the available evidence demonstrates that it serves both CLIE and the adjoining land to the south. Given the established mix of commercial and industrial uses operating from the industrial estate, the evidence does not support a conclusion that the access has, throughout the relevant period, served solely the commercial B8 storage use now claimed.

The evidence relied upon by the Local Planning Authority is derived from the applicant's own planning submissions, responses to Planning Contravention Notices, observations made during site inspections, and findings recorded within previous planning appeal proceedings. The cumulative effect of this evidence introduces significant doubt as to whether the building and land subject to this application have been used continuously for the specific commercial B8 (storage and distribution) use claimed for the requisite ten-year period.

In this case, the available planning records, PCN responses, site observations and previous appeal findings provide evidence which contradicts with the use history now advanced by the applicant. Collectively, this evidence gives rise to material uncertainty regarding the nature, extent and continuity of the claimed use throughout the relevant period. Furthermore, there are gaps and inconsistencies within the evidential record which prevent the Local Planning Authority from concluding, on the balance of probabilities, that the claimed use has subsisted continuously for the requisite period.

Whilst significant weight has been afforded to the Statutory Declaration, the contradicting evidence identified above diminishes the weight that can reasonably be attached to the applicant's account of the site's use in the 10-year period prior to the date of this application.

The additional supporting evidence submitted with the application does not satisfactorily address or reconcile the inconsistencies identified, nor does it provide sufficient clarity regarding the precise nature and extent of the use occurring within the application site over the relevant period.

As a result, the applicant has failed to discharge the burden of proof required to warrant the grant of a Certificate of Lawful Existing Use, and the Local Planning Authority is not satisfied that the evidence submitted is sufficiently precise, unambiguous and consistent to establish the lawfulness of the claimed use under Section 191 of the Town and Country Planning Act 1990.

In light of the above, the applicant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the commercial B8 (storage and distribution) use of the edged red on the drawing (Location Plan; HP-CR-01; received 28 April 2026) has been continuous for the required 10-year period immediately prior to the date of the application. There is insufficient documentation or information to confirm the lawful use over the requisite period. As such, the application for a Certificate of Lawfulness for an Existing Use is recommended for refusal.

CONCLUSION

Having considered the evidence submitted by the applicant, and all other that is available to the Local Planning Authority, it is concluded that the applicant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the use or development has been in place for the requisite period. It is therefore not lawful under the provisions of the Town and Country Planning Act 1990 (as amended).

RECOMMENDATION

It is recommended that the Certificate of Lawfulness be refused for the following reasons:

Reason for refusal: The applicant has failed to provide sufficient evidence on the balance of probabilities to demonstrate that the use of the building, area of hardstanding and associated access, as shown in the highlighted land edged red on the drawing (Location Plan; HP-CR-01; received 28 April 2026) for commercial purposes falling only within B8 (Storage and Distribution) is lawful under the provisions of the Town and Country Planning Act 1990 (as amended).