

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/04103
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	25 Primrose Hill, Tockenham, Swindon, SN4 7PG
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness for existing as-built side and rear extension to the dwellinghouse at 25 Primrose Hill
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 side and rear extension to the original dwelling.

The application relates to a semi-detached, residential dwelling set on the eastern side of Primrose Hill and to operational works that have been carried out to construct a side and rear, two storey extension to enlarge the original habitable accommodation within the property.

Similar works were approved in 1976 and commenced but not completed. The property was purchased by the current owners in 2020 and the works completed, but not in accordance with the plans originally approved in 1976.

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 the case of operational development, the relevant question is whether the unauthorised building operations were substantially completed and have remained immune from enforcement action for the requisite period. In the case of an existing use, the relevant

question is whether that use has continued for the requisite period without material interruption.

The applicant must therefore 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 (LPA), 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.

Therefore, in this instance, the LPA has sought comments from both the adjoining neighbour and the Parish Council.

Consultee

Tockenham Parish Council: No Objection but query if the works match the plans permitted in the 1979 application. It is also unclear if the completed building works are wholly within the curtilage of No 25.

Public Representations

Objection. The plans are significantly altered over that permitted in 1979, structural integrity of the development, security, encroachment onto land outside of the applicant's control.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
N/76/00760 – Extension to Dwelling Approved, 02 June 1976

ASSESSMENT

On 26 October 2023 the Levelling up and Regeneration Act was enacted and introduced a number of planning reforms, including significant changes to planning enforcement, with the provision relevant to this particular application coming into force on 25 April 2024 with transitional arrangements.

It is under these transitional arrangements and relevant dates upon which the applicant has based their argument that the development is now immune from enforcement action.

The transitional provisions provide that the 10-year enforcement period applies only where operational development was substantially completed on or after 25 April 2024. Where operational development was substantially completed before 25 April 2024, the previous four-year enforcement period continues to apply.

As the application was submitted in June 2026, and because the evidence suggests the development was substantially completed before 25 April 2024, the relevant question is whether the unauthorised operational development was substantially completed at least four years before the application date. The critical date is therefore June 2022.

There is no statutory definition of “substantially complete” but in practice this means that the development has been built, the roof is complete, the structure has external walls which are completed, windows and doors are installed and the external shell and internal fit-out is capable of functioning as part of the dwelling.

Guidance on the meaning of 'substantially complete' can be derived from the House of Lords judgment in *Sage v SSETR and Maidstone BC* [2003] UKHL 22. The judgment confirms that the focus must be upon the building operation as a whole and that a building will not necessarily be substantially complete merely because it is capable of occupation.

The issue for the Local Planning Authority is whether the operational development itself was substantially completed at least four years before submission of the application.

In support of this, the applicant is required to demonstrate with unambiguous evidence, on the balance of probabilities, that the use or development is lawful by providing sufficient and clear evidence.

It must be stressed that the planning merits are not considered during this process, it is only for the lawfulness of the development.

Evidence Submitted by the Applicant

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

- Application form
- Location Plan
- Site Location and Block Plan
- Planning Statement
- Proposed Elevations
- Proposed Ground Floor Plan
- Proposed First Floor Plan
- S Crossland Corroboration Letter

Assessment

In assessing this proposal for a Lawful Development Certificate, the Case Officer has taken account of the supporting statements and information received from the applicant, the

concerns raised by the Parish Council and relevant comments made by the adjoining occupiers. Evidence available from the Council's own records have also been considered in relation to this submission.

It is established that permission for an extension to this property was granted in 1976 and that although building works had commenced, they were left uncompleted until the property was purchased by the current occupier in April 2020.

Photographic evidence from May 2009 shows the stalled works and its condition at that time.



Evidence available from the Local Planning Authority's records indicates that the development was externally complete, or substantially complete in planning terms, by July 2021.



Additional evidence taken from street view, show its condition as of May 2023



As stated in the planning statement, the applicant purchased the property in April 2020 and moved in November 2020, once the main building works were complete.

It is also considered that from the publicly available evidence and evidence provided by commentators, that the development accords with the plans submitted in relation to this submission.

It is recorded that an application for a Building Notice was submitted to the Council on 06 May 2020, with the first inspection being carried out on 19 August 2020. Whilst Building Control records indicate that the final sign-off inspection was not undertaken until 16 July 2025, the date of Building Regulation completion is not determinative for planning purposes. The existence of an open Building Control file does not in itself demonstrate that operational development was incomplete.

It is noted that letters of representation and the Parish Council have raised concerns in relation to the works not according with the plans as originally approved. However, the purpose of this application is not to assess whether the development accords with the 1976 planning permission. The issue before the Local Planning Authority is whether the development, as built, has become lawful through the passage of time and is now immune from enforcement action.

It is also noted that letters of representation have commented on the physical encroachment of the development across the common boundary line. However, in this instance, it is considered that any land ownership dispute or dispute in relation to physical encroachment across a common boundary is a civil matter for the relevant landowners and not relevant in relation to the assessment of an application for a Lawful Development Certificate.

Therefore, when assessing the information available from all parties, it is considered that on the balance of probabilities, the available evidence demonstrates that the extension was substantially completed before June 2022.

Therefore, on the balance of probabilities, the evidence demonstrates that the unauthorised operational development was substantially completed prior to June 2022 and consequently more than four years before the submission of the application in June 2026. No enforcement action may now be taken in respect of those operations.

Specifically, the evidence submitted confirms that the plans accompanying the application accurately reflect the development as built, and that the Local Planning Authority has no evidence itself or from other parties to dispute that the works were not substantially complete on or before June 2022. There are no apparent gaps in the evidence or contradictions that would cast doubt on the lawfulness of the development.

CONCLUSION

The Local Planning Authority has considered the concerns raised by third parties regarding structural integrity, boundary encroachment and ownership disputes. These matters do not affect the assessment of whether the operational development is lawful for planning purposes and are therefore afforded no weight in the determination of this application.

The Local Planning Authority has considered the information submitted by the applicant together with evidence available from its own records and the representations received from interested parties.

On the balance of probabilities, the evidence demonstrates that the unauthorised two-storey side and rear extension was substantially completed before June 2022 and therefore more than four years prior to the submission of the application in June 2026. The development falls within the transitional provisions associated with the Levelling-up and Regeneration Act 2023 and remains subject to the former four-year enforcement period.

As no enforcement action may now be taken in respect of the operational development, and there is no enforcement notice in force, the development is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

It is therefore recommended that a Certificate of Lawfulness for Existing Development be issued in respect of the as-built two-storey side and rear extension at 25 Primrose Hill, Tockenham.

RECOMMENDATION

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

Taking into consideration the evidence submitted by the applicant in support of the application, together with any contrary evidence held by or submitted to the Local Planning Authority, it is considered that the applicant has demonstrated, on the balance of probabilities, that the unauthorised side and rear extension to the dwelling known as 25 Primrose Hill, Tockenham, Swindon, SN4 7PG, as shown on the submitted location plan and accompanying drawings, was substantially completed more than four years prior to the date of the application.

Accordingly, no enforcement action may now be taken in respect of those building operations and, pursuant to Section 191(2) of the Town and Country Planning Act 1990 (as amended), the development is lawful.