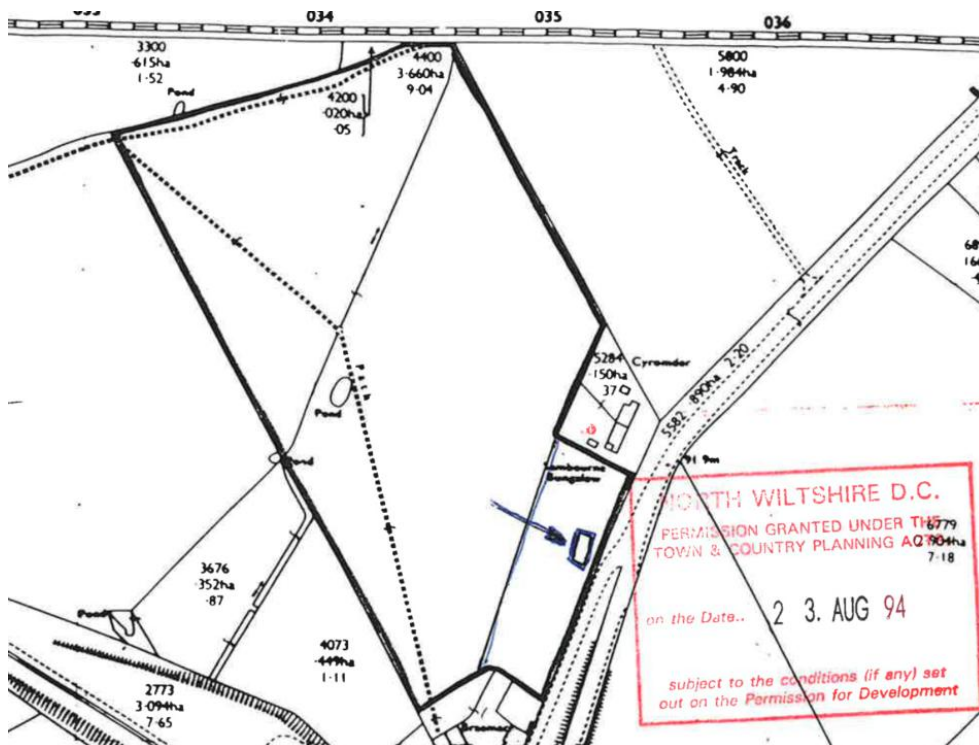


APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

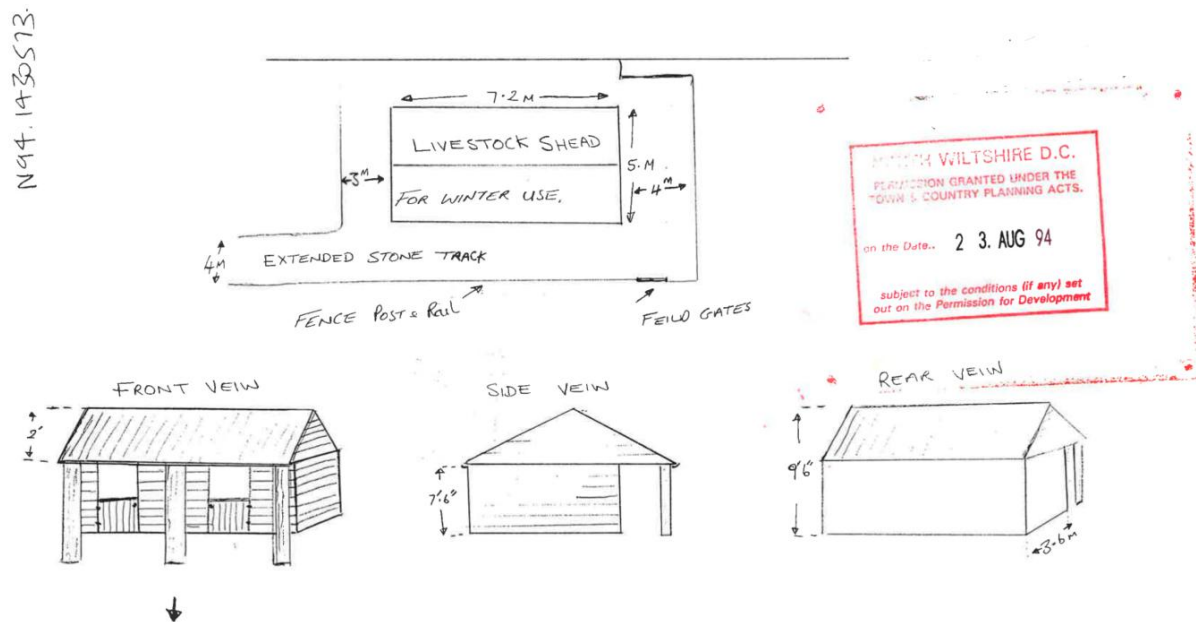
APPLICATION REFERENCE:	PL/2026/03473
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Part Field Farm, Sambourne Road, Minety, Wiltshire, SN16 9RQ
DEVELOPMENT DESCRIPTION:	Certificate of lawfulness (existing use) relating to existing agricultural buildings originally permitted and constructed as livestock buildings pursuant to the 1994 planning permission. The buildings have historically been used for agricultural purposes, livestock sheltering, feed and hay storage, equipment associated rural/agricultural activities. The buildings and land have remained in continuous rural use since construction.
RECOMMENDATION:	Refuse

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 buildings and land associated with planning permission N/94/1430/S73 have been used for agricultural purposes since its construction in 1994. The application relates to the building outlined in blue below, and the land outlined in bold black below, the building was permitted as part of planning permission N/94/01430/S73.



The approved elevations of planning permission N/94/01430/S73 are shown below.



The approved external materials are timber framing and shiplap cladding stained brown and the tin roof in black.

The conditions of planning permission N/94/01430/S73 are as follows:

1. The stables hereby permitted shall only be used for private or social purposes or agricultural purposes and shall at no time be used for any non-agricultural commercial purpose whatsoever, including that of a riding school.

Reason: To prevent the introduction of a commercial use into the area in the interests of amenity.

2. The land shown outlined with a heavy black line on the approved location plan and thereby associated with the building hereby permitted shall be used only for the purposes of agriculture, as defined in Section 336(1) of the Town and Country Planning Act 1990 unless express planning permission shall have first been granted following the submission of an application to the planning authority.

Reason: To define the permission and reserve control over matters for which full details have not been submitted.

The specific uses asserted by the Applicant as part of this current application are claimed as agricultural uses, including livestock sheltering, feed and hay storage, equipment associated rural/agricultural activities. The submitted Supporting Statement also states a 'private social use' of the application building.

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.

In this instance, consultation with members of the public has been undertaken and one letter of representation has been received. This is summarised as follows:

- Original 1994 timber building has been replaced in 2022 with a larger brick and tile structure;
- Uncertainty in status of enforcement action;
- No livestock or associated agricultural activity has been observed, only occasional grass cutting.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
N/04/00038/EMIN - COU Agricultural to Business - Wren's Brook, Sambourne Road, Minety, Malmesbury, Wiltshire, SN16 9RQ –
ENF/2022/00960 - Allegedly started Development after refusal of Planning Application PL/2022/00074. - WRENS BROOK SAMBOURNE ROAD MINETY –
N/09/01451/S73A - Full planning permission Decision - Approve with Conditions Date: 4/11/2009 – Erection of Stable Block and Tackroom, 2 Storey Fodder Storage Barn, Use of Site for Horsekeeping and Retention of Riding Arena (Revision of 09/00926/FUL)
N/94/01430/S73 - Removal/variation of conditions Decision - Approved Date: 23/8/1994 – LIVESTOCK SHEDS
N/04/02252/CLE - Lawful development: Existing use Decision - Refused Date: 21/9/2004 – CERTIFICATE OF LAWFULNESS (EXISTING) FOR USE OF LAND/BUILDINGS FOR FENCING AND BUILDING COMPANY AND FOR STORAGE OF MATERIALS/WORKSHOP/STABLES FOR HORSES
15/02975/FUL - Full planning permission Decision - Approve with Conditions Date: 13/5/2015 – Construction Of Barn (Amendments To Planning Application N/09/01451/S73A) (Retrospective)
16/04536/FUL - Full planning permission Decision - Refused Date: 7/7/2016 – Proposed Barn Conversion to Residential Dwelling (C3) & Associated Works. (Resubmission of 16/00725/FUL)
N/05/02104/APENF - Enforcement appeals Decision - Withdrawn Date: 26/10/2005 – Appeal Against Enforcement - Change of Use of Land from a Mixed Use for Agriculture and the Keeping of Horses to a Mixed Use for that Purpose and for Use by a Fencing and Building Contractor for Workshop and Storage Purposes
PL/2021/08515 - Prior approval Part 3 Class Q: Agricultural buildings to dwellinghouses Decision - Prior Approval Refused Date: 17/11/2021 – Prior notification under Class Q - Change of Use of Existing Agricultural Building to a Single Dwellinghouse and for Associated Operational Development.
PL/2022/00074 - Prior approval Part 3 Class Q: Agricultural buildings to dwellinghouses Decision - Refuse Date: 8/4/2022 – Prior notification under Class Q - Change of Use of Existing Agricultural Building to a Single Dwellinghouse and for Associated Operational Development.
PL/2023/08113 - Full planning permission Decision - Approve with Conditions Date: 7/2/2024 – Change of use of former agricultural barn to tourist accommodation together with associated ancillary works.

ASSESSMENT

In considering an application for a Certificate of Lawfulness for an Existing Use or Development (CLEUD), the relevant test is whether, on the balance of probabilities, the applicant has demonstrated that the use and development described in the application is lawful at the date of the application. The onus of proof rests with the applicant and it is necessary for the Local Planning Authority (LPA) to consider the evidence submitted in support of the application alongside any evidence available to the Council.

Evidence Submitted by the Applicant

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

- Location Plan confirming the extent of the land and its location;
- Documents associated with planning permission N/94/1430/S73, including the application form, decision notice, and approved plans;
- A scanned copy of one page of a Mortgage of Agricultural property dated 20 March 1990;
- Supporting Statement stating the purpose of the application and the applicant's case;
- Statutory declaration of Ian Maurice Plank (the Applicant), signed by both Mr Plank and a solicitor, and dated 11 May 2026, confirming the Applicant's version of events;
- Statutory declaration of Derek and Jaqui Downes (neighbours), signed by Mr Downes and a solicitor, dated 28 April 2026, confirming the buildings being built in 1994 and used for agricultural purposes;
- Statutory declaration of Biagio Vitale (neighbour), signed by Biagio Vitale and a solicitor, and dated 18 August 2021, confirming the presence of livestock shed and their agricultural use since 2005 until 2018;
- Statutory declaration of Sue Steel (visitor), signed by Sue Steel and a solicitor, and dated 28 April 2026, confirming that her visits over a number of years to the site, particularly during winter months were to assist with farming activities, and during her presence, the main livestock buildings have been used for agricultural and private social use;
- Counterfoils of certain months between 1994 and 1995 showing funds spent on agricultural items;
- A scanned document including three photographs with supporting handwritten text providing context in relation to agricultural and private social activities on-site and estimated timeframes of the years 1996 and 1998;
- Site inspection note dated 24 August 2004 with handwritten notes describing the site in relation to planning application 04/02252/CLE.

Review of evidence

The applicant has submitted evidence intended to demonstrate the continued lawful use of the site and building associated with planning permission N/94/01430/S73 (hereafter referred to as '1994 permission', as well as the completion of constructing the building in accordance with the approved plans of the 1994 permission.

The mortgage documentation confirms that the applicants have held an interest in the agricultural property commencing March 1990. This does provide evidence of the applicants' longstanding ownership and agricultural association with the site at that time.

The supporting statement submitted in support of the application refers to agricultural activities, equestrian activities and rural land uses. Whilst the statement provides contextual information regarding the site, it is not entirely clear as to the precise nature and extent of the activities undertaken, nor whether all such agricultural or equestrian activities fall within the scope of the uses authorised by 1994 permission. The statement also refers interchangeably to different buildings which introduces a degree of ambiguity. Nevertheless, drafting inconsistencies may not be critical in isolation, recognising that supporting statements are often prepared in broad terms.

The statutory declaration provided by the applicant is afforded significant evidential weight. The declaration asserts the applicant's version of events since obtaining ownership of the site in March 1990. However, aspects of this declaration lack precision. The declaration does not clearly define or identify the extent of the land or buildings being referred to. Reference to the absence of a separate residential use is unclear given that no residential use of the site forms part of the claimed or the LPA's records of the established lawful use of the site and the building in question. Similarly, the assertion that the planning unit has remained substantially unchanged is ambiguous. It is uncertain whether this statutory declaration is intended to simultaneously refer to the approved holiday accommodation that was subsequently granted as part of planning permission PL/2023/08113. Having considered the above, the statutory declaration is considered somewhat ambiguous and therefore the weight afforded is reduced.

One declaration from residents understood to have lived in the locality since the early 1990s states that buildings on the site have been used for agricultural purposes since their construction following the 1994 permission. However, the declaration does not clearly identify which buildings are being referred to, nor does it distinguish between the various structures that have existed on the site over time. Whilst accompanying photographs show agricultural land and livestock, they do not depict the building in question nor can it be distinguished that they directly related to the extent of land which is the subject of this application.

A further statutory declaration refers to agricultural activities including the housing of sheep and cattle and the storage of hay and feed between 2005 and 2018. Whilst this evidence supports the proposition that agricultural activities have occurred on the site, it does not clearly identify the building or extent of land to which these activities relate. In addition, the declaration was signed in August 2021 and provides no clear account of activities between that date and the submission of the current application.

Another statutory declaration is provided by an individual who describes having knowledge of the site for approximately 33 years and describes themselves as a regular visitor to the site over a number of years, which is not specified. It states that the buildings have been used for a mix of agricultural purposes and for the keeping of a horse for private and social purposes, and further states that the presence of the horse did not alter the agricultural character of the site. Whilst this evidence generally aligns with the uses authorised by the 1994 permission, it remains unclear which particular building or buildings are being described. The declaration similarly lacks precision regarding the extent of the land involved and the exact periods of

activity. Nevertheless, the declaration provides some support for the continued agricultural nature of the site.

The remaining evidence submitted carries limited evidential weight. Historical counterfoils dating from 1994 and 1995 do not clearly relate to the site. Similarly, the submitted photographs containing handwritten dates do not clearly depict the building or buildings subject to this application. The site inspection note dated 24 August 2004 submitted is an annotated version of the original site inspection note held within the LPA's records. This may provide some indication as to the historic layout of the site and the existence of a building at that time, but it represents a rough sketch that is not to scale, and does not provide any evidence for the specific type of use or a continued use as claimed.

In assessing this application, it is necessary to consider the scope of planning permission N/94/01430/S73 and the extent of what that permission lawfully authorised. A planning permission must be read as a whole, comprising both the operative part of the decision and the conditions attached to it. The description of development authorised "Livestock Sheds". Condition 1 limits use of the building, referred to as 'stables' in the condition, for private social use or agricultural purposes and prohibits non-agricultural commercial use. Finally, Condition 2 requires the associated land, as shown on the land outlined in bold black at the start of this report, to be used for no purpose other than agriculture. When reading these together, it is reasonable to conclude that the permission authorised the erection and use of a building, as shown on the approved plans, for stabling and/or agricultural uses, and the land use being only for agriculture.

The planning history also forms a material part of the assessment. In this regard, the LPA notes that a statutory declaration submitted and declared by the same applicant in connection with application 04/02252/CLE asserted that the site was at that time being used for non-agricultural commercial purposes. This statement appears inconsistent with the statement at para 4.4 of the supporting statement. It is noted that while the application at the time referred to the address as 'Wrens Brook' the application documents clearly relate to this same site.

The LPA has also undertaken consultation with neighbouring occupiers and the Council's Enforcement Team. The objection raised by a member of the public has been noted and taken into consideration. While the representation notes a number of discrepancies and contradictions against the applicant's version of events, the representation itself would not, on its own, provide strong evidence to counter the applicant's version of events.

With regards to the claimed continued use in accordance with the conditions of the 1994 permission, the Council has identified no substantive evidence demonstrating that the use of the land has changed to an alternative, unauthorised use during the ten-year period immediately preceding the application. The available evidence, including that held by the Council, is generally consistent with agricultural activities having occurred on the site during that period.

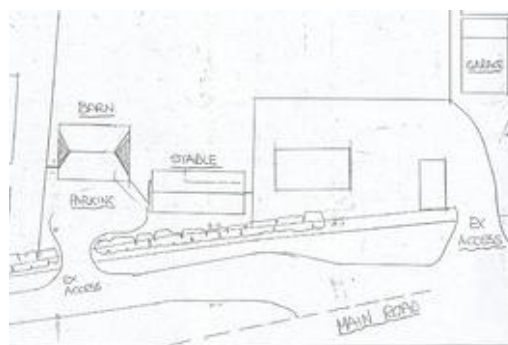
It is important to consider other evidence obtained through enforcement enquiries and site inspections which raise significant questions regarding the application building itself. Photographs by officers during site inspections in 2023 and further evidence show a newer brick structure presently occupying the site. This is a different building to that approved under

the N/94/01430/S73 permission. Whether this operational development comprising the erection of the brick building is lawful is not a matter for determination under this application as it is not what the applicant seeks a certificate for.

Within the application form the site address is given at section (3) as *Existing Livestock Buildings and Associated Land – Part Field Farm* and describes the existing use and building work at second (7) as relating to *Mixed Agricultural Use Including Livestock, Feed Storage, Agricultural Storage and Associated Rural Land Use*. The Supporting Statement at 2.2 & 6.6 clarifies that the LDC application relates to the original building authorised under planning permission reference N/94/01430/S73. There is no reference to a newer brick-built structure.

The evidence demonstrates that the building presently on the site is materially different in appearance and construction from the timber-framed building which approved under planning permission N/94/01430/S73. The original approved structure does not appear to remain on site in the form shown on the approved plans. The brick structure is considered to be a different building.

For the avoidance of doubt, this brick building is not the stable building which was permitted in 2009 permission (amended in 2015 ref 15/02975/FUL) which is in a different location on the plans (approved plan extract below) and is described by the applicant in para 6.3 as never being built. The 2023 permission which related to the change of use two storey barn overlaps and has now superseded that permission in any event.



Conclusion

In summary of the above, the statutory declaration declared by the applicant submitted as part of this application carries great weight. This is supported by a lesser degree of weight afforded to the declarations of the neighbouring residents and visitors familiar with the site. However, the evidential weight attributed by the statutory declarations are significantly reduced by the ambiguity demonstrated. There is a lack of clarity regarding precisely which building or buildings are being referred to, and limited precision regarding the extent of land to which the evidence relates.

The photographs held by the Council and publicly available aerial imagery provide clear evidence newer brick building has been constructed on site in place of the original timber structure. The application contains no information to explain the presence of the newer brick building.

Accordingly, whilst the LPA could accept the proposition that some agricultural activity may have taken place on the land consistent with the 1994 permission, it does not demonstrate with the requisite degree of clarity and precision that any specific building authorised by planning permission N/94/01430/S73 continues to exist.

The ambiguity and contradictions raise considerable doubt regarding the lawfulness of the operational development currently on site and its use. Therefore, the applicant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that the use of the land and buildings at the site in accordance with the conditions attached to planning permission N/94/01430/S73 would be lawful. As such, the application for a Certificate of Lawfulness for an Existing Use cannot be granted and must be refused.

RECOMMENDATION

That the Certificate of Lawfulness be REFUSED for the following reason:

It is not demonstrated with a necessary degree of clarity that the specific building authorised by planning permission N/94/01430/S73 has continued to exist and function as claimed. There is a lack of clarity regarding which building or buildings are being referred to, and limited precision regarding the extent of land to which the evidence relates. A recently constructed building exists on the site which is not referred to in the submitted information. The applicant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probabilities, that the building/s, their use, and use of the land at the site as described would be lawful.