

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/03622
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	The Old Chalk Pit, Old Malthouse Lane, Ford
DEVELOPMENT DESCRIPTION:	Certificate of Lawfulness (Existing Use) to confirm that the container, its containment area, and associated access have been in continuous existence for more than 10 years
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 for the stationing of a storage container, which has allegedly been present and in use at the site for 10+ years.



The site is situated in the countryside approximately 2 kilometres to the northeast of the Principal Settlement of Salisbury and between the Small Villages of Ford and Firsdawn. To the east, south and west the site abuts fields/paddocks and woodland and is defined by a steep bank because of the site's former use as a chalk pit. To the north the main road (Old Malthouse Lane) leading between the A30 to the A338 separates the site from a small cluster of residential dwellings and their associated amenity/parking provision.

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 Section 171B 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.

Firsdow Parish Council: Objection - *The site has already been refused permission for B8 storage. The applicant has not demonstrated the continued need exists for the existing container to support the agricultural holding. The applicant has not addressed the frequency of use/access to the existing container. The applicant has not shown how the continued use of the container will address the highway/noise and environmental aspects that were reasons for the refusal of the site to be used for B8 storage in 2023.*

Third party comments: One letter of support from a third party was also received stating:

During the nearly thirty years that I have lived nearly opposite The Old Chalkpit there has always been a container there.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
PL/2022/02378 - Full planning permission Decision - Refuse Date: 18/5/2022 – Proposed change of use from agricultural to B8 storage
PL/2023/03208 - Full planning permission Decision - Refuse Date: 15/6/2023 – Change of use from Agricultural to B8 storage (Resubmission of PL/2022/02378)

ASSESSMENT

The supporting statement with the application states:

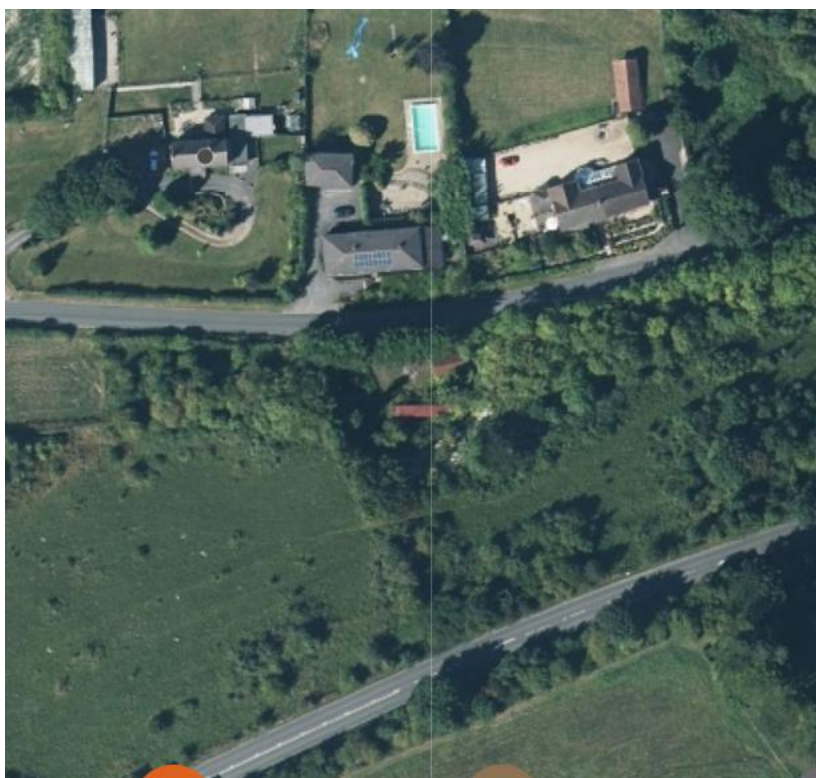
The container at present on site belongs to the applicants and is 14.6 m long x 2.40 m wide and 2.4 m high in the position as indicated in the block plan.

The container is rented to a Mr S Isaacs and is used for storage of materials and equipment in the tenant's professional trade as a general building company, trading under the name of B K Isaacs' Sons Limited.

Aerial photographs appear to show a container being present on site for several years, albeit in a slightly different position within the site, but it does appear comparable with the size/design of the container which forms part of this application.



2013



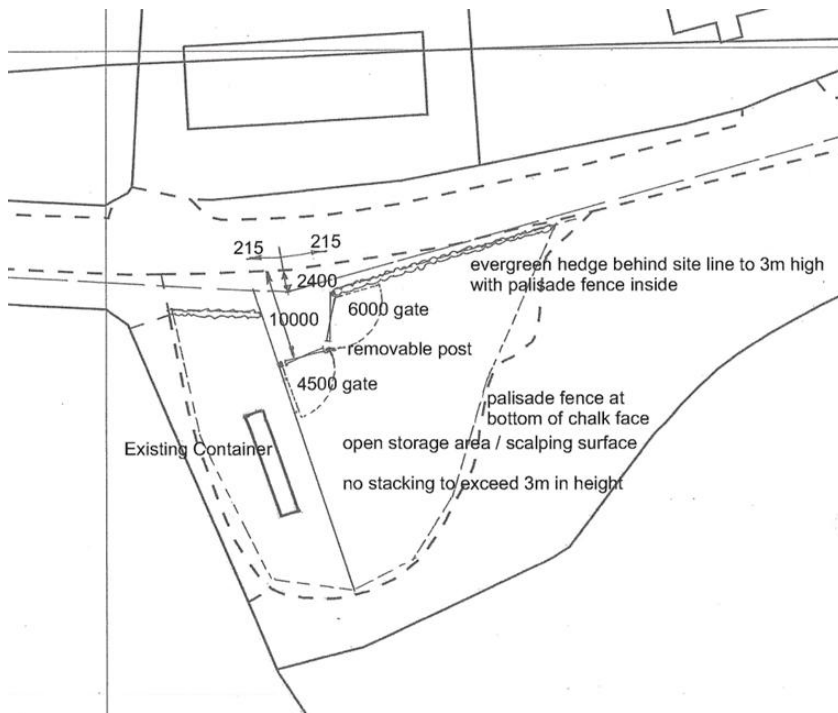
2016

Officers note the planning history for the wider site, being that two applications for the whole site to be used for a B8 Storage use were refused due to the site's Countryside location and highway safety and ecological concerns.

Officers also note the concerns raised by the Parish Council regarding the above history.

However, the current application type relates solely to a Certificate of Lawfulness, which is covered by separate legislation to the previous applications. A certificate of lawfulness is based on whether the evidence submitted can confirm, on the balance of probabilities that the single container has been present and in use on the site for 10+ years. The merits of the scheme and its compliance with the Development Plan are not a material consideration for this type of application.

It would appear by the Council's aerial photographs above that a container has been present on site for several years. The case officer's report, and site photos for the 2023 refusal (PL/2023/03208) also confirms that a container was present on site at that time. The container and associated area was also illustrated as existing on the submitted plans for that application, albeit that this application was considered less than 10 years ago.



PL/2023/03208 site plan

Evidence Submitted by the Applicant

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

- A signed declaration from Mrs Boswell who previously resided opposite the site
- A signed declaration from Mr Isaacs stating that he has used the container on site since 2006 for the storage of his materials and equipment in association with his trade as a builder

Assessment

The evidence submitted by the applicant demonstrates, on the balance of probabilities, that the use of the land/container has been continuous for the required 10 year period immediately prior to the date of the application, and therefore complies with the relevant provisions of the Town and Country Planning Act 1990 (as amended). As there is no other counter evidence or factors to suggest that the use is unlawful, the application for a Certificate of Lawfulness for an Existing Use is recommended for approval.

Specifically, the evidence submitted confirms that Mr Isaacs has been using the container on this site for storage for 20 years. The Council's own aerial photos also identify a container being present on site since at least 2013. Furthermore, a third party letter has also been received stating that the occupier purchased the nearby property in 1996 and confirms that during her occupancy of nearly 30 years they have always known of a container being present on site.

There are no apparent gaps in the evidence or contradictions that would cast doubt on the lawfulness of the use or development. Therefore, the local planning authority has no evidence

itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable,

CONCLUSION

On the balance of probability, sufficient evidence has been provided to demonstrate that the storage container and associated land as identified on the site plan has been used continuously for the stationing of a container and its use for storage, for a period more than 10 years.

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 should be issued for the stationing of and use of the building for the storage of building equipment and materials on the site.

RECOMMENDATION

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

Certificate of Lawfulness (Existing Use) to confirm that the container, its containment area, and associated access have been in continuous existence for more than 10 years; and the container has been in storage use for that time.

Reason for approval: The evidence submitted satisfies the criteria set out in the Town and Country Planning Act 1990 (as amended), and the use meets the relevant time limits and planning law requirements.