

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/04723
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Field Cottage, Main Road, Christian Malford, Chippenham, SN15 4DA
DEVELOPMENT DESCRIPTION:	Certificate of lawfulness for existing change of use of land from a paddock to domestic garden
RECOMMENDATION:	Approve with Conditions

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 an existing change of use from paddock to domestic garden, serving the dwelling known as Field Cottage.

IN their submission, the applicant claims that the change of use took place in 2014, with the land fenced in and separated from the remaining paddock land.

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.

Christian Malford Parish Council - No comment to make.

RELEVANT SITE HISTORY

Proposal / Summary
N/87/02310/FUL - Full planning permission Decision - Approve with Conditions Date: 12/11/1987 – EXTENSION TO DWELLING
N/06/01828/COU - Full planning permission Decision - Approve with Conditions Date: 24/8/2006 – Change Of Use From Garage/Workshop To Self Contained Annex
N/87/00338/FUL - Full planning permission Decision - Approved Date: 31/3/1987 – ERECTION OF TWO STOREY EXTENSION TO DWELLING
17/07930/PREAPP - Pre-Application enquiry Decision - Pre-App Response Date: 28/9/2017 – 3 Log Cabins
N/86/01186/S53 - Full planning permission Decision - Approve Date: 7/7/1986 – Section 53 Determination for residential use of vacant cottage
N/89/01570/FUL - Full planning permission Decision - Approved Date: 13/7/1989 – EXTENSION TO DWELLING
N/90/02472/FUL - Full planning permission Decision - Approve with Conditions Date: 25/2/1991 – EXTENSION TO FORM LEISURE AREA INDOOR SWIMMING POOL
PL/2026/04723 - Lawful development: Existing use – Certificate of lawfulness for existing change of use of land from a paddock to domestic garden

ASSESSMENT

In this case, the following evidence has been submitted by the applicant:

- Signed Statement of Clare Neal 15_07_2026 (The applicant has produced a site plan (Exhibit CN1) showing the extent of the area her statement refers to and some photos) (Exhibit CN2).
- RL_631_1 Location Plan
- RL_631 Block Plan

The evidence comprises both the recollections of the applicant as to the course of events (provided in a notarised form) along with some documentary evidence in the form of photographs. However, there is no independent corroboration of the dating of the photographs.

The supplied evidence asserts that the area has been separated from the wider agricultural land by gating/fencing, installed in 2015 (and shown being erected in photograph 1). Other photographs suggest landscaping was carried out within the parcel of land at an earlier point in 2014, but this does not seem to suggest a separation from the paddock in the same manner as the gate/fence, nor in itself suggest its use as domestic garden.

Nevertheless, cumulatively, the supplied evidence does suggest that that the land was severed from the surrounding agricultural land and used as a domestic garden from at least 2015, and possibly earlier. There are no apparent gaps in the evidence or contradictions that would cast doubt on the lawfulness of the development. Equally, 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.

Therefore, on the balance of probabilities, that the use of the land 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).

CONCLUSION

On the balance of probability, sufficient evidence has been provided to demonstrate that the land has been used as a domestic garden the area of land identified on the site plan has been used continuously for a period in excess of 10 years. 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 therefore recommended that on the balance of probability, a certificate of lawfulness be issued for the use of land as a domestic garden since 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.

RECOMMENDATION: That the Certificate of Lawfulness for Existing Use is GRANTED.