

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2025/03666
APPLICATION TYPE:	Lawful development: Existing use
SITE ADDRESS:	Greenacres, Fowlswick Lane, Allington, Chippenham, SN14 6LT
DEVELOPMENT DESCRIPTION:	Certificate of lawfulness for non-compliance with agricultural occupancy condition (condition 2) of N/95/1372/F
RECOMMENDATION:	To Grant the Certificate of Lawfulness

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 non-compliance with a condition which was attached to N/95/01372/F, to ensure the dwelling approved under that permission was only occupied by persons working in agriculture or forestry. The dwelling is indicated by the red dot on the aerial photograph below: -



Specifically, the condition stated:

“The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 336(1) of the Town and Country Planning Act, 1990, or in forestry, including any dependents of such a person residing with him or a widow or widower of such a person.

Reason: The site is within an area where residential development for purposes other than the essential requirements of agriculture, or forestry, are not normally permitted.”

The application now being considered states that since October 2013 the dwelling has been continuously let to (and occupied by) a person who has never been employed in agriculture or forestry.

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.

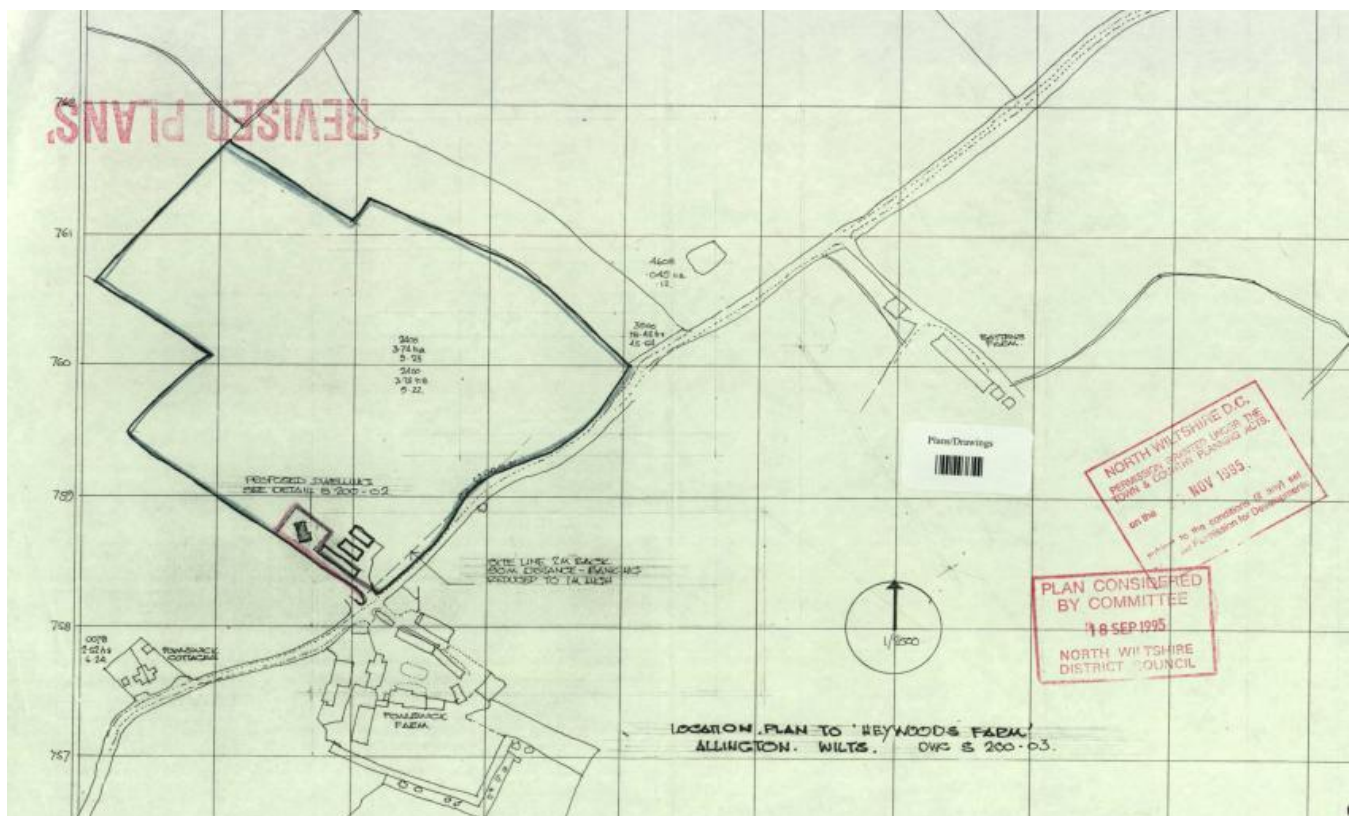
In this case, Chippenham Without Parish Council were consulted. It advised that it had No Objection to the application.

The nearest neighbour was also notified of the application by direct letter and invited to comment. No representations have been received.

RELEVANT SITE HISTORY

N/95/01372/F – Proposed agricultural workers dwelling – Approved 07.11.1995

Extract of approved proposed location plan below:



ASSESSMENT

Evidence:

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

- A copy of planning permission reference N.95.1372.F dated 07/11/1995, which granted permission for an agricultural worker's dwelling subject to an occupancy restriction limiting occupation to persons solely or mainly employed in agriculture or forestry, or qualifying dependants.
- A statutory declaration by Tina Sharon Perry, one of the owners of the property, confirming that she and her husband occupied the dwelling in accordance with the agricultural occupancy condition until 2012, before moving into the main farmhouse.

The declaration states that the dwelling was subsequently let to Melanie Yexley in October 2013 and that she has occupied the dwelling continuously since that time. The declaration further states that Melanie Yexley has never been employed in agriculture or forestry and has therefore occupied the property in breach of the agricultural occupancy condition.

- A statutory declaration by Melanie Yexley confirming that she has occupied the dwelling continuously since October 2013 and continues to do so. The declaration further confirms that throughout her occupation she has never been solely or mainly employed in agriculture or forestry and therefore has occupied the dwelling in breach of the agricultural occupancy condition.
- Copies of tenancy agreements demonstrating occupation of the dwelling by Melanie Yexley from 2013 onwards, including agreements commencing in November 2013, November 2016, November 2019 and October 2022. These agreements identify Melanie Yexley as tenant of Greenacres and provide evidence of continued residential occupation over a period exceeding ten years.
- A supporting letter from Melanie Yexley dated 28 February 2025 confirming that she has been the sole tenant of the property since 1 November 2013, remains in occupation of the dwelling and has not been engaged in agriculture or forestry during that period.
- A location plan identifying the site to which the application relates.

Assessment of Evidence:

Whilst the supporting Planning Statement includes discussion regarding the continuing need for agricultural workers' accommodation, housing land supply, and the tests for imposing and retaining planning conditions, these matters are not relevant to the determination of the current application. An application for a Certificate of Lawfulness is not an assessment of the planning merits of a development or condition. The Local Planning Authority must determine, as a matter of fact and degree, whether the evidence demonstrates on the balance of probability that the agricultural occupancy condition has been breached continuously for a period exceeding ten years such that enforcement action is now time-barred. The assessment therefore focuses solely upon the evidence submitted in support of the claimed breach.

The evidence submitted is considered collectively. The applicant has provided a statutory declaration from Tina Sharon Perry, owner of the property, confirming that she and her husband occupied the dwelling in accordance with the agricultural occupancy condition until 2012 before moving to the main farmhouse. The declaration further confirms that the dwelling was subsequently let to Melanie Yexley in October 2013 and that she has occupied the property continuously since that date despite not complying with the requirements of the occupancy condition. A separate statutory declaration from Melanie Yexley confirms that she first occupied the dwelling in October 2013, has occupied it continuously since that time, continues to occupy the property, and has never been solely or mainly employed in agriculture or forestry.

The statutory declarations are supported by a series of tenancy agreements demonstrating occupation of the dwelling by Melanie Yexley between 2013 and 2025:

- First agreement covers 15/11/2013-14/11/2016
- Agreement dated 1/11/2016 runs to 31/10/2019
- Third agreement covers period 31/10/2019 to 01/10/2022
- Most recent agreement seen is dated 01/10/2022 to run for 35 months.

Whilst the most recent tenancy agreement submitted expired in August 2025, this does not undermine the applicant's case. By that point the evidence already demonstrates a period of occupation in breach of the condition exceeding ten years. Furthermore, the statutory declaration of Melanie Yexley, sworn on 04 June 2026, confirms that her occupation of the dwelling has continued uninterrupted beyond the expiry of the latest tenancy agreement and up to the date of the declaration.

In addition, the Local Planning Authority has reviewed its planning enforcement records and has identified no enforcement investigations, complaints, notices or other action relating to a breach of the agricultural occupancy condition at the site. No evidence has been identified by the Local Planning Authority which would contradict the applicant's account or otherwise suggest that the breach has not occurred continuously for the period claimed.

Having regard to the statutory declarations, tenancy documentation and the absence of any contradictory evidence, it is considered that, on the balance of probability, the agricultural occupancy condition has been breached continuously for a period in excess of ten years. There are no apparent gaps, inconsistencies or contradictions in the evidence which would cast doubt on the applicant's version of events. Accordingly, the Local Planning Authority is satisfied that the breach of condition has become lawful through the passage of time and that a Certificate of Lawfulness should be granted.

CONCLUSION

The evidence submitted, comprising statutory declarations and supporting tenancy documentation, is considered sufficient to demonstrate on the balance of probability that the dwelling has been occupied in breach of Condition 2 of planning permission N.95.1372.F for a continuous period exceeding ten years. The Local Planning Authority has identified no evidence to contradict the applicant's account. Accordingly, the breach of condition is considered lawful and it is recommended that a Certificate of Lawfulness be issued.

RECOMMENDATION

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

The continued occupation of the dwelling known as Greenacres, Fowlswick Lane, Allington, Chippenham, Wiltshire SN14 6LT in breach of Condition 2 (Agricultural Occupancy Condition) attached to planning permission N.95.1372.F dated 07 November 1995.

Reason for approval:

The evidence submitted, comprising statutory declarations and supporting tenancy documentation, demonstrates on the balance of probability that the dwelling has been occupied continuously in breach of Condition 2 of planning permission N.95.1372.F for a period exceeding ten years. The Local Planning Authority has identified no evidence which contradicts the applicant's account and no enforcement action has been taken in relation to the breach. Accordingly, the breach of condition has become lawful through the passage of time and is immune from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended).