

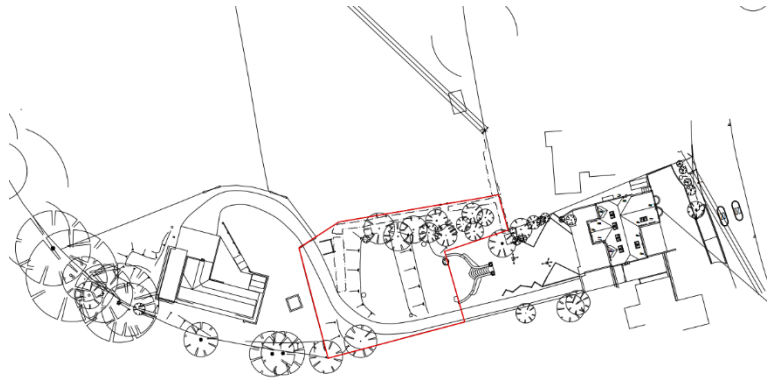
APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/04663
APPLICATION TYPE:	Lawful Development: Existing Use
SITE ADDRESS:	Meadow House, Dinton Road, Fovant, Salisbury, SP3 5JW
DEVELOPMENT DESCRIPTION:	Lawful Development Certificate for the change of use of equestrian land to residential garden
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 the use of land as a residential garden, which has been in operation at the site since 15/05/2010. The application relates to the change of use of land to the rear of Meadow House, from equestrian land to residential garden.

The application details that land to the rear of Meadow House, included in the location plan below outlined in red, has established use as residential garden since the purchase of the house and land in 2010.



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.

Fovant Parish Council provided the following response to the application:

Following our planning delegation policy, Councillors have opted to make a 'no comment' response by a majority vote.

No further comments or representations were made during the course of the application.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
S/2008/0391 - Full planning permission Decision - Refused Date: 22/4/2008 – THE ERECTION OF STABLE BUILDINGS, BOUNDARY FENCING AND THE CHANGE OF USE OF THE LAND FROM AGRICULTURAL TO THE KEEPING OF HORSES
S/2009/0572 - Full planning permission Decision - Approved Date: 18/6/2009 – RETENTION & COMPLETION OF RETAINING WALL & PATIO AND ASSOCIATED EARTHWORKS/LANDSCAPING
S/2010/0171 - Full planning permission Decision - Approve with Conditions Date: 22/4/2010 – CHANGE OF USE FROM AGRICULTURAL TO EQUESTRIAN, AND ERECTION OF STABLES, HARDSTANDING, AND EXTENSION OF EXISTING TRACK
S/2004/1177 - Full planning permission Decision - Refused Date: 6/7/2004 – CONSTRUCTION OF A PAIR OF DETACHED 4 BEDROOM HOUSES EACH WITH INTEGRAL GARAGE.

S/2007/0395 - Full planning permission Decision - Refused Date: 17/4/2007 – CHANGE OF USE FROM AGRICULTURAL LAND TO HORSE PADDOCKS FOR PRIVATE USE WITH THE PROVISION OF 2NO STABLE BLOCKS WITH BOUNDARY POSTS AND RAIL FENCING.
S/2004/1554 - Full planning permission Decision - Refused Date: 8/9/2004 – ERECT PAIR OF DETACHED DWELLINGS WITH INTEGRAL GARAGES
S/2006/1850 - Full planning permission Decision - Approve with Conditions Date: 3/11/2006 – ERECTION OF 2 DWELLINGS (AMENDMENT TO PREVIOUS PERMISSION S/2005/1676)
S/2005/1676 - Reserved Matters Decision - Approve with Conditions Date: 30/11/2005 – CONSTRUCTION OF TWO DETACHED DWELLINGS ALTERATIONS TO EXISTING ACCESS & ASSOCIATED WORKS
15/05976/FUL - Full planning permission Decision - Approve with Conditions Date: 6/8/2015 – Construction of a brick chimney on the rear facade of the dwelling to locate a wood burning stove on the ground floor.
S/2005/0058 - Outline Planning Decision - Approve with Conditions Date: 7/3/2005 – DEMOLITION OF EXISTING DWELLING AND DETACHED GARAGE - CONSTRUCTION OF TWO DETACHED DWELLINGS ALTERATIONS TO EXISTING ACCESS AND ASSOCIATED WORKS
S/1993/0256 - Full planning permission Decision - Approve with Conditions Date: 30/3/1993 – TWO STOREY EXTENSION
S/1993/1329 - Full planning permission Decision - Approve with Conditions Date: 4/11/1993 – PROPOSED CONSERVATORY TO REAR OF HOUSE
S/2012/0287 - Full planning permission Decision - Refused Date: 4/4/2012 – Change of use from agricultural land to residential garden

ASSESSMENT

The application seeks a certificate of lawfulness for the change of use from equestrian to residential garden, or land to the rear of Meadow House. The development must meet the following criteria, for a Lawful Certificate, existing use, to be granted.

10 years applies for:

- Existing uses, demonstrating that the use has been continuous for 10 years or more without interruption

Continuous Use:

- For a change of use, the use must have been continuous for the required time period without interruption e.g., periods of inactivity or abandonment, temporary changes in the use of the property (e.g., a commercial premises used for residential purposes), actions such as enforcement notices or formal closures. This ensures that the use has been established over a sustained period of time.

Evidence Submitted by the Applicant

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

- Aerial Mapping dated 2005, 2009, 2011, 2014, 2018, 2021, and 2025.
- Dated Photographs from 2010, 2011, 2012, and 2014.
- Sales Brochure

Assessment

The information submitted provides clear and visual evidence that this area of land has been occupied and used as residential garden, for a period in excess of 10 years. Historic mapping

provides aerial imaging of the site, which has an established boundary separating this area from the land to the north and west. The land subject of this application is adjacent to the host dwelling. The land is residential in appearance and formally separated from the equestrian land which extends significantly to the north and west, and is associated with the stables which are to the west, within the identified boundary of equestrian land. The aerial mapping provides over 15 years worth of evidence that this land has been in residential occupation, separated from the equestrian land, and has been used as residential garden since 2011.

The mapping provided by the applicant aligns with Historic Mapping available to the Council, and as such the evidence provided by the applicant is considered to support the claim for lawful use. There is no contrary evidence available that would suggest the use has not been continuous, and the evidence provided, and aerial mapping, provides consistent and continuous evidence of the use of the land as residential garden. The established boundary separating this land from the equestrian land, stables, and paddock, has been in place since 2011, with no removal, or alterations shown throughout the 15 years that follow. There has been no enforcement action on this site, and the evidence provided is considered sufficient in the claim for a lawful use.

The evidence submitted by the applicant demonstrates, 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). As there are no other 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 the land has been used as residential garden, and not for equestrian use, since 2010, based on the dated photos and aerial mapping provided. There are no apparent gaps in the evidence or contradictions that would cast doubt on the lawfulness of the 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 residential use of the equestrian land identified on the site plan has been used continuously for a period in excess of 10 years at the point of submitting the application. 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 be issued for the use of the building for the storage of building equipment and materials.

RECOMMENDATION

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

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.