

Supplementary Planning Document
Lawful Development Certificates

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Planning Advice Note: Lawful Development Certificates

1. About This Guidance

- 1.1** The National Planning Policy Framework (NPPF) indicates that Local Development Documents form the framework for making decisions on applications for planning permission. Decisions have to be taken in accordance with the development plan unless other material considerations indicate otherwise. NPPF advises that a local planning authority may prepare Supplementary Planning Documents to provide greater detail on the policies in its Local Plan. Supplementary Planning Documents are a 'material' consideration when planning applications are decided.
- 1.2** As required by the Planning and Compulsory Purchase Act 2004 we have prepared a Statement of Community Involvement (SCI) which sets out how we will involve the community in preparing our Local Plan and consulting on planning applications. In accordance with the SCI we have involved people who may be interested in this Supplementary Planning Document and asked them for their comments. We have produced a consultation statement which summarises all the comments people made to us and our response. This is available on request.
- 1.3** This advice note offers guidance to anyone considering applying for a Lawful Development Certificate (LDC) but does not attempt to provide a definitive interpretation of the law. It should be read in conjunction with the guidance note which can be found on the Planning Portal https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-lawful_development_certificates.pdf

2. What Is A Lawful Development Certificate?

- 2.1** A LDC (Lawful Development Certificate) is a statutory document which confirms that the use, operation or activity named in it is lawful for planning control purposes.
- 2.2** There are two types of LDC which can be applied for, saying whether:-
- i. an existing use of land, operational development or activity in breach of a planning condition is lawful; or
 - ii. a proposed use of buildings, land, or operations intended to be carried out would be lawful.

3. What Are The Benefits Of A Lawful Development Certificate?

- 3.1** A LDC can provide protection against enforcement action and therefore is valuable in its own right at any time. However, a certificate may be specifically required, for example, to obtain a Waste Disposal Licence or may be advantageous if the property is to be sold.

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4. Do Any Time Limits Apply To A Lawful Development Certificate?

4.1 Yes. If you are applying for an LDC in respect of an existing use of land, operational development or activity in breach of a condition, the evidence you provide will need to show the following time limits have been passed:-

- i. in the case of operational developments, that the operations were substantially completed at least 4 years ago;
- ii. in the case of a change of use of a building to a single dwelling house, that the change took place at least 4 years ago;
- iii. in any other case, such as a change of use or breach of a condition of a planning permission, that the change or breach occurred at least 10 years ago.

4.2 Once these time limits have passed, the breach of planning control will be immune from enforcement action.

5. How Much Does It Cost To Apply?

5.1 A fee is payable when an application is made. Generally the fees are:-

- i. for an existing use of land or operational development, the same as the equivalent planning application fee;
- ii. for a proposed use etc. to be carried out, half of the fee for an equivalent planning application.

6. How Do I Make An Application?

6.1 An application can be made on forms available from Development Management. Separate forms are available for an existing and proposed LDC.

7. What Type Of Information Is Required?

7.1 For existing development you should provide:-

- A. a full description of the operation, use or activity providing a complete definition, (for example, a description might include the number and size of lorries based at a haulage yard and the activities carried on as part of that use; the range of activities carried on at a particular builder's yard; the number and category of vehicles displayed for sale on a site; and other details such as the hours of work, the machinery or equipment used, the height above ground level to which goods or materials have been stored, or other methods of operation of a use);
- B. a plan on an Ordnance Survey base showing the site outlined in red;
- C. a scaled plan defining areas having different functions within the same site (e.g. storage, offices, manufacturing etc.);
- D. details of working practices of relevance (e.g. working hours, the processes carried out on site);
- E. details of any relevant planning decisions known to you.

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- 7.2** To substantiate your claim you should provide any additional information you consider necessary, such as:-
- a. any information concerning business rates, or from the council tax or electoral records;
 - b. any relevant invoices/bills or receipts for services such as water, electricity, gas or telecom;
 - c. personal testimonies or sworn affidavits of applicants, operations or witnesses;
 - d. photographs which can be dated;
 - e. any other relevant factual information.
- 7.3** Please ensure any information you submit is relevant to the LDC and if extensive, is properly organised and indexed.
- 7.4** **For proposed development you should provide:-**
- a. a full and precise description of the current use and operations;
 - b. a full and precise description of the proposed use and operations.

8. How Is A Decision Made?

- 8.1** An assessment of the submitted evidence will be made by a Planning Officer and any further details by way of clarification requested. The application will then be referred to the Borough Secretary, who will make a final judgement upon the application.
- 8.2** The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. However, the onus of proof in an LDC application is squarely on the applicant to show to the Council on the balance of probabilities, that a Certificate ought reasonably to be issued. Put simply, the applicant must show that it is more likely than not that the facts asserted by him or her are correct. Indeed, Government advice to local Council's is that "they need not go to great lengths to show that the use, operations or failure to comply with a condition specified in the application is not lawful". There is no requirement on the part of the Council to make an independent search for evidence. The Planning Service will always co-operate with an applicant seeking information by making records available but unless sufficient evidence is provided by the applicant, "such an application would be refused as not proven on present evidence" (Circular 17/92).

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9. What Happens If I Provide False Information?

- 9.1** It is a serious offence to make a false or misleading statement, use a false or misleading document or withhold information material to the application, to obtain a certificate. The maximum penalty on summary conviction is £5000. On conviction in the Crown Court, the maximum penalty is two years imprisonment and/or an unlimited fine.
- 9.2** If a false statement is made or a document used, or any material information withheld, the Council can revoke a certificate.

10. Do I Have A Right Of Appeal?

- 10.1** If an application is wholly or partly refused or granted in a different form to the application submitted, or it is not determined within 8 weeks, an appeal can be made to the Secretary of State. Appeal forms are available from :-

The Planning Inspectorate, 3/08a Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0117 3728612).

11. Further Advice

- 11.1** A Department of the Environment Circular 'Planning and Compensation Act 1991 – Implementation of the remaining Enforcement Provisions' No 17/192 is available from H.M.S.O.
- 11.2** If you have any queries about this note or have any questions about specific sites, you should contact members of the Development Management Section of Planning Services on (01226) 772595.