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Guidance

Lawful development certificates

Explains the process for obtaining a lawful development certificate for existing or proposed use.

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Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (<https://www.gov.uk/government/publications/national-planning-policy-framework--2>), the policies in the previous version of the framework published in 2012

(<http://webarchive.nationalarchives.gov.uk/20180608095821/https://www.gov.uk/government/publications/national-planning-policy-framework--2>) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (<https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup>).

Establishing whether a proposed or existing development is lawful

What is a lawful development certificate?

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that:

(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>); or

(b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>).

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How is a lawful development certificate obtained and what does it mean?

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

The key statutory framework for such applications and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 (“the Act”) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>).

Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (section 192(4)) (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>). Examples of such a material change include:

- a direction under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/596/article/4/made>) taking away the particular permitted development right relevant to the certificate; or
- a statutory amendment to permitted development rights

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Definition of lawfulness and its limits

How is lawfulness defined in relation to lawful development certificates?

The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>). In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force (<https://www.gov.uk/guidance/ensuring-effective-enforcement#time-limits-for-taking-enforcement-action>), or, for which planning permission is not required (<https://www.gov.uk/guidance/when-is-permission-required#What-are-permitted-development-rights>).

An enforcement notice is not in force where an enforcement appeal is outstanding or an appeal has been upheld and the decision has been remitted to the Secretary of State for redetermination, but that redetermination is still outstanding.

Paragraph: 003 Reference ID: 17c-003-20140306

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How do lawful development certificates relate to other regulatory requirements?

The grant of a certificate applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements such as the Building Regulations 2010 (<https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient#legislation>), or the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (<http://www.legislation.gov.uk/ukpga/1990/9/contents>) or other licensing or permitting schemes.

Paragraph: 004 Reference ID: 17c-004-20140306

Revision date: 06 03 2014

Application and determination procedure

What information must accompany an application for a lawful development certificate?

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/595/article/39/made>) specifies the contents of an application and how it must be submitted. There is a different application form for each type of certificate, but either type must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee (<http://www.legislation.gov.uk/uksi/2012/2920/regulation/11/made>). Application forms can be obtained from the local planning authority and can be completed by the applicant or someone working on their behalf.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

Paragraph: 005 Reference ID: 17c-005-20140306

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Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a 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, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

Paragraph: 006 Reference ID: 17c-006-20140306

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What information must be entered on to the planning register?

Article 40(7) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (<http://www.legislation.gov.uk/ukxi/2015/595/article/40/made>) sets out the requirements for the information to be placed on the planning register.

Paragraph: 007 Reference ID: 17c-007-20140306

Revision date: 06 03 2014

Does a local planning authority need to consult on an application for a lawful development certificate?

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, 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. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Paragraph: 008 Reference ID: 17c-008-20140306

Revision date: 06 03 2014

How is an application for a lawful development certificate determined?

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>) a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Paragraph: 009 Reference ID: 17c-009-20140306

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Content of a certificate

What must a lawful development certificate include?

Details of what must be included in each type of lawful development certificate can be found in section 191(5) (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>) or 192(3) (<http://www.legislation.gov.uk/ukpga/1990/8/section/192>) of the Act. The prescribed form can be found in Schedule 8 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/595/schedule/8/made>). Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a “use class”, a certificate must also specify the relevant “class”. In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any “use class” (ie “sui generis” use); and
- where a certificate is granted for one use on a “planning unit” which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.

Paragraph: 010 Reference ID: 17c-010-20140306

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Conditions, appeals, revocation and status of pre-1992 certificates

How does a lawful development certificate relate to conditions on an existing planning permission?

A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.

Paragraph: 011 Reference ID: 17c-011-20140306

Revision date: 06 03 2014

Is there a right of appeal against the refusal of a lawful development certificate?

An appeal can be made to the Secretary of State against the refusal of a lawful development certificate in certain circumstances (<https://www.gov.uk/guidance/appeals#Lawful-development-certificates-appeal>).

A Secretary of State’s decision can be challenged in the High Court by the appellant or the local planning authority, but only on the grounds that the Secretary of State has got the law wrong or made a procedural error.

Paragraph: 012 Reference ID: 17c-012-20140306

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Can a lawful development certificate be revoked?

A local planning authority can revoke a certificate if a statement was made, or document used, which was false or untrue in any way; or if any information was withheld. Details of the process that a local planning authority must follow when giving notice of their proposal to revoke a certificate and when they carry out the revocation are set out in article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

(<http://www.legislation.gov.uk/uksi/2015/595/article/39/made>). If a local authority proposes to revoke a certificate, they must give notice of their proposal as set out in article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This gives recipients an opportunity to make representations before the local planning authority makes their decision.

Revocation of a certificate may make the owner or occupier liable to immediate enforcement action. No compensation is payable in the event of revocation. The decision to revoke a certificate is entirely for a local planning authority, even when the certificate has been granted by the Secretary of State. There is no right of appeal against a revocation but a decision could be challenged in the High Court in judicial review proceedings.

It is an offence to make a false or misleading statement, use false or misleading documentation, or, withhold any material information in order to obtain a certificate. Committing an offence can result in a fine on summary conviction, on indictment, the maximum penalty is 2 years' imprisonment or a fine, or both.

Paragraph: 013 Reference ID: 17c-013-20140306

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How does an existing “established use” certificate relate to lawful development certificates?

“Established use” certificates were replaced by lawful development certificates in 1992. The effect and value of any existing established use certificates remains unchanged, but they are not considered to have been made under section 191 (<http://www.legislation.gov.uk/ukpga/1990/8/section/191>) of the Act. The key difference is that old style certificates could certify an established use and provide immunity from enforcement action, but not that the development was lawful.

An application to “convert” an established use certificate to a lawful development certificate needs to be made like any other application for a certificate.

Paragraph: 014 Reference ID: 17c-014-20140306

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