

Application for a Lawful Development Certificate for an Existing use, Proposed use, or Operation or Activity in Breach of a Planning Condition

Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991.

Town & Country Planning (Development Management Procedure) (Wales) Order 2012

An application for a Lawful Development Certificate form should be used to establish whether:

- an existing use of land, or some operational development, or some activity in breach of a planning condition, is lawful
- 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

Examples when an application for a Lawful Development Certificate should be made include:

- when planning enforcement action is taken by the local planning authority and the owner believes it is immune from action because the time limit for taking enforcement action has passed (see below)
- when an owner discovers, in the course of a sale of the land, that planning permission has never been granted, and needs to show a prospective purchaser that no enforcement action can be taken by the local planning authority

An application for a Lawful Development Certificate is also sometimes used in cases involving intensification of use or where the precise nature of the existing use is difficult to describe, such as:

- secondary uses
- mixed uses
- intensification
- sub-division of the planning unit

Time limits

The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

The time limits are:

- four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed
- four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken
- 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

Once these time limits have passed, the development becomes lawful, in terms of planning.

Information which must be provided with the application

Applications for Lawful Development Certificates should include the following information:

- whether the application relates to:
 - a use
 - a building operation
 - a condition not complied with
- the date that the use (or breach of condition) started, or the date on which the building was substantially complete
- any use class the applicant considers to be applicable
- in the case of a breach of condition, details of the relevant application
- the reasons the applicant thinks he is entitled to a Lawful Development Certificate
- any other relevant information
- a plan identifying the land
- a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person

What the applicant needs to prove

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence.

This could include:

- proof that any building was 'substantially complete' more than four years before the date of the application
- proof that any use (or breach of condition) has been carried on continuously for a period of 10 years (four years in the case of a dwelling)

If the LPA has evidence, or reasonable grounds to believe, that the applicant's claim is not correct, it may refuse a certificate.

What is a Lawful Development Certificate?

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate,

However, the certificate will not protect from enforcement action by the planning authority if the specified use is then changed 'materially' without a planning application for it.

The certificate is not a planning permission. 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. The responsibility is on the applicant to provide evidence to support the application.

Section 10 of the Planning and Compensation Act 1991 established a procedure that enables anyone who wishes to do so, to apply to the local planning authority to determine whether a proposed use or operation, or an existing operational development or an existing use of land, or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, is lawful, and if so, be granted a certificate to that effect.

A certificate granted for a proposed, or an existing use, operation or activity will specify (by reference to a plan or drawing) the area of land included in the certificate and describe the precise nature of the use, operation or activity which is lawful. The certificate will give the reason for determining the use or operation to be lawful and specify the date of the application for the certificate.

Please note: Lawful development certificates are not relevant to situations where breaches of listed building or conservation area controls may be alleged.

A lawful development certificate for non-compliance of a condition does not in itself result in the condition being removed and any further breaches outside the scope of the certificate could lead to enforcement action being taken by the planning authority.

Warning: The amended section 194 of the 1990 Act provides that it is an offence to provide false or misleading information or to withhold material information with intent to deceive. Section 193 (7) enables the council to can revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

It is often helpful to discuss your proposal with your local authority before you send in your application – this is known as 'pre-application advice'. Your local authority will normally have details of how to go about this on its website.