

WINCHESTER CITY COUNCIL

PLANNING CONTROL DIVISION

LAWFUL DEVELOPMENT CERTIFICATES – EXPLANATORY GUIDE

Introduction

This guide explains what a Lawful Development Certificate (LDC) is, the information and evidence that the Council requires and the procedures involved. It is intended to help not only applicants but also others whom the Council has informed that an application has been submitted and who, from their knowledge of the application site, may have information or evidence that confirms or disputes the applicant's claims. It does not attempt to provide a definitive interpretation of the law. Applicants should read this guide in conjunction with the information set out on the City Council's website, which sets out in detail the process to be followed:-

<http://www.winchester.gov.uk/EnvironmentAndPlanning/Planning/PlanningApplications/DownloadablePlanningApplicationForms/>

What is a Lawful Development Certificate?

A LDC is a statutory document which confirms that the use, operation or activity named in it is lawful for planning control purposes. LDCs are issued pursuant to Section 191 or 192 of the Town and Country Planning Act 1990 depending on whether they are Certificates of Lawfulness of Existing, or Proposed Use or Development.

There are therefore 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**.

What are the benefits of a Lawful Development Certificate?

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 and planning permission has not been granted for its current use or for buildings constructed on the land.

Do any time limits apply to a Lawful Development Certificate?

An application for a LDC in respect of an existing use of land, operational development or activity in breach of a condition must be accompanied by evidence to show the following time limits have been exceeded:

- (i) in the case of operational development, 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**; and
- (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** and that there has not been compliance with the condition or another use in the meantime.

Once these time limits have passed, then the breach of planning control will in most cases be immune from enforcement action.

How much does it cost to apply?

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; and
- (ii) For a proposed use etc. to be carried out, half of the fee for an equivalent planning application.

How do is an application made?

An application must be made on using the appropriate “1APP” forms available from the Planning Department, or by applying online via the Planning Portal (<http://www.planningportal.gov.uk/>).

What type of information is required?

- (i) For **existing use or development** you should provide:
 - 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 method of operation of a use);
 - A plan on an Ordnance Survey base showing the site outlined in red (3 copies unless the application is submitted electronically);
 - a scaled plan defining areas having different functions within the same site (e. g. storage, offices, manufacturing etc);

- details of working practices (e. g. working hours, the processes carried out on site);
- details of any known relevant planning decisions;
- if the application relates to a breach of condition, a copy of the permission and a description of the circumstances and period of the breach.

To substantiate a claim the following information/ evidence will also be relevant:

- any information concerning business rates, or from the community charge or electoral records;
- invoices/ bills or receipts from services such as water, electricity, gas or telecom;
- personal testimonies or sworn affidavits of applicants, operators or witnesses;
- photographs which can be dated;
- factual historical information and evidence that confirms when the use or development commenced and its continuation through the relevant period (i.e. over the last 4 or 10 years, as the case may be).

Information should be relevant to the LDC and if extensive, should be properly organised and indexed.

(ii) For **proposed use or development** the information should include:

- a full and precise description of the current use and operations;
- a full and precise description of the proposed use and operations;
- A plan on an Ordnance Survey base showing the site outlined in red (3 copies unless the application is submitted electronically).

How is a decision made?

Although it is not a statutory requirement, the Council will inform the Parish Council and, as appropriate, nearby residents of the application and give them the opportunity to supply any evidence or information that confirms or disputes that supplied by the applicant. The applicant will be informed of any contrary evidence or information and given the opportunity to comment and supply further evidence or information or, if need be, to withdraw the application. At the Council's discretion, any third parties will be informed of any further evidence supplied by the applicant before a final decision is made on the application. The Council will also examine its own enforcement and planning files and make other enquiries as it considers appropriate. An assessment of all the available evidence will then be made by the Head of Legal Services who will inform the Ward Councillor(s) and Planning and Access Portfolio Holder whether he considers the Council should refuse or issue the LDC before a decision is finally made on the application.

The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land and the interpretation of any relevant planning law or judicial authority. The planning merits of the use, operation or activity in the application are not relevant.

The onus of proof in a LDC application is squarely on the applicant to show to the Council, on the balance of probability, that a LDC ought reasonably to be issued. Circular 10/97 states that, if the Council has no evidence of its own, or 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". There is no requirement on the part of the Council to make an independent search for evidence. Indeed, Government advice to Councils in Circular 10/97 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, or is not, lawful". However, the Council will, wherever possible, co-operate with an applicant or other party seeking information by making its planning and enforcement records available.

In issuing a LDC the Council may depart from or add to the wording specified in the application so as to ensure, wherever possible, that the wording of an LDC accurately reflects the nature and scale of the activity over the relevant 4 or 10 year period.

What happens if false information is provided?

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 £5,000. On conviction in the Crown Court, the maximum penalty is two years imprisonment and/ or an unlimited fine.

If a false statement is made or a document used, or any material information withheld, the Council can revoke a certificate.

Is there a right of appeal?

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. Details on the process and the appeal forms are available on the Planning Inspectorate's website:-

http://www.planning-inspectorate.gov.uk/pins/appeals/planning_appeals/making_planning_appeal.htm#make

or:-

Customer Services Team
The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol, BS1 6PN.
Tel: 0117 372 6372

Further Advice

Department of the Environment Circular No.10/97 "Enforcing Planning Control" is available from the Department for Communities and Local Government:-

<http://www.communities.gov.uk/publications/planningandbuilding/circularenforcingplanning>

or can be inspected free of charge at Planning Reception.

If you have any queries about this note or have any questions about specific sites or applications, you should contact the Customer Service Centre in the first instance:

Telephone: 01962 840222

Fax: 01962 841365

e-mail: planning@winchester.gov.uk.