



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



**OFFICE OF THE
DEPUTY PRIME MINISTER**

Lawful Development Certificates

A user's guide

September 1999

Office of the Deputy Prime Minister
The Welsh Assembly Government

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This guide gives informal advice. It is not an authoritative statement of the law.

If you need more advice, please contact your local Council's Planning Department

Introduction

1. This user's guide is intended to help anyone who is thinking of applying for a 'lawful development certificate' or who wishes to appeal against a planning authority's decision on a certificate application.
2. The system of 'lawful development certificates' enables local planning authorities, *when the appropriate conditions are satisfied in each case*, to grant a certificate, saying that:
 - (1) an *existing* use of land, or some operational development, or some activity in breach of a planning condition, is lawful; or
 - (2) 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.

More detailed advice about the provisions is in DFTR Circular 10/97 (Welsh Office Circular 24/97) which is available from Stationery Office Bookshops (price £12).

3. This system is based on provisions in Part VII of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991. It works together with other provisions in the Act which enable the local planning authority to control or stop unauthorised development of land in their area. This wide procedure is called enforcing planning control. A lawful development certificate cannot be granted if the planning authority are entitled to take an enforcement action within the strict time-limits specified in Part VII of the Act.

The purpose of the Lawful Development Certificate system

4. This system provides the possibility of obtaining a statutory document confirming that the use, operation or activity named in it is *lawful* for planning control purposes on the dates specified in the document. Once it is granted, the new type of certificate remains valid *for the use or development described in it, on the land it describes*, provided there is no subsequent material change in the circumstances - see paragraphs 6 and 8 below.
5. The grant of a certificate applies *only* to the lawfulness of development carried out, or proposed, in accordance with the Planning legislation. It does *not* remove the need to comply properly with any other legal requirements, such as consents required under the Building Regulations, the Wildlife and Countryside Act 1981, or the Listed Building and Conservation Areas Act 1990. These are only some examples. If in doubt, please check with the local council.

What a certificate does

6. A certificate granted for 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 certified as lawful. The certificate will not protect you from enforcement action by the planning authority if you subsequently change the specified use 'materially' without making a planning application for it. For example, a certificate may specify that a haulage contractor's site can be used lawfully for the parking of a defined number of heavy goods vehicles, of a specified capacity or size, and specify the areas of the site which have been used for vehicle maintenance purposes; or it may specify the area used for the storage of pallets and the maximum height to which they are to be stacked; or it may specify the hours during which any operations have taken place on the site. Any significant change from what is specified may result in some enforcement action against it.
7. A certificate granted for a *proposed* use or operation will describe the precise use or operation on a site in the terms considered permissible without the need to make a planning application for it.
8. The certificate will always give reasons why the use, operations or activity is, or would be, lawful. It will conclusively establish the lawfulness of the use, operations or activity covered by the certificate. *A certificate granted for an existing use, operation or activity will not protect future development on the site.* For example, an extension to an existing building described in the certificate, or the intensification of an existing use will not be covered. A certificate granted for a future use or operation will protect future development, *but only if that future development is as described in the certificate and is undertaken before there is any material change in relevant circumstances.* If the limitations specified in a certificate are exceeded, the landowner or occupier may be liable to enforcement action by the planning authority for any resulting breach of planning control.
9. You may apply for a certificate if you wish to find out whether any proposed development which would otherwise be 'permitted development' (by virtue of provisions in the General Permitted Development Order) requires the submission of a planning application and what is called an 'environmental assessment'. You may also apply in order to find out whether there are any special restrictions on proposed development because the land is, or is near to, a Site of Special Scientific Interest, a Special Protection Area (under the European Community's Birds Directive), and in future a Special Area of Conservation (under the European Community's Habitats Directive), and your proposal may have a significant effect on the site.

Making an application

10. Your certificate application should be made in writing. It must provide sufficient factual information for the authority to decide the application. You and your agent are responsible for providing the necessary information. Without sufficient, or precise enough, information the authority will be justified in refusing a certificate. This does not preclude another application if you can produce more information later on. Most authorities will provide an application form. By fully completing any form, you will help the authority in considering your application and may avoid being asked for more details.

11. An application **must** specify in reasonably precise terms what the use, operational development, or other activity is, or is proposed to be. The authority need not consider any proposal which does not include specific details of what it involves. Nor need they answer *general* questions on what could be undertaken on the land or what is lawful. 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.

Fees for applications

12. You will have to pay a fee to the authority when your application is made. These fees are broadly linked to the fee payable for a planning application. In brief (though there are exceptions), the fees are -
- (1) for an application for an *existing* use of land or operational development *not* supported by an 'established use' certificate, the same as for an equivalent planning application;
 - (2) for an application for a *proposed* use of buildings or other land or any operations *proposed* to be carried out in, on, over or under land, half of the fee for an equivalent planning application.

The fees are set out in Regulations and the planning authority will be able to tell you what fee is required for your application.

If your application is refused

13. If a properly made application is wholly or partly refused, or it is granted in a different form from the application, or is deemed to have been refused (because the authority have not determined the application within the time-limit of eight weeks of receiving the completed application), you can appeal to the Secretary of State for the Environment, Transport and the Regions in England, or the National Assembly for Wales in Wales. The Appendix gives the full text of the statutory provisions for an appeal to the Secretary of State or the National Assembly against a refusal, or deemed refusal, of a certificate application. Appeal forms are obtainable from the addresses given at the end of this booklet. By properly completing an appeal form, you will help to ensure that your appeal is dealt with quickly.
14. The Secretary of State or the National Assembly may decide to dismiss an appeal, or allow it (wholly or partly) and grant a certificate. His/its decision may be challenged in the High Court, by the appellant or the planning authority, *but only on a point of law*.

Your appeal costs

15. As in other planning appeals, the parties to this type of appeal are normally expected to meet all their own appeal expenses. Costs will only be awarded, if an application is made, against a party who has acted 'unreasonably'. They may be awarded whether the appeal has proceeded by written representations or by local inquiry. DOE Circular 8/93

(WO 23/93), available from Stationery Office Bookshops, price £4.80, gives more detailed guidance about appeal costs.

Converting an 'established use' certificate (EUC) into a lawful development certificate (LDC)

- 16 If you already have an existing 'established use' certificate, you may wish to convert it into a lawful development certificate. To do so, an application must be made in the normal way

Offences

17. It is a serious offence to make a false or misleading statement, use a false or misleading document, or withhold any material information, in order to obtain a certificate. On summary conviction of this offence, the maximum penalty is a fine not exceeding £5,000. On conviction or indictment in the Crown Court, the maximum penalty is two years imprisonment, or an unlimited fine, or both

Possible revocation of a certificate

18. If a false statement is made or document used, or any material information is withheld, the planning authority can revoke a certificate. The revocation of a certificate may make the owner or occupier liable to immediate enforcement action to remedy what will then usually be a breach of planning control
19. There is no appeal to the Secretary of State or the National Assembly against an authority's decision to revoke a certificate. But the decision may be contested in the High Court on the ground that the authority acted unreasonably in making the decision. For this purpose, legal action in the Court must usually start within three months of the decision. You are strongly advised to consult a lawyer before taking any legal action in the Court.

The address for appeal forms

In England:
Planning Inspectorate
4/08 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
Tel: 0117 372 8594
Fax: 0117 372 8139

In Wales:
Planning Inspectorate
The Welsh Assembly Government
Crown Building
Cathays Park
Cardiff CF10 3NQ
Tel: 029 2082 3866
Fax: 029 2082 5150

APPENDIX

Appeal provisions of sections 195 and 196 of the Town and Country Planning Act 1990, as amended by paragraphs 32 and 33 of Schedule 7 to the Planning and Compensation Act 1991 and paragraph 4 of Schedule 4 to the Planning (Consequential Provisions) Act 1990

By virtue of the Government of Wales Act 1998, the references to the Secretary of State in the sections reproduced below shall, where the land the subject of the application/appeal is in Wales, to be construed as referring to the National Assembly for Wales.

Appeals against refusal or failure to give decision on application

195 - (1) Where an application is made to a local planning authority for a certificate under section 191 or 192 and -

- (a) the application is refused or is refused in part, or
- (b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

the applicant may by notice appeal to the Secretary of State

- (2) On any such appeal, if and so far as the Secretary of State is satisfied -
 - (a) in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, or
 - (b) in the case of an appeal under subsection (1)(b), that if the authority had refused the application their refusal would not have been well-founded,

he shall grant the appellant a certificate under section 191 or, as the case may be, 192 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.

- (3) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal
- (4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

- (5) For the purposes of the application of section 288 (10)(b) in relation to an appeal in a case within subsection (1)(b) it shall be assumed that the authority decided to refuse the application in question.
- (6) Schedule 6 applies to appeals under this section

Further provisions as to references and appeals to the Secretary of State

196. - (1) Before determining an appeal to him under section 195(1), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (2) Where the Secretary of State grants a certificate under section 191 or 192 on such an appeal, he shall give notice to the local planning authority of that fact
 - (3) The decision of the Secretary of State on such an appeal shall be final.
 - (4) The information which may be prescribed as being required to be contained in a register kept under section 69 shall include information with respect to certificates under section 191 or 192 granted by the Secretary of State.
 - (8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under section 195 as if those proceedings were an inquiry held by the Secretary of State under section 250.

Further copies of this booklet may be obtained from the following address:

ODPM Free Literature

PO Box 236

Wetherby

West Yorkshire

LS23 7NB

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