

## Certificates of Lawful Use or Development

### Purpose

The purpose of this guidance is to provide an overview of the legislation that provides for certificates of lawful use or development and to set out the procedures for dealing with applications submitted to the Council for certification.

### Legislative Background

Section 169 and 170 of The Planning Act (Northern Ireland) 2011 provide the primary legislation for certificates of lawfulness of existing use or development and proposed use or development.

Article 11 of The Planning (General Development Procedure) Order (Northern Ireland) 2015 makes the provision for the procedures relating to such applications and for the issue and revocation of certificates of lawfulness.

This legislation provides the mechanism for establishing the planning status of land and buildings as lawful for planning purposes on the date specified. **The planning merits of the use, operation or activity in the application are not relevant.** The issue of the certificate depends entirely upon factual evidence about the history and planning status of the land or building and the interpretation of the legislation.

### How is a certificate of lawful use or development obtained and what is its effect?

Anyone can apply to Council's Planning Department to obtain a decision on whether an existing use or development, or proposed use or development, is lawful or not for the purposes of planning.

If we are satisfied that the appropriate legal tests have been met, we will grant a certificate of lawful use or development. Where an application for a certificate has been made under section 169 for existing use or development, the statement in the certificate of what is lawful relates only to the state of affairs on the land or building at the date the valid certificate application was submitted.

#### Existing use or development

Section 169 sets out that uses, operations or other matter are lawful at any time if:

- No enforcement action may then be taken in respect of them and they do not constitute a contravention of any of the requirements of an enforcement notice or breach of condition notice then in force.

If we are provided with information satisfying us of the lawfulness at the time of the application of the use, operations or other matter described in the application or as amended by or substituted by us, we must issue a certificate to that effect, and in any other case refuse the application.

#### Proposed use or development

Proposed uses, operations or other matters are lawful under Section 170 if we are provided with information satisfying us that the use or operations described in the application would be lawful if instituted or begun at the time of the application and we must issue a certificate to that effect, and in any other case refuse the application. Once a certificate has been granted the proposed use or development in accordance with it must be presumed to be lawful unless there is a material change before the use or development has begun. An example of such a material change includes a statutory amendment to permitted development rights.

#### **Definition of lawfulness**

Development is considered to be lawful if no enforcement action may be taken and where no enforcement notice is in force, or, where planning permission is not required. An enforcement notice is not in force where it remains within the timeframe for appealing the notice to the Planning Appeals Commission (PAC), where an appeal to the PAC has been submitted and a decision on the appeal outstanding, or an appeal has been upheld and the enforcement notice quashed.

A development is considered to be lawful if it satisfies one of the following:

- It does not fall within the meaning of development as set out in Section 23 of the Planning Act (Northern Ireland) 2011;
- It is specifically excluded development from the operations and uses taken to involve development as set out in Section 23 and 24 of the Planning Act (Northern Ireland) 2011;
- It is within the definition of development but exempted from the need for planning permission;
- There is an extant planning permission for it;
- It is permitted development by virtue of The Planning (General Permitted Development) Order (Northern Ireland) 2015;
- It has a deemed permission;
- That the change of use began within the last 5 years and is not materially different from the previous lawful use;
- Time taken for enforcement action has expired.

**A certificate of lawfulness must not issue where an Enforcement Notice or Breach of Condition Notice is in force.**



## **Application and determination procedure**

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

An application must describe precisely what is being applied for (not simply the use class) and specify the land to which the application relates in accordance with Sections 169 and 170 of the Planning Act (Northern Ireland) 2011. Without sufficient or precise information, a certificate will be refused. This does not preclude submission of a subsequent application at a later date if more information is provided.

In addition to specifying the land and describing the use, operations or other matter, Article 11 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 specifies the contents of an application and how it must be submitted.

The application made on the appropriate form must be accompanied by:

- a plan sufficient to identify the land to which the application relates;
- evidence verifying the information included in the application; and
- a statement setting out the applicant's estate in the land, the name and address of any other person known to the applicant to have an estate in the land and whether any such person has been notified of the application.
- The application fee.

Where an application specifies two or more uses, operations or other matters, the plan that accompanies the application must indicate to which part of the land each such use, operation or other matter relates.

There is a different application form for each type of certificate. Either must be accompanied by sufficient factual information/evidence for us to determine the application along with the relevant application fee.

Application forms can be obtained from the Planning reception by emailing [planning@causewaycoastandglens.gov.uk](mailto:planning@causewaycoastandglens.gov.uk) or by downloading from Department of Infrastructure website via this link <https://www.infrastructure-ni.gov.uk/articles/planning-fees-and-forms>

The application fee is set out in The Planning (Fees) Regulations (Northern Ireland) 2015 as amended, available to view via this link <https://www.infrastructure-ni.gov.uk/articles/current-planning-legislation#toc-5> . There are two fee exemptions available to applicants for certificates of lawful use or development. These are listed in Regulation 12 of The Planning (Fees) Regulations (Northern Ireland) 2015 as amended.



The date of the application relates to the date on which we receive a 'valid' application for a certificate of lawful use or development. If the relevant information and correct fee have been received, we will validate the application. It is the status of the use, operations or other matter on this date that will be considered when assessing the application.

### Onus of proof

The applicant is responsible for providing sufficient information to support an application. This may include sworn statements, copies of rates bills, other statutory approvals, utility bills or invoices with reference to the property and an indication of how it was used and/or copies of previous permissions. We may request further information if we do not consider that we have sufficient information/evidence before determining an application for a certificate of lawfulness.

In the case of applications for existing development, if we obtain evidence that contradicts that submitted by the applicant, we will share this with the applicant and provide them with the opportunity to comment on it and provide counter-evidence.

The Courts have held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted (*FW Gabbitas v SSE and Newham LBC (1985) JPL630*). If we have no evidence of our own, nor from any third parties, 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.

An application for a certificate of lawful use or development **cannot** be made in respect of an Advertisement. The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 is the relevant statutory instrument for the regulation of advertisements.

### **Does a consultation take place on an application for a certificate for lawful use or development?**

As set out above, the planning merits of the use, operation or activity in the application are not relevant to assessment of a CLUD application. Accordingly, there is no statutory requirement to consult third parties, notify neighbours or advertise the application for a certificate. Views expressed by third parties on the planning merits of the case are irrelevant when determining the application.



## **Determination of an application for certificate of lawful use or development**

On receipt of a valid application for certificate of lawful use or development we shall input the information onto the Planning Portal and validate the application. The appointed case officer will visit the site for applications for certificates of existing use or development; site visits will not normally take place for applications for certificates of proposed use or development. We will keep a record of the date of the site visit within the case officer report and retain in the application file.

In determining an application for certificate of lawful use, we can only consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful at the date of the valid application i.e. the material date. Planning merits are not relevant at any stage in the determination of the application for a certificate.

The appointed case officer will discuss their assessment with an authorised officer and both the case officer and authorised officer will record their agreement on the final determination either electronically by email or by signature on the report. A copy of the agreed case officer's report will be retained on the application file and on the Planning Portal.

On an existing CLUD application, we may make changes to the description of the certificate of lawful development certificate from that applied for, as an alternative to refusing a certificate altogether. We will however, seek the applicant's agreement to any amendment before issuing the certificate. On a proposed CLUD application, while we cannot make changes to the description, we may suggest to the applicant to make such changes.

A refusal is not necessarily conclusive that something is not lawful. Rather, it may mean that to date insufficient evidence has been presented to satisfy us that the use or operation is lawful.

Where an application is refused, in whole or in part, we will set out in the notice decision the full reason for our decision including a statement to advise the applicant that they can appeal the decision to the PAC under section 173 of the Planning Act (Northern Ireland) 2011.

We may issue a certificate for the whole or part of the land specified in the application and where the application relates to two or more uses, operations or other matters, for all of them or one or more of them.

Where we issue a certificate of lawful use or development, precision in the description of the use, operation or other matter is important so that there is no ambiguity about what was lawful at a particular date, as any subsequent development may be assessed against it. The certificate will be set out in a form as

set out in Schedule 2 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 as amended.

It is important to note that a certificate must:

- must specify the land to which it relates;
- include a description of the use, operations or other matter for which it is granted including the use class. The description needs to be more than simply a label or title to avoid problems of interpretation;
- give the reasons for determining the use, operations or other matter to be lawful; and
- specify the date of the application for the certificate.

Where a certificate is granted for one use on a 'planning unit' which is mixed or composite use, those circumstances may need to be reflected in the certificate.

The decision will be inputted into the Planning Portal by the case officer and the certificate and associated plans passed to an authorised officer for checking and signing of certificate. Once signed the certificate and associated plans will be uploaded onto the Planning Portal and issued and any information/evidence no longer required returned to the applicant.

A certificate of lawful use or development may be granted on the basis that there is an extant planning permission for the development. However, that development will still need to comply with any conditions or limitations subject to which planning permission was granted, except to the extent described in the lawful development certificate.

Any limitation specified on the certificate will be a point of reference specifying what was lawful at the date of application against which any subsequent change may be assessed. If a use subsequently changes or intensifies to the point where a material change of use takes place we may take enforcement action against that subsequent breach of planning control.

## **Planning Register**

Section 242 of The Planning Act (Northern Ireland) 2011 sets out the requirements for the information to be placed on the planning register which includes CLUD certificates. Article 27 of the Planning (General Development Procedures) Order (Northern Ireland) 2015 sets out that the information placed on the register shall contain brief details including the date of issue, any variation and any revocation or expiry as the case may be.





## **Revocation of a certificate of lawful use or development**

We can revoke a certificate if a statement was made, or document used, which was false or untrue in a material way; or if material information was withheld. The statutory procedures for revoking a certificate of lawful use or development is set out in Article 11(7)-(9) of The Planning (General Development Procedure) Order (Northern Ireland) 2015.

If we propose to revoke a certificate we must give notice of our proposal to

- the owner affected;
- the occupier of the land affected;
- any other person who will in our opinion be affected by the revocation; and
- in the case of a certificate issued under an appeal to the PAC under section 173 of the Planning Act (Northern Ireland) 2011.

This process allows recipients the opportunity to make representations to us within 14 days of the service of the notice before we make our decision. The decision to revoke a certificate cannot be appealed to the PAC and can only be challenged in the High Court in judicial review proceedings.

Revocation of a certificate may make the owner or occupier liable to enforcement action. No compensation is payable in the event of revocation.

It is an offence under section 172 of the Planning Act (Northern Ireland) 2011 to knowingly or recklessly make a false or misleading statement in a material way, use false or misleading documentation with the intent to deceive, or, withhold any material information with the intent to deceive, in order to obtain a certificate. A person guilty of committing an offence can be liable to a fine on summary conviction, on indictment to imprisonment for a term of up to two years, or both.

## **Additional Provisions**

A certificate issued under section 169 of the Planning Act (Northern Ireland) 2011 also has the effect of granting planning permission under the following statutory provisions:

- Section 3(3) of the Caravan Act (Northern Ireland) 1963 (c.17);
- Article 8(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).



## **Certificates of lawful use or development and Environmental Impact Assessment and Habitats Regulation Assessment**

Before granting a certificate of lawfulness there is a requirement for us to consider whether the use, operations or other matter could comprise EIA development under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. In addition, The Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 (as amended) requires habitats regulation assessment (HRA) to be undertaken on development which is likely have a significant effect on a European site. These provisions do not apply where development is immune from enforcement action.