

LAWFUL DEVELOPMENT CERTIFICATES

AN EXPLANATORY GUIDE

INTRODUCTION

This guide explains what a Lawful Development Certificate (LDC) is, the information and evidence that the Authority requires, and the procedures involved in obtaining a Certificate. It is intended to help not only Applicants, but other members of the public and those whom the Authority may have consulted 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 guide to the law and therefore Applicants should read this guide in conjunction with the leaflet "Lawful Development Certificates" available on the Planning Inspectorate website at <http://www.planning-inspectorate.gov.uk/pins/publications/index.htm>. The Authority has also produced guidance notes to assist in the completion of the relevant LDC application forms. Copies of all the guidance referred to, and the application forms, are available free of charge from the Authority's Development Control Service. Tel: 01629 816336 or email: devcon@peakdistrict.gov.uk

WHAT IS A LAWFUL DEVELOPMENT CERTIFICATE?

Certificates of Lawful Use or Development, otherwise known as Lawful Development Certificates (LDCs), were introduced in 1991 through the Town & Country Planning Act 1990 (as amended). Through the process it is possible to obtain a statutory document which confirms that the use, operation or activity in breach of a planning condition, named in the Certificate, is lawful for planning control purposes on the date specified in the document. **The issue of a certificate depends entirely on the available factual evidence about the history and the planning status of the building or land, and the interpretation of any relevant planning law and judicial authority. The planning merits of the use, operation or activity in breach of a planning condition are not relevant or taken into account.**

There are two main types of LDC which can be applied for:

- an application under S.191 relating to an *existing* use of land, operational development or activity in breach of a planning condition
- an application under S.192 of the Act relating to a *proposed* use of buildings or land, or operations intended to be carried out

Obtaining a LDC can be advantageous for a variety of reasons, for example:

- it can show that the use, operations, or activity in breach of a planning condition is immune from enforcement action
- it may be necessary to show a prospective mortgagee or purchaser of a property that a use, operational development or activity in breach of a planning condition is lawful if no planning permission has been granted for it
- it may be required by other regulatory bodies for the purposes of granting permission for other activities i.e., Caravan Site Licence, Waste Disposal Licence

- it is a formal clarification of the planning status of a particular use of land, operational development or activity in breach of a planning condition, which may be required to enable another form of development to take place

Any person has the right to submit an application on a site, therefore prospective purchasers or occupiers may also clarify the lawfulness of development.

WHEN CAN A CERTIFICATE BE ISSUED?

The National Park Authority acting in its capacity as the Local Planning Authority can issue LDCs where it has been demonstrated that, **on the balance of probability**, a use, operation, or activity in breach of a planning condition is lawful on the date of the application for one of the following reasons:

- the use began more than ten years ago
- the use, operation or activity in breach of a condition on a planning permission began more than ten years ago
- the use began within the last ten years as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last ten years
- the operations were substantially completed more than four years ago
- the use of a building as a single dwellinghouse began more than four years ago
- other reason i.e., the use, operation or activity does not involve development or benefits from planning permission granted by the Town & Country Planning Act 1990 or by the General Permitted Development Order 1995 or other Local Development Order

A LDC cannot be issued where a valid enforcement notice is in force, in relation to the application site, that prohibits the use, operation or activity in breach of a planning condition that has been applied for.

HOW DO I MAKE AN APPLICATION?

An application must be made on the forms available from the Authority's Development Control Service, Tel: 01629 816336 or email: devcon@peakdistrict.gov.uk Separate application forms, and related guidance notes, are available for both types of application ie, one for existing and one for proposed development. Applicants are requested to submit four copies of the completed form, and four copies of any information and evidence submitted in support of the application, together with the relevant fee. Six copies of the Ordnance Survey plan showing the site edged in red and six copies of any elevation or layout plan included in the application, should also be enclosed.

The fee is payable when the application is made. Generally the fees are as follows:

- for an application under S.191 for an *existing* use of land or operation, the same fee as an equivalent planning application
- for an application under S.191 for an *existing* use as one or more separate dwellinghouses, the fee is £265 for each dwellinghouse
- for an application under S.191 relating to an *existing* breach of a planning condition, a fee of £135.
- for an application under S.192 for a *proposed* use of buildings or other land, or any operations *proposed* to be carried out in, on , over or under land – half the fee of an equivalent planning application.

However, there are exceptions, and if you are in any doubt as to the correct fee, please contact the Development Control Service who will be able to advise you of the correct fee for your application.

WHAT TYPE OF INFORMATION IS REQUIRED?

1. For an **existing use or development** you should provide:
 - a full description of the operation, use or activity, providing as complete a definition as possible, (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 scaled plan defining areas that have different functions within the same site (e.g. storage, offices, manufacture etc)
 - details of working practices (e.g. various processes carried out on site, working hours, etc)
 - 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
 - full details of when the activity or use commenced, including any period when the activity or use has ceased, whether temporary or not.

2. For a **proposed use or development** the information should include both:
 - a full and precise description of the current use and/or operations
 - a full and precise description of the proposed use and /or operations – see examples above.

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

- any information concerning business rates, or Council Tax records 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 building or other operations were substantially completed, or confirm when the use began, or show how the planning condition has been breached, and show its continuation throughout the relevant period, (i.e., over the last 4 or 10 years as the case may be).

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

PLEASE NOTE if insufficient evidence is provided, an application will be refused as not proven. This does not preclude the submission of a further application if further evidence subsequently becomes available. In most circumstances, any subsequent application within 12 months is free, but each case should be checked with the Development Control Service beforehand.

WHAT HAPPENS THEN?

Once an application is received by the Authority it will be checked to ensure that it is valid (i.e., it contains all the relevant forms, plans, fees and sufficient factual evidence to enable the application to be determined). If the application is not valid, you will be notified of the reason for this and further information may be requested from you before the application can be registered. Once the application is valid, then it will be registered and you will be sent an acknowledgment letter which will notify you of the person who is dealing with your application. All applications are dealt with by the Authority's Legal Services Team.

The law requires that the forms you have submitted must be put onto the public "register of applications" and the evidence submitted in support of the application must be available for viewing by any member of the public. The information submitted will also be used to form the basis of any consultations that the Authority may wish to make i.e., to Parish or District Councils, neighbours or other third parties whom the Authority consider may have factual knowledge of the Applicant's claim. The Authority will also examine its own planning and other files, and make other enquiries it considers appropriate. An assessment of all the available evidence will then be made by the case officer and a report and recommendation made to the Head of Law who will make the final decision on the application.

The issue of a certificate depends entirely on the available factual evidence about the history and the planning status of the building or land, and the interpretation of any relevant planning law and judicial authority. **The planning merits of the use, operation or activity in the application are not relevant, and any comments relating to the planning merits of the application will not be taken into consideration in the determination of the application.**

WHAT HAPPENS IF FALSE INFORMATION IS PROVIDED OR RELEVANT INFORMATION IS WITHHELD?

It is a serious offence to make a false or misleading statement, use a false or misleading document, or withhold information which is material to the application in order 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?

An appeal can be made to the Secretary of State in the following circumstances:

- if the application is wholly or partly refused
- if the application is granted in a form different to the application submitted
- if the application is not determined within 8 weeks of being registered.

If you do wish to make an appeal, then you may obtain the necessary forms from The Planning Inspectorate, Room 10/01, Tollgate House, Houlton Street, Bristol, BS2 9DJ. Tel: 0117 9878000. Alternatively the forms are available to download via the Planning Portal at www.planningportal.gov.uk. In some cases it is possible to submit an appeal online through the Planning Casework Service via the Planning Portal. Please check the Planning Portal at www.planningportal.gov.uk for further details.