

## **LEGAL SERVICES SECTION GUIDANCE ON APPLICATIONS FOR CERTIFICATES OF LAWFULNESS**

An applicant should contact the Council's Planning Department to obtain the requisite form when making an application for a Certificate of Lawful Use. The prescribed fee must be paid when returning the application.

Certificates of Lawfulness are granted pursuant to Section 191 of the Town & Country Planning Act 1990, as amended by Section 10 of the Planning & Compensation Act 1991. The applicant is responsible for satisfying the Planning Officer on the information provided by the applicant that the 'use' or 'building works' described in the application taking place on the land were lawful, and that the 'use' that is the subject of the application has been continuous for in excess of ten years or that the 'building works' have been substantially complete for more than four years, prior to the application and is continuing as at the date of the application and, thus, not liable to enforcement on that date.

It is for the applicant to provide sufficient evidence to satisfy the Local Planning Authority. An applicant is strongly advised to seek legal advice before making an application. However, whether or not the application is successful will depend upon the evidence the applicant submits to support their claim. This evidence can take many forms and the purpose of this Guidance is to assist an applicant through the process so that the application can be processed as quickly as possible and avoid the need for additional information.

### **Proof of Application**

1. The onus is on the applicant to prove the allegation made in the application. For example, if the claim is that the site has been used for car repairs, the applicant must show that the use has been in existence for a continuous period of at least ten years and that it is in use as at the date of the application. The applicant must also show where on the land the use has been undertaken and describe what has been done on the relevant parts of the land.
2. If the applicant has undertaken any alterations to the land or has altered the nature of the business during the period relied on in support of the application, the applicant must describe these changes.
3. The applicant must bear in mind that the application and all supporting information will be available for the general public to inspect and comment upon.
4. All representations received will have to be considered as part of the decision making process but only purely factual matters will be relevant.
5. Any comments that relate to whether or not it is "right or wrong" for the applicant to operate will be irrelevant.

### **Form of Evidence**

1. As the application relates to factual matters, the applicant should submit what is called a Statutory Declaration to support the factual claims being made. These are formal documents which have to be sworn in front of a Solicitor.
2. The applicant should consider carefully who will swear the Declaration, or Declarations, submitted in support of the application. The Declaration, or Declarations, should only contain factual information and should be sworn by people who have direct knowledge of the facts that are being alleged if they are to be of much value.
3. The Declaration, or Declarations, should be supplemented by as much independent evidence as possible so as to increase their value as evidence. This evidence can be anything of a documentary nature that supports the application. This will include photographs, rate demands, old invoices/bills, public utility bills, newspaper cuttings, old Ordnance Survey maps, correspondence and any other material that is considered useful.
4. The extra material needs to be appended to the Statutory Declarations, or Declarations.

### **Useful Tips.**

Be clear, specific and precise

Consider carefully who has relevant knowledge

Consider what documentary evidence is available and obtain it. The onus is on the applicant and not the Council to do this.

Concentrate on purely factual issues and avoid opinion evidence.

### **Determination of Application.**

1. The application will be determined in the same way as any other application. This means that it will be publicised and certain people will be specifically consulted on it.
2. After the consultation period has expired, the application will be considered by the Planning Officers who will refer it to the Council's Solicitors for advice as to the strength of the evidence that has been submitted and whether or not the application should be approved or refused or whether further information should be requested.
3. If further information is required, the applicant will be told what areas need to be covered and will be given a further period in which to submit the required information.
4. The applicant is entitled to see all representations received and comment on these in writing and any comment made will be considered by the Planning Officers and the Council's Legal Section.
5. If the application is approved, the applicant will receive a Certificate which will set out what the applicant can do with the land.
6. If the application is refused, the applicant will receive a Decision Notice, which will set out the reasons for refusal, together with details of the right to appeal against the decision.

### **Targets**

If the application is submitted to the Legal Section via the Planning Department, we shall endeavour to consider and complete the application (whether or not a Certificate is granted) within 12 weeks of receipt all relevant evidence.

*Updated January 2013*