

Certificates of Lawfulness

There are two types of Certificate of Lawfulness:-

- 1) A Certificate of Lawfulness of Existing Use or Development (CLEUD); and
- 2) A Certificate of Lawfulness of Proposed Use or Development (CLPUD).

A **Certificate of Lawfulness of Existing Use or Development (CLEUD)** is a certificate which can be obtained from the Local Planning Authority (LPA) which if granted will prevent enforcement by that Authority against any breach of planning permission or condition.

Constructing a building for any use or using a site for anything other than forestry or agriculture will require planning permission, unless it is exempt under the General Permitted Development Order (GPDO). However, it is not illegal to do so until such time as the Local Planning Authority decide to take enforcement action. The Local Authority must however take this action within certain time periods. If however these periods have already passed, you can legitimise the development in planning terms by applying for a CLEUD.

There are minimum time periods regarding the time expired in respect of the activity that has occurred (development without planning permission or breach of condition). Unless the requisite time has elapsed there is no benefit of submitting for a CLEUD. The breach of planning must have been continuous over the time period and ongoing at the time of the submission of the application.

Unlike normal planning applications, CLEUDs are decided on the facts of the case (not planning policy) and evidence needs to be provided to prove to the council, on the balance of probability, that the development/breach of condition has been ongoing continuously for the required minimum time period.

Evidence will be anything which substantiates the application and can vary in each case, but could include for example: statutory declarations, photographs, business accounts, utility bills and wage slips.

On the 1 April 2012 the issue of **deliberate concealment** was introduced. This means if the Local Planning Authority consider a development has been deliberately concealed they can apply to the Court for an Order giving them authority to have the breach of planning control 'immediately' rectified (i.e. in the case of the creation of a new dwelling, demolition would commence). This means extra care must be taken with such cases.

A **Certificate of Lawfulness of Proposed Use or Development (CLPUD)** is a certificate which is submitted to a Local Planning Authority to establish and clarify if a proposed development requires planning permission. Such a method is generally used when it is thought that planning permission is not required, however, before progressing a CLPUD is submitted to obtain the view of the Council. An example of such a situation is where it is believed and considered that a proposal is within the parameters of permitted development rights.



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ACORUS HAVE ACTED IN MANY SITUATIONS WHICH HAVE REQUIRED A CLEUD APPLICATION

Continuation of use as a Vehicle Repair Workshop

At a site near Wakefield a farmer's son had decided in the early 1990s that he would set up his own business as a mechanic repairing cars and vehicles. His father had a barn which was under utilised and the obvious place to start work was in it. Over the years the business grew and a car ramp was installed, the building re-clad and the height of one of the repair bays increased. In 2007 an enforcement notice from the LPA was received informing him that he did not have planning permission and action would be taken against him unless the issue was resolved.

The father and son contacted Acorus and we promptly arranged to meet on site to discuss in detail its history. The client provided substantial evidence, including dated photographs, receipts and invoices for car parts covering the period of the use. Acorus also assisted in facilitating statutory declarations and preparing a full supporting statement.



After two meetings with the planning officer a submission was made and Acorus successfully obtained a CLEUD. This means that the business can continue to provide excellent service to its clients and a secure future for the proprietor and his young family.

Agricultural Occupancy Condition

A CLEUD is an appropriate means of addressing the issue of a property which has an agricultural occupancy condition and the property has been occupied in breach of the condition for over 10 years.

This was the case with a dwelling set in 30 acres near Sheffield. The owner had built the house in the 1970s and it was subject to an agricultural occupancy condition. Although he ran a few cattle and sheep, these were always only a hobby as his main income was derived from healthcare.

It was clear that the occupancy condition had been breached since the house was built. Acorus helped to present a case to show that there had been a continuous breach of the condition over a ten year period from the date of submission of the CLEUD.

The Local Planning Authority accepted the submission and duly issued a CLEUD, probably increasing the value of the dwelling by over £200,000.

For advice concerning Certificates of Lawfulness contact your local Acorus office.

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