

Lawful Development Certificate

Lawful Development Certificate to establish the existing use of static caravan as primary and permanent residential dwelling (Use Class C3) with associated access, and amenity space at Bank Farm, Shenton Lane, Dadlington, CV13 6JD (Resubmission 23/00190/CLU.)

10th May 2023

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Introduction

The purpose of this application is to demonstrate on the balance of probabilities that under Section 191 of the Town & Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) the land and any existing structures subject to this application are lawfully recognised as a land forming the primary and permanent residential (C3) address for the applicant and any resident dependents, and is afforded statutory protection as such under the 10 year time limitation of the 1990 Act.

Planning considerations:

Section 191 of the Town & Country Planning act 1991 specifies that a Certificate of lawfulness of existing use or development can be issued for the following purposes:

- (1) If any person wishes to ascertain whether—
 - (a) any existing use of buildings or other land is lawful; .
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
- (2) For the purposes of this Act uses and operations are lawful at any time if—
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- (3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
 - (a) the time for taking enforcement action in respect of the failure has then expired; and
 - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
- (4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (5) A certificate under this section shall:
 - (a) specify the land to which it relates;

- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

Relevant History

23/00190/CLE: Lawful Development Certificate to establish the existing use of static caravan as primary and permanent residential dwelling (Use Class C3) with associated access, and amenity space. Refused 9th May 2023.

Following the above refusal, the email below was sent to the Head of Planning Chris Brown on Wednesday 10 May 2023, informing the LPA additional supporting evidence is available and will be duly supplied via this resubmission as the offer to agree a short extension of time was not taken up by the council:

“Chris,

Regarding the attached refusal and delegated report, as per my email below dated Wednesday 26th April, providing additional evidence is not an issue, it is simply agreeing the format with the LPA.

The delegated report states:

“2.4 The GP Registration Details and Medical Card 2011 have not been formally submitted at the request of the Applicant in the interests of data protection.”

That is not factually correct, I simply stated do not publish them on Public Access as per my email of Friday 21st April 2023 which is standard practice under the circumstances: “Please keep for officer viewing only and do not list on PA.”

Paragraph 8.4. of the delegated report states:

“Within the Statutory Declaration, the Applicant suggests that Bank Farm has been their primary place of residence since 1982.”

The purpose of providing a Statutory Statement is precisely for the avoidance of doubt as it is not a “suggestion”, but a sworn statement witnessed by a solicitor and the applicant would be committing perjury if this was not the case. On this basis the SD carries significant weight especially considering the LPA confirm they have no contrary evidence of their own.

I had a similar situation in Litchfield in 2021 where the LPA requested additional statements from friends and family even though the associated case law is very clear, the witnessed declaration does not need to be supplemented in this way.

As the offer to agree a short extension of time to provide additional information / clarification was not taken up by the LPA, I shall resubmit the application today updated with the relevant case law and additional evidence can be submitted as

appropriate during the determination period in agreement with the LPA for the avoidance of doubt.

*Kind Regards,
Simon”*

Evidence

The application is supported by a Statutory Declaration that confirms the land has been actively and consistently used as the permanent residence (C3) by the applicant in excess of 10 years. Private and confidential evidence is submitted in support of this certificate in the form of utility bills and further evidence of this nature can be supplied following further discussions with the LPA during the determination of the resubmission.

Conclusion

Notwithstanding the above, it is considered the sworn declaration provided by the applicant carries significant weight and case law clearly demonstrates it does not need to be supplemented by further statements particularly when the LPA have confirmed they have no contrary evidence of their own. As such the SD and confidential supporting documents are sufficiently precise and unambiguous to demonstrate the lawful planning use subject to this application. There is no suggestion the applicant has taken any positive steps to disguise the breach of planning control or any other measures that would warrant forfeiting the statutory protection afforded by the 10 year time limitation of the 1990 Act and as such a Certificate of Lawful Existing Use should be issued on this basis.