

Lawful Development Certificate

Certificate of Lawful Existing Use to demonstrate a lawful commercial (B8) storage use, where the buildings and structures combined with the large open areas of hardstanding as they exist today, were substantially completed for a period greater than 10 years prior to the submission of this certificate, associated with the land and property that forms Bank Farm, Shenton Lane, Dadlington, CV13 6JD.

September 2026

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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, hardstanding and existing structures subject to this application is lawfully recognised and by extension, lawfully qualifies under the description of Previously Developed Land (PDL), as defined in Annex B: Glossary of the NPPF 17th August 2026, for use as B8 storage and is afforded statutory protection as such under the 10 year time limitation of the 1990 Act.

The legal definition of 'development' provided in section 55(1) of the Town and Country Planning Act 1990 (as amended) (the Act) states:

“development” means the carrying out of building, engineering, mining or other operations in, on, or under land, or the making of any material change in the use of any buildings or other land.

There are two limbs to the definition of “development” in the form of operational development and a material change of use, and an LPA can grant a certificate of lawfulness confirming that:

(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

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.

Planning History & Evidence

Bank Farm and the associated land was purchased by the applicant on the 10th April 1981 as registered via Title Number LT114863. The land was previously owned by the British Railway Board and functioned as a former railway track. The adjacent “Battlefield Line” is the last remaining part of the former Ashby and Nuneaton Joint Railway which was opened in 1873. It runs from Shackerstone via Market Bosworth to Shenton and is operated by the Shackerstone Railway Society. The NPPF advises that Previously Developed Land is *‘Land which is or was occupied by a permanent structure, including the curtilage of the developed land and areas of hardstanding and any associated fixed surface infrastructure’*.

From April 1981 until the outbreak of foot and mouth in 2001, the site operated on an agricultural basis rearing cattle and pigs, however following the outbreak of foot and mouth at nearby Lindley Hall Farm in Fenny Drayton, all livestock were destroyed and all farming activities ceased. The existing yard areas and associated buildings were then used on a B8 basis and have remained so up to and including the submission of the current application.

The two most recent planning approvals include the approvals below:

24/00454/OUT: Outline planning permission (access only) for the removal of existing static caravan (C3) and erection of a replacement single dwelling (C3 self build) and associated amenity space and parking. Approved 3rd July 2024.

23/00465/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 (Resubmission 23/00190/CLE.) Approved 26th July 2023.

The planning history above clearly demonstrates the land has undergone lawful operational development and lawful material changes of use. The updated definition of PDL in Annex B of the NPPF Glossary (Aug 2026) reads:

“Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed.” (My emphasis)

The inclusion of "lawfully developed" into the definition of Previously Developed Land (PDL) in the updated National Planning Policy Framework (NPPF Aug 2026) ensures that land is only considered brownfield, if its previous development was authorized. On this basis, the revised definition specifically links "lawfully developed" to permanent structures and associated fixed surface infrastructure, such as the permanent hardstanding and existing buildings that were created by the implementation of the lawful operational development associated with the planning history of the site.

As noted above, the Framework defines PDL as land that has been lawfully developed, including any permanent structures, associated fixed surface infrastructure, and the curtilage of the developed area. The development and use of the site for B8 storage is clearly visible from the historic Google images dating from where such records began and include from the 20th April 2016, covering the requisite 10 year CLU period.

The case of **F W Gabbitts v SSE and Newham LBC [1985] JPL 630** established that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, 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".

Conclusion

The sworn declaration provided by the applicant combined with this statement and supporting documents are sufficiently precise and unambiguous to demonstrate the lawful planning designation subject to this application. There is no suggestion the applicant has taken any positive steps to disguise historic use of the land during the determination of applications 24/00454/OUT and 23/00465/CLE, 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 Lawfulness should be issued on this basis.