

**GREAT LINFORD PARISH COUNCIL**  
**PLANNING POLICY GUIDE**  
**CLUED**  
**Lawful Development Certificate Section 191**

**Planning Act 1990**

Sections 191 and 192 of the Town and Country Planning Act 1990 (the 1990 Act) provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority for a CLUED.

**A CLEUD is a statutory document certifying:-**

- (a) In the case of an application under **Section 191**, the lawfulness for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or
- (b) In the case of an application under **Section 192** the lawfulness of proposed operations on, or use of land.

The provisions introduced a procedure whereby a developer may formally establish whether what is proposed to be done **S192 (CLOPUD)** or what has already been done **S191 (CLEUD)** is "lawful", in that no planning permission is required and no enforcement action may be taken.

**TIME SCALES**

Under a Section 191 application for a CLUED. All unauthorised structures (*and also unauthorised use as a dwelling house or self-contained flat or maisonettes*) require a four-year period of proof.

All remaining unauthorised uses require a ten-year period of proof

**Not Planning Application**

There is no formal duty for local authorities to consult on CLUEDs. This is because they are not planning applications but a legal document that is based upon the information provided to the authority and a consideration of the evidence based upon the balance of probability. The applications are not subjective and therefore rely on factual evidence being presented.

**Continuity.**

It is important to prove that uses of land have existing for all the period required and have not lapsed at some time. The applicant needs to prove not only that the use for which the certificate is sought commenced 4 years or 10 years ago, but also that it has been continuous.

Therefore, for a change of use the applicant must provide evidence for each year over the past decade and for house conversions over four years.

**Precise Evidence**

Without sufficient clear and precise evidence on which to make a determination, it is likely that the application will be refused on the basis of lack of evidence. It is therefore in the applicant's interest to obtain as much information as possible prior to submission of the application.

**Note.** The onus of proof lies upon the applicant solely.

The most important factor that the LPA must consider is Annex 8 of Circular 10/97 (Enforcing Planning Control: Lawfulness and the Lawful Development Certificate (LDC)).

This states: 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'.

Applications must be submitted in duplicate and accompanied by two copies of documentary evidence substantiating the case for a CLEUD and such drawings and plans to fully illustrate the site and existing use, operation or activity in breach of a planning condition and its' extent.

**Proof.**

The applicant needs to prove the existing use is lawful using one or more of the following types of evidence:-

- Statutory Declaration(s) to be signed by someone with personal knowledge of the continuous use, activity in breach of condition, or operational development over the required period, who will not benefit from the application (e.g. a neighbouring resident, previous owner).
- Alternatively a Statutory Declaration by the Applicant may be submitted, although this may not carry as great a weight when making a determination
- Council Tax record of payments.
- Leases or rent books or copies of tenancy agreements: - showing a single or separately numbered units covering each of the years needed, i.e. 10 or 4 years
- Entries in the Electoral Roll; - showing a single or separately numbered units covering each of the years needed, i.e. 10 or 4 years
- Utility bills, e.g. gas, electric or water bills: - showing a single or separately numbered units covering each of the years needed, i.e. 10 or 4 years
- Other consents from the local authority, e.g. Building Regulations or Environmental Health decisions which mention or imply a use of the land on a certain date or which refers to a completed structure or sub-division of a property on a certain date.
- Invoices for works undertaken.
- Business records, where relevant.
- Other consents from the local authority, e.g. Building Regulations Completion Notice

The amended section 194 of the 1990 Act provides that it is an offence to furnish false or misleading document, information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

### **Decisions.**

The decision on such applications (unlike that for planning applications) is taken purely on the factual information presented, without any regard to 'suitability' considerations or reference to local planning policies

The grounds on which a CLEUD may be issued are;

- (a) The use began more than 10 years before the date of the application;
- (b) The use/operation/breach of condition began more than 10 years before the date of the application;
- (c) A use began within the last 10 years did not require planning permission and there has not been a change of use within the last 10 years requiring planning permission;
- (d) The operations were substantially completed more than 4 years before the date of the application;
- (e) The use as a single dwelling house began more than 4 years before the date of the application;
- (f) Other grounds that the applicant may consider valid.

**Councillor David Stabler**

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