Certificate of Lawfulness for a Proposed Use or Development Form

Guidance Notes

Application for a Certificate of Lawfulness for a Proposed Use or Development. Town and Country Planning (Scotland) Act 1997: Section 151.

Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (as amended).

The Certificate of Lawfulness for a Proposed Use or Development Form allows you to obtain a decision from the planning authority that a proposed use or works do not require planning permission. This form is to be submitted as part of your proposal.

These guidance notes provide clarification and further information to help you complete each section of the form.

What is a Certificate of Lawfulness?

1. A Certificate of Lawfulness is essentially a means of obtaining a decision from the planning authority that a proposed use or works do not require planning permission.

2. An application for a Certificate of Lawfulness should be made when an applicant wishes to establish conclusively that a proposed use of land, or some operational development is lawful and will not run the risk of future enforcement action by the planning authority.

Scope

3. An application for a Certificate of Lawfulness for a Proposed Use or Development usually arises from one of three circumstances:

   - where there is an anticipated change in planning law and a developer wishes to establish the legality of a proposal with the planning authority;
   - where a property is vacant and a developer wants confirmation that a proposed use is not a material change of use;
• if the history of planning permission on site is unclear and the best remedy is a slightly different use or minor external or internal alterations which a developer considers lawful.

4. An application for such a Certificate is sometimes appropriate in cases involving proposed intensification of use or where the precise nature of the existing use is difficult to describe because there is more than one use.

Information To Be Provided With Application

5. You must provide a location plan to identify clearly the site which is the subject of the application. This should be at a scale of 1:1250 or 1:2500 (or larger), showing the position of the site in relation to at least two named roads and surrounding buildings and a north point shown. The site must be edged clearly with a red line.

6. The questions seek confirmation on a number of matters and all questions must be answered. However, you will need to provide additional information and documentary evidence to support your application.

7. You must explain in your own words why you consider a Certificate of Lawfulness should be granted. You should always remember that it is for you, the applicant, to provide sufficient evidence to satisfy the planning authority that a Certificate must be issued. The evidence submitted should therefore be clear and convincing.

8. If any questions of fact are involved, the planning authority may accept statements from persons who have a direct knowledge of those facts. It is normal to require such statements in the form of an affidavit and you should therefore seek advice from a Solicitor or Planning Agent. In some cases letters or unsworn statements may be acceptable to provide collaborative documentary evidence.

9. You may wish to obtain a legal opinion on the interpretation of evidence and the weight to be placed on different documents.
What The Planning Authority Will Consider

10. The onus is on the applicant to provide enough evidence to satisfy the planning authority that planning permission is not needed for the proposals. Mere assertion on these points is not sufficient. If the planning authority has evidence, or reasonable grounds to believe that an assertion by the applicant is not correct, it may refuse a Certificate.

11. A Certificate of Lawfulness for a Proposed Use or Development is founded on legal facts about the lawfulness of the proposed use or development. The planning merits of the use, operation or works referred to in the application are not relevant and will not be considered.

What A Certificate Of Lawfulness Does

12. Please note - the Certificate is not a planning permission. Section 151 of The Town and Country Planning (Scotland) Act 1997 sets out the detailed provisions.

13. A Certificate granted for a proposed use or operation will specify (by reference to a plan or drawing) the area of land included in the certificate and describe the precise nature of the use, operation or activity which would be lawful if instituted or begun at the time of the application. The certificate will give the reason for determining the use or operation to be lawful and specify the date of the application for the certificate.

14. A Certificate will protect you from enforcement action by the planning authority unless you do not make a start to the proposed use or operations and there is some material change in circumstances. Also you may not subsequently change the specified use “materially” without making a planning application for it. (For example, a certificate may specify that a haulage contractor’s site may be used lawfully for the storage of goods as well as for parking of a defined number of heavy goods vehicles on a specified area of the site).

NB: Certificates of Lawfulness are not relevant to situations where breaches of listed building or conservation area controls may be alleged.

WARNING: Section 153 of the 1997 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 152 enables the planning authority to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.
15. It is often helpful to discuss your proposal before you send in your application and to seek pre-application advice from your planning authority. For details please look at your planning authority’s website.

Right Of Appeal

16. If your application for Certificate of Lawfulness is not granted by the planning authority, you have a right of appeal to the Scottish Ministers against such a decision.

Electronic Submission Of Application

17. Under the provisions of The Town and Country Planning (Electronic Communications) (Scotland) Order 2004, please note that by submitting your application using this form you are deemed to have agreed to the following:

   a. to the use of electronic communication for all purposes relating to the application; and

   b. that the electronic address you have used is the one which will be incorporated into the application.

18. Should you wish to withdraw or revoke your consent to using electronic means of communication means you will have to advise the planning authority in writing that you wish to do so, giving at least 7 days’ notice of the date when your withdrawal of consent will take effect.
CERTIFICATE OF LAWFULNESS  
PROPOSED USE OR DEVELOPMENT

Town and Country Planning (Scotland) Act 1997: Section 151  
*Please refer to the accompanying Guidance Notes when completing this application*

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<th><strong>1</strong> Applicant's Details</th>
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<td>Company Name</td>
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<td>Address</td>
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<td>Postcode</td>
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<td>Telephone (inc. STD Code)</td>
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<th><strong>2</strong> Agent's Details</th>
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<td>Forename</td>
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<td>Building Number</td>
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<th><strong>3</strong> Address or Location of Proposed Development <em>(please include postcode)</em></th>
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<td>Postcode</td>
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*NB. If you do not have a full site address please describe/identify the location of the site or sites in your accompanying documentation.*
**Type of Application**

This application is for:

- [ ] Proposed use of buildings or land and/or
- [ ] Proposed operation or development

Please provide details of the use or development/operations for which you are seeking the Certificate:

**Description of Use, Building Works or Operations**

Please state the **existing** Use Class as described in the Town and Country Planning (Use Classes)(Scotland) Order 1997 of the buildings or land to which your application relates:

Use Class: 

Please state the **proposed** Use Class (for which the certificate is sought) as described in the Town and Country Planning (Use Classes)(Scotland) Order 1997:

Use Class: 

Is there more than one use or activity/operation?  

- [ ] Yes  
- [ ] No  

If yes, please describe each use or activity/operation fully and show on a plan how they relate to each other.

Is the proposed use:  

- [ ] Temporary  
- [ ] Permanent  

If temporary, please give details, including the dates on which the temporary use will begin and terminate:

Date of Start: 
Date of Termination: 

Details:

Please describe clearly your proposed development or building operations, indicating the scale, nature and location of the development.
Have you received advice from the planning authority in relation to this proposal?

☐ Yes  ☐ No

If yes, please provide details about the advice below:

In what format was the advice given?

☐ Meeting  ☐ Telephone call  ☐ Letter  ☐ Email

Please provide a description of the advice you were given and who you received the advice from:

Name:

Reference Number:  Date:

Interest in Land

Please state the applicant’s interest in the land: Owner/ Lessee/ Tenant/ Occupier/ Other (please circle)

If you selected lessee, occupier or tenant, has the owner been informed? Yes/No (please delete as appropriate)

Please give details of the owner and state whether they have been informed in writing of this application:

Name:

Address:

If you selected other, please provide details about the interest in the land below:

Please give details of anyone else you know who has an interest in the land:
Planning Service Employee/Elected Member Interest

Are you or is the applicant, or the applicant’s spouse/partner, a member of staff within the planning service or an elected member of the planning authority?

☐ Yes  ☐ No

Or, are you/the applicant/the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority?

☐ Yes  ☐ No

If you have answered yes please provide details:
DECLARATION

I, the applicant/agent certify that this is an application for a Certificate of Lawfulness as described in the form. The accompanying plans/drawings and additional information are provided as part of this application.

Signature: 

Name: 

Date: 

WARNING:

Section 153 of the 1997 Act provides that it is an offence to knowingly or recklessly provide false or misleading information or to withhold material information with intent to deceive.

Section 152(7) enables the planning authority to revoke, at any time, a certificate they have issued as a result of such false or misleading information or if material information has been withheld.