

Planning Department
Eastleigh Borough Council
Eastleigh House
Upper Market Street
Eastleigh
Hants
SO30 2HH

25th July 2025

Dear Sir/Madam

**Re: Lawful Development Certificate for enlarged roof to stable building to include box dormer window (4-year breach):
The Stables, Grange Road, Bursledon, SO31 8GD**

The above Lawful Development Certificate is made to Eastleigh Borough Council to confirm that the existing box dormer window in the western elevation of the stables is now lawful. It has been constructed and implemented for a continuous period without the benefit of planning permission in excess of 4 years. The development having been fully constructed and implemented prior to 24th April 2024. This application and the evidence submitted will prove beyond the balance of probability that this is the case.

This application includes evidence from the following sources:

APPENDIX 1 - Submitted Planning Application F/20/88060

Application Form

Proposed Plans

Decision Notice

Council's Website Overview of Application

APPENDIX 2 – Appeal Decision for Application F/20/88060

APPENDIX 3 - Photo of Current Box Dormer Window

Section 191- Certificate of lawfulness of existing use or development.

“By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them, and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force”.

“Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:

(1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact, and degree, materially different, for planning purposes, from a previous lawful use of land.); or

(2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or

(3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or

(4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or

(5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or

(6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or

(7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or

(8) it is development by or on behalf of the Crown; or

(9) the time for taking enforcement action has expired.”

In this instance the relevant category is (9) the time for taking enforcement action has expired.

The onus of proof in a Lawful Development Certificate (LDC) application is firmly on the applicant and that the determination of an application must be made on the balance of probability. An applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted and if the local planning authority (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".

It is considered that the supporting evidence is particularly poignant in that the key documents are in fact verifiable by the local planning authority. In some instances, the key documents are produced by the local planning authority (the officer report and website overview from application F/20/88060 – see Appendix 1 documents). Both of these documents confirm the dates the structure was in place and make reference to the roof alterations and box dormer window being in situ at this time.

"Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes".

Paragraph: 006 Reference ID: 17c-006-20140306 of the NPPG states *"the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning statues of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. **If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence**(my emphasis)".*

One of the key documents in support of this lawful development certificate is provided by the Planning Inspectorate. The appeal decision Ref: APP/W1715/W/20/3262351 made following the refusal of application F/20/88060 (see Appendix 2). This is an impartial professional planning judgment based upon the actual merits of the proposal now sought for a lawful development certificate.

This decision provides a firm date and professional corroboration of when the dormer was in situ and completed. The Inspector clearly states in paragraph 2 of his decision notice dated 22nd February 2021 that *“I note that the planning application was submitted part retrospectively, and on my site inspection I observed that the appeal scheme has been implemented”*. This unequivocally provides confirmation that the box dormer was not only complete but it was implemented. It also provides a firm date for us to work to (although it is pertinent to note that the site visit would have been undertaken prior to this date) and the roof alterations and box dormer window would have been in place and complete before this date. However, as mentioned it is taken as a decisive planning professional determination as to when the work was substantially complete and the official start date for immunity can be relied upon impartially.

Working to the Inspector's appeal decision date of 22nd February 2021, (although it is evident that the box dormer was in fact in place and implemented prior to this date), this would give us a four-year conservative time date for immunity under Section 191 of the Town and Country Planning Act 1990 of 22nd February 2025. Having more than exceeded this period without the LPA issuing an enforcement notice, despite being aware of the breach of planning control, the applicant is now seeking a Lawful Development Certificate for its retention.

In the absence of any enforcement action from the local planning authority the immunity period for these works began from its completion until the four-year time period was completed (pre- 24.02.24). The local planning authority has been aware of the development throughout its completed “life” and in light of its decision not to take any action to seek its formal removal the development is now immune through the passage of time. A Lawful Development Certificate for the roof alterations to the stable building and box dormer window should therefore be duly issued.

However, if the Council requires further clarification or evidence in support of the Lawful Development Certificate, in accordance with paragraph 006 of the NPPG, please do not hesitate to contact me.

Yours sincerely

H. Dawson B.A. Hons DipTP