

Statement in support of Application for a Certificate of Lawful Existing Use pursuant to Section 191 of the Town and Country Planning Act 1990

Relating to the use and occupation of TAKARA, Ralphs Lane, Frampton, Boston, Lincolnshire, PE20 1RJ (the "Property").

1. Introduction

- 1.1. This statement is submitted in support of an application for a certificate of lawful existing use pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Development Management Procedures) (England) Order 2015 ("the Application").
- 1.2. The Application is submitted to confirm the lawful use of TAKARA, Ralphs Lane, Frampton, Boston, Lincolnshire, PE20 1RJ (the "Property") for in excess of 10 years without compliance with the condition attached to the planning permission for the Property which restricted its occupation to those employed or last employed in agriculture.

2. The Property

- 2.1. The Property comprises of detached residential dwelling with 5 bedrooms. The applicant recalls that the family obtained planning permission for the dwelling in around 1988. The Property was a self build by the family and was completed in 1992.
- 2.2. The Property is shown edged red on the plan submitted with this application.
- 2.3. The Property sits adjacent to a former nursery site which was operated by the Applicants father, the business of which ceased between 2003 and 2005. The occupants of the Property have since that time been employed outside of agriculture or horticulture. The applicant has for over ten years been solely or mainly employed in operating his own garden landscaping business as is shown in the submitted Statutory Declaration.

3. The use of the Property

- 3.1. The Application has been submitted to Boston Borough Council ("the Council") for a Certificate of Lawful Existing Use ("CLUED") for the Property, as shown edged Red on the Plan to confirm that the occupation of the Property without compliance with the condition attached to the planning permission, which restricted the occupation to those employed or last employed in agriculture is lawful.

4. Evidence in support of the Application

- 4.1. The Applicant, in addition to this supporting statement, has submitted a detailed sworn statutory declaration in respect of the use of the Property over the last 10 years for purposes specified above, which includes evidence of his employment outside of agriculture.

5. The Legislation

- 5.1. Section 191 of the TCPA 1990 governs certificates of lawfulness of existing use or development. It provides:

"(1) If any person wishes to ascertain whether -

(a) any existing use of buildings or other land is lawful;

(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, ... or other matter.

*(2) For the purposes of this Act **uses ... 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.

(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, ... 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."

6. Section 171A of the TCPA 1990 defines certain expressions which are used in connection with enforcement. Section 172 of the TCPA 1990 provides that:

"(1) The local planning authority may issue a notice (in this Act referred to as an 'enforcement notice') where it appears to them -

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

7. Section 171B governs time limits for the taking of enforcement action. The only relevant provision in this case is subsection (3), which provides:

"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach."

8. The standard of proof required to be demonstrated is the balance of probabilities, (**F W Gabbittas v Secretary of State for the Environment and Newham LBC [1985] JPL 630**). The standard of proof is not beyond reasonable doubt, but a much lower threshold. The question that needs to be considered by the Council, in making a determination, is whether it is more likely than not that the matters put forward are lawful on balance.
9. The 'lawfulness' of the use of the Property for the purposes prescribed above, is referable to the date on which the section 191 Application is submitted, not the date on which the Application is determined.
10. Whilst the breach of planning control relied upon must have been continuous throughout that period, the case of **Thurrock BC v Secretary of State for the Environment [2002] JPL 1278** confirms that "continuity" for these purposes does not necessarily mean that the land in question must have been used for the activity in question on every single day during the relevant period. Our client's Application meets these requirements, in order to demonstrate the use of the Property for the purposes described above. It is sufficient for the purposes of the Application that the relevant owner entered the Property and commenced using it for the purposes described above and continued to use it for those purposes for in excess of ten years.
11. This approach was confirmed in the decision of **Swale Borough Council v First Secretary of State and Roger Lee [2005] EWCA Civ 1568** in which the Court of Appeal was concerned with a building which had originally been a barn, but was later used for residential purposes. The question was whether there was a breach of the planning permission and whether it had been used in breach, or for a particular purpose, over the relevant period. The leading judgment was given by Keene LJ who recognised and agreed that it was correct to distinguish between a cessation of use, on the one hand, and an absence of the occupier for a time, such as for the purpose of a holiday. Keene LJ held that if there was no intention to abandon the residential use, which was the unlawful use in question, over the period, then it might be that it could be decided that the unlawful use continued, even though it was not being actually carried out at any particular moment. It would be a question of fact and degree whether it could properly be said that the unlawful use, was continuing.
12. The decision in **Basingstoke and Deane BC v Secretary of State for Communities and Local Government [2009] EWHC 1012 (Admin)**, addresses the question of 'continuity' further in the particular circumstances surrounding gaps in occupation or use for renovation works required to enable the property to be re-let or re-used, following a challenge to an Inspector's decision to grant a certificate of lawful use on appeal. In this

case Collins J considered that, *“a gap during which refurbishment took place, in order to make the dwelling more attractive for continuing breach, is a period during which the breach continued. It continued because the activities then being carried out in relation to it, whether marketing, whether sorting out the correct persons, or company, to do the work, whether doing the actual work itself, were all in furtherance of the breach of condition.”* Collins J went on to hold that, *“The correct question was whether there had been what could properly be regarded as a breach of the condition over the whole of the 10-year period, whether or not there was anyone in physical occupation during any particular part of it. Where there had been a clear breach for some time, namely use for other than an agricultural tenant, a gap during which refurbishment took place, in order to make the dwelling more attractive so that the breach could continue, was a period during which the breach continued. If enforcement action had been taken during the period of refurbishment, it would have succeeded. Despite the inspector’s incorrect reasoning about the period of refurbishment, he had been entitled and bound to reach the conclusion that there had been a continuing breach.”*

13. It can therefore be seen from the above caselaw that a temporary period during which the Property was not used for purposes set out above, does not preclude the use of the Property for the purposes described in this Statement above from continuing.
14. The Planning Practice Guidance is clear in stating that: ***“...if a local planning authority has no evidence itself, nor any 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.”*** (Paragraph: 006 Reference ID: 17c-006-20140306).
15. It is submitted that upon the balance of probabilities the evidence is sufficient to demonstrate that the Property has been continuously used for the purposes described above for a period in excess of the requisite 10 years and it is requested that the Council therefore grant the Certificate without delay.

16. Conclusion

- 16.1. Based on the evidence submitted and the above statement we respectfully request that the Council grant the Certificate.