



The Town and Country Planning Act 1990 (as amended)
Lawful Development Certificate – Section 191

Supporting Statement

To establish the Lawful Use of a building for the conversion of a former boat house to a dwellinghouse.

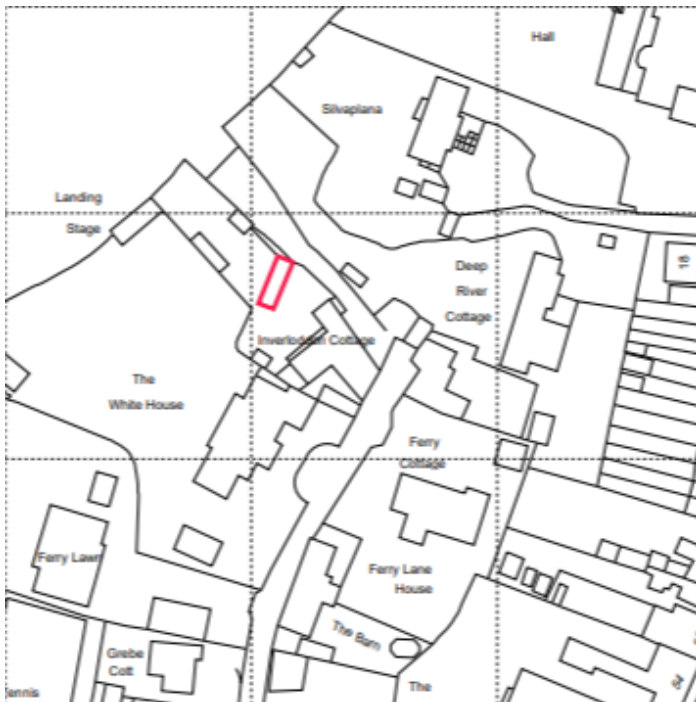
at

Inverloddon Cottage, Ferry Lane, Wargrave. Wokingham, RG10 8ET

Introduction

XL Planning Ltd are instructed to submit a Lawful Development Certificate (LDC) on behalf of the landowner/applicant under the provisions of section 191 of the Town and Country Planning Act 1990, to determine whether the existing use is lawful for planning purposes.

The site and land the subject of this application is known as The Boat House, Inverloddon Cottage, Wargrave, Wokingham, RG10 8ET (see site location plan).



Extract from Site Location Plan

Section 191 Town & Country Planning Act 1990 states; at (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.

Lawfulness of a use or development (as in this case) is 'not' dependent upon an LDC or Planning Permission. This has been confirmed in relation to the lawfulness of an existing use or development by the judgment of the High Court in *Hillingdon LBC v SSCLG [2008] EWHC 198 (Admin)*.

However, the landowner/applicant has chosen in this case to apply for a Certificate of Lawful Use/Development (CLEUD) and the following therefore applies.

Guidance as set out within the Department for Communities and Local Government - Planning Practice Guidance in relation to Lawful Development Certificates. (Revised 6th March 2014) states:

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Paragraph: 009 Reference ID: 17c-009-20140306

Revision date: 06 03 2014.

The Local Planning Authorities (LPA) attention is also drawn to Section 191(4) of Town and Country Planning Act 1990 which states:

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.

As a result, the LPA do have the ability to issue a certificate for the use, operation or other matter described in the application, *OR* that description as modified by the LPA, or a description substituted by them. In summary the LPA have the ability, and flexibility to issue a certificate in terms/description that may differ from the description contained within the application, as an alternative to refusing the application.

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that, and *specifically in relation to this application* 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.

This supporting statement and submitted documentation provides factual information and evidence in accordance with guidance as set out within the Department for Communities and Local Government - Planning Practice Guidance in relation to Lawful Development Certificates (Revised 6th March 2014).

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191. The applicant understands that the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

In the case of applications for existing use, as in this case, 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.

A local planning authority needs to consider whether, on the facts of the individual case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application, or any subsequent appeal process.

Site and surrounding area

The applicant lives at Inverloddon Cottage at the north eastern end of Ferry Lane. Ferry Lane is in the north western part of Wargrave and many of the properties on the north western side of the lane have access to the River Thames. The Boat House sits within the substantial plot associated with Inverloddon Cottage. Ferry Lane is a no-through road.

The Boat House is situated to the west of Inverloddon Cottage and from the property there is access to a garden area used by the residents of The Boat House, as well as the garden associated with Inverloddon Cottage.

The Boat House is an entirely separate building to Inverloddon Cottage and is accessed through a gate from Ferry Lane. The residents do not have to pass through Inverloddon Cottage in order to access The Boat House.



Image courtesy of Google Maps 2025

The Boat House is only a couple of minutes' walk from Wargrave High Street where there are a range of services and facilities, as well as being only a few minutes' walk from Wargrave train station.

Planning History

Research reveals the following planning history within the CLU site location plan area:

F/2002/6996 Proposed erection of boathouse and wet dock plus new section of brick wall – Approved (this is not the building that is the subject of this CLU)

F/2002/4617 Proposed erection of single storey boathouse and wet dock to replace existing summer house – Refused (this is not the building that is the subject of this CLU)

F/2000/2813 Proposed erection of replacement front porch and carport (Retrospective) - Approved

Research indicates that there has been no planning enforcement notice served, or that exists at the time of this application regarding either the residential use of The Boat House dwelling that has been created through the conversion of the former boathouse.

The Case for the Issue of a Certificate

Section 55 of the Town and Country Planning Act 1990 (as amended) sets out the definition of development.

Section 55 (1) of the Act, states that "Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

As a result, planning permission is required for any building operation or change of use on, or of the land. The occupation of the site through the conversion of the former boathouse to form a dwelling for permanent human habitation, constitutes a material change of use that would have required planning permission.

If planning permission is not obtained or deemed to be granted by virtue of any other legislation, that use, would be considered as unauthorised development contrary to Section 171A Town and Country Planning Act 1990 which states at:

(1) For the purposes of this Act—

(a) Carrying out development without the required planning permission; or

(b) Failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

However, Section 191 Town & Country Planning Act 1990 states at:

(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.

As mentioned previously. No enforcement action has been taken and no extant enforcement notice is in place for either the residential use of the site or the occupation of the converted building as a dwelling.

The time limits that relate to enforcement action are identified at Section 171B of the Town and Country Planning Act 1990 (as amended) and states regarding time limits:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed.

*(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of **ten years** beginning with the date of the breach.*

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

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*(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of **ten years** beginning with the date of the breach.*

However, despite the change to the legislation, as long as the unauthorised material change of use of the former boathouse building to use as a single dwellinghouse had existed for a continual period in excess of four (4) years by 25th April 2024, it can meet the requirements of Section 171B (2) of the Town and Country Planning Act 1990.

R (oao Alison Sellars) v Basingstoke & Deane Borough Council [2013] EWHC 3673 (Admin) states: "The identification of the appropriate planning unit (whether larger or smaller than the land specified in the application) is an essential part of the decision whether a certificate under s191 should be granted."

The use referred to within this application has, over more than a 4 year period by the qualifying date of 25th April 2024, created a new and separate planning unit as detailed in case law; *Burdle v Secretary of State for the Environment*. This case law is considered to provide the accepted guidance.

The planning unit is a concept which has evolved as a means of determining the most appropriate physical area which to assess whether a material change of use has occurred. The general rule and starting point are that the whole of the area in the same ownership or occupation should be considered. However, the High Court in the case of *Burdle* suggested three broad tests for determining the appropriate planning unit. Those three (3) scenarios are as follows.

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.

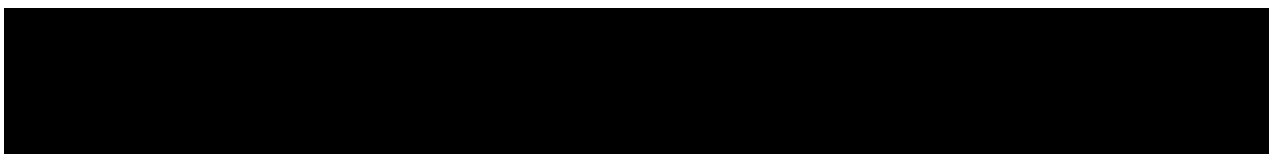
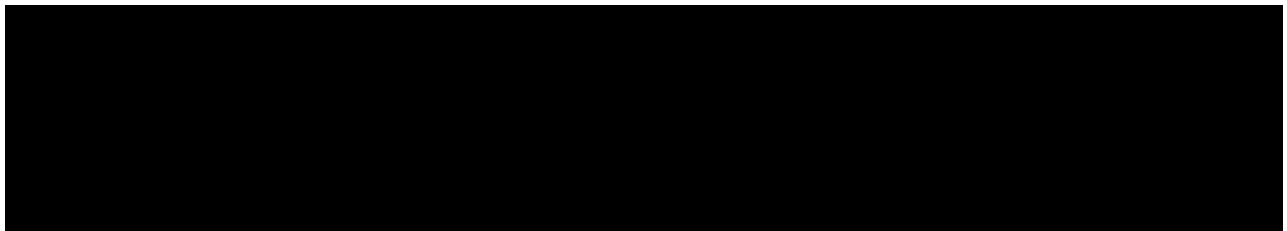
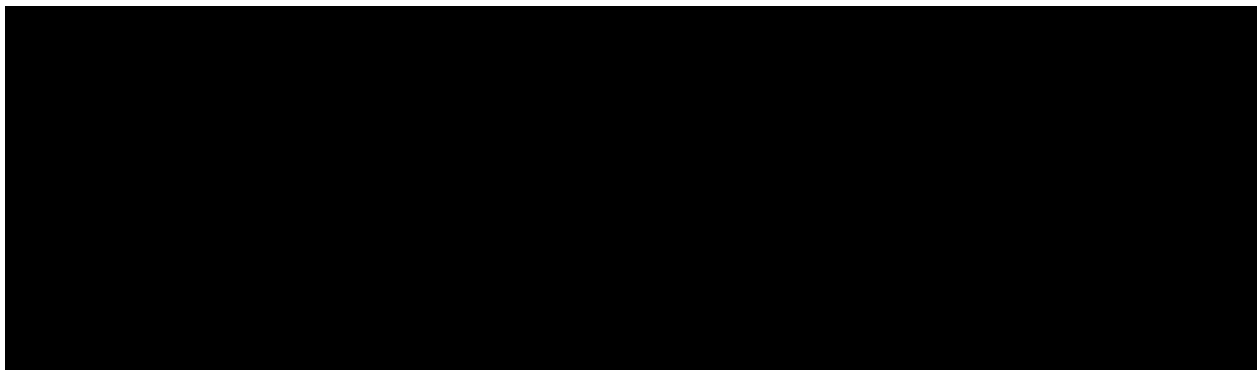
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Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

The third (3rd) test would be considered as relevant in this case.

In this case the unit of ownership, is the whole site. However, there are two distinct areas within the unit of ownership, those being the area that is the subject of this certificate application and the adjoining land and Inverloddon Cottage dwellinghouse that are in separate residential use. The main and primary use of the building that is the subject of this Certificate application has, for more than 4 years by April 2024, been as an occupied dwellinghouse.

The applicant inherited Inverloddon Cottage and has been resident there for a many years. As a result she is able to provide detailed information and evidence regarding the use of the property which she has shared with XL Planning Ltd.



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The Boat House contains the spaces and facilities commonly expected within a dwellinghouse and required for day-to-day domestic living. There is a combined kitchen/living room, a bathroom, bedroom and a storage room. The dwelling has a mains electricity supply, mains water and mains drainage. Works required to provide these spaces were completed prior to the first occupation of The Boat House by tenant 1 in September 2019.

Please see the photos below of the external appearance of the former boathouse that is now a single dwelling house. Plans and elevations of the dwelling created through the change of use of the former boathouse have been submitted with the application. Internal photos have been submitted as a confidential document to protect the privacy of the occupant.



North West elevation of the former boathouse, now a single dwelling house.



Exterior of The Boat House

The change of use of the boathouse to form a permanent single dwelling house is considered to be a material change of use of the building that required planning permission. The former boathouse, now a permanent single dwelling house, was occupied by the applicants first tenant as their permanent dwelling from the 1st September 2019. A commencement date of the 1st September 2019 for the permanent occupation of the former boat house at Inverloddon Cottage, as the applicant's tenant's permanent residence in the form of a single dwelling house, is therefore the start of the relevant unauthorised material change of use of the boathouse to a single dwelling house contrary to Section 171A Town and Country Planning Act 1990. As this dwelling house use started more than four (4) years prior to 25th April 2024, the use became immune from planning enforcement action on the 1st September 2023, in accordance with Section 171B (2) of the Town And Country Planning Act 1990 (as amended). The use of the former boat house as a dwelling house had become established and lawful by this date.

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The tenant(s) access the single dwelling house and the garden area, on foot, from the gateway into Ferry Lane.

The applicant considers that the circumstances of this CLEUD application fall within the 3rd category of *Burdle*. As within the applicant's larger single unit of ownership and occupation a separate unit of occupation and use has occurred, thus creating the separate and independent planning unit the subject of this application.

This certificate application relates to the permanent use of a building that is owned by the applicant. The Boat House contains facilities and personal possessions required for full, permanent residential occupation, namely a kitchen and living area/bedroom and a bathroom. The Boat House is supplied by metered mains electricity and water.

Case law in the *Thurrock* decision is therefore relevant with regards to the former boathouse, as there would have been evidence of residential use and occupation of the former boathouse if any inspection visit had been made by the local planning authority (LPA) from 1st September 2019, with the continued use of the former boathouse as a single dwelling house being unauthorised from this date.

The pedestrian access into and out of the Boat House has always been through the garden gate that leads onto Ferry Lane. That access has been used continually for a very long time and prior to the occupation of the boat house as a dwelling.

The occupants of The Boat House have had access to an area of garden north west of the Boat House. This has been used by the occupants of the Boat House since it has been occupied as a single dwelling house.

It is evident, and beyond the balance of probability, that the unauthorised conversion and occupation of the former boathouse as a single dwelling house has existed continually for more than four (4) years, up to the qualifying date of 25th April 2024.

The Evidence

The evidence base in relation to this application constitutes the following material and documentation:

- Plans submitted in support of this application identifying the Boat House and a surveyed drawing of the Boat House.
- Statutory Declaration (SD) and exhibits from the current and former tenants
- Photographs exhibited along with the Statutory Declaration and content of this supporting statement.

Conclusion

Having regard to the matters set out above, evidence submitted, material factors such as case law, as well as evidence on site, and the fact that no known enforcement action has been undertaken historically in relation to any unauthorised use within the qualifying period, relating to the conversion and occupation of the former boathouse as a single dwelling house within the defined planning unit, it is respectfully suggested, that on the balance of probability, the Local Planning Authority (LPA) are able to issue a suitably worded Lawful Development Certificate, with suitably annotated site plan, under the provisions of Section 191 Town & Country Planning Act 1990, confirming that the conversion and use of the former boathouse into a single dwellinghouse is lawful and immune from planning enforcement action.