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Planning Development

Evidence Statement – Certificate of Existing Lawful Development

Erection of Commercial Building (Unit 13) Calder Trading Estate, Lower Quarry Road, Bradley, Huddersfield, HD5 0RX

Introduction and Background

An application for a Certificate of Existing Lawful Development is submitted to the Council under Section 191 of the Town and Country Planning Act 1990 (as amended) for the erection of a commercial building (known as Unit 13) on an existing business and industrial estate. The date of the application is 6th August 2025 and the applicant is E Bottomley & Sons Ltd.

What the application seeks to establish as lawful development

The application is made under the four-year immunity rule as the development in question relates to the following aspect of 'development' as defined under Section 55 of the Town and Country Planning Act: ¹

- a) Building operations comprising the substantial completion of a building over four years prior to the date of this application.

With regard to the recent changes to the immunity periods, the Planning Act 2008 (Commencement No. 8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 were made, bringing Section 115 of the Levelling-Up and Regeneration Act 2023 into force on 25th April 2024.

This changed the period for all breaches of planning control to 10 years in England. However, Regulation 5 of the 2024 Regulations includes transitional provisions which provide that, where operations under Section 171B(1) Town and Country Planning Act were substantially completed before the 25th April 2024, the 4 year period will continue to apply. The transitional arrangements are also reflected in the relevant Planning Practice Guidance (Paragraph 004 Reference ID: 17b-004-20180222).

Lawful Development Certificate legislation

The legislation sets out (Section 191 – 1):

¹ Meaning of 'development' and 'new development'

“If any person wishes to ascertain whether—

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

(b) **any operations which have been carried out in, on, over or under land are lawful**²; or

(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, operations or other matter.”

Section 191 (2) goes on to state:

“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.

Section 171B (1) (as amended this year) confirms the time limits for enforcement action in respect of building operations:

“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 – (a) in the case of planning control in England, ten years beginning with the date on which the operations were substantially completed.”

However, as discussed in the previous section, where operations under Section 171B(1) Town and Country Planning Act were substantially completed before the 25th April 2024, the 4 year period will continue to apply.

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in [blue](#)):

(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; ([submitted with this application - see accompanying Location Plan](#))

(b) such evidence verifying the information included in the application as the applicant can provide; ([this Evidence Statement and appendices as detailed below](#)); and

² Our emphasis

- (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. [The applicant E Bottomley & Sons is the freehold owner of the property in question.](#)

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance 'Lawful Development Certificates', paragraph 006, 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 status 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.

In the case of applications for existing use, 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.

Case law notes that the 'balance of probability' test is less onerous than that of 'beyond reasonable doubt'. Moreover, the courts³ have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted.

Evidence of Lawfulness

The evidence set out below in totality demonstrates that the building was substantially completed in April 2016 and therefore significantly exceeds the four year immunity period.

1) Aerial Images

The aerial photograph below demonstrates that the building was in place by June 2016 when the aerial photograph is stated to have been taken.⁴ This is 9 years and 2 months prior to the date of this application.

2) Sworn Statements

Sworn Statements are provided by Mr Robert Bottomley (Managing Director of E Bottomley & Sons) and Mr Russell Holmes (Chartered Building Surveyor). Please refer to Appendices 1 and 2.

In summary, Mr Bottomley has owned Calder Trading Estate since 1969 and commissioned the construction of the building in question, visiting the site several times to witness the construction of the building during the Spring of 2016 - including witnessing the foundations being poured, the steel frame being erected, and roofs and walls being installed. Mr Bottomley witnessed the building being

³ *Gabbittas v Secretary of State for the Environment and Newham LBC* [1985] J.P.L. 630

⁴ <https://livingatlas.arcgis.com/wayback/#active=15212&mapCenter=-1.73680%2C53.68424%2C18&mode=explore>

completed in June 2016 when the Practical Completion Certificate was issued (see below) and confirms that the building was ready for occupation in the same month (June 2016).



Aerial Photo June 2016

Mr Holmes confirms that he has acted in the role of Building Surveyor & Architectural Design Consultants at the Calder Trading Estate in Bradley, Huddersfield since 1988.

Mr Holmes states that he visited the site several times during the construction of the building work which commenced in November 2015, including checking foundation details and supervising the construction, through it being completed and then fit for occupation in June 2016. A Certificate of Practical Completion was issued at that point confirming the date of practical completion (see Appendix 3).

3) Immunity from Enforcement

We are not aware of any enforcement action during the four years preceding the date of this application.

Conclusion

It is submitted that the development described above is lawful at the date of this application under Section 191 of the Town & Country Planning Act.

The evidence listed above is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that operations to form the building were completed more than four years before the date of this S191 Certificate of Lawfulness application.

Finally, as the Planning Practice Guidance recommends ⁵, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity, if necessary, to produce counter-evidence.

In the light of the above, we respectfully submit that the aforementioned development is indeed lawful, and request that the Council grant the Certificate of Lawfulness accordingly.

Please do not hesitate to contact us if you require any further information, or clarification on any of the above.

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⁵ Paragraph 006