

Certificates Of Lawfulness Of Existing Use Or Development



Due to the way that equestrian properties evolve many do not have the requisite planning permission as people incorrectly assume their equestrian use of the land is covered by agricultural use.

When purchasing equestrian property it is essential to ascertain whether there are any problems with the planning title. Due to the passage of time many planning problems can be dealt with by obtaining a Certificate of Lawfulness of Existing Use or Development (CLEUD).

Local Authorities are entitled to bring enforcement action against any unauthorised use or development on land. The time limits for such enforcement action are:-

1. four years for operational development since completion of the development;
2. four years for uninterrupted use as a single dwelling-house;
3. ten years for any other breach of planning control if the breach has continued uninterrupted for that period.

It would be advisable to apply for a CLEUD in the above circumstances to ensure clarity. Evidence by way of statutory declarations must support your application. Statutory declarations would be required from the owner and any other person who can support the claim stating when the use commenced or development was completed. Further evidence, for example photographs or receipts for building work or copies of accounts in the case of a livery yard or riding school, should be included. In the case of a breach of an occupancy condition, evidence of earnings other than from agriculture will need to be provided, e.g. payslips or accounts. It is up to the applicant to prove lawfulness on the 'balance of probabilities'. The applicant must therefore make out a clear case, which does not need to be corroborated, but the fuller the evidence the greater the likelihood that the test will be met and the Certificate granted.

Essentially, use must be shown to be continuous. Any period of a different use will start the clock running again. Also, a chain of different uses will not amount to a period of non-compliance. You must also be aware that any non-compliance once a Certificate has been granted (i.e. change of use) in the future brings the condition back into operation.

An incomplete or defective application can result in the Certificate not being issued, which, in turn, has the unfortunate effect of notifying the Local Authority to the planning breaches resulting in enforcement action against you. Not the desired outcome! It is always advisable to take legal planning advice for a CLEUD application.