

BROMSGROVE DISTRICT COUNCIL

Parish Councils Forum

30th September 2008

Consultation with Parish Councils on Certificates of Lawfulness on Existing Use or Development (CLEUD)

Responsible Portfolio Holder	Mrs J. Dyer
Responsible Head of Service	D. Hammond
Non-Key Decision	

1. SUMMARY

- 1.1 To consider introducing a procedure to enable Parish Councils to be consulted on Certificates of Lawfulness on Existing Use or Development (CLEUD).

2. RECOMMENDATION

- 2.1 That a one year trial is undertaken by the Head of Planning and Environment Services to assess the implications of consulting Parish Councils on Certificates of Lawfulness on Existing Use or Development (CLEUD) in terms of resources and improvements to the decision making process.

3. BACKGROUND

- 3.1 A certificate of lawfulness (LDC) is a legal document rather than a planning permission. LDCs replaced the former planning procedure whereby it was possible to apply for a formal determination as to whether or not planning permission was required for a proposed development, and also the established use certificate system which formalised an immunity from enforcement for uses already carried out continuously, but unlawfully, since the end of the 1963. In a nutshell the provisions introduced a procedure whereby a developer may formally establish whether what is proposed to be done (CLOPUD) or what has already been done (CLEUD) is "lawful", in that no planning permission is required and no enforcement action may taken
- 3.2. This report relates to the procedures relating to CLEUDS
- 3.3 There is no formal duty for local authorities to consult on CLEUDS. This is because they are not planning applications but a legal document that is based upon the information provided to the authority and a consideration of

the evidence based upon the balance of probability. The applications are not subjective and therefore rely on factual evidence being presented.

- 3.4. At the present time the applications are dealt with by the Legal Services team who advise Ward Councillors that a CLEUD has been received. The Enforcement section of the Development Control section is also consulted to check records and the history of activity at a site. The decision as to whether or not to grant the CLEUD rests with the Council's Senior Solicitor after consideration of the evidence contained in the application and any comments made by the Enforcement section.
- 3.5. The purpose of this report is to assess the viability of introducing a consultation process with Parish Councils who may have historical knowledge which could assist in the evidence checking carried out by the Councils Enforcement Officer. It is therefore considered that consultations on CLEUDS should be undertaken by the Enforcement officer when he/she receives the initial consultation request from Legal Services rather than by Legal Services directly.
- 3.6. It is very important that Parish Councils are aware of what the Enforcement Officer will require. Comment must be limited essentially to evidence as to whether a use or form of Development has been operating for 10 years continuously or has been completely built for 4 years. Applicants for CLEUDS are now required to ensure that their evidence is in the form of a statutory declaration; whilst that may include hearsay (ie. second-hand) evidence, the weight attached to hearsay evidence is likely to be less than that attached to first-hand evidence. Parish Councils need to be aware, therefore, that similar consideration will be given to information provided by them. Therefore Parish Councils are encouraged to liaise with the Enforcement Officer to ensure that the appropriate weight can be attached to the information they hold.
- 3.7 Any response will form part of the consultation response to the Councils Solicitor who will make the formal determination. It would not therefore be appropriate for Parish Councils to liaise directly with the Legal Services team once they have been consulted on a matter.
- 3.8 The Enforcement officer will request the Parish Council to respond within a specific time period. Councils are encouraged to ensure that they have appropriate procedures in place to ensure that they are able to provide the information within the specified time scale.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications.

5. LEGAL IMPLICATIONS

- 5.1 There are no legal implications

6. COUNCIL OBJECTIVES

6.1 The information sheet would link to Council objective 2 - Improvement

7. RISK MANAGEMENT

7.1 None

8. CUSTOMER IMPLICATIONS

8.1 None

9. EQUALITIES AND DIVERSITY IMPLICATIONS

9.1 None

10. VALUE FOR MONEY IMPLICATIONS

10.1 None

11. OTHER IMPLICATIONS

Procurement Issues - None
Personnel Implications - None
Governance/Performance Management - None
Community Safety including Section 17 of Crime and Disorder Act 1998 - None
Policy - None
Environmental - None

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	No
Executive Director - Partnerships and Projects	No
Executive Director - Services	No
Assistant Chief Executive	No

Head of Service	
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

13. WARDS AFFECTED

All Wards

14. APPENDICES

None

15. BACKGROUND PAPERS

None

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