

**APPLICATION FOR CERTIFICATE OF LAWFUL EXISTING USE AND/OR
DEVELOPMENT**

GILDENHURST STUD, LORDINGS ROAD, BILLINGHURST RH14 9JB

Scope

1. This application for a Certificate of Lawfulness has been prepared on behalf of Ms Anna Asvedberg (hereafter referred to as 'the Applicant') and concerns development comprising a horse arena ('the Arena') located at Gildenhurst Stud, Lording's Road, Billingham RH14 9JB ('the Property').
2. The Property is unlisted and is not located in a Conservation Area.
3. The local planning authority is Horsham District Council ('the LPA').

Purpose of Application

4. Planning Practice Guidance ('PPG') provides the basis for any application under section 191 Town and Country Planning Act 1990 (lawful development certificate – CLEUD) to be made and assessed.
5. The purpose of an application under section 191 of the Town and Country Planning Act is to establish that: *"an existing use of land, or some operational development, or some activity being carried out, to include any use in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990"*. (Planning Practice Guidance ('PPG') Paragraph: 001 Reference ID: 17c-001-20140306).
6. The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken, where no enforcement notice is in force, or for which planning permission is not required. S171B of the Act sets out time limits for enforcement.
7. PPG Paragraph: 006 Reference ID: 17c-006-20140306 provides that: *"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”.

The Development

Background

8. The Applicant acquired the Property in October 2025.

Relevant Planning History

9. A search of the Local Planning Authority planning register identified no planning history relevant to the matters in issue.

Historic Use - Property

10. The use of the Arena historically and currently is Equine.

Works

11. It is apparent that works undertaken to create the Arena were undertaken without the benefit of planning permission.

Enforcement

12. The applicant has no knowledge of any enforcement action taken by the LPA in relation to the works undertaken.

Lawfulness

13. On 2 April 2024, **The Planning Act 2008 (Commencement No. 8)** and **Levelling-Up and Regeneration Act 2023 (LURA) (Commencement No. 4 and Transitional Provisions) Regulations 2024 (2024 Regulations)** were made. The 2024 Regulations brought Section 115 of the LURA into force, so that from 25 April 2024, the period for all breaches of planning control, whether operational development, changes of use to dwellinghouse or breaches of condition, became now 10 years (instead of four years), subject to transitional provisions.

14. Section 115 of the Levelling Up and Regeneration Act 2023, came into force on 25 April 2024 and changes the period for all breaches of planning control to 10 years.
15. However, to the extent that it is relevant to do so, it is noted that transitional provisions under Regulation 5 LURA exist are applicable in certain circumstances.
16. Regulation 5 includes transitional provisions which provide that, where operations under **Section 171B(1) TPCA** were substantially complete or a change of use to a single dwellinghouse occurred before the 25 April 2024, the 4 year period **will continue to apply**.

Town and Country Planning Act 1990 - Section 191 (2)

17. 2. For the purposes of the 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”.*

Town and Country Planning Act 1990 - Section 171B

18. By Section 171B (1) Town and Country Planning Act 1990:

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 four 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 building¹ to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*

¹ S336 TPCA “building” includes any structure or erection, and **any part of a building**, as so defined, but does not include plant or machinery comprised in a building;

(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).

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.

4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

Case for Lawfulness

Development – Construction of Equine Arena

The Facts

19. Works were undertaken to create the Arena without the benefit of planning permission. Drawings of the resulting Arena are exhibited at **Appendix A** hereto.
20. This application includes and provides for the fact of these works without the benefit of planning permission.
21. Historic imagery exhibited at **Appendix B** hereto demonstrates that works were fully complete by December 2005.
22. By **s171B (1) TCPA (1990)**, in the absence of enforcement action: *‘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 four years beginning with the date on which*

the operations were substantially completed.'

23. In those circumstances, in the absence of enforcement action and having regard to the 2025 Regulations and s171B (1), any relevant works undertaken to construct the Arena became lawful four years hence.

24. **Accordingly, the applicant seeks Certification of the lawfulness of those works.**

Development - Change of Use of Land from Agriculture to Equine Use

The Facts

25. From (at least) December 2005 (a period in excess of 20 years), the de facto use of the Land was as an Equine Arena.

26. The use of the land as an Equine Arena commenced prior to December 2005 and has continued since that time and to date and was (and remains) immune from enforcement action in December 2015 and also lawful for planning purposes after ten years;

27. The use of the Land continued seamlessly between December 2005 as it does to date.

28. **By s171B (3) TCPA 1990**, in the absence of enforcement action: '*no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.'*

29. In those circumstances, in the absence of enforcement action and having regard to the 2025 Regulations and s171B (2), the applicant seeks recognition and Certification of the lawfulness of the use of the Land as an Equine Arena.

30. Former Annex 8 to Circular 10/97 (paragraph 8.7) observes that this applies *whether or not* a LDC has been issued under sections 191 or 192 of the 1990 Act, and there is *no* compulsion to apply for a LDC.

Conclusion

Summary

31. It is respectfully submitted that in the subject case, and for the reasons stated, the operations, works and use in question may be taken to amount to breaches of planning control that have obtained immunity by the passage of time and have become lawful for planning purposes.

32. Accordingly, the subject application should be approved, and a Certificate should be issued.

APPENDIX A

APPENDIX B