



## **CERTIFICATE OF LAWFUL USE FOR EXISTING DEVELOPMENT**

**Newton Fisheries, Lynwood,  
Blackpool Road,  
Newton with Scales, PR4 3RU**

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## 1.0 Introduction

### Description of Development

- 1.1 Leith Planning have been instructed by KJP Properties Ltd, to apply for a Certificate of Lawfulness for Existing Use or Development under section 191 of the Town and Country Planning Act 1990, as amended. “Development” in this context means to satisfy the legal requirements in section 56(4) of the Town and Country Planning Act 1990:

“Development is taken to be begun on the earliest date on which a material operation is carried out”. A material operation is defined in the Act and can include any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land.

- 1.2 This certificate application seeks to establish the lawfulness of the following:

“Certificate of Lawfulness associated with the continual use of the fishing lakes, for commercial purposes for more than 10 years at Lynwood, Blackpool Road, Newton.”

- 1.3 As set out above, the existing fishing lakes were approved by Lancashire County council on the 5 January 2011, under the provisions of planning consent 05/10/0641. The description of that approved development read as follows:

“Extraction of clay to form a fishing lake including 5 car parking spaces and alteration of existing access.”

- 1.4 The development approved was the subject of a number of planning conditions as seen in the decision included at **Appendix 1**. Two of these conditions – Condition 7 and Condition 16, sought to limit the extent and the use of the fishing lakes as follows:

Condition 7:

*“Prior to the commencement of development, the boundary of the lakes as shown on drawing PS/04060/003A shall be marked out on the ground using pegs, tape or other form of delineation. No soil stripping or extraction shall take place outside of the area delineated under the requirements of this condition.*

Condition 16:

*“The fishing lakes shall not be used for commercial purposes.”*

- 1.5 As shown within this certificate application, the fishing lakes have been in use for commercial purposes since 2011, in breach of the provision of the above condition 16. In addition, the lakes were extended in April 2013 and is not in accordance with the approved plan, in breach of the provision of the above condition 7. However, in excess of 10 years have now passed since the

extension and the use of lakes for commercial purposes, and therefore, in our view, the size and use of the site as a commercial fishery is lawful through the passage of time.

### **Site Context**

- 1.6 The application site comprised of two flat fields, located directly to the north of a residential property known as Lynwood, on the north side of the A583 Blackpool Road. Blackpool Road is a dual carriageway that forms the northern boundary of the village of Newton-with-Scales. The fields were part separated by a dyke, and bound by established trees, hedgerows and dykes and there was an existing pond is located inside the boundary of one of the fields.
- 1.7 The site currently comprises of two fishing lakes and the total site area is approximately 2 hectares. The site is bordered by grazing land with a public playing field also being located along the west of the site. An electricity cable which is partly overhead and partly underground is located within the site connecting to a substation located on the west side of the site entrance. The site is accessed by the existing access to Lynwood off Blackpool Road, and via a strip of land to the side of the property.
- 1.8 There are a number of ponds located nearby; one on the eastern boundary, two within 25 metres of the site and a man-made pond 35 metres from the northern boundary of site. The rear gardens of three houses that front Blackpool Road share the southern boundary of the site.

## **2.0 Certificates of Lawfulness of existing use of development - Generally**

2.1 Section 191 of the Town and Country Planning Act 1990 relates to Certificates of Lawfulness for Existing Use or Development (CLUED) which reads as follows:

(1) 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; 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.

2.2 The matter is further addressed within the National Planning Practice Guidance (NPPG) which states that:

“There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming 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; or

(b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990. “

2.3 Clearly in this instance we are applying under the provisions of Section 191 of the Town and County Planning Act, to seek to regularise an existing breach of planning condition, namely condition 16 of consent reference 05/10/0641, and the on going use of the site as a commercial fishery. In our view, the use has become lawful through the passage of time.

2.4 It is stated within the National Planning Practice Guidance that ‘a local planning authority always needs to co-operate with an Applicant who is seeking information that the local authority may hold about the planning status of land’. Furthermore:

“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."

### **Lawfulness Certificates: onus of proof.**

- 2.5 It is recognised that the onus of proof in a certificate of lawfulness application is on the Applicant. The standard of proof in respect of a certificate is on the balance of probability. Furthermore, it was held in *F. W. Gabbitas v Secretary of State and Newham London Borough Council* [1985] J.P.L 630 that an Applicant's own evidence is not required to be corroborated by independent evidence in order to be accepted.
- 2.6 Further, if the local planning authority or an Inspector have no evidence of their own, or from third parties, to contradict or otherwise dispute the Applicant's version of events, rendering them less than probable, then 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 the certificate on the balance of probability.
- 2.7 In this case, it is considered that the evidential documentation submitted in support of the breach of planning conditions 7 and 16 attached to planning permission (LPA Ref: 05/10/0641), as detailed in Section 4 below, is considered to be conclusive, and shows beyond reasonable doubt that the fishing lakes with the current extent have been in use for commercial purposes for more than the requisite 10 years.

### **Need for Precision in Certificates**

- 2.8 The words of the certificate are more appropriately considered as defining what may lawfully take place on site, much as the description of the grant in a planning permission does.
- 2.9 The wording of the Certificate as outlined in Section 1 of this statement is clear, concise, and unambiguous. The fishing lakes have clearly been used for commercial purposes since 2011 and continually following the size extension in 2013, meaning this activity has taken place for more than 10 years. This breach of conditions 7 and 16 is understood to have been continuous and uninterrupted making the use lawful.

### **Time Limits**

- 2.9 Section 171B of the Town and Country Planning Act 1990 addresses the issue of time limits within which enforcement action can be pursued against breach of planning conditions. The legislation states:

“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”.

- 2.10 The fishing lakes were first used for commercial purposes in 2011. The lakes were further extended in April 2013, and has been continually in use since. Therefore, a period of more than 10 years prior to the date of this certificate application has passed and is therefore, in excess of the 10-year minimum period as set out at Section 171B in the Town and Country Planning Act and confirms that the commercial operation of the fisheries with the current extent is and remains lawful.

### 3.0 Establishing Existing Use

3.1 The planning history for the site, referable to this application is detailed below:

**LPA Ref** 05/10/0641  
**Description** Extraction of clay to form a fishing lake including 5 car parking spaces and alteration of existing access.  
**Decision** Granted subject to conditions.  
**Date issued** 5 January 2011

3.2 The decision notice for the planning application listed above is included within **Appendix 1**.

3.3 The table below provides a further summary of the all the applications submitted in relation to application 05/10/0641 and the decision notice for each has been attached within **Appendix 2**.

Application Number	Description of Development	Decision/ decision date
05/10/0641/1	Compliance with condition 7 12 and 17 of permission 05/10/0641 covering landscaping, lake boundary entrance layout and signage details	Approved 10 July 2012
LCC/2015/0039	Variation of condition 16 of permission 05/10/0641 to allow fishing lake to be used for commercial purposes for a maximum of 12 persons at any one time	Withdrawn 19 August 2015
15/0312	Consultation on county matter application for variation of condition 16 of planning permission 05/10/0641 to allow fishing lake to be used for commercial purposes for a maximum of 12 persons at any one time	Decision issued - Objection 17 August 2015

3.4 It is the lawfulness of the breach of the Conditions 7 and 16 attached to planning permission 05/10/0641 which this Certificate application seeks to regularise. The evidence to support this application is set out within section 4 of this report.



3.5 The timeframe for the development is as follows.

- **19<sup>th</sup> August 2010:** Application (LPA ref: 05/10/0641) received and validated by Lancashire County Council.
- **5<sup>th</sup> January 2011:** Planning permission was granted for application reference 05/10/0641 for the extraction of clay to form a fishing lake including 5 car parking spaces and alteration of existing access.
- **24<sup>th</sup> January 2011:** DOC application (LPA ref: 05/10/0641/1) for Condition 7, 12 and 17 received and validated by Lancashire County Council.
- **10<sup>th</sup> July 2012:** DOC application (LPA ref: 05/10/0641/1) for Condition 12 and 17 approved by Lancashire County Council.
- **March 2013:** The lakes were in use for commercial purposes with the extent in accordance with the approved plan PS/04060/003A attached to planning permission (LPA Ref: 05/10/0641). The approved plan and Google Earth Imagery dated 4<sup>th</sup> March 2013 is included in **Appendix 3** to evidence this.
- **April 2013:** Lakes were extended and remain as they were to date. A signed affidavit from the previous owner and Google Earth imagery dated 22<sup>nd</sup> April 2015 and dated 30<sup>th</sup> May 2023 is included in **Appendix 4** and **5** to evidence that the lake was extended, continued to be in use for commercial purposes and remains as they were to date.
- **20<sup>th</sup> April 2015:** Application (LPA ref: LCC/2015/0039) for Variation of Condition 16 received and validated by Lancashire County Council.
- **29<sup>th</sup> April 2015:** Application (LPA ref: 15/0312) for Consultation on County Matter Application for Variation of Condition 16 received and validated by Fylde Borough Council.
- **17<sup>th</sup> August 2015:** Decision issued – Objection on consultation application (LPA ref: 15/0312) by Fylde Borough Council.
- **19<sup>th</sup> August 2015:** Application (LPA ref: LCC/2015/0039) for Variation of Condition 16 withdrawn by Applicant.

3.6 The timeline of the development and as submitted evidence shows that the fishing lakes were first used for commercial purpose in 2011, and continually following the extension in 2013, a period of more than 10 years prior to the date of this certificate application.

## 4.0 DEVELOPMENT

### **Implementation of planning permission: 05/10/0641 and breach of attached planning conditions 7 and 16**

- 4.1 The development was granted planning permission and the decision notice issued on 5th January 2011. The permission allowed for the extraction of clay to form a fishing lake, including 5 car parking spaces and alteration of existing access.
- 4.2 The decision notice included in **Appendix 1** shows that the development approved was the subject of a number of planning conditions. Two of these conditions – Condition 7 and Condition 16, sought to limit the extent and the use of the fishing lakes.
- 4.3 In the case of the application site, the lakes have been used as a commercial fishery since 2011 and continually following the extension in 2013. The use of the lakes as a commercial fishery with the current extent has therefore been carried out contrary to the provisions of the original consent for the development (LPA reference: 05/10/0641).
- 4.4 This is a period of more than 10 years prior to the submission of this certificate application. Therefore, breach of Conditions 7 and 16 has been undertaken for a period of more than 10 years as clearly detailed below and shown in the evidence submitted in support of the application. The use of the fishing lakes for commercial purposes is therefore lawful by the passage of time and the council are unable to enforce the provisions of Conditions 7 and 16.

### **Condition 7**

- 4.5 Condition 7 reads:

*“7. Prior to the commencement of development, the boundary of the lakes as shown on drawing PS/04060/003A shall be marked out on the ground using pegs, tape or other form of delineation. No soil stripping or extraction shall take place outside of the area delineated under the requirements of this condition.*

*Reason: In the interests of local amenity and to conform with Policy 7 of the Lancashire Minerals and Waste Local Plan.”*

- 4.6 The above condition required that the boundary of the lakes is in accordance with the approved plan PS/04060/003A.
- 4.7 The lakes were in use for commercial purposes since 2011 with the approved extent in accordance with the approved plan attached to planning permission (LPA Ref: 05/10/0641).

- 4.8 The approved plan and Google Earth Imagery dated 4<sup>th</sup> March 2013 are included in **Appendix 3** to evidence that the lake was in use for commercial purposes with the originally approved extent.
- 4.9 It is accepted that the lakes were extended in April 2013. A signed affidavit from the previous owner and Google Earth imagery dated 22<sup>nd</sup> April 2015 is included in **Appendix 4** to evidence that the lakes as shown on the aerial imagery were extended in April 2013. The affidavit further confirms that the commercial use continued following the extension.
- 4.10 Following the extension in size, the lakes remain as they were to date. Google Earth Imagery dated 30<sup>th</sup> May 2023 is included in **Appendix 5** to evidence that following the extension in April 2013, the extent of the lakes remains as it was to date.

### **Condition 16**

- 4.11 Condition 16 reads:

*“16. The fishing lakes shall not be used for commercial purposes.*

*Reason: In the interests of highway safety and to conform with Policy 37 of the Lancashire Minerals and Waste Local Plan.”*

- 4.12 The above condition sought to limit the use of the lakes.
- 4.13 The site has been used for commercial purposes in excess of 10 years. As detailed below, the following has been included with the application to evidence that the fishing lakes have been in use for commercial purposes since 2011 and continually following the extension in 2013.
- Signed Affidavit from the previous owner included in **Appendix 6** states:
    - The application site has been operating as a commercial fishery, with a toilet block and shop on site. It has been there and in use for more than 10 years.
    - At no point during this time, an enforcement notice as issued and therefore the use of the premises as a commercial fishery was continued.
    - Any earnings from the operations went to the continued development of the lakes, for feeding the fishes and for the general upkeep and maintenance of the site.

- Signed affidavits from the anglers and neighbors are attached in **Appendix 7, 8 and 9** to evidence that the lake has been operating as a commercial fishery for more than 10 years as detailed below.
  - Signed Affidavit from the anglers stating that they have fished at Newton Fishery between 2011 and Present and the application site has been operating as a commercial fishery since 2011, for more than 10 years. The affidavit is attached in **Appendix 7**.
  - Signed Affidavit from a neighbor stating that they reside in the neighboring property to Newton Fishery and the application site has been operating has a commercial fishery since 2011 for more than 10 years. The affidavit is attached in **Appendix 8**.
  - Signed Affidavit from a neighbor stating that they reside in a property local to Newton Fishery and the application site has been operating as a commercial fishery since 2011, for more than 10 years. The affidavit is attached in **Appendix 9**.

## Summary

- 4.14 Given the above evidence and chronology of events, it has been established that the lakes have been used as a commercial fishery since 2011 and continually following the extension in 2013.
- 4.15 The use of the application site for commercial purposes has been carried out contrary to the provisions of the original consent for the development (LPA reference: 05/10/0641). The operations have been undertaken for a period of more than 10 years as clearly shown in the evidence submitted in support of the application, thereby resulting in and is in breach of Conditions 7 and 16 attached to the planning permission and confirming that the commercial operation of the fisheries with the current extent is and remains lawful.

## **5.0 Conclusion**

5.1 This certificate application is for the following:

“Certificate of Lawfulness associated with the continual use of the fishing lakes, for commercial purposes for more than 10 years at Lynwood, Blackpool Road, Newton.”

5.2 Having regard to these submissions we trust that the Council accept that the existing commercial use of fishing lakes is lawful, despite the provisions of conditions 7 and 16 of consent reference 05/10/0641. As such, we trust the Council will, on the balance of probability, grant a Certificate in the above terms.

5.3 Whilst we hope that the Certificate application is sufficiently supported with documentary evidence, should the Council require any further details on the proposed development in advance of determining the Certificate, we would be grateful to be notified of the same at the Council’s earliest convenience, such that the documentation can be prepared and submitted in advance of the determination date.

## **APPENDICES**

- Appendix 1**            **Decision Notice for Planning Application: 05/10/0641**
- Appendix 2**            **Decision Notices for Planning Applications:  
05/10/0641/1, LCC/2015/0039 and 15/0312**
- Appendix 3**            **Approved plan PS/04060/003A and Google Earth  
Imagery dated 4th March 2013**
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