

# Which Ownership Certificate Do I submit with my planning application?



## Introduction

It is a legal requirement that owners of land upon which a planning application is being made are notified of that application. The term “owner” means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than seven years. There can therefore be more than one owner (for example, the landlord and any tenants). When the landowner has been notified by the applicant, the applicant is required to confirm this to the council by submitting one of a choice of four ownership certificates (often known as “Article 12 Certificates) with their planning application.

If the process is not properly followed it can result in an invalid planning permission so the aim of this advice note is to explain the alternative types of certificate and identify some of the pitfalls to avoid when confirming the ownership of an application site.

## The different types of certificate

There are four alternative ownership certificates which are referred to nationally as certificates A, B, C or D. The applicant must complete and submit only one of these certificates with their planning application.

**Certificate A** is completed if the applicant is the only owner of all the land within the boundaries of the application site. If the applicant is not the only owner then they must complete one of the following alternative certificates.

**Certificate B** is completed if the applicant knows the names and addresses of all the other owners of the land involved in the application

**Certificate C** is completed if the applicant knows the names and addresses of some, but not all, the other owners of the land involved in the application, and.

**Certificate D** is completed if the applicant does not know the names and addresses of any of the other owners of the land involved in the application.

With certificates B and C the applicant has to serve a notice (a blank version of which is provided with the application forms) on the owner(s) that the applicant knows the names of, telling him/her that the applicant is making the planning application. For certificates C and D the applicant also has to advertise in the local press the fact that he/she is making the application and does not know the names of the owner(s) of some or all of the land. The

applicant must send a copy of the published notice to us with their application forms. When the applicant has to serve a notice on an owner, and does know their name and address, the applicant may hand it personally to them, or send it by registered post or recorded delivery. If the applicant has to serve a notice on an organisation, he/she should address it to the Secretary or Clerk of the organisation at their registered or principal office.

Certificate A means that no-one other than the applicant owns the land. If the application is being made in the name of two people, then Certificate A will still be valid provided that no-one other than those two people is an owner of the land

### **Certificates - Agricultural Land Declaration**

Every planning application, no matter where the site is, must also include a signed declaration confirming whether the land relates to, or is part of, an agricultural holding. The declaration forms part of the application form and must be completed.

### **Legal Position**

Article 12 of the Town & Country Planning (Development Management) Procedure Order 2010 imposes a requirement that all applications for planning permission must be accompanied by a certificate confirming that either the applicant is the sole owner of the land to which the application relates or that the appropriate notice has been served on any person who is an owner of the land or a tenant.

Section 65(5) of the Town & Country Planning Act 1990 says that a local planning authority shall not “entertain” any application for planning permission where these requirements have not been satisfied.

### **Implications of incorrect certificate**

Accordingly, if a certificate is inaccurate as a matter of fact, we will not deal with the application any further. We will cease work on it and cannot lawfully determine it one way or the other. If a local planning authority either ignores a defect in an Article 12 certificate or is unaware of this and proceeds to determine an application and grant planning permission, then any permission granted will be invalid and there would be a real risk that the High Court would quash the permission if any person aggrieved by the grant of the permission brought judicial review proceedings

### **Examples of incorrect certificates**

Certificate A asks the applicant to confirm that on the day 21 days before the date of the application “nobody except myself/ the applicant was the owner of any part of the land or building to which the application relates”. It is essential therefore that the applicant properly researches the land ownership of the site before the application is submitted to make sure this statement is correct if they are not intending to serve notice on anybody else.

A signed and submitted certificate A could be factually incorrect and the application could no longer be considered where any of the following apply:

The plans show part of the development encroaching over the boundary with somebody else's land. For example, roof eaves, gutters, footings or foundations can encroach over the boundary.

- Some parts of the land are owned by other people who have signed an agreement with the applicant. While there has been no prejudice to those people because they are aware of the proposed application, the certificate itself will be inaccurate unless all of the owners are listed as the applicant or unless part B is completed and the other owners are listed as people to whom notice has been given.
- The land or part of the land is owned by a limited company that is not the applicant. It is irrelevant whether the applicant is a shareholder or director of the limited company or may have a majority shareholding in the limited company. As a matter of law, a limited company is a separate legal person so the certificate will be inaccurate if the company has not been served notice.
- The applicant is the lessee of the land. The fact that there is a lease means that as well as the leasehold owner (the applicant) there will also be a freehold owner and, therefore, it is not correct to say that nobody except the applicant is the owner of the land. Certificate A would inevitably be inaccurate. The correct procedure is to give notice to the freeholder and any head lessees before the application is submitted using the form in Schedule 2 of the Development Management Procedure Order 2010 and to complete certificate B on the application form. The form in Schedule 2 requires that the recipient of the notice is given 21 days from the date of service of the notice to make representations to the local planning authority about the application.
- The applicant is the freeholder of the land but there is a tenancy with at least 7 years remaining unexpired. The tenant is a leasehold owner and, therefore, it is not correct to say that nobody except the applicant is the owner of the land. Certificate A would inevitably be inaccurate. The correct procedure is to give notice to any leasehold owners before the application is submitted using the form in Schedule 2 of the DMPO 2010 and to complete certificate B.
- Where an applicant who owns the land runs a business using a trading name, the application should show the name of the actual person or limited company that owns the land in order to avoid any potential complaint being raised by a third party about the validity of the article 12 certificate. For example, a proprietor of a hairdressing business could give the applicant's name as "Jane Smith trading as Fast Cuts". A limited company which owns the land should give the applicant's name as "ABC Limited trading as Local Pubs".

### **What happens if an incorrect certificate is submitted?**

If an incorrect ownership is submitted, this cannot be remedied by simply replacing it with a replacement certificate completed at a subsequent date

before the application is determined. This is because planning law requires that where any person other than the applicant is the owner of the land then notice has to be given before the making of the application.

Unless the notice has been given before the date when the application is submitted, an applicant could not truthfully or accurately complete an alternative certificate. Therefore, the only way of remedying the situation will be to withdraw the current application and re-submit it after serving of the notice with a new ownership certificate correctly completed. Even if all the actual owners are aware of and support the proposed application, an inaccurate certificate could still enable any third party aggrieved by the grant of planning permission to apply for judicial review to quash the permission if they wished. If the Council becomes aware of a defect in the certificate before the application is determined we will be unable to make a decision on it.

### **How to avoid problems**

To prevent delay and expense for applicants and the Council, it is essential that all applicants (or their agents) explore the issue of ownership fully and, where possible, check the ownership position by obtaining Land Registry records. They should then serve any necessary notices before completing the certificate and submitting the application.

When a situation arises where someone disputes whether the applicant owns all or any part of any application site, we may ask the applicant and/or the objector for confirmation or evidence of ownership (for example Land Registry entries). We do not have jurisdiction to determine boundaries and will normally work on the basis that the Land Registry records are definitive unless there is written agreement between the neighbouring owners as to where the definitive boundary lies.

Provided that the indicative boundaries on the Land Registry records show all of the land as being within the applicant's ownership then we will accept the article 12 certificate as being accurate, even if someone else claims that they own part of the land. This is because the Council does not have jurisdiction to determine disputes about land ownership. One way of addressing a dispute over ownership is for the applicant to serve notice on the neighbour before the application is made. This should be accompanied by a letter to the neighbour stating that this is without prejudice to the applicant's assertion that the neighbour is the owner of the disputed land. The applicant should then submit the application again after service of the notices with certificate B completed. This would enable the planning application to be decided but any permission granted would not override the property rights of the neighbour should they subsequently prove to be the land owner.