

## Opening the field – DPA proposes to introduce the Certificate of Lawful Use regime

Service area / [Property Law](#)

Location / [Guernsey](#)

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### Introduction

The Development and Planning Authority (DPA) has brought proposals to the States of Guernsey to introduce a change in the law that could have significant benefits for residential as well as commercial property owners on the Island. Carey Olsen senior associate and planning law specialist, Rachel Jones, explains the law and its implications.

The change in the law centres around long-established local business Stan Brouard Limited – a garden, leisure and furniture store that has been trading as a retail outlet for many years but without the required planning permission for such use. Due to the length of time that has passed without enforcement action, the States are unable to do anything to prohibit this retail use.

Stan Brouard cannot regularise its position by obtaining retrospective planning permission as the retail use does not accord with planning policy. Thus the company continues to operate a retail store ‘unofficially’ but is not able to open an ancillary café.

The issue was debated by the States last October and the States directed the DPA to find a way to facilitate the café. The States envisaged amending the planning policy but the DPA has concluded that the preferred remedy is to change the law. It has proposed that a new Ordinance be made to introduce Certificates of Lawful Use; a method of regularising long-standing unlawful use, which has been used in the UK for many years.

### What is the Law?

The Land Planning and Development (Guernsey) Law 2005 provides that if a material change of use of land (including buildings) occurs without the required planning permission, the DPA may take enforcement action – typically requiring a reversion to the lawful use or requesting an application for retrospective planning permission.

If the change of use can be shown to have occurred more than 10 years previously, no enforcement action can be taken although the classified lawful use will not change with the passage of time.

Section 22 of the Law allows the States to enact new law (by Ordinance) introducing the Certificate of Lawful Use regime. The Ordinance could allow applications to be made to the DPA for a Certificate to certify the lawfulness of an existing use; of any operations that have been carried out; and of any proposed use or of any proposed operations. Broadly, “operations” consist of building works and other development requiring planning permission.

The DPA has limited its proposals to the narrowest interpretation of the Law in order to deal specifically with the Stan Brouard situation so that Certificates will only be available for existing use.

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## What is a Certificate of Lawful Use?

A Certificate of Lawful Use is a legal document that regularises a long-standing unlawful use of land. It certifies that an existing use of land is lawful for planning purposes.

## Why is a Certificate of Lawful Use useful?

Along with the obvious advantage on a sale of regularising long-standing unlawful use, certificates can deliver significant additional benefits.

For Stan Brouard, a certificate authorising the existing retail use will allow the ancillary development of the café.

In a domestic property, a long-standing, unlawful change of use from agricultural land to garden land, regularised by a Certificate of Lawful Use would allow that land to benefit from householder “permitted development” rights. Those rights remove the requirement for planning permission for certain operations (providing conditions are met) including the erection of an extension, shed or garage and the installation of a swimming pool.

## What’s next?

The DPA’s proposals are due to be debated by the States on 7 June and, if approved, will be passed on to the Law Officers to begin drafting.

Obtaining a Certificate of Lawful Use will require an application to the DPA comparable to a planning application with a fee payable. The application process is likely to be complex and will be assessed on legal principles requiring detailed and precise evidence.

## How we can help

Carey Olsen’s property team has extensive experience in local planning law matters and senior associate Rachel Jones has particular expertise in the preparation of applications and appeals for Certificates of Lawful Use and the provision of legal opinions on such applications, having worked on this area with UK planning authorities.

For more information, please email [rachel.jones@careyolsen.com](mailto:rachel.jones@careyolsen.com)



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