

## Determining 'in use'



Some planning applications will include the conversion or demolition of floorspace of an existing building, which may reduce or cancel out the calculated CIL amount. The CIL Regulations allow for the deduction of existing floorspace if the building in question has been in lawful use.

The CIL Regulations (as amended) defines 'in use' within Regulation 40 as;

- Is a "relevant building" – meaning a building which is situated on the relevant land on the day planning permission is granted. Buildings which are demolished before planning permission is granted will not be included.
- The whole or part of the building has been in lawful\* use for a continuous period of at least six months within the previous three years, ending on the day planning permission is granted.

*\* Lawful use is the use class that the building has been formally granted to be. For example, if a building which is granted to be in business use (e.g. B2) is being used as a dwelling; this would not be considered lawful if the change occurred before planning permission was granted.*

We will not consider any existing floorspace as deductible unless the applicant demonstrates this to the Council's satisfaction. It is the applicant's responsibility to provide evidence to demonstrate continuous lawful use. The list below details information that could be submitted, it may be likely that a combination of these will be required.

- Copies of leases
- Utility bills for a 6 month period
- Business Rates or Council Tax Bill
- Confirmation from a letting agent or solicitor advising of the period of occupancy
- An affidavit\*\*
- Where an informal arrangement exists, redacted bank statements to show that rent or leaseholder charges have been paid

In certain cases it may not be possible to produce evidence to demonstrate continuous lawful use to the Council's satisfaction. In those cases the Council may, at its discretion, accept an affidavit instead of, or as well as, other forms of proof. Photographs are not on the list of information to evidence use, this is because they only evidence that the building was in use at the moment in time that the photograph was taken. If you wish to supply photographs in support of other documentation, then you may do so. However, unless it is possible to verify the date of the photograph, it is unlikely to be taken into consideration.

*\*\* An affidavit is used wherever a person making a decision requires to rely on a statement of an individual. An affidavit is a written statement that is sworn or affirmed to be true by a solicitor, notary public or other judicial officer. A solicitor will charge a small fee to swear or affirm a document. Swearing or affirming a document is a serious matter, as you are stating that the entire contents of the document are true. If it is later discovered that any part of that statement is false, you could be held in contempt of court and sent to prison.*