

DELEGATED OFFICER REPORT

Site Address: 8A Wheatlands Avenue, Hayling Island, PO11 9SG
Proposal: Certificate of Lawfulness (Existing) for the change of use of land to provide a separate unit of residential accommodation.
Application Type: Certificate of Lawfulness
Application No: APP/24/00853 Expiry Date: 31/12/2024
Applicant: Mr Antony Johnson
Agent: Case Officer: Selina Donophy
Ward: Hayling East

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 **Site location**

This application site comprises of a detached bungalow located on the south side of Wheatlands Avenue. This property has a pitched roof with elevations formed from brickwork . Down the west side of the property is a gravel driveway leading to the rear of the property. To the rear of the property is a detached outbuilding to which this application relates.

2 **Planning history**

None relevant

3 **Proposal**

Certificate of Lawfulness (Existing) for the change of use of land to provide a separate unit of residential accommodation.

4 **Policy Considerations**

None - not relevant to Section 191 of the Town and Country Planning Act 1990

5 **Legislation**

Relevant legislation and guidance:
Town and Country Planning Act 1990
Planning Practice Guidance, Lawful development certificates, 2014

6 **Statutory and Non Statutory Consultations**

None

7 **Community Involvement**

Neighbour notifications were carried out in this case, however, it is noted that this goes beyond the requirements for publicity associated with an application under Section 191.

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
No comments received	

8 Legal Considerations

- 8.1 The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of an existing development. The relevant standard of proof is "balance of probabilities" , meaning that the evidence must show that it is more likely than not that the development is lawful for a certificate to be granted. Regard cannot be given to any objections to this application on planning merit grounds.

- 8.2 Planning Policy Guidance (PPG) in relation to Lawful Development Certificates advises that the applicant is responsible for providing sufficient information to support an application and the PPG states:

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.

- 8.3 The PPG goes on to state that:

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

- 8.4 The determination of this application therefore turns on the facts of the case and interpretation of the relevant planning law legislation and case law. The Certificate is sought under Section 191 of the Town and Country Planning Act 1990. In this case the requirements are as follows:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land 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) For the purposes of this 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.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

- 8.5 In this instance it is claimed that the existing outbuilding has been in separate dwellinghouse for the past 4 years and has been rented out to a tenant for that time .The use is therefore lawful because the time during which the Council could have taken enforcement action has now expired. An assessment of the evidence provided will be made below.

9 Assessment

- 9.1 The applicant has provided the evidence below of the use over the previous 4 years :

- Council Tax bill dated 2022/2023
- Electoral Register for address dated November 2024
- Landlord Insurance dated 2024
- Landlord Insurance 2023-2024
- Landlord Insurance 2022-2023
- Landlord Insurance 2020-2021
- Landlord Insurance 2019-2020
- Arden and Way Property Management bill dated 2018 addressed to 8a Wheatlands Avenue
- Arden and Way Property Management bill dated 2019 addressed to 8a Wheatlands Avenue
- Tenant rent invoices dated Nov 2018 and September 2024
- Planning Enforcement Letter dated March 2020

- 9.2 The evidence listed above includes a variation of sources which show prolonged use of the outbuilding as a separate residential unit. The outbuilding has a separate address from No. 8 which forms the main dwelling to the front of the site where it is understood the applicant resides. It is also understood that a case was opened by the Planning Enforcement Team back in 2019 due to an alleged 'unauthorised change of use' - evidence of prolonged use was supplied by the applicant at this time and the case was not proceeded with, with the applicant advised at the time to apply for a Lawful Development Certificate. The remainder of the evidence spans across the last 6 years and shows that there has been a constant residential use by a tenant. The Local Planning Authority has no contrary evidence of its own. Therefore, based on the evidence submitted, it is considered that the outbuilding has been a separate

residential unit for the past 4 years or more and therefore the use is considered to be lawful.

10 Conclusion

- 10.1 It is considered that the facts of the case are such that, on the balance of probability, the outbuilding has been in use as a separate residential unit for at least the past 4 or more years and a Lawful Development Certificate should be issued in accordance with Section 191 of the Town and Country Planning Act 1990.

11 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/24/00853.

FIRST SCHEDULE:

This certificate relates to the following development: Application for Certificate of Lawfulness (Existing) for the change of use of land to provide a separate unit of residential accommodation as described in the written particulars, plans and other documents submitted with your application received on 05 November 2024.

SECOND SCHEDULE: This certificate relates to land at 8A Wheatlands Avenue, Hayling Island, PO11 9SG as shown with the annotation 8A and edged black on the submitted Location Plan received 05 November 2024.

OTHER IMPORTANT INFORMATION:

- (1) OTHER IMPORTANT INFORMATION: (1) (2) (3) (4) This Certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus was not liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.

(4)

Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.