

DELEGATED OFFICER REPORT

Site Address: 14 Priorsdean Crescent, Havant, PO9 3AT
Proposal: Certificate of Lawfulness (Existing) for the erection of a timber cabin for uses ancillary to the family home.
Application Type: Certificate of Lawfulness
Application No: APP/24/00875 Expiry Date: 07/01/2025
Applicant: Miss Kelly Boulton
Agent: Case Officer: Jennie Fox
Ward: Bedhampton

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

1 Site Description

- 1.1 14 Priorsdean Crescent, Havant, PO9 3AT is a two-storey terraced property to the south-east of Priorsdean Crescent. Pedestrian access is via Priorsdean Crescent and there is no vehicular access. The subject of the application is a timber cabin within the rear garden of the application site and adjacent to the rear boundary.
- 1.2 The area immediately surrounding the application site is residential and is comprised of semi-detached pairs and terraces of two storey dwellings. The properties are all similar in type, with rendered facades under concrete tile roofs and relatively generous rear gardens

2 Planning History

APP/10/00892 - Conversion of 1No. 3 bed dwelling to 2No. 1 bed flats.,
PERM,21/03/2011
52/02094 - for the erection of 420 Wimpey Houses, UNK,22/12/1952
APP/24/00464 - Application of an external wall insulation system, replacement of existing windows, and replacement of existing entrance canopies with new GRP canopies to eliminate thermal bridges., PERM,09/08/2024

3 Proposal

- 3.1 Certificate of Lawfulness (Existing) for the erection of a timber cabin for uses ancillary to the family home.
- 3.2 This application is made under Section 191 of the Town and Country Planning Act 1990 for an existing use, and seeks to demonstrate that, on the balance of probabilities, the site identified in red on the submitted plans, has been continuously used as a timber cabin ancillary to the family home for 4 years preceding the submission of this application. This application was made valid on 12 November 2024 and therefore the use has to have been continuous since 12 November 2020.

4 Policy Considerations

Not relevant to the determination of applications made under Section 191 of the Town and Country Planning Act 1990

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Legislation

5.1 Relevant legislation and guidance:

Town and Country Planning Act 1990
Planning Practice Guidance, Lawful development certificates, 2014

6 Statutory and Non Statutory Consultations

Not relevant to the determination of applications made under Section 191 of the Town and Country Planning Act 1990.

7 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 9

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 use. The planning merits of the use, and policies, are not relevant to the determination of this application.

If the application is granted, planning conditions cannot be imposed. However, in accordance with the advice in the Government's Planning Practice Guidance (PPG), the certificate should state the precise details of the use and any limitation on that use.

The PPG advises that the applicant is responsible for providing sufficient information to support an application and the relevant test for determining applications is on the balance of probability. 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.

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.

- 8.2 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.

(3) 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.

- 8.3 It is necessary to consider whether on the balance of probability the uses applied for have been demonstrated over the relevant 4 year period for residential use from 12th November 2020 - 12th November 2024 (the date that the application was validated). It is for the applicant to provide the necessary evidence to demonstrate that the uses are lawful.

- 8.4 The history and use of the site has been considered in detail both from the Council's records and from the submitted information. This is summarised below.

Evidence and documents submitted

- 8.5 Location plan at 1:1250 and block plan at 1:500 identifying the property and the location of the cabin within the rear garden.
- 8.6 Correspondence relating to the use of the cabin as follows:

Letter from K. Broome of 12 Priorsdean Crescent (immediate neighbour) dated 12 October 2024

Letter from K. Blake (family friend) dated 1 October 2024

Letter from T. Beckett-Frost (son of the applicant) received 23 October 2024

Supporting statement from the applicant received 12 November 2024

- 8.7 The correspondence indicates that the cabin was initially used as additional living space, so that children of the applicant were able to have a small additional living area whilst sharing a bedroom. During the Coronavirus outbreak the cabin was converted into a home office for approximately a year. It is currently in use as a sensory room for a child with ADHD and autism. The uses stated are consistent across the correspondence received and are considered to be ancillary to the main dwelling.
- 8.8 No. 14 Priorsdean Crescent is the second property in a row of two storey terraced houses. As such it is noted that the timber cabin is only accessible through and from the main house. There has been no suggestion that the cabin has ever had a use that is unconnected with the family home.
- 8.9 An order form and receipt from Skinners Sheds Ltd. dated 8th July 2017 gives the scale of the cabin, which is 5m wide by 3.8m deep, and states that the base model is designed to be under 2.5m tall but that additional bearers or bases may increase the height above this.
- 8.10 A photograph dated 29th July 2017 shows the timber cabin under construction and another of the completed build. There is also an additional photograph of the completed cabin showing that it is set on a timber base and is therefore marginally over 2.5m in height.
- 8.11 Considering the corresponding dates of both the order form and photograph, there is reasonable evidence to show that the timber cabin has been in place on the application site as built since the end of 2017.
- 8.12 The application site does not have any planning history attached to the Council's records.
- 8.13 Considering the layout of the site, the small scale of the structure, and the information provided regarding the various uses, there is reasonable evidence to indicate that the timber cabin was constructed and completed by the end of 2017. Furthermore the submitted evidence indicates that the cabin has been used solely for purposes ancillary to the occupation of No. 14 Priorsdean Crescent since it was built.

9 Conclusion

- 9.1 It is considered that, on the balance of probability, there is sufficient evidence to demonstrate that the structure in the rear garden of 14 Priorsdean Crescent, Havant, identified on the submitted 1:1250 Location Plan and 1:500 site plan, was constructed and has been used as a timber cabin ancillary to the family home since at least 12 November 2020 (*the evidence actually indicates this to have been the situation since 2017*). There is no conflicting evidence to cast doubt on the validity of the documents provided. Therefore, a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990.
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9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/24/00875.

Information for decision notice:

Havant Borough Council, as Local Planning Authority, certifies that on 12 November 2024 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged in red on the submitted Location Plan was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

The evidence submitted with the application has demonstrated that, on the balance of probability, the building works the subject of the application were substantially completed more than four years before the date of this application; and that the use of the building has been solely for purposes ancillary to the occupation of No. 14 Priorsdean Crescent since it was built.

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of Lawfulness (Existing) for the erection of a timber cabin for uses ancillary to the family home. as described in the written particulars, plans and other documents submitted with your application received on 23 October 2024.

SECOND SCHEDULE:

This certificate relates to land at 14 Priorsdean Crescent, Havant, PO9 3AT as shown edged red on the submitted Location Plan received 23 October 2024.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 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 would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been 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) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) 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.