

DELEGATED OFFICER REPORT

Site Address: Salterns Quay, Marine Walk, Hayling Island, PO11 9PG
 Proposal: Application for a Lawful Development Certificate for residential accommodation ancillary to the existing dwelling Saltern Quay, Marine Walk, Hayling Island
 Application Type: Certificate of Lawfulness
 Application No: APP/24/00808 Expiry Date: 22/11/2024
 Applicant: Mr and Mrs Lewis
 Agent: Mrs Futter Case Officer: Selina Donophy
 Ward: Hayling East

Recommendation: GRANT A CERTIFICATE OF LAWFUL USE

1 Site Description

This application site comprises Salterns Quay, Marine Walk, Hayling Island is a detached thatched roof cottage in a large plot surrounded by mature planting, to the north of Marine Walk, and just south of the entrance into Mengham Rythe Sailing Club. The site is located within close proximity of the coastline and is set off from the residential development to the south. The site lies outside of the defined urban area however is located within the Chichester Harbour AONB, adjacent to SSI, SPA and RAMSAR sites and is also located within Flood Zone 3.

The particular section of the site to which this application relates comprises 'The Barn' which is a separate building from the main residential dwelling 'Salterns Quay' and is sited to the North West of the site . This is an 'L shaped' building with rooms at both ground and first floor level. The outbuilding now referred to as 'The Barn' was originally granted planning consent in 2010 under application reference 10/68365/003 'Erection of part single, part two storey outbuilding, swimming pool and tennis court.' with the ground floor of the building to be used as a boat store and garage .

2 Planning History

03/68365/000 - Demolition of existing outbuildings and erection of a single storey extension and a detached double garage to the south west of the dwelling.,
REF.02/07/2003

03/68365/001 - Demolition of substandard outbuildings and construction of single storey swimming pool, changing room detached double garage. (Revised application).. PERM,23/10/2003

07/68365/002 - Demolition of existing outbuildings and existing conservatory, and erection of new single storey timber framed extension.. PERM.12/11/2007

10/68365/003 - Erection of part single, part two storey outbuilding, swimming pool and tennis court.. PERM.22/06/2010

10/68365/004 - Demolition of existing outbuilding and conservatory, and erection of single storey extension.. PERM.09/07/2010

APP/10/00953 - Construction of Sea Defence Works. (Retrospective application.),

PERM,03/03/2011

APP/11/00127 - Application for non-material changes to Planning Permission 10/68365/003 relating to fenestration, external door sizes and positions and changes to barn gable at south east elevation., PERM,07/03/2011

APP/11/00132 - Discharge of Condition No's 2, 5 and 7 of Planning Permission 10/68365/003., PERM,15/04/2011

APP/11/01268 - Discharge of Condition No. 1 of Planning Permission APP/10/00953., REF,24/10/2011

APP/12/00196 - An extension to an existing landing pontoon and relocation of the access bridge., PERM,17/05/2012

APP/12/00529 - Discharge of Condition No/s 2, 3 and 5 of Planning Permission APP/12/00306., PERM,12/07/2012

APP/12/00669 - Application for non-material changes to Planning Permission No. APP/12/00306 relating to additional window and velux. , PERM,30/07/2012

APP/12/00982 - Application for non-material changes to Planning Permission No APP/12/00306 relating to first floor accommodation and adjustments to the fenestration., WD,18/10/2012

APP/12/00306 - Demolition of existing conservatory and erection of single storey side extension., PERM,16/02/2012

3 Proposal

Application for a Lawful Development Certificate for residential accommodation ancillary to the existing dwelling Saltern Quay, Marine Walk, Hayling Island

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

Chichester Harbour Conservancy - Recommendation – No contrary evidence to offer

Officer reasoned justification

I visited the site on 13 November 2024 and spoke with the applicant who showed me around the building, which appeared as per the submitted photographic evidence.

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 legal test is "balance of probabilities". Regard cannot be given to any objections to this application on planning merit grounds.

- 7.2 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.

- 7.3 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.

- 7.4 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.

- 8.4 In this instance it is claimed that the use of the existing outbuilding has been in ancillary residential use for the past 13 years and is therefore lawful. It is stated that the property is owned by Mr and Mrs Lewis who originally submitted the planning application reference 10/68365/003 for purposes incidental to the host dwelling. In 2011 the applicant's mother became unwell and moved into the outbuilding along with her husband. Visiting family and friends have also made use of the barn facilities over the years. The information to support this claim is listed at section 3 above.

9 Assessment

- 9.1 The application is made under Section 191 of the Town and Country Planning Act 1990 (as amended) and relates to the existing lawful use of the Property. In this instance, it is claimed that 'The Barn' has been in ancillary use for the past 13 years.

- 9.2 Under application reference APP/11/00127 'Application for non-material changes to Planning Permission 10/68365/003 relating to fenestration, external door sizes and positions and changes to barn gable at south east elevation' a non-material amendment was approved for these works.

- 9.3 The applicant claims that 'The Barn' has been in ancillary use for the past 13 years due to the changing requirements of the family including use by the applicant's parents as well as visiting family and friends. The layout was altered at construction stage to allow for this use, with the internal layout no longer reflecting that which was agreed under application 10/68365/003. This application is therefore required as ancillary use would be in breach of the incidental use condition applied under application 10/68365/003 which states the following:

'The outbuilding hereby permitted shall be used only for purposes incidental to the enjoyment of the dwellinghouse as such and shall not be used as a separate unit of accommodation or for any business, commercial or industrial purposes whatsoever.'

Reason: In the interests of the amenity of the area and having due regard to saved Policies D1 and PC1 of the Havant Borough District Wide Local Plan 1996-2011, which forms part of the Havant Borough Local Development Framework, and Planning Policy Statement 1.'

- 9.4 The contrast between incidental and ancillary use relates to the use of primary accommodation. The Government's *Technical Guidance: Permitted Development for Householders* advises that, in relation to Class E(a), a purpose incidental to a

dwellinghouse would not cover normal residential uses, including primary living accommodation such as a bedroom or bathroom. In this instance the development comprises these particular residential uses and therefore the applicant is now required to provide evidence that the outbuilding has been in ancillary use for the past 10 years or more.

- 9.5 The applicant has provided the evidence listed below which dates back from construction back in 2011.
- 9.6 The information submitted with this application seeking to demonstrate proof of use over the past 13 years is listed below :

1. Land Registry Title dated June 2006
2. Surrey Oak Barn floor layout dated March 2011
3. Date stamped photograph of construction works dated April 2011
4. Date stamped photograph of construction works dated June 2011
5. Building Regulations notice dated June 2011
6. Photograph of kitchen installation dated Sep 2011
7. Photograph taken inside the barn dated Jan 2012
8. Electrics invoice or barn dated June 2013
9. Photograph on the deck dated July 2013
10. Design stage SAP report dated Sep 2015
11. Photograph at the barn dated Dec 2016
12. Valuation office letter dated Feb 2017
13. SSE bill June 2017
14. Council Tax Exemption Notice 2018/2019
15. Photograph in the barn kitchen
16. Council Tax Exemption Notice 2021/2022
17. SSE bill 2020-2021
18. Council Tax Exemption Notice 2022/2023
19. Portsmouth Water bill 2023/2024
20. Letter of support dated Sep 2024
21. Additional letter of support dated Sep 2024
22. Project Manager letter dated Sep 2024
23. Letter of support dated Sep 2024

- 9.7 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 in ancillary use for the past 10 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 known as 'The Barn' has been in ancillary use for the past 10 or more years and a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990.

9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/24/00808

FIRST SCHEDULE:

This certificate relates to the following development:

Application for a Lawful Development Certificate for existing use of barn as a residential accommodation ancillary to the existing dwelling 'Salterns Quay'. as described in the written particulars, plans and other documents submitted with your application received on 27 September 2024.

SECOND SCHEDULE:

This certificate relates to land at Salterns Quay, Marine Walk, Hayling Island, PO11 9PG as shown edged red on the submitted Location Plan received 27 September 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.