

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

Havant Borough Local Plan (Allocations) July 2014

N/A

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Councillor Julie Thain-Smith

No comment.

Councillor Lulu Bowerman

No comment.

Councillor R Kennett

No comment.

6 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: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None.	

7 Legal Considerations

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 the "balance of probabilities". Regard cannot be given to any objections to this application on planning grounds.

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.

Evidence submitted

Evidence

Signed affidavit by the Landlord dated 8.1.20. He has been a tenant landlord since

2.7.12. Smoking shelter, already in place when he took on the Pub.

Letter dated 9 January 2020 from agent - shelter believed to have been constructed in 2007 in response to smoking ban that came into force that year - clearly visible in a Google Earth image of the site dated 22/4/15.

Undated photograph, showing buildings to the rear of the pub, close to where the smoking shelter is now located

Risk Assessment of the building, dated 25/1/13, refers to the 'smoking structure on page 9.

Evidence on Council's Files

Council's aerial photograph of 2013 appears to show a structure in the approximate location shown on the submitted plan.

Assessment of Evidence

The Local Planning Authority has no evidence of its own, other than an aerial photograph taken in 2013, which appears to show a structure in the approximate location as that identified on the submitted plan. The tenant landlord has provided a statutory declaration, to which due weight must be given, which states that since he became the tenant landlord in July 2012, the smoking shelter was in situ. Some support is provided for this in a Risk Assessment of the building dated 25/1/13 and an aerial photograph taken in 2015.

The Council has no evidence that would contradict or otherwise make the applicant's version of events less than probable. In addition, the applicant's evidence alone is considered to be sufficiently precise and unambiguous, to demonstrate that 4 years prior to the date of the application, the smoking shelter was in situ and has remained so in this position. Therefore, on the balance of probability, and on the evidence presented, the smoking shelter has been sited on the land continuously for 4 years and a Lawful Development Certificate for this structure should be granted. The Council's Legal Section concur with this assessment.

8 Conclusion

That a Lawful development Certificate be granted.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/20/00026

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness for Existing Use or Development relating to a smoking shelter at The Kings Arms, 19 Havant Road, Emsworth, PO10 7JD as described in the written particulars, plans and other documents submitted with the application received on 10 January 2020.

SECOND SCHEDULE:

This certificate relates to land at The Kings Arms, 19 Havant Road, Emsworth, PO10 7JD as identified by the building edged blue on Drawing No. 19-038-01-01 received 10 January 2019.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 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 would have been lawful within the meaning of section 191 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) 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.