

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

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
No comment.	

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 "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

Letter dated 2/12/12 from Mrs Anne S Dockerty, to HBC, advising renting out Granny annexe to Andy since 9/7/12 - pays monthly rent of £480, which covers all the utility bills and Council Tax

Tenancy Agreement dated 6/1/14 - tenant Andrew John Elliott

Letter dated 19/2/20 from Charles Peck confirming that the statements are correct and the tenant has been renting the annex during the time the company has been managing it and even before this time.

Statement of Account and Payment Advice for 6/1/14, 6/1/15, 4/1/16, 3/1/17, 3/1/18, 4/10/19 & 3/1/20 from Charles Peck Lettings.

Site location plan

Block plan

Annexe floor plan

Five external coloured photographs of the annexe.

Evidence on Council's file.

Planning permission reference 88/50135/1, for a single storey side extension for use as a "granny annexe".

Council Tax has not been paid for the annexe.

Assessment of Evidence

The annexe has all the attributes of a dwellinghouse. A separate front door, entrance hall, bedroom, ensuite, living room and kitchen.

A Tenancy Agreement has been provided dated 6 January 2014 for a Mr Andrew John Elliot, who continues to occupy the annexe. Six monthly Statement of Accounts and Payment Advice have also been provided for 6/1/14, 6/1/15, 4/1/16, 3/1/17, 3/1/18, 4/10/19 & 3/1/20, which identifies the rent paid by the tenant, and a letter from the letting agent, Charles Peck, confirming that the tenant has been in the annexe since they starting managing it in 2014 and before this time. The Owners of the property have stated in a letter dated 2 December 2012, addressed to Havant Borough Council, that "...we have been renting out our Granny annexe to Andy since the 9th July 2012" and that the "... rent covers all the utility bills and Council Tax as these systems all operate from the main house."

The Local Planning Authority has no evidence of its own, other than non-payment of Council Tax, which is referred to in the applicant's letter of 2 December 2012, 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 4 years continuous separate occupation of the annexe, as a dwellinghouse. Therefore, on the balance of probability, and on the evidence presented, the annexe has been continuously used as a separate dwellinghouse in excess of four years. In accordance with *First Secretary of State v Arun District Council and another [2006] EWCA Civ 1172*, a Lawful Development Certificate for the former annexe used as a dwellinghouse 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/19/01216

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness for Existing Use or Development relating to

separation of annex from 1 Highland Road to provide a separate dwellinghouse as described in the written particulars, plans and other documents submitted with the application received on 10 December 2019.

SECOND SCHEDULE:

This certificate relates to land at 1 Highland Road, Emsworth, PO10 7JL as identified by the building annotated 'Annex' and coloured orange on the Annex Block plan received 17 December 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.