

Recommendation: GRANT A CERTIFICATE OF LAWFUL USE

None.

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: 1

Comment	Officer Comment
Parking, congestion, access and lack of line of sight issues, close to the entrance/exit to the school car park.	The comments relate to planning considerations, which are not relevant to the determination of this application.
Reference to the refusal to grant permission under APP/13/00181 for converting the garage into a dwelling in June 2013. However the garage has been converted and has been occupied for some years now.	Noted. Supports the applicant's claim that the Annex has been occupied for some years.

7 **Legal considerations**

The determination of this application turns on the facts of the case and their interpretation in the light of relevant planning law and judicial authority. Regard cannot be given to any objections to this application on planning grounds. The test to be satisfied is the balance of probability.

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

8 **Evidence submitted**

Affidavit of Mrs Lorraine King

Photographs of annex during installation/completed in February/March 2014.

List of occupiers since 30 March to date of application.

Letter dated 30/2/19 from Mrs B Horlock

Invoice dated 24/3/19 from NP Bradshaw, Carpenter/Builder

Receipt dated 21/3/14 from Howdens Joinery Co.

Details concerning Mr Bill Baker's occupation

Undated note from applicant - Bill Baker and Kelly Seaman on electoral role, but not Hollie Colenutt

Letter dated 18/2/19 from Nationwide

Assured Shorthold Tenancy Agreement dated 15/6/17 with Lee James

Confirmation dated 14/3/19 of Ms Hollie Colenutt's occupation

Assured Shorthold Tenancy agreement dated 6/3/15 with tenant Kelly Seaman

Letter dated 24/4/15 from Sainsbury's Bank addressed to Mr B Baker at 25 Thruxton Road

Email dated 27/2/19 from Mr Bill Baker

9 Evidence on Council's Files

Planning permission was refused on 5 March 2013 under reference APP/13/00181 for the 'Conversion of existing detached garage to provide additional accommodation for dependant relative, ancillary to the main house.'

Council tax has not been paid for the Annex.

10 Legal Position

Section 171B(2) of the Town & Country Planning Act 1990 states:

"Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach."

Therefore, "If on an application, under this section (191 (4)), 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."

As set out in the PPG, the onus is on the applicant to provide sufficient information, to support the application. Such evidence should be "...sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

The applicant, has provided a signed affidavit, which includes the following information, which is supported by other details submitted.

The conversion of the garage was completed in March 2014 by a Mr NP Bradshaw. This is supported by an invoice from Mr NP Bradshaw dated 24 March 2014, which refers to, amongst other matters, works undertaken to the Annex, which included, the supply and fitting of windows and internal and external doors, the installation of a sink and worktops, new toilet, sink and shower for the bathroom. Photographs dated February and March 2014 show works to the Annex during its installation/completion. A receipt from Howdens Joiner Co. dated 21 March 2014, for a chimney extractor and carbon filters, support when the conversion works took place.

On 30 March 2014 Mr B Baker moved into the Annex, moving out on 29 October, 2014. This is supported by an email from Mr Baker dated 27 February 2019, stating he lived in the Annex between the aforementioned dates, and that there were no utility bills, only a pay metre for electricity.

On 1 November 2014 Mrs P Herlock, the applicant's Mother moved into the Annex for about 5 weeks.

On 6 March 2015 Miss Kelly Seaman, moved into the Annex, moving out in October 2015. This is supported by an Assured Shorthold Tenancy Agreement signed by Kelly Seaman dated 6/3/15.

On 8 November 2016 Hollie Colenutt moved into the Annex, moving out on 6 June

2017.

On 15 June 2017, Mr Lee James, moved into the Annex, which he is currently residing in. This is supported by an Assured Shorthold Tenancy Agreement signed by Lee James dated 15 June 2019.

The applicant goes on to state in her affidavit that all bills are included [in the rent] with the exception of the electricity which is on a coin metre, which is supported by the comments in Mr Baker's email, referred to above.

Other evidence provides some further support to the occupation of the Annex, which includes a letter from Nationwide dated 18 February 2019, referring to monthly bank credits, which the applicant has advised was the payment of rent. This is from 2015, which is "...still going into the account monthly."

The relevant period is 4 years back, from the date of the application, which was the 5 April 2015. Since this date the Annex has been occupied by 3 different tenants, on what is considered to be a continuous basis, with very limited period of vacancies, between tenancies. The occupation of the Annex for some years is supported by other evidence provided by the applicant and by a third party representation.

As advised in the PPG "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 Local Planning Authority, has no evidence, other than the failure to pay Council Tax for this separate dwelling, which is considered insufficient in itself, to refuse the application, when weighted against the other evidence provided. It is considered that the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

11 Conclusion

Having regard to all material factors and judicial authority there is considered to be no legal impediment to the continued use of the building as a single dwelling and it is recommended that a Certificate of Lawfulness be granted, for the land edged black and hatched red on the block plan numbered 1 and the floor plan numbered 2. The Council solicitor concurs with this recommendation.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/19/00333.

Havant Borough Council, as Local Planning Authority, certifies that on 05 04 2019 the use described in the First Schedule to this certificate in respect of land described in the Second Schedule and as shown edged red on the location plan submitted with this application was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

It appears to the Local Planning Authority on the balance of probability that the use of the building the subject of this application as a residential dwelling began, and has

been continuous, for more than 4 years before the date of the application.

The Authority has considered evidence and information submitted by the applicant and the planning history of the site.

FIRST SCHEDULE:

This Certificate relates to the following use:

(i) use as a single residential dwellinghouse

In association with (i) above, the use in the area edged black and hatched red on the submitted block plan numbered 1, 1:1250 block plan is considered to have been demonstrated over the relevant 4 year period.

SECOND SCHEDULE:

For the purposes of the first schedule (i) above, this certificate relates to the land edged black and hatched red on block plan No.1, and floor plan No. 2. at 25 Thruxton Road, Havant, Hampshire, PO9 4DG.