

Site Address: Creek View Annex, Selsmore Road, Hayling Island, PO11
9JZ

Proposal: Application for Certificate of lawfulness relating to use of annex as separate independent residential accommodation for more than 4 years.

Application No: APP/19/01225 Expiry Date: 06/04/2020

Applicant: Mrs Julie Cutbush

Agent: Case Officer: Tina Pickup

Ward: Hayling East

1 Site Description

It comprises 2 bedrooms (1 double one single); a lounge/dinner with kitchen area and separate bathroom with shower. It has its own front door, enclosed garden area measuring approximately 11m x 7m and parking to front - 2 spaces in tandem fashion. Vehicular access to the site is via the existing drive and shared with the main house.

Condition 4 of stated:

3 Proposal

5 **Statutory and Non Statutory Consultations**

N/A

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: 1

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

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.

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:

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.

To demonstrate the claimed use as a separate dwellinghouse, a continuous breach of 4 years would have to be shown - reference *First Secretary of State v Arun District Council and another [2006] EWCA Civ 1172*. The relevant 4 year time period for the current application relates to 10 February 2016 until 10 February 2020 (validation date). The evidence submitted in support of the Certificate is as follows:

Evidence submitted

Annex Tenancy Agreement dated 25.03.15 between applicant and tenant Mr A Clarke and Mrs M Clarke for occupancy between 10th April 2015 and 9th April 2016
Annex Tenancy Agreement dated 23.04.16 between applicant and tenant Mr C-M Pitrop and M Tudor for occupancy between 7th May 2016 and 20th July 2016
Annex Tenancy Agreement dated 25.03.15 between applicant and tenant Mr C McLoughlin and D Parsons for occupancy from 23rd July 2016 - *these tenants still occupy premises*

Tenancy Agreements set out that rent includes Gas, Electric, Southern Water Rates, Portsmouth Water Rates and HBC Council Tax

Letter from Mr & Mrs Clarke confirming occupancy between 10th April 2015 and 9th April 2016

Letter from Mihaela Tudor confirming occupation of annexe between May 2016 and July 2016

HBC Council tax bills for property 'Annexe at Creek View' for periods 2016/17; 2017/18; 2018/19 and 2019/20

Site location plan

Block plan

Ground floor plan

First Floor Plan

Aerial Photo indicating parking and garden area

Additionally sight of a selection of bank statements showing regular rental income deposits from April 2015 to November 2018

Evidence on Council's file.

Planning permission reference 04/56156/002, for a Single storey self contained granny annexe to east elevation

Confirmation that Council Tax has been paid continuously for both the main house and a separate account for the annexe since 2005.

Assessment of Evidence

The annexe has all the attributes of a dwellinghouse. A separate front door, 2 bedrooms, bathroom, living room and kitchen, as well as separate off road parking and enclosed rear garden. The site was visited on 4th March 2020 and found to be occupied totally independently to the main dwellinghouse on site and in accordance with the submitted plans.

Tenancy Agreements have been provided from April 2015 to current day. Mr C McLoughlin and D Parsons have been in residence since July 2016 and continue to occupy the annexe with their young son. Since the rent covers all bills which still operate via the main house, it is not possible to provide evidence of separate utilities, but nevertheless Council Tax has been paid separately and continuously since 2005.

The Local Planning Authority has no contrary evidence of its own. No third party comments have been received either supporting or denying the use. The applicant's evidence 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.

It should be noted that the issue of this Lawful Development Certificate would create a separate planning unit on the site, separate from the remaining dwellinghouse. The main dwellinghouse, Creek View, would continue to have a lawful use as a separate C3 planning unit. Under the General Permitted Development Order there is a permitted change of use between C3 and C4 (small houses in multiple occupation for between 3 and 6 unrelated individuals who share basic amenities such as kitchen and bathroom). Therefore its continued use as a small house in multiple occupation for no more than 6 residents is permitted development that does not need planning permission.

8 **Conclusion**

It is considered in this case, on the balance of probability, that the annexe has been occupied independently as a separate dwelling for the relevant 4 year period and a Certificate of Lawfulness can therefore be issued.

9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/19/01225

Havant Borough Council, as Local Planning Authority, certifies that on 10 February 2020 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 plan attached to this certificate 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 uses described in the First and Second Schedules and plan attached to this Certificate, have taken place for a continuous period of at least four years up to the date of the current 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 of annexe as separate independent residential dwellinghouse (C3)

In association with (i) above, the use in the area edged red on the submitted site location and 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 red on the submitted site location and block plan, received on 28th January 2020, at Creek View Annex, Selsmore Road, Hayling Island, PO11 9JZ

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.