
Site Address: 118 Parkhouse Farm Way, Havant, PO9 4AN
Proposal: Application for Certificate of Lawful Existing Use relating to use of building to rear of 118 Parkhouse Farm Way as a dwelling.
Application No: APP/18/01229 Expiry Date: 27/02/2019
Applicant: Mr G Thompson
Agent: Case Officer: Emma Chisnall
Ward: Barncroft

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

1 Site Description

- 1.1 118 Parkhouse Farm Way is a two storey end of terrace dwelling situated on a corner plot between Parkhouse Farm Way and Linkenholt Way, The application site had a garage to the rear south of the site which served No 118 however, since 2002 it is claimed that the garage has been converted into an annexe/separate dwelling and has been rented out since February 2011. Specifically a Mr Steven Williams has rented the property since 1st July 2013 and therefore the owner Mr G Thompson is now seeking a certificate of lawful development to demonstrate continuous use for the last 4 years.
- 1.2 A site visit was made to the property as part of the assessment and Mr Thompson showed the Planning officers the area internally which showed that the building was clearly used as 1 bedroom residential dwelling and was very much established.

2 Planning History

98/51290/003 - Continued use of garage for car repair business, REF,16/04/1998
97/51290/002 - Single storey front and side extension, PERM,04/08/1997
03/51290/004 - Land to rear of No. 118. New dwelling., WD,28/01/2004
04/51290/005 - Demolition of existing garage and erection of a 2 No. bedroom dwelling to the rear of 118 Park House Farm Way with new vehicular access to Linkenholt Way., REF,08/04/2004

3 Proposal

- 3.1 Application for Certificate of Lawful Existing Use relating to use of building to rear of 118 Parkhouse Farm Way as a dwelling.
- 3.2 The application is submitted as a Section 191 application for a Lawful Development Certificate to establish whether the existing use of the building is lawful. In this instance it is claimed that the building has been occupied as a residential dwelling for over 4 years i.e. as a Class C3 Dwellinghouse.

4 Policy Considerations

National Planning Policy Framework

Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Council Parking SPD July 2016

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

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: 17

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Planning Considerations

- 7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Planning Considerations
- (ii) Assessment of Evidence

- 7.2 Section 191(2) of the Town and Country Planning Act 1990 (as amended) allows an applicant to apply to the Local Planning Authority for a determination of whether an existing use of land, some operational development, or some activity being carried out in breach of a planning condition, is lawful.
- 7.3 If the Council, as 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 matters 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. The Council must also be satisfied that the applicant has not deliberately concealed the change of use/development.
- 7.4 Government guidance states that the onus of proof is based firmly on the applicant and a certificate of lawfulness may be refused on the basis that insufficient evidence has been included along with the application. Critically, the relevant test of the evidence is the 'balance of probability' and not the more onerous criminal burden of proof 'beyond reasonable doubt'. If the Council do not have any evidence to

contradict the applicant, or make the applicant's version of events less probable, there should be no reason to refuse the application. The applicant's evidence should, however, be sufficiently precise and unambiguous to justify a grant of a certificate of lawfulness.

7.5 The application is submitted with the following evidence:

(i) Affidavit from the owner of No 116 Park House Farm Way confirming that the garage has been used as a separate dwelling for at least 14 years and Mr Steven Williams has occupied the property since July 2013.

(ii) Affidavit from the owner of No 79 Linkenholt Way confirming that the garage has been used as a separate dwelling for at least 14 years and Mr Steven Williams has occupied the property since July 2013

(iii) Affidavit from Mr Steven Williams living in the unit to the rear of No 118 ParkHouse Farm Way who confirms that he is the tenant of the dwellinghouse and that he has lived in the building which was erected to the rear of No 118 and has been used as a separate dwellinghouse since 1st July 2013.

(iv) Affidavit from Mr Graham Thompson the owner of the unit and No 118 Parkhouse Farm Way confirming the following:

- The annexe was constructed in 2002 and has been used as a separate dwelling since at least February 2011.
- The annexe has been let out on an Assured Shorthold Tenancy to Steven Williams since 1st July 2013 until the current day.

(v) Documents have been submitted which include:

- A copy of the Assured Shorthold Tenancy Agreement of the 1st July 2013 signed by Mr Steven Williams
- A copy of a P60 showing the address for 118 Parkhouse Farm Way for 2010 and 2011
- A bank statement showing the address for 118 Parkhouse Farm Way from 10th December 2011
- A tax credit award addresses to 118 Parkhouse Farm Way dated 30th June 2011.
- Pay slips addressed to Mr S Williams at 118 Parkhouse Farm Way February 2011, March 2011, April 2011, June 2011, July 2011.
- Property Maintenance Bill for 118 Parkhouse Farm Way to run main electrics to out houses dated 14th November 2018

(vi) 14 Letters from neighbouring dwellings confirming that Mr Steven Williams has lived in the outer building at 118 Parkhouse Farm Way for approximately 5 years and 6 months.

(ii) Assessment of evidence

7.6 The LPA must still make a determination of the application as submitted and this must be based on the evidence provided and on the balance of probability. The evidence provided by the applicant is the form of statutory declarations and proof of bills as outlined above. From the Councils own records there is no record of council tax being paid on this new dwelling. However Council tax records do exist for No 118 Parkhouse Farm Way.

7.7 As outlined above, this application is based on evidence which is tested on 'balance of probability'. With no objections being made against the application there is no

contrary evidence of what has been provided by the applicant and as such, the documents have been assessed as submitted.

- 7.8 The Council, as the Local Planning Authority, has no evidence to contradict the applicant's version of events and history of the use of the site. Whilst no council tax records exist for the building, which is subject to this application, this does not necessarily mean that the building has not been occupied for residential purposes. Overall and having considered all matters raised, it is considered that as a matter of fact and degree that the evidence weighs in favour of Mr Steven Williams using the building as their sole residence. As such the applicant's evidence is sufficiently precise and unambiguous to find, on the balance of probability that the residential use of the building, for residential purposes has subsisted for the requisite four year period.

8 Conclusion

- 8.1 The applicant has provided evidence of residential use since 2013 and this application has been publicised in accordance with adopted procedures and no evidence to the contrary has been raised.
- 8.2 In conclusion, having reviewed all the information submitted with the building identified in this application on the balance of probability, it has been satisfactorily demonstrated that it has been in continuous use, for a period of over four years, as a residential unit. Furthermore the legal department have considered this application and having reviewed the evidence presented confirm that the Certificate of Lawfulness for existing use as a C3 dwellinghouse can be issued. As such, it is recommended that a certificate of lawful use be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/18/01229.

Havant Borough Council, as Local Planning Authority, certifies that on 02 01 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 red on the submitted Licence No 100041041, 1:1250 site location 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 Licence No 100041041, 1:1250 site location plan, Drawing 5162/500 Block Plan and Drawing No 5162/1 Ground Floor Plan at 118 Parkhouse Farm Way, Havant, PO9 4AN