
Site Address:	14 Fairlight Chalets, Salterns Lane, Hayling Island		
Proposal:	Application for Certificate of Lawfulness relating to use of dwelling for 12 months residency.		
Application No:	APP/18/00378	Expiry Date:	19/06/2018
Applicant:	Mrs P Baron		
Agent:		Case Officer:	Emma Chisnall
Ward:	Hayling East		

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

1 Site Description

- 1.1 This application relates to a single chalet and its curtilage. It sits within a larger site comprising 36no. chalets off a private drive off Salterns Lane. It is abutted on all sides by residential development. The chalets are arranged in blocks of 2 or 3 and are of brick construction with tiled pitched roofs. The original layout was 1 or 2 bedrooms with sitting room, kitchen and wc. A number of them have been extended to the rear. Each chalet has a small private area to the rear, although where extensions have taken place this is reduced to a very insignificant area. The chalets are maintained to different standards.

2 Planning History

HWU 2788 - Erection of 30 chalets. Permit 8/2/54 subject to condition 7 which states 'these chalets shall only be occupied between the period of 1st march and 31st October of each year. PERM

89/54234 - C/U of 27 for residential use - Permit 14/12/1989 with condition limiting it to a single manager between 1 March and 31 October.

95/52925/3/CLE - for 31 for use of property as a dwellinghouse 11/5/1995. PERM

95/56717/2 - No 1 - Relief of condition 7 of HWU2788 to enable year round occupation. Refused and appeal dismissed 2/2/1996

Reasons:

- Even when extended chalets close together with little private amenity space; central area would be taken up with vehicles and too cramped to be lived in permanently.
- Access - single car width; visibility poor; conflict with peak flow traffic; wrong to permit more intensive use
- Loss of holiday accommodation.

03/54234/001 - No 27 - remove condition restricting use to manager out of season. Refused:

- Year round availability for warden. Whilst size is acceptable for permanent occupation the amenity space is not.
- As warden occupies all year - level of traffic would not be significantly different.
- Loss of dwelling related to tourism.

APP/12/00896 - Removal of Condition 7 of Planning Permission HWU2788 and Condition 1 of Planning Permission 13268/3 to allow for permanent occupation of chalet numbers 1-30, 32-35 inclusive.

This was refused and subsequently appealed against. The appeal (REF - APP/X1735/A/13/2194326) was dismissed on 3 key grounds:

- (a) Loss of holiday accommodation;
- (b) Suitability of all units for permanent accommodation in terms of both internal living and external amenity space; and
- (c) More intensive use of a substandard access onto Salterns Lane.

APP/12/01196 - No. 1 - Application for Certificate of Lawfulness relating to permanent occupation of chalet. PERM - 9/1/13

APP/12/01197 - No. 2 - Application for Certificate of Lawfulness relating to permanent occupation of chalet. PERM - 9/1/13

APP/12/01198 - No. 3 - Application for Certificate of Lawfulness relating to permanent occupation of chalet. PERM - 9/1/13

APP/12/01200 - No. 30 - Application for Certificate of Lawfulness relating to permanent occupation of chalet. PERM - 9/1/13

APP/12/01201 - No. 20 - Application for Certificate of Lawfulness relating to permanent occupation of chalet. PERM - 9/1/13

APP/12/01202 - No. 16 - Application of Certificate Lawfulness relating to permanent occupation of chalet - PERM - 9/1/13

APP/17/00318 - No. 15 - Variation of Condition 7 of Planning Permission HWU2788 to allow for permanent occupation of chalet No 15. PERM - 7/7/17

APP/17/00618 - No 14-Application for Certificate of Lawfulness relating to use of dwelling for 12 months residency., REF,20/10/2017

APP/17/01326- No 33- Application for Variation of Condition 7 of Planning Permission 2788 to increase occupancy from 8 months to 12 months of chalet No 33.
Perm- 26/03/18

3 Legal Background

- 3.1 Following an enforcement investigation into alleged breaches of Condition 7 of Planning Permission HWU 2788, a Breach of Condition Notice was served on the application property on 24/2/2014 which required the occupation of the chalet to be ceased outside of the period of 1 March to 31st October in any year.

4. Proposal

- 4.1 This is a proposal for a Certificate of Lawfulness relating to the use of 14 Fairlight Chalets as a dwelling for 12 months residency. Evidence has been provided to establish the length of residency has been over four years prior to the date of the application. A list of evidence is provided at Section 8.1.

5 Policy Considerations

National Planning Policy Framework 2012

Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

Havant Borough Local Plan (Allocations) July 2014

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

6 Statutory and Non Statutory Consultations

Legal advice:

The development the subject of the application constitutes a contravention of the requirements of an extant Enforcement Notice dated 24 February 2014, and therefore in accordance with Section 191(2) of the Town and Country Planning Act 1990 a Certificate of Lawfulness cannot legally be granted.

7 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: 2 letters in support.

Comment	Officer Comment
Support from 30 Fairlight Chalets: I support this application. I know previous applications have been made for this and other properties on Fairlight, and have been refused due to a requirement to retain holiday properties, which was the original intent for the chalets on Fairlight. However, that was 60 years ago! Times change, and needs change. There is a more dire need for smaller properties for retired and/or disabled people; also to release larger properties for families. This applicant has proved that this property is ideal for her needs. If the application is refused, the property is most UNLIKELY to be released for holiday usage. If a Breach of Condition Order is pursued, this applicant is	See section 8

possibly likely to make alternative arrangements for the months in which there is a breach, and continue to live there for the allowed months. It's time to recognise that, if an owner sees these properties as ideal for their use all-year-round, then surely it should be allowed. Trying to enforce their use as a holiday residence only, when they are all individually owned, freehold, and maintained to individual standards, is wasted effort by the council, who surely cannot deny the needs of retired and/or disabled and/or elderly folk who need these types of houses, and on an island which is already well-stocked with appropriately-built holiday homes, such as static caravans. Don't know what 'consultation modified' means but opted for that as I'm not an 'Complainant'	
2 Manor Cottages Manor Road: I fully agree that this applicant should be granted 12 months occupancy of the property. As with number 33 Fairlight Chalets, which has been granted this permission recently, the chalets are ideal for retirement/single/disabled people. The fact that they are supposed to be for holiday accommodation was really made redundant when the holiday site was sold off to individuals as freehold properties. if the applicant is refused permission it does not result in the property being available for holiday use. These properties are far more suitable for older people or disabled people than flats, which have no exterior amenities at all.	See section 8

8 **Planning Considerations**

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

- (i) The nature of the evidence provided to substantiate the application; and
 - (ii) Whether there are any other matters affecting whether a Certificate should be issued
- (i) The nature of the evidence provided to substantiate the application

In support of the application for a Certificate of Lawfulness the applicant has supplied the following evidence:

1. Declarations from 6.no. persons that Mrs P Baron has lived at 14 Fairlight Chalets since 20/12/2012.
2. Medical details including a letter from Mrs Baron's Doctor.
3. Council Tax Bill dated 9/3/2012
4. Council Tax Bill dated 7/3/2013
5. Council Tax Bill dated 7/3/2014
6. Council Tax Bill dated 12/3/2015
7. Council Tax Bill dated 10/3/2016
8. Council Tax Bill dated 10/03/2017
9. Statement from Mrs Baron that the continuous occupation related to use as a main residence.

In the absence of any contradictory information, there would therefore appear to be prima facie evidence that the occupation of No.14 Fairlight Chalets has been continuous since 20 December 2012, and that this has continued notwithstanding the service of the enforcement (Breach of Condition) notice on 24 February 2014.

(ii) Whether there are any other matters affecting whether a Certificate should be issued

S191 of the Town and Country Planning Act sets out the following, which is pertinent to this case:

Whilst the evidence supplied in respect of the occupancy of 14 Fairlight Chalets would indicate that, in the absence of an enforcement notice, the period for taking enforcement action would have lapsed – the normal ‘four year rule’ applying in respect of residential development – it is clear that an enforcement notice in the form of a Breach of Condition Notice (BCN) was served on the applicant Mrs P Baron in respect of No. 14 Fairlight Chalets on 24th February 2014. This notice required her to comply with the condition set out in the original planning permission relating to the eight month occupancy and therefore that occupation of the chalet should have ceased outside of the period of 1st March to 31st October in any year.

The application claims that the applicant has been in continuous residence at the property since 20 February 2012. It is apparent therefore that the BCN issued in 2014, has not been complied with. The BCN is of particular relevance to the application as it has the effect of halting, from the time of its issue, any claim for uninterrupted occupancy whereby a four year rule would normally apply (subject to satisfactory evidence being provided). This being the case, from the legal perspective of Section 191(2) of the Town and Country Planning Act 1990, the current application for a Certificate of Lawfulness cannot be granted as the continued use of the property for year round occupancy constitutes a contravention of the requirements of an extant Enforcement Notice.

9 Conclusion

- 9.1 Whilst prima facie evidence has been supplied by the applicant to support the assertion that year round occupation of 14 Fairlight Chalets has continued since 20th December 2012, such occupation represents a contravention of the requirements of an extant enforcement notice – the Breach of Condition Notice issued in 2014. This is a

fundamental issue which, as set out under S1919(2) of the Town and Country Planning Act 1990 as amended, prevents this use from being lawful in planning terms. As such, the application as submitted is recommended for refusal.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/18/00378

Wording for decision notice:

Havant Borough Council, as Local Planning Authority, **REFUSES** to certify that on 18/06/2018 the development described in the First Schedule to this notice in respect of land described in the Second Schedule and edged in red on the submitted location plan would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

1. The development the subject of the application constitutes a contravention of the requirements of an extant Enforcement Notice dated 24 February 2014, and therefore in accordance with Section 191(2) of the Town and Country Planning Act 1990 a Certificate of Lawfulness cannot legally be granted.

FIRST SCHEDULE

This decision relates to an Application for a Certificate of Lawfulness relating to the use of a dwelling for 12 months residency as described in the written particulars, plans and other documents submitted with your application.

SECOND SCHEDULE

This decision relates to land at 14 Fairlight Chalets, Salterns Lane, Hayling Island as shown edged red on the submitted location plan.

- 1 The development the subject of the application constitutes a contravention of the requirements of an extant Enforcement Notice dated 24 February 2014, and therefore in accordance with Section 191(2) of the Town and Country Planning Act 1990 a Certificate of Lawfulness cannot legally be granted.