
Site Address:	6 Fairlight Chalets, Salterns Lane, Hayling Island, PO11 9LQ		
Proposal:	Application for Lawful Development Certificate relating to use of dwelling for 12 months occupancy.		
Application No:	APP/17/00804	Expiry Date:	25/09/2017
Applicant:	Miss W Heath	Case Officer:	Rachael McMurray
Agent:			
Ward:	Hayling East		

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

1 Site Description

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

3 Legal Background

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 February 2012 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

This is a proposal for a Certificate of Lawfulness relating to the use of 6 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 7.1.

5 Policy Considerations

Not relevant.

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: 5

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Planning Considerations

7.1 Having regard to the provisions of S191 of the Town and Country Planning Act 1990, as amended, 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 Miss W Heath has lived at 6 Fairlight Chalets since 15th November 2011 and continues to live there to date.
2. Letter from parkinsons Estates Agents to confirm the sale of the propsery to Miss Heather on 17th July 2009.
3. Council Tax Bill dated 24/11/2011
4. Council Tax Bill dated 9/9/2012
5. Council Tax Bill dated 7/3/2013
6. Council Tax Bill dated 7/3/2014
7. Council Tax Bill dated 12/3/2015
8. Council Tax Bill dated 10/3/2016
9. Council Tax Bill dated 10/3/2017
10. Southern Water bills dated 2017-2018, 2016-2017, 2015-2016, 2014-2015,
11. Electricity bill dated 15/9/2011 - 24/9/2011
12. Driving license photocopy showing address as No. 6 Fairlight Chalets dated 2/12/2011.
13. Statement from Miss Heath that the continuous occupation related to use as a main residence since 15th November 2011.
14. Plan showing transfer of garden land from 9 Whithorn Road to No. 6 Fairlight Chalets.

In the absence of any contradictory information, there would therefore appear to be prima facie evidence that the occupation of No.6 Fairlight Chalets has been continuous since 15 November 2011, 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:

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Whilst the evidence supplied in respect of the occupancy of No. 6 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 Miss W Heath P Baron in respect of No. 6 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 15 November 2011. 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.

8 Conclusion

Whilst prima facie evidence has been supplied by the applicant to support the assertion that year round occupation of No. 6 Fairlight Chalets has continued since 15 November 2011, 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 S191(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/17/00804 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.

Wording for decision notice:

Havant Borough Council, as Local Planning Authority, **REFUSES** to certify that on 08/06/2017 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 occupancy as described in the written particulars, plans and other documents submitted with your application.

SECOND SCHEDULE

This decision relates to land at 6 Fairlight Chalets, Salterns Lane, Hayling Island as shown edged red on the submitted location plan