
Site Address: 56 Soberton Road, Havant, PO9 2EG
Proposal: Application for Lawful Development Certificate relating to the erection of an outbuilding and its occupation as an independent dwellinghouse.
Application Type: Certificate of Lawfulness
Application No: APP/23/01076 Expiry Date: 16/02/2024
Applicant: Mr Jasper
Agent: Mr Tutton Case Officer: Lesley Wells
 Robert Tutton Town Planning
 Consultants Ltd
Ward: Battins

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

1 Site Description

56 Soberton Road, Havant, PO9 2EG

2 Planning History

06/66088/000 - Porch encasing original front door. Installing new door to give extra security to property. , UNK,

3 Proposal

Application for Lawful Development Certificate relating to the erection of an outbuilding and its occupation as an independent dwellinghouse.

4 Policy Considerations

N/A

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Councillor Kristine Tindall - Battins - No Comment

Councillor T Moutray - No Comment

Havant Council Tax - No Comment

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: 3

Comment	Officer Comment
3 Representations of Support	See Section 7 below.
Confirmed the outbuilding completed in February 2012 and from March 2012 continuously occupied from this date.	
Lived locally for the past 8 years - aware that there has been an independent dwelling at No. 56 since that time. It has always been occupied.	
Lived locally for many years and confirm the outbuilding was completed in February 2012 and from March 2012 has been continuously occupied from that date.	

7. Legal Considerations.

- 7.1 The Government's Planning Practice Guidance (PPG) states that: *'In the case of applications for existing use, if a local planning authority has no evidence itself, nor 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 that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'*.
- 7.2 In order to grant a Certificate of Lawfulness for the use the Local Planning Authority must be satisfied that the use of the outbuilding has been used as a separate dwellinghouse and is lawful. The test is whether, on the balance of probability, the outbuilding has been in this use for a continuous period of at least 4 years up to the date of the application (22 December 2023).
- 7.3 The red line area for the application, lies within the blue area shown on the site location plan. The floor layout plan shows a bath room, hall way, kitchen and bedroom. The visit by the Case Officer, noted that the bedroom, is divided into a bedroom and living area, with a shower room and kitchen within the outbuilding. The outbuilding

has its own separate access from 56 Soberton Road, with a rear door from the kitchen to the garden area. The outbuilding has all the attributes of a separate functioning dwellinghouse.

7.5 Evidence Provided by the Applicant

7.6 The following evidence has been provided by the Applicant.

7.7 Affidavit from applicant declares that he started construction on the outbuilding in June 2011 and completed the building in February 2012. He was then approached by his long term friend if he could occupy the outbuilding. This was agreed and he occupied from March 2012, vacating in August 2015 (ie First Occupier).

7.8 The building was then renovated internally and marketed. A Second Occupier then occupied in September 2015, vacating in March 2020.

7.9 Following internal repairs /painting and marketing The First Tenant occupied in March 2020, vacating in November 2023.

7.10 The outbuilding was then re-decorated and marketed in November 2023 with the Second Tenant occupying in December 2023, who is still residing there. The area of occupation is as shown on drawing No. SD-2402-02-A.

7.11 Affidavit from First Occupier declares he continuously occupied the outbuilding edged in red on the plans attached, drawing Nos. SD-2402-01-A & drawing No. SD-2402-02-A from March 2012 to August 2015. During this period he enjoyed the use of its own entrance, fully equipped kitchen, small show/toilet room and large lounge/bedroom space. The outbuilding was solely electric with heating and hot/cold running water supplied by the owner of 56 Soberton Road. All utilities were covered by the applicant.

7.12 In support of the application Rightmove marketing details have been provided with the 'Let available date: 11/11/2023'. These details include the floor layout as per submitted drawing No. SD-2402-02-A.

7.13 First Tenancy Agreement dated 31/1/2020

7.14 Second Tenancy Agreement dated 4/12/23

7.15 Supporting representation from neighbour who has live locally for the past 8 years, confirming the independent dwelling since that time.

7.16 Supporting representation confirming the completion of the outbuilding in February 2012 and from March 2012 its continuous occupation.

7.17 LPA's Evidence

7.18 Council's Tax has not been paid for the separate use of the outbuilding, which was confirmed to the Case Officer, by the applicant.

7.19 Aerial photograph 2013 shows the current position of the outbuilding to the side of 56 Soberton Road, as does Google Earth's most recent aerial photograph.

8.0 Assessment of Evident

- 8.1 Due regard must be given to the submitted affidavits which states the building was completed in February 2012 and that since this date, with the exception of some small periods of time for redecoration, the outbuilding has been used as a separate dwellinghouse. The Tenancy Agreements, albeit only covering the period from 31/1/20 supports the claim that the outbuilding has been rented out as a separate dwellinghouse. Likewise, the representations received support the occupation of the outbuilding in excess of 4 years.
- 8.2 As to the two periods of vacancies over the last 4 years this first period occurred March 2020, when the outbuilding was vacated, redecorated and then occupied by a tenant during the same month. The second period of vacancies was when the outbuilding was vacated in November 2023 and following redecoration occupied in December 2023. Such short periods of vacancies of the outbuilding are considered reasonable gaps in occupation.
- 8.3 The only evidence the Council has which could undermine the claimed use of the outbuilding is that Council Tax has not been paid for the use of the outbuilding as a separate dwellinghouse. However, the weight given to this, is not so sufficient as to weight against the evidence submitted by the applicant, which includes affidavits and tenancy agreements. The aerial photograph of 2013, whilst not confirming the use of the outbuilding, does demonstrate that a structure was on the land at that time and coupled with the evidence submitted was substantially completed in or around February 2012. Therefore, under the 4 year rule, the erection of the outbuilding is immune from planning control.
- 8.4 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 dwellinghouse, 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.

8 Conclusion

- 8.1 Having regard to all material factors and judicial authority there is considered to be no legal impediment to the continued use of the outbuilding as a single dwellinghouse and it is recommended that a Certificate of Lawfulness be granted, for the land edged red on drawing Nos. SD-2402-01-A & drawing No. SD-2402-02-A. The Council solicitor concurs with this recommendation.

9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/23/01076

Havant Borough Council, as Local Planning Authority, certifies that on 22 December 2023 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 outbuilding 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 development:

Application for Lawful Development Certificate relating to the erection of an outbuilding and its occupation as an independent dwellinghouse as described in the written particulars, plans and other documents submitted with your application received on 22 December 2023 and 5 March 2024.

SECOND SCHEDULE:

This certificate relates to land at 56 Soberton Road, Havant, PO9 2EG as shown edged red on the submitted Location Plan received 5 March 2024.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 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 192 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) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Secretary of State, if you are aggrieved by the Council's decision.