

5 **Statutory and Non Statutory Consultations**

Councillor Julie Thain-Smith

No comment received

Councillor Lulu Bowerman

No comment received

Councillor R Kennett

No comment received

6 **Community Involvement**

Neighbour notifications were carried out in this case, however, it is noted that this goes beyond the requirements for publicity associated with an application under Section 191.

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

7 **Legal Considerations**

- 7.1 This application is a Section 191 application for a Lawful Development Certificate which seeks to determine whether the use of garage no 7 associated with the property has been in breach of Condition 8 in use as storage and not for parking purposes is lawful.
- 7.2 Planning Policy Guidance (PPG) in relation to Lawful Development Certificates advises that the applicant is responsible for providing sufficient information to support an application and the PPG states:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

7.3 The PPG goes on to state that:

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

7.4 The determination of this application therefore turns on the facts of the case and interpretation of the relevant planning law legislation and case law. The Certificate is sought under Section 191 of the Town and Country Planning Act 1990. In this case the requirements are as follows:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(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.

(4) If, on an application under this section, 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 matter 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.

7.5 It is therefore necessary to consider whether on the balance of probability the uses applied for have been demonstrated over the relevant 10 year period for a breach of condition i.e. more than 10 years before the date of this application (23/09/2022). The breach of condition in question is condition 8 of application reference **08/70919/003** however the applicant is claiming 10 year storage use only for garage no 7 - the condition reads as follows :

' The two parking spaces provided in the form of the two garages as marked "G" on the Drawing No.203, Job No. 0512, received on 22 May 2008, are to remain available at all times for the parking of vehicles in connection with the development hereby permitted unless otherwise agreed in writing by the Local Planning Authority' .

It is for the applicant to provide the necessary evidence to demonstrate that the uses are lawful.

Evidence

- 7.6 It is stated within the application that the Condition 8 of application 08/70919/003 has been in breach since May 2011 since the applicant moved in to the property and the applicant has continuously since then used garage 7 for storage purposes , notably bikes , house and garden items and not for parking a vehicle - a 10 year time period has since then lapsed without interruption since the start of the use for which a certificate is sought. In support of the submission the applicant has submitted the following pieces of evidence:-
- 7.7 Signed Affidavits from the applicant plus two residents (including one former) of neighbouring properties. One affidavit is from the former resident of 1 Grenfield Court who states they have lived at this address in excess of 10 years including before the applicant moved in to no 4A Anthony Way . The other neighbour affidavit is from the former resident of no 4 Anthony Way who lived at the address between April, 2014 and October 2021 and leased the adjacent garage . Both have confirmed the garage was in use as storage and not for parking purposes within the last 10 years . The applicant has also signed an Affidavit and Statutory Declaration confirming garage no 7 has been in use solely for storage purposes.
- 7.8 It is also noted the position of the garage would make parking maneuvering difficult, particularly as other properties appear to park outside of their garage spaces rather than internally. Therefore on the balance of probability it is likely that this garage has not been used for parking purposes.
- 7.9 The Council has reviewed the submitted documentation and have confirmed agreement that the evidence is substantial to support in favour of granting a certificate of lawfulness. On the balance of probability it is considered that the breach of condition 8 has occurred in continuation for the requisite 10 year period pre-dating the application, such that no enforcement action could now be taken in respect of them.

8 Conclusion

- 8.1 The use of garage no 7 as storage and not as an available parking space is considered to have been established such that no enforcement action could now be taken against them. Whilst this may be the case the condition remains applicable in relation to the use of the second garage and linkage of both garages to the development . Therefore, a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990.
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9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/22/00817

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of lawfulness for the existing use as domestic storage connected to the use of 4A Anthony Way in place of condition 8 of permission 08/70919/003 which stipulates parking of vehicles in connection with the approved development. as described in the written particulars, plans and other documents submitted with your application received on 16 August 2022.

SECOND SCHEDULE:

This certificate relates to land at 4A Anthony Way, Emsworth, PO10 7RZ as shown edged red on the submitted Location Plan received 16 August 2022.

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 Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.