
Site Address: 41 Brooklands Road, Havant, PO9 3NT
Proposal: Application for Lawful Development Certificate relating to existing use of an outbuilding as an ancillary annexe.
Application Type: Certificate of Lawfulness
Application No: APP/22/00203 Expiry Date: 17/05/2022
Applicant: Mr S Robson
Agent: Case Officer: Tina Pickup
Ward: Bedhampton

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

1 Site Description

The application site relates to a semi-detached dwelling located on the south side of Brooklands Road, which is set back from the road with frontage hard surfaced for the parking of up to 3 cars. The land slopes slightly such that the bungalow is slightly higher than the road level. There is a side gate accessing the rear garden which continues to slope up slightly. At the end of the garden is an existing brick with shallow pitched tiled roof outbuilding, which has been converted to living accommodation and is the subject of this application.

It is understood that the outbuilding was constructed in 2006, and whilst it exceeds the criteria set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 as amended, because of the time lapsed (ie more than 4 years) the structure itself is now immune from enforcement proceedings. It was originally constructed with internal partitions and was used for domestic storage as an incidental use.

In 2020 the outbuilding was fitted out internally to form one double bedroom with en-suite shower room, living area, and full kitchen including all appliances and washing machine. It is accessed via the garden which is not subdivided in any way. The applicant's adult daughter lives in the main dwelling, and his adult son moved into the "annexe" in early 2021 i.e. the occupier of the main dwelling and annexe are siblings.

2 Planning History

APP/21/00715 - Conversion of summer house to annexe (retrospective application)., Withdrawn 20/09/2021 as wrong sort of householder application submitted

3 Proposal

Application for Lawful Development Certificate relating to existing use of an outbuilding as an ancillary annexe.

This application seeks to demonstrate that the site remains a single family dwelling with the occupation of the annexe remaining ancillary and linked to the main house i.e. the site has not been subdivided into two planning units and the use is lawful and does not require planning permission.

The information submitted with this application to demonstrate all utilities, bills and services are via the main house and not separate, include:

A Statement from the applicant explaining the use
Virgin Media TV, Broadband & Phone bill addressed to main house only - shows an Additional TV Box which is in the annexe
Octopus Energy bills for Gas & Electric addressed to main house only
Receipt between siblings for share of Gas & Electric bills
Parcel delivery note for son showing address as main house
Supporting Statement from work colleague/friend re shared use

4 Policy Considerations

None - not relevant to Section 191 of the Town and Country Planning Act 1990

5 Legislation

Relevant legislation and guidance:

Town and Country Planning Act 1990

Planning Practice Guidance, Lawful development certificates, 2014

6 Statutory and Non Statutory Consultations

None - not relevant to Section 191 of the Town and Country Planning Act 1990

7 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: 3 The comments appertaining to the planning merit of the development are not relevant to the determination of this application, which is purely a legal determination. Any comments that provide factual information are noted

Comment	Officer Comment
We are objecting to the proposal for the for Lawful Development relating to the use of the outbuilding as an ancillary annexe for 41 Brooklands Road, Havant.	
We feel that if this permission is granted it could well set a precedent for future applications by other property owners, with all the implications of increased traffic and parking issues by possible future developments as well	not relevant to the legal determination

as this one being the start as there is insufficient on or off road parking. This road was a very quiet road of bungalows of low occupancy with low foot and vehicle traffic which was irrevocably changed when planning permission was given to the new estate, which affected the the increased volumes of foot and vehicle traffic and noise (with anti social driving speeds, an accident waiting to happen).	
THE BUILDING IS EQUIPPED WITH THE ESSENTIAL FACILITIES REQUIRED FOR NORMAL DAY-TO-DAY LIVING AND THEREFORE CLASSED AS A DWELLING BUT HAS NOT BEEN IN CONTINUOUS OCCUPATION AS A DWELLING FOR AT LEAST 4 YEARS, SO WHY IS THE OWNER ALLOWED TO APPLY FOR A LAWFUL DEVELOPMENT CERTIFICATE? IN THE TWO AND HALF YEARS THEY HAVE OCCUPIED THIS PROPERTY I HAVE NEVER SEEN THE (redacted) ENTER THIS PROPERTY THROUGH THE FRONT DOOR OR LEAVE BY THE FRONT DOOR THEY BOTH USE GATE AT THE SIDE OF THE PROPERTY TO ACCESS THERE DWELLING IN THE BACK GARDEN, NOT ENTERING THE MAIN BUILDING AT ANYTIME AND THE OCCUPANT OF THE MAIN BUILDING NEVER ENTERING THE DWELLING IN THE BACK GARDEN SO TO ME THIS PROVES THAT THEY ARE SEPERATE DWELLINGS AND NOT A SINGLE FAMILY DWELLING JUST BECAUSE THEY ARE RELATED	Noted and agreed Application does not claim it has been occupied for 4 years; this lawful development certificate claims the occupation is ancillary to the main house and therefore the use is lawful i.e. planning permission is not needed Noted - see section 8 below
We would like to object against this proposal, this is obviously not a single family dwelling, most families would be sharing the accommodation but in this case this is two separate dwellings as they access the buildings separately using the gate to the side to access the property in the back garden never entering the main dwelling at all which is very strange for a family to do this why do they never enter or leave by the	Noted - see section 8

front door this is not a family dwelling but two single dwellings and has always been this way since they have lived there so yes a very strange set up by the father	
Lawful development ? As before the original build in 2006 was only brought to the attention of the council by a neighbours complaint, so is that Lawful?? The original build was supposed to be built under permitted development, which was to add value to YOUR property, this building has always been an annexe not a summer house, so by giving them planning would now decrease the value of neighbouring properties By having neighbours also in your back garden making our properties hard to sell!! Also with this comes with all the added extra vehicles on the street the road cannot safely cope. This property has now six motors at least and two trailers in the street and also neighbouring roads which is also annoying these residents of Woodville road as well. The 10 and 4 year rule, yes the building has been built for over 10 years but has not been a dwelling for over 4 years as the property was previously rented out!! and the new tenants only living there for 3 years MAXIMUM. In the evidence provided with the hand written bills?? It says that the daughter and her son live in the main bungalow and the son in the back garden forgetting to mention there partners who also reside permanently at this address with that comes all there vehicles which again is making our road unsafe. And no consideration has been taken for neighbouring properties with the loss of light, extra noise and smells created by this building.	Building itself now immune from enforcement proceedings Only converted to an annexe in 2020 Value of houses not a material consideration not relevant to the legal determination Application does not claim it has been occupied for 4 years Partners noted - see section 8 these issues are not relevant to the legal determination

8 **Legal Considerations**

- 8.1 The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of an existing development. The relevant legal test is "balance of probabilities". Regard cannot be given to any objections to this application on planning merit grounds.

- 8.2 If the application is granted, planning conditions cannot be imposed. However, in accordance with the advice in the Government's Planning Practice Guidance (PPG), the certificate should state the precise details of the use *so there is no room for doubt about what was a lawful use at a particular date, as any subsequent change may be assessed against it.*
- 8.3 The PPG also advises that the applicant is responsible for providing sufficient information to support an application and notes that:
- 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.*
- 8.4 In this instance it is claimed that the use of the existing outbuilding as an annexe is on an ancillary basis and as such lawful. It is stated that the property is owned by Mr Shaun Robson, whose adult daughter Ms Carla Robson and her young son live in the main dwelling, and his adult son, Mr Craig Robson, lives in the annexe. It is stated that as siblings they share the garden, bills, post, parking etc and each of them has access to both buildings. The information to support this claim is listed at section 3 above.

Assessment:

- 8.5 The primary use of the site, 41 Brooklands Road, has always been a single-family dwelling, i.e. a Class C3 use. The outbuilding was originally used for domestic storage, a genuine 'incidental to the enjoyment of the dwellinghouse' use. Therefore, the outbuilding had a lawful C3 residential use, as an 'incidental use'. In 2020 the outbuilding was fitted out internally to form one double bedroom with en-suite shower room, living area, and full kitchen, including all appliances and washing machine - which is still a 'residential' use. The internal fitting out itself does not constitute development, so therefore whether 'development' has occurred or not, depends on whether there has been a material change of use of the site as whole.
- 8.6 Relevant to this is Section 55 (2)(d) of the Town and Country Planning Act 1990 which states:
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—*
- (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;*
- 8.7 Case law has found that the change of use of an existing incidental outbuilding within the curtilage of a dwellinghouse to an annexe does not comprise development provided it does not result in the creation of a separate planning unit and still falls within the primary use as a dwellinghouse. Of particular relevance to this case is *Uttlesford DC v SSE & White (1992)* where the QC concluded that if an existing outbuilding within the residential curtilage of the dwellinghouse was occupied by a family member it would not comprise a material change of use as it would not create a separate planning unit.
- 8.8 The definition of a Class C3 dwellinghouse includes occupation by *"a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of*

the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child". In this instance the occupier of the main house and the annexe are siblings i.e. they are related and from the same family. As such their occupation of the site continues to comply with the definition of a C3 dwellinghouse.

- 8.9 It is however accepted that the internal fitting out of the outbuilding is such that it now contains primary living accommodation that would allow it to be self-contained and capable of independent occupation. Therefore, consideration must be given to whether a separate planning unit has been formed or not. It is noted that access to the annexe is via the garden which is not subdivided in any way and is shared and available to both siblings. In turn access to the garden is either via the main dwelling or a side gate. That side gate is locked with a keypad, and only accessible to anyone with the access number. Therefore, ad-hoc visitors, and the postman etc cannot directly access the outbuilding and must knock and use the main front door, which is where the only letter box serving the site exists.
- 8.10 If a separate planning unit had been created then it would normally be expected to have its own individual access and letter box. This lack of direct access to the outbuilding indicates that the occupation of the outbuilding is linked to the main house. Within the evidence submitted is a copy of a parcel delivery label, which shows that the parcel for Craig was delivered to the main bungalow address. The outbuilding does not have its own letter box and hence all postal deliveries have to be via the main house.
- 8.11 Also of relevance is the fact that the garden is shared, and not subdivided. The statement provided from a friend and colleague indicates that the siblings socialise together and have had shared social events in the garden. If a separate planning unit had been created, then it would be expected that each unit would have its own private space and the garden would be subdivided.
- 8.12 The evidence submitted also includes copies of Gas & Electric bills, and Virgin media, all addressed to the main house and serving the entire site including the annexe. The fact that the annexe relies on the main house for its utility services is also a key indicator that the use of the annexe is genuinely ancillary to the main house and not independently occupied. Overall, on the evidence submitted, and following a site inspection, it is considered that on the balance of probabilities, the site is occupied on a shared and therefore ancillary basis.
- 8.13 The third party comments generally relate to planning merit issues, such as extra vehicles, comings and goings, that are not relevant to the determination of whether the outbuilding can lawfully be occupied on an ancillary basis. Some do however note that both siblings have their partners living with them on site. This would make 4 adults and a young child at the site. But it is quite common for adult children and their partners to live at one address, as an extended family – if they were all in the main dwelling no-one would query the point. Just because they are spread over two buildings within the same residential curtilage does not itself mean there has been the creation of a separate planning unit, the siblings retain that family tie and connection with shared bills and garden.
- 8.14 Third party comments also note that Craig generally accesses the outbuilding via the side gate, and doesn't use the main front door. But as noted at paragraphs 8.10 and 8.11 above, because this side gate is secure, there is not general public access for

unaccompanied visitors to the outbuilding i.e. there is no independent access to the outbuilding. Craig himself and other residents of the site, can use whichever access is more convenient, but all other visitors, post etc occurs via the front door of the main house. This demonstrates that on the balance of probability the site remains a single-family dwelling.

- 8.15 The Local Planning Authority has no contrary evidence of its own. There is no relevant planning history or conditions appertaining to the use of the site or outbuilding that could be breached. Therefore, based on the evidence submitted, it is considered that the fitting out of the outbuilding as an annexe, and its occupation by the sibling of the occupier of the main house, falls within a C3 use and no separation from the main dwelling has occurred.

8 Conclusion

- 8.1 It is considered that the facts of the case are such that, on the balance of probability, the occupation of the outbuilding by a family member with shared bills, shared garden, and no independent access or letter box, constitutes an ancillary C3 use. The site therefore remains a single family dwelling and a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/22/00203

Havant Borough Council, as Local Planning Authority, certifies that on 22 March 2022 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 plan attached to this certificate 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 described in the First and Second Schedules and plan attached to this Certificate, do not constitute development and are therefore lawful.

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 of outbuilding as an ancillary residential annexe, occupied by a family relative of the main dwellinghouse

as described in the written particulars, plans and other documents submitted with your application validated on 22 March 2022.

SECOND SCHEDULE:

For the purposes of the first schedule (i) above, this certificate relates to land at 41 Brooklands Road, Havant, PO9 3NT, as shown edged red on the submitted Location and Block Plan, Drawing Number 545.P100_A.

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.