

Havant Council Tax

Both the listed properties have been separate dwellings for Council Tax purposes since at least 01/04/2005.

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: 0

7 Planning Considerations

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

(i) Whether the use of the 42 and 42A West Street as two separate 1 bedroom flats is Lawful

7.2 In order to issue a Certificate of Lawfulness, Section 191 of the Town and Country Planning Act 1990 requires the applicant to demonstrate on the balance of probability that an existing use of the property as two self contained units (C3) had begun more than 4 years before the date of the application (29th March 2017).

7.3 The application has been accompanied by a Statement of Evidence, the statement provides the following information in support of the application:

It is stated that the property was subdivided into flats in circa 1968/69

Council Tax has been paid on each property at least since 1993. To support this an email from the Valuation Office Agency (VOA) has been submitted which relates to properties in the Council Tax List. This clarifies that the property details '*will have a section titles "With effect from" - this date indicates how long this property has been on the Council Tax List.*' The VOA continue, '*Please note if there is no date shown, it means it has always been in the Council Tax List, which began on 1.4.1993.*'

A copy of the Council Tax band details for both properties has been provided as follows:

42A, West Lane (Last update on 17/03/2021) is listed Council Tax Band A. The 'With Effect From' section is blank which confirms that the property has always been on the Council Tax List which began on 1.4.1993.

42, West Lane (Last update on 17/03/2021) is listed Council Tax Band A. The 'With Effect From' section is blank which confirms that the property has always been on the Council Tax List which began on 1.4.1993.

The agent has provided an email from the applicant who states that:

As discussed my sister Victoria Rouse and I (Jessica Rouse, my married name is Macaulay) inherited the properties when my father passed away on the 17th October 2018. It took a while for them to formally come into our possession due to a long probate process but I've attached tenancy agreements for the properties during the period of our ownership. When we inherited the properties the following tenancies were in place:

1. 42 West Lane was empty when we inherited the property, it was previously tenanted but due to my fathers ill health in the 12-18 months prior to his death it lay empty and also did so whilst we were in probate and while we renovated the flat. Havant Borough Council should have a note of the empty property council tax statements on file for when it was empty but there were long tenancies prior to this as my father rented it out since purchase. It is rented now and attached are the recent tenancy agreements

2. 42A West Lane, we inherited the tenants John and Susan Cudmore from my late father. They have been in occupation for around 10 years and I attach a recent tenancy agreement for them they are holding over as they have purchased a new property and will be moving in over the next week or so

All of these properties pay separate council tax and have separate utility connections and bills. Unfortunately throughout the probate process we could not find copies of paperwork to do with the properties but the VOA provided details that they have been separate units historically for a long time as per the lawful certificate application. Council tax records should also show this. We believe that the flats were converted by the original owners in the late 1960s into flats from a house and my father purchased the properties directly from the original sellers that did the conversion in the 1960s.

The tenancy agreements do not cover the complete period in relation to 42 and 42A and some are unsigned. In themselves they are of limited value in establishing the use over the relevant four year period.

7.4 The valuation listing is considered to be form better evidence.

Valuation listing

The [Council Tax \(Chargeable Dwellings\) Order 1992](#) ('the Chargeable Dwellings Order') provides:

"..... where a single property contains more than one **self-contained unit**, for the purposes of Part I of the Act, the property shall be treated as comprising as many dwellings as there are such units included in it and each such unit shall be treated as a dwelling." [emphasis added]

[Article 2](#) of the Chargeable Dwellings Order provides:

"'single property' means property which would, apart from this Order, be one dwelling within the meaning of [section 3](#) of the Act;"

"self-contained unit" means a building or part of a building which has been constructed or adapted for use as separate living accommodation. [emphasis

added]

The inclusion of 42 and 42A on the valuation list from 1st April 1993 would suggest that the listing officer was satisfied that each flat was a self contained unit for the purposes of Article 2 of the Chargeable Dwelling Order from this point of time. The Council's Council Tax section (Capita), have confirmed that *Both the listed properties have been separate dwellings for Council Tax purposes since at least 01/04/2005.*

The Havant Council Tax officer confirms that Both the listed properties have been separate dwellings for Council Tax purposes since at least 01/04/2005.

It is considered that the valuation listing since 1st April 1993 for both flats is sufficient evidence to conclude that the sub-division and use as separate dwellings there after is more likely than not to have occurred from that point of time.

The Council's Legal officer confirms that on the balance of probabilities there is sufficient evidence to grant the Certificate of Lawfulness.

8 Conclusion

- 8.1 The test for a Lawful development Certificate is the balance of probability. It is considered that the evidence provided is sufficient on the balance of probability for the granting of a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990.

9 RECOMMENDATION:

That the Head of Planning be authorised to **Grant a Certificate of Lawfulness** for application APP/21/00380

Havant Borough Council, as Local Planning Authority, certifies that on 29th March 2021 the use described in the First Schedule to this certificate in respect of land described in the Second Schedule 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 uses described in the First and Second Schedules have taken place for a continuous period of at least four years up to the date of the current application.

In reaching this determination the Authority has considered evidence and additional information submitted by the applicant.

FIRST SCHEDULE:

It appears to the Local Planning Authority on the balance of probability that the uses described in the First and Second Schedules have taken place for a continuous period of at least four years up to the date of the current application.

In reaching this determination the Authority has considered evidence and additional information submitted by the applicant.

SECOND SCHEDULE:

This certificate relates to land at 42 West Lane, Hayling Island, PO11 0JL as shown edged red on the submitted Location Plan received 29 March 2021.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 191 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 was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus was not 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) 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.