

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

Councillor M Wilson - Hayling West Ward

No comment

Councillor R Raines - Hayling East

No comment

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: 1

Comment	Officer Comment
To my knowledge this has been a dwelling of two 1 bed flats for at least 14 + years. I assume that the application is retrospective and await your response.	Noted.

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 the property as two separate 1-bedroom flats 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 4 year period for residential use i.e. more than 4 years before the date of this application (29/03/2021). 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 pertinent use begun in the late 1960's , without interruption or material change of use 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 Council Tax records have been provided which show that Council Tax has been paid on each flat, nos 12 and 12A since 1997 and for no 12 , potentially before 1993. Havant Revenues Department has confirmed that both addresses are on tax records although no further information could be provided by the revenues department.
- 7.8 A Housing benefit bill has been provided as evidence dating back to 2011 which relates to flat 12A.
- 7.9 Tenancy agreements have been provided by the applicant however these do not date back later than 4 years and therefore do not offer evidence towards lawful use in this

instance.

- 7.10 The Council's legal team have 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 uses applied have continued for the requisite 4-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 12 Church Road as 2 separate 1-bedroomed flats is considered to have been established such that no enforcement action could now be taken against them. Therefore, 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/21/00387

Details for decision notice

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:

This certificate relates to the following development:

Application for Lawful Development Certificate relating to sub-division of 12 Church Road into two 1bed flats as described in the written particulars, plans and other documents submitted with your application received on 29 March 2021.

SECOND SCHEDULE:

This certificate relates to land at 12 Church Road, Hayling Island, PO11 0NT 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 Section 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.