

5 Legislation

- 5.1 Relevant legislation and guidance:
Town and Country Planning Act 1990
Planning Practice Guidance, Lawful development certificates, 2014

6 Statutory and Non Statutory Consultations

Councillor Leah Turner - Hayling East

No comments received

Councillor M Wilson - Hayling West Ward

No comments received

Councillor R Raines - Hayling East

No comments received

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: 0

8 Legal Considerations

- 8.1 This application is a Section 191 application for a Lawful Development Certificate which seeks to determine whether the use of the property as a private dwellinghouse with ancillary annex is lawful.

- 8.2 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.

8.3 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.

8.4 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.

8.5 It is 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 from 18th February 2017 - 18th February 2021 (the date that the application was validated). It is for the applicant to provide the necessary evidence to demonstrate that the uses are lawful.

8.6 The history and use of the site has been considered in detail both from the Council's records and from the submitted information. This is summarised below.

Evidence:

8.7 The site of 7 Wheatlands Avenue does not have any planning history attached to the Council's records. It is however noted that the adjacent properties No.5A and No.9 received planning permissions in 1949. The application for No.9 Ref: HWU/00353 for 'The erection of a bungalow' included a Location Plan received 28th March 1949 which shows two buildings on the 7 Wheatlands Avenue site in the layout and positions of the current buildings. It is therefore considered that the buildings were on the balance

of probabilities erected prior to the Town and Country Planning Act 1947 coming into effect in 1948.

- 8.8 The application has been submitted with a Supporting Statement. The main evidence produced is as follows:

The application is on behalf of the site owners Mr Michael Davis, Mrs Tara Kerr Elliot & Mrs Tanya Donkin

(Officer Comment: *Mrs Donkin is the applicant on the submitted form*)

The bungalow was originally constructed as a holiday home;

The bungalow has a floor area of approx 52sqm;

The annex has a floor area of approx 25sqm

Site has been in the ownership of the applicants family since 1929 when it was first brought by Mrs F.E.Davis (document attached refers to 'as part of lot 99b')

Historic maps are included purporting to show that the 'bungalow' building pre-dates neighbouring dwellings (which would concur with the evidence in 8.7 above)

There is a record of a bungalow being registered 'Proposal by Rating Authority' to Mr A. Davis plot 99, Eastoke, description of property 'Bungalow' stating 'That this is a new property and has not been previously assessed' dated 2nd August 1930.

The agent states 'It is likely that this indicates the approximate build date of the bungalow and that the family have owned it since it was first constructed'.

It is stated that 'The site and buildings within it are used solely by the owners and their families and are not commercially let.'

A recent council tax bill was submitted dated 11th March 2020 - this states 'second home/furnished/unoccupied - no discount 01.04.2020 to 31.03.2021'.

This has now been supplemented by further Council Tax bills all dated 19th July 2021 for the periods:

1.4.21 to 31.3.22 'second home/furnished/unoccupied'

1.4.19 to 31.3.20 'second home/furnished/unoccupied'

1.4.18 to 31.3.19 'second home/furnished/unoccupied'

1.4.17 to 31.3.18 'second home/furnished/unoccupied'

1.4.16 to 31.3.17 'second home/furnished/unoccupied'

1.4.15 to 31.3.16 'second home/furnished/unoccupied'

A letter from No.9 Wheatlands Avenue states:

We have lived at the above address since 15.4.2016. We can confirm that during that time the property at 7 Wheatlands Avenue has been used solely for personal family use by the owners Michael Davis, Tara Ker Elliot and Tanya Donkin and their families.

The applicants agent concludes:

Having reviewed the documents provided by the applicants, it is our belief that the site should be classed as C3. The existing bungalow has been in use as a private dwellinghouse for over 90 years and the annexe, clearly a later addition, is only accessible to the occupants of the bungalow and should be considered an outbuilding incidental to the enjoyment of the dwellinghouse.

Officer Comment: *As the outbuilding includes primary living accommodation this would constitute ancillary rather than incidental use.*

- 8.9 Further information was submitted on the 27th May 2021 and the agent states:

The applicant, Tanya Donkin, has forwarded additional utility bills relating to the

property, please find attached. These are in the name of Michael Davis, who is the father of the applicant and of Tara Kerr, the applicant's sister. Michael, his daughters, and their families currently utilise the property as a holiday home, but are considering making the site a permanent residence in the future.

Please also find attached floor plans of the house and annexe which show the schedule of accommodation. The house is typical of the holiday homes found around Hayling Island, primarily intended for short stays with a small kitchen and shower room and limited living space compared to the number of bedrooms. The annexe dates from the late 1950s and is used by the occupants of the house either as overflow living space (office, playroom etc), or occasionally as a spare bedroom. It does not have separate kitchen or bathroom facilities.

The utility bills are as follows:

Southern Electric dated 18th March 2021 for the period 22nd December 2020 to 17th March 2021 (Mr M Davis)

Southern Electric dated 17th March 2020 for the period 20th December 2019 to 16th March 2020 (Mr Davis)

Southern Water dated 22nd May 2020 for 23rd November 2019 to 15th May 2020 (Mr Michael Davis)

- 8.10 On the basis of the above evidence it would appear that the premises was originally constructed pre-planning controls as a Holiday Home and that the outbuilding was built a little later probably in the 1950's and used for ancillary purposes (it does not appear to be of a size or layout to have allowed for independent occupation). There is no evidence of the accommodation being commercially let out and the accommodation appears to have been used as a second home or for holiday use of members of the family. In planning law a dwelling remains within Use Class C3 whether it is occupied as a principal residence, as a second home or is let as a self-catering holiday home.
- 8.11 Photographs of the 'Bungalow and Annex' have been submitted which show the buildings furnished for residential use (bungalow) and ancillary use (annex).
- 8.12 On the balance of probability it is considered that the 'bungalow' would constitute a private dwellinghouse and the outbuilding would constitute an ancillary annex.

9 Conclusion

- 9.1 The uses as set out as a dwellinghouse with ancillary annex are considered to have been established. 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/21/00180

Details for decision notice

Havant Borough Council, as Local Planning Authority, certifies that on 18th February

2021 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 uses described in the First and Second Schedules and plan attached to this Certificate, have taken place for a continuous period of at least four years up to the date of the current application.

The Authority has considered evidence and additional information submitted by the applicant and the planning history of the site.

FIRST SCHEDULE:

This certificate relates to the following development:

Application for a Lawful Development Certificate for an existing use, relating to use of property as a private dwellinghouse with ancillary annexe, as described in the written particulars, plans and other documents submitted with your application received on 18 February 2021.

SECOND SCHEDULE:

This certificate relates to land at 7 Wheatlands Avenue, Hayling Island, PO11 9SG as shown edged red on the submitted Location Plan received 18 February 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 would have been lawful within the meaning of section 191 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) 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.