

DELEGATED OFFICER REPORT

PROPOSAL	Lawful Development Certificate for the use of the existing flat at 106A Sea Front, Hayling Island, PO11 9HW as a separate dwelling (C3).
LOCATION:	106A Sea Front, Hayling Island, PO11 9HW
REFERENCE NO:	APP/25/01019
APPLICANT:	Mrs M Denton
APPLICATION TYPE:	Lawful development: Existing use
CONSULTATION EXPIRY DATE:	28/01/2026
APPLICATION EXPIRY DATE:	11/02/2026
WARD:	Hayling East
SUMMARY RECOMMENDATION:	Grant a Lawful Development Certificate

1 Site Description

- 1.1 The red lined application site relates to a flat roofed single storey 'flat', which includes one room within the main house, and its garden space, known as 106A Sea Front, which is attached to the blue lined chalet bungalow, number 106 Sea Front.
- 1.2 The original property on the site, 106, is a detached chalet bungalow with a fully hipped tiled roof with large central front roof dormer, and a flat roofed full width front extension, in white render. It originally had a detached garage, which was converted to accommodation following 05/70880/00. It is now an enlarged linked 2 bedroom 'flat' and is also in white render.
- 1.3 The whole property is set back from the road, and at an elevated position, behind a front wall with shrubbery behind. There is vehicular access taken from the western corner with hard surfaced drive and turning area. The flat has an enclosed patio space, fenced off from the remainder of the garden of 106.

2 Planning History

05/70880/000 – creation of balcony on existing flat roof to front elevation, alterations to front dormer to provide 'french doors' onto proposed balcony and conversion of garage to living accommodation. Permitted 03/11/2005

Officer Note - *Notably there was no condition requiring the accommodation to only be occupied on an ancillary basis*

APP/13/000274 – Roof alterations including raised ridge height and replacement of hip to gable end. Permitted 14 May 2013

Officer Note – *This has not been implemented. The plans showed 106A as a separate flat annexe*

3 Proposal

Lawful Development Certificate for the use of the existing flat at 106A Sea Front, Hayling Island, PO11 9HW as a separate dwelling (C3).

This is a Section 191 application for a Lawful Development Certificate to establish whether the existing use of the flat as a separate C3 dwelling is lawful.

4. Legislation

Town and Country Planning Act 1990

5. Statutory and Non Statutory Consultations

None required for this application type.

6. Publicity and Community Involvement

Not required for Lawful Development Certificate applications, but out of courtesy neighbour notification has been carried out.

Two letters have been received:

1 letter of Support: Cllr Coates – looks reasonable to me

1 letter of Objection:

Converted garage located about 0.5m from boundary line; close proximity creates a sensitive relationship between buildings.

Granting permission to establish the conversion as an independent dwelling would, in our view, materially increase the likelihood of future applications for upward extension, including the addition of a second storey. Such development would have a severe overbearing impact on our property and would result in loss of light, loss of outlook, and an unacceptable sense of enclosure.

While any future extension would of course require its own planning permission, national and local planning guidance makes clear that applications should be assessed in the context of their foreseeable consequences. The creation of a separate dwelling in such close proximity to a neighbouring boundary creates a clear and foreseeable pressure for further expansion that would be wholly inappropriate for this location.

We are also concerned that the original structure was constructed as a domestic garage and not designed to accommodate multi-storey development. Although structural matters fall under Building Regulations, the planning system must consider whether a form of development is appropriate in principle and whether it would encourage unsustainable or harmful intensification of the site.

In addition, the proposal would set an undesirable precedent for back-to-boundary development and subdivision of plots in this area, contrary to the established character of the neighbourhood and the reasonable expectations of neighbouring occupiers. For these reasons, we respectfully request that the application be refused, or alternatively that very clear and robust planning conditions be imposed to prevent any future upward extension of the building, in order to protect neighbouring amenity. following condition be included:

“The dwelling hereby approved shall not be extended vertically or horizontally, including the addition of any further storeys, without express planning permission.”

This I respectfully request that, should permission be granted, a condition be imposed to ensure that the scale and impact of the development remains strictly controlled in the long term. In particular, I ask that the condition is necessary to safeguard the amenities of neighbouring properties and to prevent any future overdevelopment of the site that could result in unacceptable impacts, including loss of light, overshadowing, or an overbearing relationship with adjacent dwellings.

Given the constraints of the plot and the close relationship with surrounding properties, the removal of permitted development rights for extensions would be both reasonable and proportionate, ensuring compliance with local planning policies and protecting residential amenity.

Officer Note – *this is a legal determination only and the planning merits of the case are not relevant. Nor is it possible to impose conventional planning conditions on any Certificate granted. Any future planning application for further development would be considered on its individual merits at the time.*

7 Legal Considerations

- 7.1 The proposal is seeking a legal determination as to whether the existing use of the ‘flat’ as a separate C3 dwelling is lawful or not. The planning merits of the proposal are not for consideration as part of this application type.
- 7.2 The application has been submitted under Section 191 of the Town and Country Planning Act 1990. Section 191(2) states that 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.*
- 7.3 No Enforcement Notice has been served for this site, so (b) is not relevant. Therefore, this application falls to be assessed against criteria (a) above.
- 7.4 The use of the flat as separate independent accommodation does constitute development through the material change from ancillary accommodation within the single family dwellinghouse, to two separate dwellinghouses. Notably there is no condition restricting the occupation of the flat to ancillary only, so there is no breach of condition to consider.
- 7.5 The relevant time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act, as amended by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. The transitional arrangements are such that development becomes immune from enforcement action if no action is taken within 4 years for an unauthorised change of use to a single dwellinghouse where the change took place before 25 April 2024.

- 7.6 Therefore, in this case where the use commenced before 25 April 2024, the relevant time period is 4 years. If it can be demonstrated that the use has occurred continuously for 4 years prior to the date of this application (17/12/25) then no enforcement action can be taken, and the defined use would lawful.

Evidence provided

- 7.7 The onus is on the applicant to provide sufficient evidence to support the application and the Planning Practice Guidance states:
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.
- 7.8 The submitted evidence statement states that the 'flat', number 106A, is a self-contained unit of accommodation that has been continuously tenanted for over 10 years, billed separately for council tax and has its own utility supplies and bills.
- 7.9 Visually on site the flat has its own separate access, with a front door in the link attached to the main dwelling. The parking area at the front is shared with the main dwelling, with just one access point from the highway. The enclosed rear/side garden space is dedicated to the flat.
- 7.10 Copies of signed and dated tenancy agreements have been submitted dating from May 2016, with moving in and out dates provided. This shows the first tenant occupied the flat from 24/05/16 to 20/11/17; the second from 22/11/17 to 22/08/18; and the third from 27/09/18 to 14/03/2025. A copy of a separate Council Tax bill for 106A, dated 10 March 2016 is also provided.
- 7.11 Internal enquiries have also been made of Council Tax who have confirmed that the property 106A Sea Front has been registered separately for Council tax purposes since 2011.
- 7.12 Therefore, on the balance of probabilities, it is considered that the flat has been occupied separately from the main dwelling on the site for over 4 years, sufficient to issue a lawful development certificate.
- 7.13 With respect to the precise area used in connection with the flat, the amended red line includes the bedroom within the main house, which is part of the flat, as well as the enclosed rear patio space. This tallies with the 2013 plans and photographic evidence. Therefore, the amended plans are considered accurate to reflect the site to which the lawful development certificate relates.

8 Conclusion

- 8.1 On the balance of probabilities it is considered that the evidence is sufficient to demonstrate that the flat at 106A Sea Front has been continuously occupied as a separate C3 dwelling for the requisite 4-year period predating this application, such that no enforcement action can now be taken against the use. 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 Development Manager be authorised to **Grant a Lawful Development Certificate** for application APP/25/01019 under Section 191 of the Town and Country Planning Act.

Wording for decision notice:

Havant Borough Council, as Local Planning Authority, certifies that on 17th December 2025 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 Flat at 106A Sea Front has been continuously occupied as a separate C3 dwelling for at least four years prior to the date of this application. In reaching this determination the Authority has considered all evidence and information submitted by the applicant.

FIRST SCHEDULE:

This certificate relates to the following development:

Lawful Development Certificate for the use of the existing flat at 106A Sea Front, Hayling Island, PO11 9HW as a separate dwelling (C3), as described in the written particulars; Drawing numbers 601 LDC01 Rev B, 601 LDC02 Rev A and 601 LDC03 Rev A; and other documents submitted with your application valid on 17/12/2025.

SECOND SCHEDULE:

This certificate relates to land at 106A Sea Front, Hayling Island, PO11 9HW as shown edged red on Drawing number 601 LDC01 Rev B.

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 use/development specified in the First Schedule taking place on land described in the Second Schedule was/were 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 Secretary of State if you are aggrieved by the Council's decision.