

DELEGATED OFFICER REPORT

Site Address: 21 Hawkley Close, Havant, PO9 5EL
Proposal: Certificate of Lawfulness for existing outbuilding located to the rear of the dwellinghouse at 21 Hawkley Close for use of residential purpose ancillary to the enjoyment of the main dwellinghouse. Single storey flat roof extension added in 2013.
Application Type: Lawful development: Existing use
Application No: APP/25/01018
Applicant: Mr & Mrs Stephen & Suzanne Wilson
Expiry Date: 06 February 2026
Case Officer: Denise Sheath
Ward: Leigh Park Hermitage

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

1 Site Description

21 Hawkley Close, Havant is a two storey mid terrace property constructed with rebrick with red tile hanging to the front first floor elevation. There is a white render finishing partially to the front ground floor elevation. The property benefits from an existing single storey rear extension. There is a pitched roof outbuilding adjacent the rear boundary with a single storey flat roof extension to the front elevation.

2 Planning History

97/62537/000 – Single Storey rear extension – 02 February 1998

3 Proposal

Certificate of Lawfulness for existing outbuilding located to the rear of the dwellinghouse at 21 Hawkley Close for use of residential purpose ancillary to the enjoyment of the main dwellinghouse. Single storey flat roof extension added in 2013.

It is understood that the single storey extension to the outbuilding was constructed in 2013, 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.

This application seeks to demonstrate that the site remains a single family dwelling with the occupation of the outbuilding 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.

Evidence provided:

A Statutory Declaration from Mrs Wilson – Applicant and homeowner States:

- that the single storey extension to the outbuilding was constructed in 2013.
- The outbuilding contains a bedroom, shower, and living room area used only by members of the household.

- The outbuilding contains a worktop for convenience and a sink for the washing up of cups etc. No cooking facilities are located within the outbuilding such as oven, hob, stand alone or integrated cooking appliances, there are no gas or electrical cooking points
- All cooking for the household takes place within the kitchen within the main dwellinghouse.
- The outbuilding is fully dependant on the main dwellinghouse and is therefore not capable of being occupied independently and remains integrated and functionally dependant on the main dwellinghouse.
- The proposed extension since its construction in 2013 and outbuilding have continuously and exclusively as ancillary to the main dwellinghouse
- The outbuilding and extension have never been advertised or occupied as a self-contained accommodation or for any commercial or rental purpose.
- The bedroom and living space are only used by existing members of the household.

A neighbour statement declaration stating that the extension to the outbuilding was constructed in 2013 and the outbuilding has not been used as a separate household or independent dwelling.

Google photos:

Year - 2007 – shows an aerial view of the dwelling with no extension added to the outbuilding.

Years - 2015, 2024 & 2025 shows an aerial view of the dwelling with an extension added to the outbuilding.

Further Information Questions and Answers – Clarifying the previous use of the outbuilding, sole owners of property, who uses the outbuilding, council tax bill, confirmation utilities are to main dwelling with no separate billing.

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

Legal - Legal are satisfied on the balance of probabilities there is evidence to show that the existing outbuilding has been in use as an ancillary use (C3) continuously for at least four years prior to the date of the application.

7 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: 5

Number of site notices: N/A

Statutory advertisement: Not applicable.

Number of representations received: 0

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".

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 is for ancillary purposes and as such lawful. It is stated that the property is owned by Mr & Mrs Wilson, whose adult sons live in the main dwelling, whilst Mr & Mrs Wilson use the outbuilding for sleeping and relaxing. Each family member of the household has access to both buildings.

Assessment:

8.5 The primary use of the site, 21 Hawkleys Close, has always been a single-family dwelling, i.e. a Class C3 use. The outbuilding was originally as a single family room a genuine 'incidental to the enjoyment of the dwellinghouse' use. Therefore, the outbuilding had a lawful C3 residential use, as an 'incidental use'. In 2013 an extension was added to the outbuilding and the internal layout was amended from one room to include one double bedroom, a small shower room and living area. 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 occupiers of the main house and outbuilding are mother, father and sons 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 could 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 outbuilding is via the main dwellinghouse to the garden which is not subdivided in any way and is shared and available to all family members. There is no separate access to the garden. 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. 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. 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 statement provided from a former neighbour indicates that the outbuilding has not been used as a separate household or independent dwelling.

- 8.13 The evidence submitted also includes a copy of a Council Tax Bill addressed to the main house and serving the entire site including the outbuilding. The applicant has confirmed that the outbuilding relies on the main house for its utility services is also a key indicator that the use of the outbuilding 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.
- 8.14 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 ancillary residential use, and its occupation by the occupiers of the main house, falls within a C3 use and no separation from the main dwelling has occurred.

9 Conclusion

- 9.1 It is considered that the facts of the case are such that, on the balance of probability, the occupation of the outbuilding family members of the main dwellinghouse, 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 Interim Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/25/01018

Havant Borough Council, as Local Planning Authority, certifies that on 12 December 2025 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:

use of outbuilding as an ancillary use, occupied by members of the main dwellinghouse as described in the written particulars, plans and other documents submitted with the application validated on 12 December 2025.

SECOND SCHEDULE:

For the purposes of the first schedule above, this certificate relates to land at 21 Hawkley Close, Havant, PO9 5EL, as shown edged red on the submitted Location Plan Received 12 December 2025.

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 Ministry of Housing, Communities and Local Government if you are aggrieved by the Council's decision