

DELEGATED PLANNING APPLICATION REPORT

Ward: Park

App Ref: 230463/CLE

Address: 64 College Road, Reading, RG6 1QB

Proposals: 6-person C4 small HMO

Case Officer: Marcie Rejwerska

Date received (valid from): 9 April 2023 Target Decision date: 21 June 2023 (ext.)

1. SITE DESCRIPTION

The application site comprises a two storey mid-terrace property on the west side of College Road. The immediate surrounding area is residential with similarly designed Victorian terraced rows. The application site is not listed nor in a conservation area. The property is within an Article 4 area, restricting the change of use from residential (Use Class C3) to small HMO (Use Class C4).

2. PROPOSAL AND SUPPORTING INFORMATION

The application seeks to demonstrate the existing use of 64 College Road, Reading RG6 1QB as a 6 person small HMO (Use Class C4).

3. RELEVANT PLANNING HISTORY

221541 - Change of use from 6 person C4 HMO to an 8 person Sui Generis HMO - Not yet determined

4. LEGAL AND PLANNING POLICY CONTEXT

Section 10 of the Planning and Compensation Act 1991 established a procedure that enables anyone who wishes to do so, to apply to the local planning authority to determine whether a proposed use or operation, or an existing operational development or an existing use of land, or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, is lawful, and is so, be granted a certificate to that effect.

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate. However, the certificate will not protect from enforcement action by the planning authority if the specified use or development is then changed 'materially' without a planning application for it.

The certificate is not planning permission. The planning merits of use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

The NPPG states that ‘The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use (section 191 of the Town and Country Planning Act 1990), if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability’.

5. CONSULTATIONS

Reading Borough Council, Electoral Registration - Response received on 17/04/2023

- Number of electors at the property:

Year	No. of electors
2023	3
2022	3
2021	3
2020	1
2019	3
2018	2
2017	2
2016	4
2015	2
2014	1
2013	0

Reading Borough Council, Environmental Health - Response received on 02/05/2023

- No comment to make on this application.

Reading Borough Council, HMO Team - response received on 24/04/2023

- The property currently holds a HMO licence for up to 8 people as it had sufficient facilities at the time of application for this amount of people (the licence is valid until May 2024).
- It was pointed out to the licence holder that just because it has a HMO licence for up to 8 people that it would need planning permission for this amount of people.

Reading Borough Council, Council Tax - Response received on 17/04/2023

- The property has been banded as a single dwelling and banded since at least 01/04/1997 for CT purposes.
- The property is let to tenants under the same tenancy agreement, so we wouldn't consider this property to be a HMO for CT purposes.

Reading Borough Council, Enforcement - Response received on 14/04/2023

- Having checked our records (which go back to 2003) I can see that we investigated a complaint concerning an unauthorised development (dormer extension found to be PD) and a change of use of the property back in 2011 (11/00369). The case was closed in 2015.

Reading Borough Council, Legal - Response received on 07/06/2023

- The applicant's agent's suggestion that an HMO licence would not have been obtained if the property were not in use is likely to be correct. In the absence of contradictory evidence, it is more likely than not that the property was in use as a small HMO prior to the Article 4 Direction taking effect.

- There is no evidence (e.g. planning permission or enforcement case) of any such change of use away from C4 here, so the use would remain lawful on that basis.

6. SUBMITTED EVIDENCE

The applicant provided the following evidence to support the use of 64 College Road, Reading RG6 1QB as a 6 person small HMO (Use Class C4):

- 935/9 Location plan, dated April 2023, received 11 April 2023
- 935/2 Existing floor plans, dated September 2022, received 11 April 2023
- HMO Licence dated 21 August 2007 received 11 April 2023
- HMO Licence dated 4 October 2012 received 11 April 2023
- HMO Licence dated 15 May 2019 received 11 April 2023
- Tenancy Agreement dated 19 March 2015 received 11 April 2023
- Tenancy Agreement dated 26 September 2016 received 11 April 2023
- Tenancy Agreement dated 27 November 2016 received 11 April 2023
- Tenancy Agreement dated 21 February 2018 received 11 April 2023
- Tenancy Agreement dated 27 November 2019 received 11 April 2023
- Tenancy Agreement dated 16 February 2021 received 11 April 2023
- Tenancy Agreement dated 20 November 2021 received 11 April 2023
- Planning Statement dated March 2023, received 9 May 2023

7. ASSESSMENT

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate either that the use of 64 College Road as a 6 person small HMO (Use Class C4) began more than 10 years before the date of this application of 9 April 2023, or that the use of the property as a small HMO commenced prior to the introduction of the Article 4 Direction in 2013 and that the use has not changed since. The application form states that the use began on 1 January 2006.

With regards to internal consultee response; the Council Tax team have confirmed that the property is banded as a single dwelling and has been since 01/04/1997. It is considered that confirming 64 College Road as being banded as a single dwelling does not demonstrate occupancy or use in supporting the claims made within this application. No Council Tax bills have been provided by the applicant to support the claims of occupancy and use made within this application.

The HMO team have confirmed that the property has a currently valid (until May 2024) HMO licence for up to 8 people. The response from the HMO team and the evidence submitted supports the use of 64 College Road as a HMO, although potentially larger than permitted in Class C4.

The Enforcement team have confirmed that 64 College Road was investigated in 2015 due to claims of unauthorised erection of rear dormer and unauthorised conversion to small HMO (Use Class C4). Evidence of the investigation submitted by the Enforcement team includes a letter from the Enforcement team to the applicant to confirm that the change of use would have been lawful at the time of the investigation as the applicant had supplied tenancy agreements for the period 2008-2010 to demonstrate the use of 64 College Road as a small HMO occurred before the Article 4 Direction introduced in 2013. The relevant tenancy agreements were submitted by the Enforcement team for the assessment of this application. The Council does not hold any evidence to demonstrate that the lawful use of 64 College Road as a small HMO was lost by another change of use.

Turning to the evidence submitted by the applicant to support the claims made within this application, the PPG makes the position clear on how the evidence submitted is to be considered. It says:

“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”

A planning statement provided by the applicant dated March 2023 states that the property has been in continued HMO use with relevant HMO licenses for 7 occupants between 2007-2012 and for 8 occupants between 2012-present.

Tenancy agreements have been provided by the applicant which demonstrate continuous use of 64 College Road as a 6 person small HMO for the time periods 2008-2010, 2014/2015 and 2016-2023. Each agreement is signed by 6 individual tenants and clearly states the start and end date of the tenancy.

Regarding the gap in tenancy between 2010-2015 and 2015-2016 the applicant states that the tenancy agreements for this period have been lost. Further information has not been provided regarding this gap in tenancy which may indicate the number of occupants. However, HMO licences for this period have been submitted to support the claim that 64 College Road was in use as a small HMO although this does not sufficiently support the claim that 64 College Road was in actual use as a small HMO.

Legal Services are in agreement that the Council does not hold any evidence to contradict the above claims made by the applicant regarding the gaps in tenancy.

Although there is insufficient evidence to suggest the use of 64 College Road has been continuous as a small HMO over the last 10 years due to the lack of tenancy agreements or other supporting evidence, the applicant has demonstrated that the property was in use as a small HMO prior to the introduction of the Article 4 Direction restricting this change of use, and the LPA has no evidence that this use was then changed or lost. As such, this is considered sufficient to demonstrate the present use of 64 College Road as a small HMO (Use Class C4) as lawful.

RECOMMENDATION GRANT

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 64 College Road as a small HMO (Use Class C4) begun more than 10 years ago and prior to the introduction of the Article 4 Direction, and there is no evidence to suggest this use was changed or lost. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

Informative

Positive and Proactive - Approval

