

Delegated Application Report**Extended Target Date:** 11/07/2023**Address:** 109A Oxford Road, Reading, RG1 7UD**Application No:** 230667/CLE**Proposal:** Certificate of Lawfulness for Existing use as 1 x 2 bed dwelling ('Flat 1') at first floor level**Case Officer:** Nicola Taplin (original case officer was Joel Grist)**Introduction & Proposal**

The application site comprises a 3-storey, with roofspace, end terraced building on the southern side of Oxford Road, on the corner with Zinzan Street. The character of Oxford Road is a mix of commercial / residential / religious uses in the vicinity of this site.

The proposal is for a certificate of lawfulness for the existing use as 1 x 2 bed dwelling ('Flat 1') at first floor level.

It is noted that the site location plan submitted with the application shows a red line boundary around both No. 109 Oxford Road and No. 109a Oxford Road. The application form however clarifies the site location as '109a Flat 1 Oxford Road'. Based on the annotated floor plan submitted and correspondence with the agent prior to the registration of the application, it was clarified that the subject of the application is the first-floor level of No. 109 Oxford Road, which the applicant identifies as 'Flat 1'. This is the area shaded in red on the floor plan submitted in support of the application (see extract below – 'AP-9191 As Built Floor Plans'). The application form specifically states this to be 1 x -2 bed dwelling, so this is reflected in the description of development, although this does not tally with the number of bedrooms annotated on the plan or witnessed in practice during the site visit by the original case officer (as detailed below).



A site visit was undertaken by the original case officer on 24 August 2023 to confirm the layout of the property.

Flat 1

- The room described as being a 'Dining Room' on the As Built plan (ref: AP-9191) is being used as a bedroom. The other 3 rooms labelled 'Room' are also being used as bedrooms meaning the dwelling is being used as a 4-bedroom dwelling.
- There were 4 different people in flat at the time of the visit.

- The dwelling has its own front door, electricity and gas meters.

Flat 2

- The room described on the As Built plan as 'Room' is being used as a bedroom meaning the flat was observed being used as a 3 bedroom dwelling.
- The flat has its own front door, electricity and gas meters.

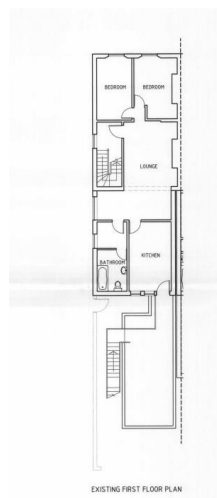
The applicant asserts that the existing use of the first floor as a 2 bed flat has been in continuous use for more than 4 years, from 16 May 2023.

Relevant Planning History:

100968 - Retrospective change of use to from B1 to residential accommodation. Application returned 4 October 2010

101773 – Retrospective change of use from A2 (Offices) to C3 (Residential Accommodation) on first and second floors, and loft. – Withdrawn 15 February 2011.

110985 - Certificate of lawfulness for existing C3 use class on the first, second and third floors. - Application Refused 12 July 2011. The application plans confirmed the use of the first floor as follows:



Officers advised, while a Certificate was sought for the use of the property for purposes falling within Class C3 (Dwellinghouse, it became apparent during the Officers site visit that the property was may in fact be in use as a House in Multiple Occupation (HMO) falling either within be in Use C4 (3-6 unrelated individuals sharing basic amenities HMO) use, or as a sui generis HMO (more than 6 unrelated individuals) HMO. The use of the property as a sui-generis HMO was supported by information from our Electoral Services department which show the premises previously occupied (2010) by seven people with different surnames. Furthermore, the Council's Housing & Public Health team also confirmed the property was in HMO use during 2007 and 2010 following inspections.

While the conversion of a building to a dwellinghouse gains immunity from enforcement action after 4 years the normal 10-year rule for a change of use to a HMO will apply In which case the applicant must demonstrate that the use has been in place for 10 years subject to no enforcement action having been taken on the property. Again, and it is re-iterated that should

the applicant intend to apply for a certificate on this basis the burden of proof falls squarely with the applicant.

The application was refused on the grounds that:

As the Local Planning Authority has evidence from its own records and information gathered on the Officers site visit to contradict the applicant's version of events there is no justification to grant the certificate "on the balance of probability

201585 - Change of use from an estate agent use class E to a restaurant and hot food takeaway sui generis use class. Application Permitted 31 March 2022. This application related to the ground floor and basement level.

201586 - Fascia and a projecting sign. Application Permitted 31 March 2022.

221861 - Certificate of Lawfulness for Existing use as 1x - 2 bed dwelling for more than 4 years. Application Withdrawn 25 April 2023.

Relevant Planning Policy & Guidance:

Annexure 8 "Lawfulness and the Lawful Development Certificate" of Planning Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' sets out the procedure for assessing applications for certificates of lawfulness:

Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision on whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

The onus of proof in a LDC application is firmly on the applicant. Subsection (4) of section 191 provides that if, on an application under the section, the LPA 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 LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application'.

Para 8.3 states, 'by virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them **and** they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), *a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.*'

Consultation Responses:

Council Tax:

Our records show that we have two separate dwellings banded for Council Tax purposes, Flats 1 & 2 at 109A Oxford Road. Both dwellings have been separately banded since 01.03.2004 and both been separately occupied since this time.

Environmental Protection: No comments.

Planning Enforcement: No comments.

Electoral Services confirmed the following Electoral Register records:

Number of Registered Electors at 109a Oxford Road			
	109a Oxford Road	109a Flat 1	109a Flat 2
Year			
2023		7	4
2022		7	2
2021		7	2
2020		4	2
2019		4	1
2018		4	
2017	3		
2016	2		
2015			
2014			
2013			

Legal Services –

The CLE application is for C3 use. In planning terms, the number of bedrooms is not particular relevant – the use would still be C3, “dwelling”, whether there are 2 or 4 bedrooms.

However, my concern is that, based on the evidence provided, there is a good chance that the current use is actually C4 (small HMO), or even *sui generis* (large HMO). The site visit observed 4 people in 4 bedrooms, and the electoral register shows up to 7 residents.

This presents a couple of problems:

- The main difference between C3 and C4 is whether the residents are a single household (i.e. related). As the owner seems to have leased the property to a company (Reading City Estates), we don’t actually know who the sub-tenants (the actual occupiers) are. So, on that point alone, we can safely refuse the C3 application because the evidence provided isn’t clear and unambiguous.
- The enforcement period is potentially different if the use is C3 or C4:
 - The courts have confirmed (*London Borough of Brent v Secretary of State for Levelling Up, Housing and Communities & Anor* [2022] EWHC 2051 (Admin)) that an HMO (whether C4 or *sui generis* for large HMOs) will still be a dwellinghouse, as long as the property satisfies the usual *Gravesham* test (“a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence”).
 - If the previous use was not as a dwelling, then, because an HMO is a dwelling, there would be a change of use to a dwelling. So, it would be covered by s171B(2) and the time period would be 4 years.
 - However, the courts have confirmed (*Bloomfield v Secretary of State for the Environment, Transport and the Regions and another* [1999] 2 PLR 79) that where the previous use was as a dwellinghouse (whether C3, C4 or *sui generis*) the 4-year rule does not apply. This is because if the building was already a dwellinghouse, there will be no change of use to a dwellinghouse). So, in those cases, the 10-year rule from s171B(3) applies.
 - So, again, this would be a reason for refusal, as we can’t be sure whether the use is C3, C4 or even *sui generis*, and so can’t be sure of the enforcement period.

So, based on the evidence provided, we can safely refuse as the evidence is not sufficiently clear and unambiguous, and we hold possibly contradictory evidence (electoral register).

Submitted Evidence

Evidence to verify application for a lawful development certificate for 'Flat 1' at first floor level to be used as a separate flat. The application form states the use was begun on 01/09/2017.

Information submitted:

AP-9191 – Approved Floor Plans (As Approved 140959)

AP-9191 – As Built Floor Plans

Various tenancy agreements – from 1/10/2018 – 30/9/2023

2 Letters from Mr Sales and Lettings

Both dated 03/05/2023 acting as managing agent for flat 1 & 2, 109A Oxford Road, Reading, Berkshire, RG 1 7UD. Claiming to have tenants residing in the properties between 1st October 2017 to present.

Photos of Flat 1

Photos only show the kitchen, hallway, bathroom and exterior of Flat 1. They do not show how the rooms/bedrooms are being used.

Letter from The Keen Partnership (undated) 'Application for a Lawful use (of an existing use for more than 4 years) relating to the upper floors of 109A Oxford Road Reading. Namely flat 1 as the other flat is lawful'.

Email from Keen Partnership 'RE: 230667 - 109a Oxford Road, Reading', dated and received 25/05/2023.

Correspondence with the applicant's agent:

Beyond initial correspondence at the outset of the application to ascertain the exact nature of the proposals, the applicant's agent was contacted on 17/11/23 to advise that the evidence was ambiguous and that the officer recommendation would be to refuse the application. The agent was provided with an opportunity to withdraw the application, but no response has been received and therefore a decision will now proceed to be issued.

Assessment:

In order to grant a Certificate of Lawfulness for existing use of first floor of 109A Oxford Road as a flat, sufficient unambiguous and precise evidence must be supplied to confirm that the property has been in this use continuously for a period of 4 years from the date the application was made valid. The relevant time period is therefore 16 May 2019 to 16 May 2023.

The application form submitted by the applicant states that the existing use of the property has been as a separate first floor flat for over 4 years (when cross referenced with the plans submitted and clarifications received from the agent that it is solely 'flat 1' applied for, since 1st September 2017 to present. This application is supported by five tenancy agreements for flat 1 (clarified as the first floor flat when cross-referenced with the plan submitted and correspondence with the agent).

The legal definition of self-contained unit is defined as "since 2001 **a dwelling is defined (in line with the 2001 Census definition) as a self-contained unit of accommodation.** Self-containment is where all the rooms (including kitchen, bathroom and toilet) in a household's accommodation are behind a single door which only that household can use."

The case officer considers that on balance, based on the evidence submitted, despite the RBC council tax team confirming that payments have been made since 2004, there is some ambiguity in terms of the use of the first floor flat.

The concerns relate to the number of tenants and their relationship in terms of occupation. The site visit observed 4 people in 4 bedrooms and the electoral register confirms 7 residents. There is consequently some ambiguity in terms of the use as to whether there is a C4 (HMO) use or Sui Generis (HMO) use. The tenancy agreements submitted by the applicant as evidence do not detail the names of the tenants, given that the property was leased to a company. It has not been possible to ascertain whether the property was being occupied as a single private dwelling (C3) Use or an HMO falling within either class C4 or Sui Generis Use. Planning Officers, in conjunction with advice from Legal Services, consider that there is ambiguity in terms of the use and so can't be sure of the enforcement period.

The law on applications for existing use certificates is clear and in relation to the submitted application it is incumbent on the applicant to prove, on the balance of probabilities, that the property had an existing lawful use as a flat for the relevant time as noted above. The applicant's evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and consequently the application will be refused for the reason set out below.

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the first floor of 109A Oxford Road has been used as 1x2 bed dwelling for more than four years prior to 16 May 2023.

It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

Recommendation

Refuse certificate

Location map (not to scale)



Informatives

1. Whilst it is noted that the site location plan submitted by the applicant shows the red line boundary of the site comprising both No's 109 and 109a Oxford Road, it is clear

based on the remainder of the submission that the application relates solely to 109a Oxford Road and the application has duly been assessed on this basis.

2. The Local Planning Authority has worked positively and proactively with the applicant. However, the applicant's agent has not responded to feedback provided on 17/11/23 and therefore the decision to refuse the application has been taken.
3. In reaching this decision the local planning authority has taken the following submitted information into consideration:

AP-9191 – Approved Floor Plans (As Approved 140959)
AP-9191 – As Built Floor Plans

Tenancy agreements –

01/10/2018 – 30/09/2019, Tenant is Reading City Estates Ltd,
01/10/2019 – 30/09/2020, Tenant is Reading City Estates Ltd,
01/10/2020 – 30/09/2021, Tenant is Reading City Estates Ltd,
01/10/2021 – 30/09/2022, Tenant is Reading City Estates Ltd,
01/10/2022 – 30/09/2023, Tenant is Reading City Estates Ltd,

Letters from Mr Sales and Lettings

Letter dated 03/05/2023 signed by Sher Afgun of the Accounts Dept.

Letter dated 03/05/2023, not signed by a specific person.

Photos of Flat 1

Letter from The Keen Partnership (undated) 'Application for a Lawful use (of an existing use for more than 4 years) relating to the upper floors of 109A Oxford Road Reading. Namely flat 1 as the other flat is lawful'.

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