

Delegated Application Report**Target Date:** 03 May 2023**Address:** 21 Russell Street**Application No:** 230295/CLE**Proposal:** Certificate of Lawfulness for existing use as 8 x studio flats with 2 flats at basement level, 2 flats at ground floor level, 2 flats at first floor level and 2 flats at second floor level.**Case Officer:** Joel Grist

Introduction & Proposal

The application site comprises a four storey terraced property, including basement, located on the east side of Russell Street which contains a mix of terraced, semi-detached and detached buildings.

The proposal is for a certificate of lawfulness which seeks to confirm the use of the existing property for 8 studio flats is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 and cannot therefore be subject to enforcement action.

The applicant has submitted the following information to be considered:

- Location plan
- Existing floor plans for each flat
- Evidence Document dated April 2023
- Tenancy agreements relating to all 8 flats
- Tenancy Deposit Scheme relating to all 8 flats
- EICR Inspection Certificates relating to all 8 flats
- Checkout report relating to Flat 1
- Energy Performance Certificates relating to all 8 flats

Relevant Planning History:

010642 - Change of use from multi occupational residential units to four one bed flats.
Permitted – 23/05/2001

031222 - Change of use from a 6 bedroom multi occupancy into 6 self contained units.
Withdrawn – 15/12/2003

041429 - Retrospective application for the change of use from 6 bedroom multi-occupancy property into 6 self contained flats, ground floor to second floor (re-submission of planning application 03/01287). Withdrawn – 28/01/2005

050234 - Conversion of basement from 2 bedsits to 1 flat. Withdrawn – 03/02/2005

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:

RBC Council Tax Team – Our records show the property has been split over 8 separate flats, flats 1-8 at Jessica House, 21 Russell Street. All the flats have been banded since 1st June 2016.

RBC Electoral Registration Team – Number of registered electors at each residential property:

Number of registered electors at the residential property using data from the Electoral Register that are electronically stored (Xpress): Pending elector numbers not provided.

Number of Registered Electors at:									
Year	21 Russell Street	Flat 1	Flat 2	Flat 3	Flat 4	Flat 5	Flat 6	Flat 7	Flat 8
2023	3	1	0	0	0	1	0	0	1
2022	2	1	0	1	0	1	0	1	1
2021	2	0	0	0	0	1	1	1	1
2020	3	0	0	0	0	1	1	1	0
2019	2	1	0	1	0	1	1	1	2
2018	2	1	0	1	0	0	1	1	2
2017	1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2016	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2015	4	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2014	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2013	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Legal team – The certificate of lawfulness can be granted. The Council has no evidence to contradict the evidence provided by the applicant or make the applicant’s version of events less than probable. The “four year rule” is applicable. The applicant’s evidence, presents a consistent series of dates and facts that are sufficiently precise and unambiguous to demonstrate on its own that the occupation of 1 Jessica House, 21 Russell Street through to 8 Jessica House 21 Russel Street has been continuous for a minimum period of at least four years prior to the submission date of the LDC application.

Assessment:

Although the onus of proof in a LDC application is firmly on the applicant, when considering an application 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**”.*

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.”

A site visit was carried out on 12 May 2023. Access was provided to 7 flats within the building, except for the flat known as 7 Jessica House. The layout of each flat observed on the visit match those shown on the existing floor plans submitted with the application.

In respect of Flat 1, the tenancy agreements date from January 2019 to October 2023 and show the flat has been occupied by 2 different tenants for a period of 2 years each with several other occupancies throughout the time period.

In respect of Flat 2, the tenancy agreement date from July 2018 to September 2023 and show the dwelling has been consistently occupied by various tenants with no significant gaps between tenancies.

In respect of Flat 3, the tenancy agreements date from August 2018 to September 2024. While there were a few brief intervals between tenancy agreements, these are breaks are not significant in length and are not considered to mean that the dwelling has not been occupied for a continuous 4 year period.

In respect of Flat 4, the tenancy agreements date from November 2017 to December 2023. There are no significant gaps between tenancies and demonstrate all 3 dwellings have been continuously occupied for at least 4 years.

In respect of Flat 5, the tenancy agreements date from June 2018 to June 2023 and contain no significant gaps and demonstrate the dwelling has been continuously occupied for at least 4 years.

In respect of Flat 6, the tenancy agreements date from August 2018 to September 2023 and demonstrate that 1 tenant has lived in the dwelling for a period of 3 years whilst others have occupied the dwelling for 1 year at a time.

In respect of Flat 7, the tenancy agreements date from March 2014 to November 2023. The agreements demonstrate the dwelling has been occupied by a single tenant from 2014 to 2020 whilst the remaining tenancy agreements demonstrate an unbroken history of continuous occupation. Although access was not provided to the flat during the site visit, the Council is not in possession of any evidence that would contradict the applicant’s evidence or version of events.

In respect of Flat 8, the tenancy agreements date from August 2018 to April 2024 and contain no significant gaps and demonstrate the dwelling has been continuously occupied for at least 4 years.

Tenancy Deposit Schemes for all 8 flats have been submitted. These schemes match the dates of the associated tenancy agreements and while no TDSs have been submitted for 2 of the tenancy agreements for Flat 4 and 1 of the agreements for Flat 6, this is not sufficient evidence to contradict the applicant's version of events.

The EICR certificates relate to inspections carried out at each flat between 2020 and 2021 however these only offer a snapshot in the timeline of events for each flat and therefore carry limited weight in demonstrating 4 years of occupation for each flat. Equally, the energy performance certificates dated from 2014 carry limited weight for the same reason.

Comments from the Council's Revenues Property Inspector clearly demonstrate the building has been split into 8 flats for the purposes of collecting Council Tax since 2016.

While the Council's electoral services have provided records of registrations for each of the flats over a number of years, it is important to note that tenant registration is not obligatory. Hence, these records are not considered to hold sufficient enough weight to contradict the applicant's evidence or version of events.

It is therefore considered that as there is no evidence to make the applicant's version of events less than probable and there is no good reason to refuse the application. Based on a matter of fact and degree, it is considered the building known as Jessica House at 21 Russell Street has been in use as 8 separate dwellings for a period exceeding 4 years and is therefore immune to enforcement action therefore the application should be accepted based on the evidence currently provided and a Certificate of Lawfulness should be granted.

Recommendation

Issue Certificate of Lawfulness

Location map (not to scale)

21 Russell Street, Reading

