

DELEGATED APPLICATION REPORT

Ward: Redlands

App Ref: 220840/CLE

Address: 44 Donnington Gardens, Reading, RG1 5LY

Proposals: Certificate of Lawfulness for Existing use as a Class C4 four bedroom HMO for 4 occupants.

Case Officer: Mr David Brett

Applicant: Mr & Mrs Shukla

Date received (valid from): 08/06/2022

Target Date: 12/09/2022, extension of time agreed on decision from 03/08/2022.

Site Description and Surrounding Area

The proposal site is a two-storey middle terraced dwelling along Donnington Gardens, Redlands. The surrounding area is predominantly residential with a mix of Victorian terraced rows and large semi-detached and detached dwellings to the west on Alexandra Road.

The application site is not listed, nor in a conservation area. The application site is, however, close to the Alexandra Road Conservation Area.

Description of Use or Development

This application seeks to demonstrate the existing use of 20 Highgrove Street as a small HMO (Use Class C4).

Relevant Planning History

None

Consultation Responses

There are no statutory consultation requirements for a Certificate of Lawfulness application.

Relevant Planning Policy and Guidance

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’.

Consultations

Reading Borough Council, Electoral Registration - Response received on 17/06/2022

- Number of electors at the property:

Year	Property 44 Donnington Gardens Number of Registered Electors
2022	4
2021	4
2020	1
2019	4
2018	3
2017	3
2016	2
2015	1
2014	3
2013	3
2012	4
2011	4
2010	4

Reading Borough Council, Council Tax - Response received on 24/06/2022

- This property has been banded as a single dwelling since at least 01.04.1997. Its let to tenants under the same tenancy agreement so we wouldn't class this property as a HMO for CT purposes.

Reading Borough Council, Enforcement - Response received on 25/02/2022

- Having checked our records (which go back to 2003) I can confirm that we have had no dealings with this property.

Reading Borough Council, Environmental Health - Response received on 17/06/2022

- Although I have some records indicating that the property was in the private rented market 2008-2010, I could not find supporting documentation to indicate whether or not the property has been in use as a house in multiple occupation.

Reading Borough Council, Environmental Protection - Response received on 23/06/2022

- No comment regarding the application.

Reading Borough Council, Legal - Response received on 09/09/2022

- The application should be granted. Even though Council Tax information does not directly point to the property being a HMO. The evidence demonstrates the use of the property as a 'Student House' for more than 10 years. The Tenancy Agreements lend weight to the use of the property as does the letter of the previous owners.

Submitted Evidence

The applicant provided the following evidence to support the use of 44 Donnington Gardens as a small HMO (Use Class C4):

- Site Location Plan & Block Plan
- Existing Floor Plan (Not to Scale)
- Assured Tenancy Agreement - 07/07/2017 to 06/07/2018
- Assured Tenancy Agreement - 07/07/2018 to 30/06/2019
- Assured Tenancy Agreement - 01/07/2019 to 30/06/2020
- Assured Tenancy Agreement - 01/07/2020 to 30/06/2021
- Assured Tenancy Agreement - 01/09/2021 to 30/06/2022
- Accounts Statement - Westgate Students - Period: 10/02/2014
 - 4 named individuals
- Accounts Statement - Westgate Students - Period: 27/02/2015
 - 4 named individuals
- Accounts Statement - Westgate Students - Period: 18/04/2017 to 08/06/2018
 - 4 named individuals
- Accounts Statement - Westgate Students - Period: 27/11/2017 to 01/06/2020
 - 4 named individuals
- Accounts Statement - Westgate Students - Period: 06/12/2019 to 01/06/2021
 - 4 named individuals
- Accounts Statement - Westgate Students - Period: 22/12/2020 to 01/06/2023
 - 4 named individuals
- Letter from previous owner of 44 Donnington Gardens

Received on 08/06/2022

- Email from Reading Borough Council Tax Team upon instruction of applicant

Received on 20/07/2022

- Email from applicant explaining lack of first-hand evidence

Received on 21/07/2022

- Email from applicant to Council Tax confirming number of tenants from 2020 to 2021

Received on 26/07/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 44 Donnington Gardens as small HMO

(Use Class C4) began more than 10 years before the date of this application of 08/06/2022. The application form states that the use began in 01/07/2007.

With regards to internal consultee responses; the Council Tax Team have confirmed that the property has been banded for Council Tax purposes since at least 01/04/1997 and that the property is let to tenants under the same tenancy agreement. The Council Tax Team also stated that the property is not classed as a HMO for Council Tax purposes. It is considered that confirming 44 Donnington Gardens as being banded does not demonstrate occupancy or use in supporting the claims made within this application. The comments from the Council Tax Team do, however, confirm that the property has been let to tenants under the same tenancy agreement which supports the use of the property as a small HMO.

The applicant contacted the Council Tax team separately to pursue evidence to support this Certificate of Lawfulness (Existing) application. Under instruction of the applicant, the Council Tax Team provided the case officer with a breakdown of the Council Tax records from 05/07/2011 onwards. The breakdown is a list of dates in which the property was registered for Council Tax purposes and also states the number of tenants registered at the property during each period. One query was raised to the applicant and the Council Tax team concerning the period from 30/10/2020 to 11/06/2021. For this period the Council Tax team recorded 5 students at the property, the applicant refutes this and provided the case officer with an email from the applicant to the Council Tax team dated 09/06/2020 informing the Council Tax team that four named tenants would be occupying the property. The Council Tax team responded acknowledged this error and confirmed that the property was recorded as being let to 4 students for the period 30/10/2020 to 11/06/2021.

The Electoral Services Team have provided the number of electors registered to 44 Donnington Gardens since 2010. At least one elector has been registered at the property since 2010, with no more than four electors registered for any single period. It should be recognised that this list is lacking in specific detail as to the exact dates of occupancy, but this is not the level of detail expected in this sort of response. It is also considered relevant that any tenants of the property are not required to register as an elector.

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 signed letter from the previous owner of 44 Donnington Gardens. The letter is signed and dated and states the following:

1. We as the previous owner of the above property [44 Donnington Gardens, Reading, RG1 5LY] sold the property to Mr & Mrs Shukla on 5th July 2017.
2. We can confirm that we let the property to students for at least ten years prior to selling the property on a continuous basis.

The letter is lacking in detail and specifics, for instance the number of tenants the property was let to over the ten-year period, along with the specific date upon which the use of the property became a small HMO. The letter states that the property was let to students for at least ten years prior to selling the property. The letter also states that the property was sold on 05/07/2017. The application form states that the use as a small HMO began on 01/07/2007, which aligns with the statement made within the letter. It is acknowledged that this not a formal Statutory Declaration, however, there is no evidence before the case officer that contradicts the statements made within the letter. Therefore, some weight is given to the statements made within the letter.

To cover the period from 07/07/2017 onwards; Assured Tenancy Agreements have been provided by the applicant. The latest agreement provided currently runs to 30/06/2022. A total of five Assured Tenancy Agreements have been provided for 44 Donnington Gardens, with 4 tenants for each period. The number of tenants is still suitable under Use Class C4 which defines a Small HMO as being a small, shared house occupied by between three and six unrelated individuals. The tenancy agreements provided reflect the details provided via email by the Reading Borough Council Billing Officer in relation to Council Tax. There are no gaps in tenancy from 07/07/2017 to the date of this Certificate of Lawfulness (Existing) application, this covers the period in which the current owner has owned the property. The tenancy agreements have been supplemented with account statements provided by the letting agent.

Start Date	End Date	Gap (days)	Number of tenants
07/07/2017	06/07/2018		4
07/07/2018	30/06/2019	1	4
01/07/2019	30/06/2020	1	4
01/07/2020	30/06/2021	1	4
01/07/2021	30/06/2022	1	4

On the balance of probabilities, it is therefore considered to have been suitably demonstrated that 44 Donnington Gardens has been a continuously occupied as a small C4 HMO for a ten-year period prior to the receipt of this application. This conclusion is drawn having considered all the evidence including the statutory declaration made by the previous owner and the Assured Tenancy Agreements, along with the explanation by the applicant and invoices.

Recommendation

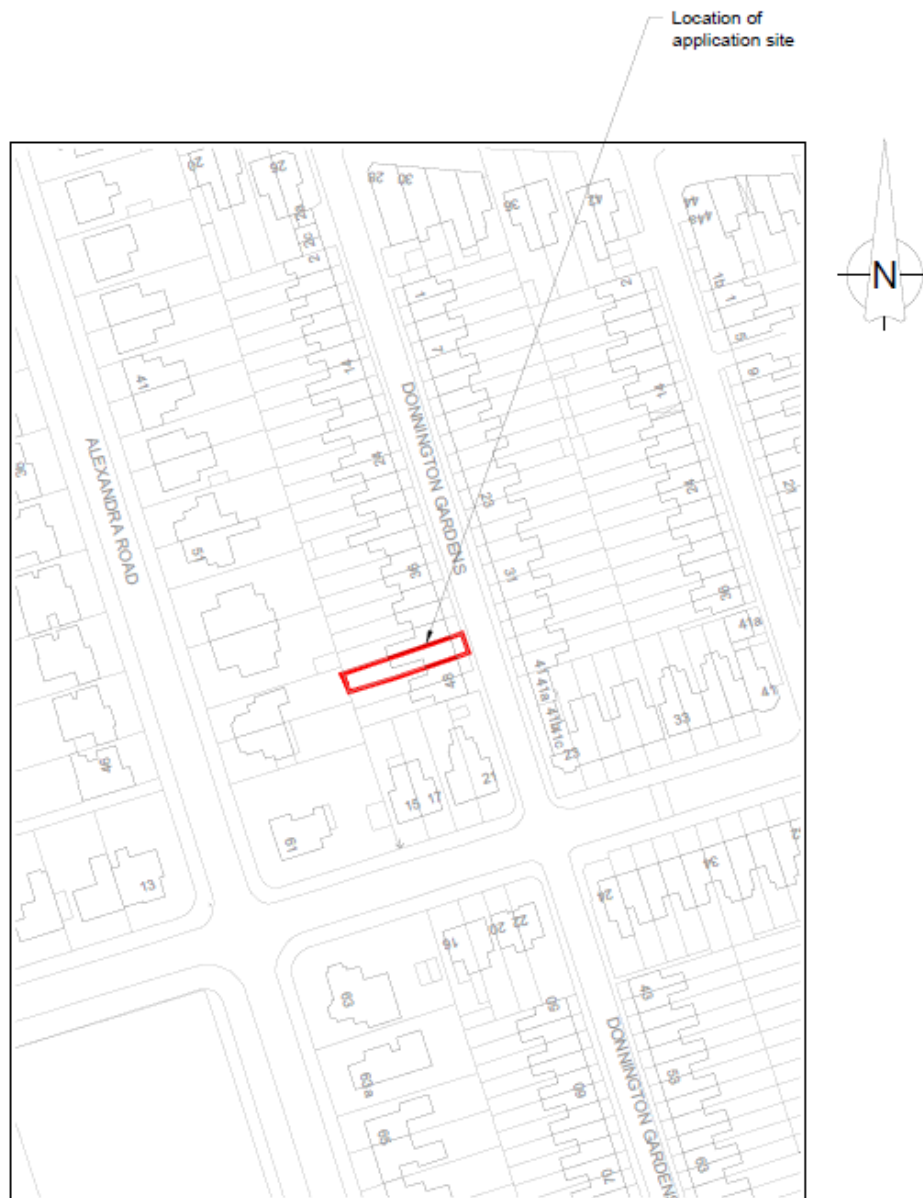
Grant

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 44 Donnington Gardens as a small HMO

(Use Class C4) has been ongoing for continuously for at least ten years. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

Informatives

Positive and Proactive - Approval



Site Location Plan

Scale 1:1250