

DELEGATED APPLICATION REPORT

Ward: Katesgrove

App Ref: 230137/CLE

Address: 72 Whitley Street, Reading, RG2 0EQ

Proposals: Certificate of Lawfulness for existing use as 8 x studio flats and 2 x 1-bedroom flats on the first and second floor of the building.

Case Officer: Mr David Brett

Applicant: Mr Amar Prajapati

Date received (valid from): 06/02/2023

Target Date: 14/04/2023, extension of time agreed on decision from 03/04/2023.

Site Description and Surrounding Area

The former Wellington Arms pre-dates the 1860 OS Map and appears to have been part of a row of similar Victorian buildings. The building was restored in 2017. The ground floor of the building consist of a bakery/café.



Fig 1. Front of 72 Whitley Street. Image captured in August 2021. Image retrieved from Google Street View on 13/04/2023.

The application site is not listed, nor in a conservation area.

Description of Use or Development

This application seeks to demonstrate the existing use of 72 Whitley Street as 8 x studio flats and 2 x 1-bedroom flats on the first and second floor of the building.

Relevant Planning History

970964/ADV - New fascia sign, amenity signs and lighting. - Application Permitted on 16/12/1997

970871/FUL - External alterations to include new fire escape, garden pergola, new fire doors. - Application Permitted on 07/01/1998

140150/FUL - Change of fenestration to Wellington Arms Public House with internal & external alterations, incorporating a new covered stairway to the south elevation and a new entrance to the north elevation. - Application Permitted on 02/04/2014

181257/CLE - Use as Bed & Breakfast/Hotel accommodation (Class C1) - Application Withdrawn on 26/09/2018

181351/FUL - Change of use for ground floor commercial unit from use class A4 to A1 - Application Permitted on 27/09/2018

181875/ADV - Three fascia signs and one projecting sign - Application Permitted on 14/12/2018

181874/FUL - Install two air conditioning condenser units at ground floor level. Cut a new WC extract grill and install new extract flue on the rear pitched roof. - Application Permitted on 21/12/2018

191648/ADV - Upgrade of 1no. 48-sheet advertisement hoarding to digital LED display - Application Refused on 20/12/2019

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 10/06/2022

- Number of electors at the property:

Year	Flat 1	Flat 2	Flat 3	Flat 4	Flat 5	Flat 6	Flat 7	Flat 8	Flat 9	Flat 10
2023	1	1	1	0	0	1	0	1	0	1
2022	1	1	1	0	2	1	0	1	0	1
2021	0	1	1	0	2	1	0	1	1	1
2020	0	0	1	0	0	0	0	1	1	1
2019	1	0	0	0	0	0	0	0	0	1
2018	0	0	0	0	0	0	0	0	1	1
	Listed as 70-72 Whitley Street prior to 2018									
2017	0									
2016	0									
2015	0									
2014	0									
2013	1									

Reading Borough Council, Planning Enforcement

- Confirm that no Planning Enforcement Notice has been issued at the site.

Reading Borough Council, Land Charges - Response received on 13/04/2023

- There are no planning enforcement notices registered at 70 or 72 Whitley Street.

Reading Borough Council, Council Tax - Response received on 22/02/2023

- Our records show we have Flats 1-10 all separately banded for CT purposes since 28.07.2017.
- All flats have been separately let out to tenants from around September 2017 onwards.
- The address on our system is Flats 1-10; WILLIAM HALL, 72 WHITLEY STREET.

Reading Borough Council, Environmental Protection - Response received on 14/02/2023

- No comment regarding the application.

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

- From our records the above property has been a licenced HMO for 6 people since 2006.
- The licence was renewed in August 2020 with no objections or concerns.

Reading Borough Council, Legal - Response received on 21/03/2022

- I agree that based on the evidence provided you can safely issue the certificate. The plan shows that each flat is a self-contained unit, and you have sufficient evidence to show residential occupation over the required 4-year period.

Submitted Evidence

The applicant provided the following evidence to support the use of 72 Whitley Street as 8 x studio flats and 2 x 1-bedroom flats on the first and second floor of the building:

- Completed application form
- Existing Floor Plans
- Assured Shorthold Tenancy Agreements covering the last four years for all ten flats.

- Tenancy Deposit Protection Certificates
- Energy Performance Certificates

Received on 06/02/2023

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 72 Whitley Street as 8 x studio flats and 2 x 1-bedroom flats (C3 Use Class) on the first and second floor of the building began more than 4 years before the date of this application of 06/02/2023. The application form states that the use began in 27/07/2017.

With regards to internal consultee responses; the Council Tax Team have confirmed that the property has been separately banded for ten flats for CT purposes since 28/07/2017. It is considered that confirming 72 Whitley Street as separately banded for ten flats 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 separate tenancies for 10 self-contained flats.

The Electoral Services Team have provided the number of electors registered to 72 Whitley Street since 2013. It is also stated in the response from the Electoral Services Team that prior to 2018 the building was listed as 70-72 Whitley Street, and from 2018 onwards the building was listed as 10 self-contained flats. 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.

The Planning Enforcement Team have confirmed that there is no Planning Enforcement Notice in place at the site.

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”.

To cover the four-year period prior to the date of this application; Tenancy Agreements and Tenancy Deposit Certificates have been provided by the applicant. A total of 63 Tenancy Agreements have been provided for the 10 flats at 72 Whitley Street. The number of occupants described within each tenancy agreement is suitable under Use Class C3 flats. There are some gaps in tenancy, however, these gaps are considered di minus given the length of the gaps, and where there are gaps the use of the respective flat as a C3 dwelling resumed following each gap.

Energy Performance Certificates have also been provided for each flat. These carry merit in confirming the existence of these flats, however they do not aid in demonstrating continued occupancy of these flats.

On the balance of probabilities, it is considered to have been suitably demonstrated that 72 Whitley Street has been a continuously occupied as 8 x studio flats and 2 x 1-bedroom flats (C3 Use Class) on the first and second floor of the building for a four-year period prior to the receipt of this application. This conclusion is drawn having considered all the evidence provided, and that there is no evidence to the contrary.

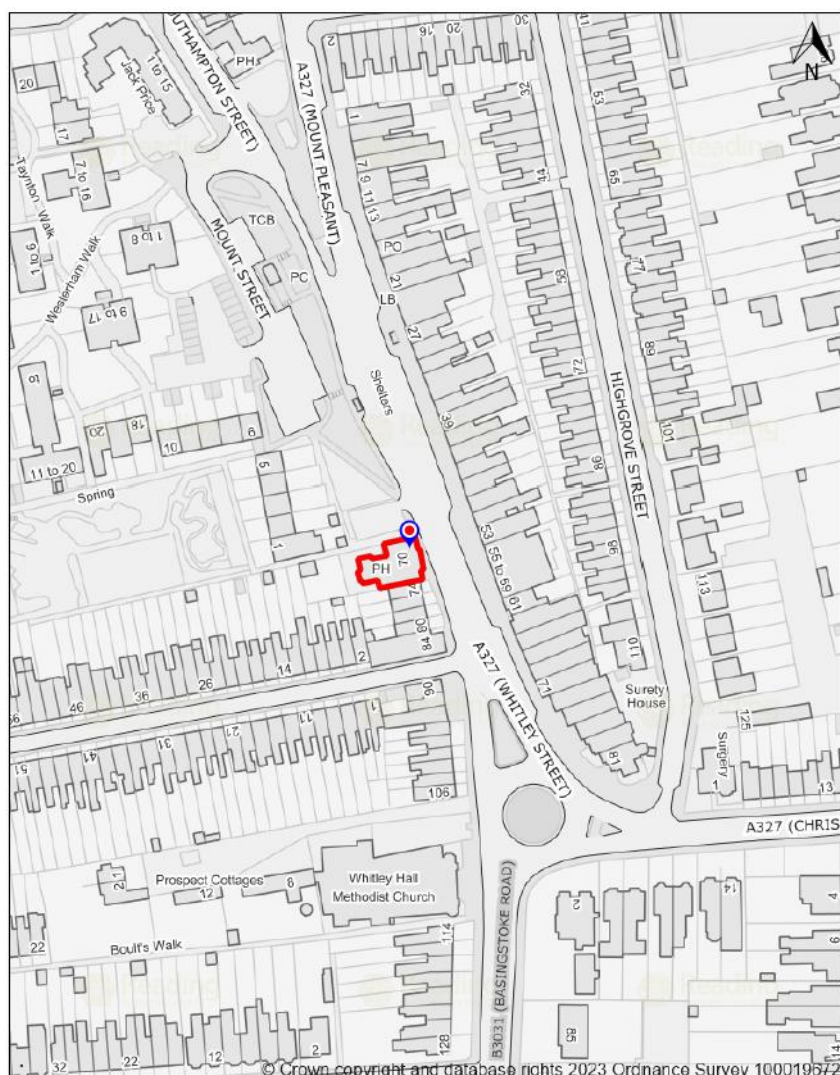
Recommendation

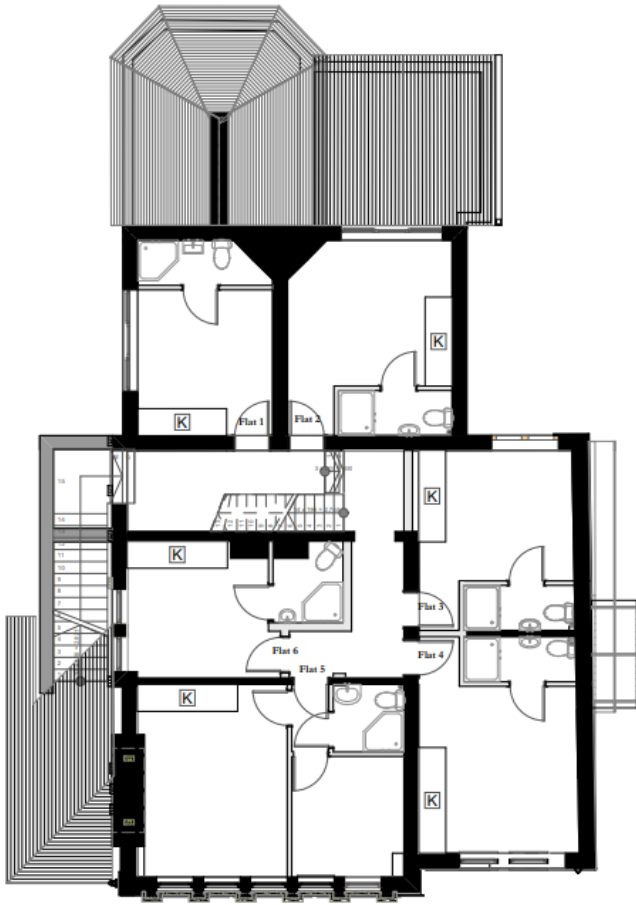
Grant

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 72 Whitley Street as 8 x studio flats and 2 x 1-bedroom flats (C3 Use Class) on the first and second floor of the building has been ongoing continuously for at least four years. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

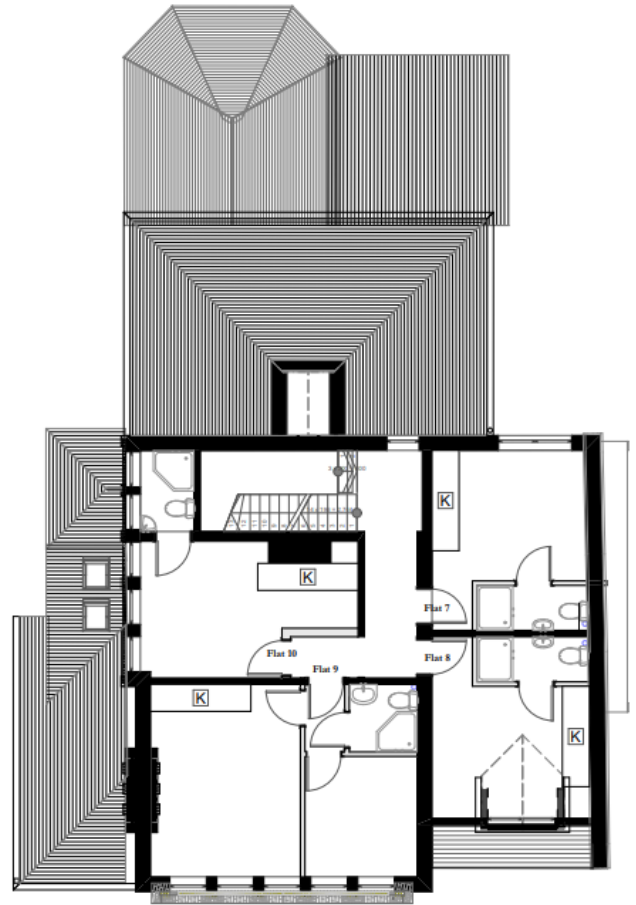
Informatives

Positive and Proactive - Approval





Existing First Floor 1:100
70-72 Whitley Street Reading



Existing Second Floor 1:100
70-72 Whitley Street Reading