

DELEGATED APPLICATION REPORT

Ward: Katesgrove

App Ref: 220692/CLE

Address: 4 Northumberland Avenue, Reading, RG2 7PN

Proposals: Certificate of Lawfulness for Existing use as Sui Generis HMO for a maximum of 8 occupants.

Case Officer: Mr David Brett

Applicant: Garcha Property Group LTD

Date received (valid from): 11/05/2022

Target Date: 27/01/2023, extension of time agreed on decision from 22/07/2022.

Site Description and Surrounding Area

The application site consists of a two-storey semi-detached property located on Northumberland Avenue, Katesgrove. The surrounding area is considered predominantly residential with similarly designed two storey semi-detached dwellings and terraced rows.

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

Description of Use or Development

This application seeks to demonstrate that 4 Northumberland Avenue has been in use as an 8-bed HMO (Sui Generis Use Class) for at least 10 years prior to the date of this application.

Relevant Planning History

011176/FUL - Loft conversion with rear dormer to add 2 no. student rooms - Application permitted on 30/07/2001

011448/FUL - Change of use to house of multiple occupation - Application refused on 21/11/2001. Appeal Allowed on 16/12/2002

211056/FUL - Proposed part 2 storey and single storey rear extension following demolition of existing - Application Withdrawn on 01/11/2021

(2 & 4 Northumberland Avenue) 211763/FUL - Proposed part 2 storey and single storey rear extensions following demolition of existing - Application Permitted on 21/12/2021

Officer Note: The agent confirmed on 29/06/2022 that approval 211763/FUL has not yet been implemented.

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 21/07/2022

- Number of electors at the property:

Year	No. of electors 4 Northumberland Avenue	Comment
2022	0	
2021	0	Property recorded as empty on register
2020	0	Property recorded as empty on register
2019	0	Property recorded as empty on register
2018	0	Property recorded as empty on register
2017	0	
2016	0	7 pending electors/ 0 fully registered
2015	1	
2014	0	
2013	0	
2012	8	
2011	3	
2010	0	
2009	0	
2008	8	
2007	8	
2006	8	
2005	8	

Reading Borough Council, Council Tax - Responses received on 06/06/2022.

- Our records show this property has been banded as a single dwelling since at least 1st April 1997.
- Since 31.03.2022 we are classing this property as a HMO for CT purposes.

Reading Borough Council, Enforcement - Response received on 06/06/2022

- 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 Protection - Response received on 06/06/2022

- No comment.

Reading Borough Council, Legal - Response received on 17/01/2023

- The certificate can safely be granted. There is nothing to suggest that the HMO use has been abandoned - the occupation gap in 2021-22 is not long enough for the use to have been abandoned (and in any case, the Supreme Court has recently cast doubt on the suggestion that a planning permission can be lost by abandonment). There is also nothing to suggest that the planning permission has been lost, via a change of use to some other use.

Submitted Evidence

The applicant provided the following evidence to support the use of 4 Northumberland Avenue as an 8-bed HMO (Sui Generis Use Class):

- Block Plan
- Location Plan
- Statutory Declaration
- HMO Licence - 8 people - Licence Start Date: 21/06/2021; Licence Expiry Date: 20/06/2026
- HMO Licence - 8 people - Licence Start Date: 24/10/2017; Licence Expiry Date: 20/06/2022
- HMO Licence - 8 people - Licence Start Date: 24/10/2012; Licence Expiry Date: 23/10/2017
- HMO Licence - 8 people - Licence Start Date: 24/07/2007; Licence Expiry Date: 24/07/2012
- Appeal Decision - LPA reference: 011448/FUL, Appeal Reference: APP/E0345/A/02/1085418

Received on 18/05/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use of 4 Northumberland Avenue as an 8-bed large HMO (Sui Generis Use Class) began more than 10 years before the date of this application of 11/05/2022. The application form states that the use began 01/02/2002

With regards to internal consultee responses; the Council Tax Team have confirmed that the property has been banded as a single dwelling since 01/04/1997, and that since 31/03/2022 the property is classed as a HMO for Council Tax Purposes. Planning Enforcement have confirmed that they have had no dealings with the property.

Turning to the evidence submitted by the applicant to support the statements 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”.

Turning to the evidence submitted by the applicant; for the purposes of establishing the lawful use of the site as claimed by the applicant it must be demonstrated that the use of the property as a large HMO has been ongoing for at least 10 years leading up to the date the application is submitted, subject to no enforcement action having been taken on the property.

The applicant has submitted evidence in the form of HMO licences with the property recorded by Reading Borough Council’s HMO licencing team and a statutory declaration by the previous owner witnessed by solicitors. The Statutory Declaration submitted is rather vague in detail concerning the number of occupants at 4 Northumberland Avenue, and the dates in which the property was occupied. Nevertheless, the Council do not have any evidence to the contrary of the statement made within the Statutory Declaration.

It is acknowledged that there is an 89-day gap between the HMO Licences provided from 27/07/2012 to 24/10/2012. Given that the break occurred early in the ten-year period, it is considered that the break cannot be clearly tested, and the LPA have no evidence to suggest any intervening uses (uses other than as an 8-bed large HMO (Sui Generis Use Class) of 4 Northumberland Avenue during this period. On the balance of probabilities this break is acceptable given the fact that the use as a large HMO resumed following the gap.

The LPA has no evidence of its own that disagrees with this evidence and Officers are therefore satisfied that the evidence provided is sufficient to show that the property has been used as claimed by this application.

Recommendation

Grant

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 4 Northumberland Avenue as an 8-bed large HMO (Sui Generis Use Class) 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

