

DELEGATED APPLICATION REPORT

Ward: Park

App Ref: 220782/CLE

Address: 78 Grange Avenue, Reading, RG6 1DL

Proposals: Certificate of Lawfulness for Existing use as Small HMO (C4 Use Class) for 10 years

Case Officer: Mr David Brett

Applicant: Mr Amar Prajapati

Date received (valid from): 27/05/2022

Target Date: 06/04/2023, extension of time agreed on decision from 22/07/2022.

Site Description and Surrounding Area

The proposal site is a two-storey middle terraced dwelling along Grange Avenue, Redlands. The surrounding area is predominantly residential with a mix of Victorian terraced rows.



Fig 1. Front of 78 Grange Avenue. Image captured in May 2019. Image retrieved from Google Street View on 22/11/2022.

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

The proposal site is within the Article 4 area which restricts the conversion from C3 to C4 (Small HMO) and vice versa.

Description of Use or Development

This application seeks to demonstrate the existing use of 78 Grange Avenue 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 10/06/2022

- Number of electors at the property:

Year	Property 78 Grange Avenue Number of Registered Electors
2022	0
2021	0
2020	0
2019	0
2018	1
2017	4
2016	0
2015	0
2014	5
2013	5
2012	6

Reading Borough Council, Enforcement - Response received on 10/06/2022

- Records have been checked (which go back to 2003).
- None of the records are considered relevant to this Certificate of Lawfulness application.

Reading Borough Council, Council Tax - Response received on 16/06/2022

- This property has been banded as a single dwelling for CT purposes since at least 01.04.1997. The dwelling has been let out for at least the last 10 years to various groups of tenants, we do not class this property as a HMO for CT purposes as the tenants are named on the same tenancy agreement.

Reading Borough Council, Environmental Protection - Response received on 14/06/2022

- 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 find that the evidence submitted is sufficiently precise and unambiguous to demonstrate on the balance of probability the use of the property as a small HMO let out to no more than 6 occupants for a continuous for a period of over 10 years and recommend the Certificate of Lawfulness is granted on that basis.

Submitted Evidence

The applicant provided the following evidence to support the use of 78 Grange Avenue as a small HMO (Use Class C4):

- Completed application form
- Assured Shorthold Tenancy Agreement - 01/07/2009 to 30/06/2010 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2010 to 30/06/2011 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2012 to 30/06/2013 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 17/07/2013 to 30/06/2014 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2014 to 30/06/2015 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2015 to 30/06/2016 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2016 to 30/06/2017 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2017 to 30/06/2018 - 6 Occupants
- Assured Shorthold Tenancy Agreement - 01/07/2018 to 30/06/2019 - 6 Occupants
- Company Tenancy Agreement - 23/08/2019 to 22/08/2020
- Assured Shorthold Tenancy Agreement - 30/10/2020 to 29/10/2023 - 6 Occupants

Received on 27/05/2022

- Email from Elysium Healthcare confirming occupants from 2019 to 2020

Received on 12/07/2022

- Property Inspection Sheet

Received on 09/09/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 78 Grange Avenue as small HMO (Use Class C4) began more than 10 years before the date of this application of 27/05/2022. The application form states that the use began in 30/04/2003.

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 78 Grange Avenue 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 Electoral Services Team have provided the number of electors registered to 78 Grange Avenue since 2012. There are periods in which no electors have been registered to 78 Grange Avenue. 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 HMO Team have provided a written response to this application, stating that the property has been licenced as a HMO for 6 people since 2006, with the licence renewed in August 2020.

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 period from ten-year period prior to the date of this application; Tenancy Agreements have been provided by the applicant. The latest agreement provided currently runs to 29/10/2023. A total of eleven Tenancy Agreements have been provided for 78 Grange Avenue. The number of occupants described within each tenancy agreement is 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 gaps in tenancy, as shown in the table below, however, these gaps are considered di minus given the length of the gaps, and the fact that the use of 78 Grange Avenue as a Small HMO resumed following the gap.

Start Date	End Date	Gap (days)
01/07/2009	30/06/2010	
01/07/2010	30/06/2011	1
01/07/2011	30/06/2012	1
01/07/2012	30/06/2013	1
17/07/2013	30/06/2014	17
01/07/2014	30/06/2015	1
01/07/2015	30/06/2016	1
01/07/2016	30/06/2017	1
01/07/2017	30/06/2018	1
01/07/2018	30/06/2019	1
23/08/2019	22/08/2020	54
30/10/2020	19/10/2023	69

There are three tenancy agreements provided for the periods 01/07/2014 to 30/06/2015, 01/07/2015 to 30/06/2016, and 01/07/2016 to 30/06/2017 where the tenant was identified as “Easy London Accommodation”. No details of names or the number of tenants has been provided within these tenancy agreements. The applicant has provided a list of occupants provided by “Easy London Accommodation” via email. There is no evidence before the case officer to suggest that during these periods the use of 78 Grange Avenue was anything other than as a Small HMO.

The applicant has also provided an inspection log for the property, which details general inspections of the property such as the conditions of furniture, fillings and electricals. One criteria within the inspection log is the number of occupants at the time of the visit. Clarification was sought regarding two visits on 14/04/2015 and 14/09/2015, which state that 6 or 7 occupants resided at the property. Seven or more occupants at any time would mean that the property was used as a large HMO during that period, thus constituting a break in use as a Small HMO. The applicant clarified this aspect of the inspection log stating that following an investigation the tenant confirmed that the property was never occupied by more than 6 people.

On the balance of probabilities, it is considered to have been suitably demonstrated that 78 Grange Avenue 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 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 78 Grange Avenue 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

