

Delegated Application Report

Address: 'Sardar Palace', 149 London Road, Reading, RG1 5DE

Application No: 221278/CLE

Proposal: Certificate of Lawfulness for existing use of the basement of the property as 6 self-contained studio flats (C3 use)

Extended Target Date: 05/12/22

Case Officer: Connie Davis

Introduction & Proposal

The application site is a semi-detached, Grade II Listed Building located on the northern side of London Road, a former restaurant that closed in 2012. The surrounding area is a mix of commercial units, residential dwellings, and to the west is the Royal Berkshire Hospital. In total the building has 22 dwellings (6 of which are in the basement and subject to this application). The remaining 16 have been regularised through a certificate or planning permission has been obtained (see planning history).

Upon the site visit, it could be confirmed that there is a communal area on the ground floor, with some occupiers of the basement units sharing facilities such as washing machines within communal space.

The Certificate seeks to confirm that the basement has a primary C3 use, and has been used as 6 self-contained flats. In order for the certificate to be granted, it needs to be demonstrated that the basement has been in this primary use for a continuous period of 4 years.

Relevant Planning History:

170070/LBC - Conversion of vacant A3 restaurant into 6 Flats - Application Permitted

161303/FUL - Conversion of vacant A3 restaurant into 6 Flats - Application Permitted

151013/CLE - Certificate of Lawfulness for existing use as 10 self-contained flats at first and second floor level - Certificate Granted

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:

Electoral Registration: Electoral register showing 149 London Road as 1-12 flats and a maisonette between 2018 - 2022.

Council Tax: No response received.

Legal: The applicant has failed to demonstrate that the property has been in use as 6 self-contained flats due to insufficient evidence being provided.

Submitted Evidence

Each dwelling has had multiple names (differed studio numbers referred to, sometimes called ‘Flat, sometimes ‘studio’)

Studio 18 / Flat 1

Evidence	Name	From	To	Comments
Tenancy Agreement	Manjinder Singh *	17 th September 2012	16 th September 2013	Signed Referred to as Studio 1
Tenancy Agreement	Manjinder Singh	17 th September 2013	16 th September 2014	Signed Referred to as Studio 1
Tenancy Agreement	Bernadett Raduly	12 th April 2022	11 th April 2023	Signed

- Council Tax Bill 2022/ 23 (For ‘Basement Flat 18’)

Studio 19 / Flat 2

Evidence	Name	From	To	Comments
Tenancy Agreement	Ashok Kumar *	28 th July 2013	27 th July 2014	Signed - referred to as Studio 2
Tenancy Agreement	Ashok Kumar	28 th July 2014	27 th July 2015	Signed - referred to as studio 2
Tenancy	Raymond	12 th August	11 th August	Signed -

Agreement	John Sloan	2021	2022	referred to as 'Basement 2' in the Tenancy Agreement
Tenancy Agreement	Victoria Adedipe	1 st November 2021	30 th April 2022	Signed

- Council Tax Bill 2022/ 23 (For 'Basement Flat 19')

Studio 20 / Flat 3

Evidence	Name	From	To	Comments
Tenancy Agreement	Jagtar Singh*	12 th February 2011	11 th February 2012	Signed Referred to as studio 3
Tenancy Agreement	Jagtar Singh	12 th February 2012	11 th February 2013	Signed Referred to as studio 3
Tenancy Agreement	Guy Whitehead	22 nd August 2022	21 st August 2023	Signed

- Council Tax Bill 2022/ 23 (For 'Basement Flat 20')

Studio 21 / Flat 4

Evidence	Name	From	To	Comments
Tenancy Agreement	Hakim Singh*	28 th August 2006	27 th August 2007	Signed Referred to as studio 4
Tenancy Agreement	Hakim Singh	28 th August 2007	27 th August 2008	Signed Referred to as studio 4
Tenancy Agreement	Imariabe Sarah Uwubanmwun	1 st August 2022	31 st July 2023	Signed

- Council Tax Bill 2022/ 23 (For 'Basement Flat 21')

Studio 22 / Flat 5

Evidence	Name	From	To	Comments
Tenancy Agreement	Raman Thulasydaran*	25 th February 2008	24 th February 2009	Signed Referred to as studio 5
Tenancy Agreement	Raman Thulasydaran	25 th February 2009	24 th February 2010	Signed Referred to as studio 5

Tenancy Agreement	Gifty Affram	1 st November 2021	31 st October 2022	Signed
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- Council Tax Bill 2022/ 23 (For 'Basement Flat 22')

Studio 23 / Flat 6

Evidence	Name	From	To	Comments
Tenancy Agreement	Gangandeep Baala*	8 th September 2013	7 th September 2014	Signed Referred to as studio 6
Tenancy Agreement	Gangandeep Baala	8 th September 2014	7 th September 2015	Signed Referred to as studio 6
Tenancy Agreement	Oluseun Bamidele Francis	24 th February 2022	23 rd February 2023	Signed

- Council Tax Bill 2022/ 23 (For 'Basement Flat 23')

Other information submitted:

- RS Plumbing and Heating invoice dated 04/02/2012 for 'Basement Flats 1- 6'
- Letter from cleaner stating they have cleaned basement flats 1-6 since August 2010
Letter from Manjinder Singh (Studio 1) stated he had a work visa from September 2007 for 5 years and lived in the basement until he wished to leave (after the restaurant closed in
- Letter from Roberto Lima stating that he carried out decorating in basement flats 1-6 since August 2015 (no specific dates of maintenance work provided)
- Work permits for 6 individuals with a * indicated
- Supporting Statement from Bell Cornwell

All received 31st August 2022

Assessment:

In order to grant a Certificate of Lawfulness for existing use as 6 self-contained flats, sufficient evidence must be supplied to confirm that the basement had been in primary use as self-contained flats for a continuous period of 4 years.

By way of background information, the former restaurant closed in 2012. Staff were employed on work visa in 2007/ 2008 and 6 members of staff lived in the basement (one in each flat). The workers were allowed to remain in their flats after the closure of the restaurant.

The fact that the flats were used by restaurant workers, the interconnectedness of the layout and the communal nature of parts of the ground floor and basement suggests that the basement was in fact ancillary accommodation to the restaurant, rather than the dwellings having a primary C3 residential use. It is considered the dwellings remained in ancillary use until the lawful use of the ground/ first floor was changed to dwellings houses from

restaurant (A3 to C3) only once the change of use of the ground floor had been granted planning permission (see planning history) and subsequently implemented. Although the restaurant closed, the use was not abandoned in planning terms and could have been occupied by a restaurant again until the ground floor flats were implemented.

As such, it is considered that the basement accommodation could only have the potential of a primary residential use (rather than ancillary) once permission/ Listed Building Consent was granted for the conversion of the restaurant to flats in June 2019 (so no works were lawful before this date). As such, a 4 year period has not yet elapsed that could demonstrate that the basement contained 6 self-contained flats that were not ancillary accommodation.

In addition, upon a site visit carried out on 09/11/22, it was noted that Studio 21 (Flat 4) and Studio 22 (Flat 5) had washing facilities (washing machines) so are reliant on communal facilities, meaning that the dwellings could not be totally self-contained, as specified in the description of development.

As such, the Local Planning Authority do not consider that a 4 year period has elapsed to confirm that the basement has housed 6 x self-contained flats that were not ancillary to the restaurant use on the ground and first floors.

Conclusion

Based on the evidence provided, it has not considered that it has been demonstrated that the dwellings operated as non-ancillary dwellings for a period of 4 years. This is supported by *Islington LBC v SSHCLG* [2019] EWHC 2691 (Admin). This case confirmed well established law that there is the need for the **continuous, uninterrupted** residential use as set out in the cases of *Thurrock* and *Swale*.

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**”.*

The law on applications for existing use certificates is clear and in relation to the submitted application it is incumbent on the applicant to prove, on the balance of probabilities, that the building had an existing lawful use as a 6 self-contained dwellings (C3 use) for a continuous 4 year period. The applicant’s evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and consequently the application will be refused for the reason set out below.

Recommendation - Refuse Certificate

Reason for refusal:

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the primary use of the basement as 6 self-contained flats (C3 use) has been ongoing continuously for at least four years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

1:125 Location Plan (Not to scale)

