

DELEGATED APPLICATION REPORT

Ward: Katesgrove

App Ref: 220201/CLE

Address: 20 Highgrove Street, Reading, RG1 5EN

Proposals: Certificate of Lawfulness for Existing use as C4 HMO

Case Officer: Mr David Brett

Applicant: Mrs Hilary Rawson

Date received (valid from): 14/02/2022

Valid from: 17/02/2022

Target Date: 10/06/2022, extension of time agreed on decision from 14/04/2022.

Site Description and Surrounding Area

The proposal site is a two-storey middle terraced dwelling along Highgrove Street, Katesgrove. 20 Highgrove Street is just north of Whitley Street Major Local Centre.

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 20 Highgrove Street as a small HMO (Use Class C4).

Relevant Planning History

220256 - Certificate of Lawfulness for Existing use as HMO - Application Withdrawn on 08/03/2022

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 01/03/2022

- Number of electors at the property:

Year	Property 20 Highgrove Street Number of Registered Electors	Property 20 Highgrove Street Number of Pending Electors
2022	0	0
2021	0	0
2020	3 (1 registered / 2 registered & deleted)	0
2019	3	1
2018	0	4
2017	3 (1 registered / 2 registered & deleted)	0
2016	0	4
2015	0	0
2014	0	0
2013	0	0
2012	0	0
2011	0	0
2010	2	0
2009	2	0
2008	2	0
2007	2	0
2006	2	0
2005 Year Data Electronically Stored	2	0

Reading Borough Council, Council Tax - Response received on 01/03/2022

- I can confirm this property has been banded for C.tax purposes since at least 01.04.1997; the property is let to tenants on the same tenancy agreement so this wouldn't be classed as a HMO for council tax 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 29/03/2022

- Further to your referral about the above matter Private sector Housing do not hold any evidence on our database that would suggest that the above property was occupied as an HMO over the past 4 years.

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

- It is my advice therefore that the application is granted subject to a plan attached which clearly sets out the location of the property. Internal layout plans are also useful in establishing the min and max number of occupants.

Submitted Evidence

The applicant provided the following evidence to support the use of 20 Highgrove Street as a small HMO (Use Class C4):

- Site Location Plan
- Assured Tenancy Agreement - 20/04/2015 to 19/04/2016
- Tenancy Deposit Protection Certificate 07/07/2014 to 19/04/2015
- Tenancy Deposit Protection Certificate 20/04/2015 to 19/10/2015
- Statutory Declaration - Andrew Charles Stormer
- Email from Reading Borough Council Billing Officer
- Letter from Westgate (Lettings Manager)

Received on 14/02/2022

- Assured Tenancy Agreement - 01/07/2016 to 30/06/2017
- Assured Tenancy Agreement - 01/07/2017 to 30/06/2018
- Assured Tenancy Agreement - 01/07/2018 to 30/06/2019
- Assured Tenancy Agreement - 01/07/2019 to 30/06/2020
- Assured Tenancy Agreement - 01/09/2020 to 30/06/2021
- Assured Tenancy Agreement - 01/09/2011 to 30/06/2022
- Email from applicant explaining gaps in tenancy
- Email from applicant explaining evidence submitted
- Existing Floor Plans
- Location Plan
- Invoices for property improvements and maintenance

Received on 11/04/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 20 Highgrove Street as small HMO (Use Class C4) began more than 10 years before the date of this application of 14/02/2022. The application form states that the use began in 10/10/2020.

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 20 Highgrove Street 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 20 Highgrove Street since 2005. The list states that there have not been electors registered at the property from 2011 to 2016. 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 Statutory Declaration has been provided in support of the claims made within this application. The Statutory Declaration is made by Andrew Charles Stormer, is signed by Mr Stormer and witnessed Carey Olsen Law Firm on 20/04/2015, and states the following:

1. Mr Stormer is the owner 20 Highgrove Street.
2. Mr Stormer purchased 20 Highgrove Street on 11/10/2010 and has continually rented the property to between 3 and 6 unrelated individual tenants as a HMO as defined by Class C4.
3. During the whole of the Mr Stormer’s period of ownership, 20 Highgrove Street, the use of the property was as an HMO.

The statutory declaration is given considerable weight and declares that 20 Highgrove Street has been used as a small HMO (Use Class C4 since 11/10/2020 up to the date that the declaration was made on 20/04/2015. There is no information before me that contradicts the claims made within the statutory declaration. The declaration was made on 20/04/2015, the applicant has confirmed that the purchased 20 Highgrove Street in April 2015, so it makes sense that that this statutory declaration is made around that time in order for the sale of the property by Mr Stormer.

To cover the period from 20/04/2015 onwards; Assured Tenancy Agreements have been provided by the applicant. The latest agreement provided currently runs to 30/06/2022. A total of seven Assured Tenancy Agreements have been provided for 20 Highgrove Street, ranging from 3 to 4 tenants for each period. Whilst the number

of tenants fluctuates from 3 to 4, the number of tenants is still considered 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.

Start Date	End Date	Gap (days)	Number of tenants
20/04/2015	19/04/2016		3
01/07/2016	30/06/2017	73	4
01/07/2017	30/06/2018	1	4
01/07/2018	30/06/2019	1	4
01/07/2019	30/06/2020	1	4
01/09/2020	30/06/2021	63	3
01/09/2021	30/06/2022	63	3

Three gaps have been identified when assessing the Assured Tenancy Agreements. The applicant has stated that the 73 day gap from 19/04/2016 to 01/07/2016 was due to extensive renovation works that took place. This consisted of replacement windows, resolving damp issues, internal alterations, replacing the boiler, repainting the interior and garden maintenance. The renovations commenced after the tenants from the previous agreement vacated on 19/04/2016, with the renovations completed in time for the next tenancy on 01/07/2016. Invoices have been provided from carpet fitters, window fitters, boiler fitters and landscapers. It is considered that 73 days is an appropriate amount of time for all these works to have been carried out and completed in time for tenants to enter the property on 01/07/2016. The 73 day period for renovations is therefore considered de minimis in this instance.

With regards to the two 63 day gaps between 30/06/2020 and 01/09/2020 and from 30/06/2021 to 01/09/2021; the applicant has explained that due to the Coronavirus pandemic it was unclear as to whether student tuition was going to be online or face to face. Therefore, the students (tenants) were not keen to sign up in advance to rent properties. The students therefore negotiated to start their tenancies in September rather than July, which the applicant agreed. It is noted that whilst the tenancies commenced in September, in both instances the tenancies were agreed in June 2020 for the September 2020 commencement, and in July 2021 for the September 2021 commencement. The two 63 gaps are therefore considered de minimis due to the start of the academic year and the fact that the tenants committed to occupying the property in September, but agreed tenancy in June and July.

On the balance of probabilities, it is therefore considered to have been suitably demonstrated that 20 Highgrove Street 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

Positive and Proactive - Approval

