

DELEGATED HOUSEHOLDER APPLICATION REPORT

Ward: Redlands

App Ref: 220602/CLE

Address: 32 Donnington Gardens, Reading, RG1 5LY

Proposals: Certificate of Lawfulness for Existing C4 use for 4 persons

Case Officer: Mrs Alison Amoah

Applicant: Mr David Parry

Date received (valid from): 24 April 2022 **Target Decision date:** 19 June 2022 ext 9/9/22

1. SITE DESCRIPTION

Site visit date: 21st June 2022

The application site relates to a mid-terrace, two storey dwelling (plus converted loft space) located on the western side of Donnington Gardens.

The property is currently in use as a student C4 small HMO as observed during the site visit, with 4 single occupancy bedrooms (1x ground floor; 2x first floor; and 1 in converted loft space), communal lounge kitchen and bathroom.

2. PROPOSAL AND SUPPORTING INFORMATION

Certificate of Lawfulness for Existing C4 use for 4 persons.

The applicant's submission states that the property was converted from a C3 dwellinghouse to C4 small HMO in 2008 and has been continuously let since October 2008 with 4 tenants, and with no more than 4 persons at any time.

Plans and other information considered:

As received 25th April 2022:

- Location Plan
- Planning Statement
- Tenancy Agreements for a 13 year period for the following dates:
 - 1/7/09 - 30/6/10
 - 1/7/10 - 30/6/11 (dated 21/1/10)
 - 1/7/11 - 30/6/12 (dated 18/1/11)
 - 1/7/12 - 30/6/13
 - 1/7/13 - 30/6/14
 - 1/7/14 - 30/6/15
- **Gap:** between 30/6/15 and 1/7/16 - This gap has been addressed by the applicant stating that there was a rolling tenancy for 3 of the tenants, so they resided at the property for 2 consecutive years. One of the original tenants as part of the joint tenancy 1/7/14 - 30/6/15 was replaced and the submission information includes a Deed of assignment of tenancy for one new tenant dated 1/7/2015
 - 1/7/16 - 30/6/17
 - 1/7/17 - 30/6/18
 - 1/7/18 - 30/6/19
 - 1/7/19 - 30/6/20
 - 1/7/20 - 30/6/21
 - 1/7/21 - 30/6/22

3. RELEVANT PLANNING HISTORY

None.

4. CONSULTATIONS

Planning Enforcement: No dealings with the property.

Council Tax - Our records show this property has been banded as a single dwelling since at least 1st April 1997. I can confirm that this property has been in occupation since at least 2007 to date by various charge payers. As the tenants are named on the same tenancy agreement we don't consider this property to be a HMO for Council Tax purposes.

Electoral Registration: no response.

HMO Private Sector: no response.

Legal: On balance, the evidence submitted seems to/does not support the claim that the C4 use of the property was lawful (in accordance with a permitted development right which applied before the Council's Article Direction came into effect.

5. LEGAL AND PLANNING POLICY CONTEXT

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 if 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 a planning permission. The planning merits of the 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 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"*.

6. APPRAISAL

In order for the certificate to be granted, it needs to be demonstrated that the property has been in continuous use as a C4 small HMO for 4 persons for a period of 10 years prior to the date of the application. As such, the relevant time period is **24/04/12 - 24/04/22**.

Joint tenancy agreements have been provided for the entirety of the period for 4 tenants save for 1/7/14 - 30/6/15. However, the applicant has confirmed that for this period 3 of the 4 tenants had a rolling tenancy, therefore, no new documentation was issued, and one new tenant took up occupation and a Deed of Assignment of Tenancy, for that one new tenant, dated 1/7/2015, has been submitted.

Although Council tax advised the dwelling was banded as a single dwelling, the evidence submitted by the applicant is considered to be sufficient to demonstrate that the property has been used as a small C4 HMO for 4 tenants.

The LPA has no sufficient evidence to the contrary to prove that the property has not been used as a small C4 HMO for 4 tenants.

7. CONCLUSION

In the absence of the information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises at 32 Donnington Gardens has been in use as a small C4 HMO for 4 persons for a period of at least 10 years. It is therefore considered a Certificate of Lawfulness for the use of the building as C4 small HMO for 4 persons should be granted.

8. RECOMMENDATION

GRANT Certificate

1:1250 Location Plan

