

DELEGATED APPLICATION REPORT

Ward: Redlands

App Ref: 220217/CLE

Address: 12 Blenheim Road, Reading, RG1 5NQ

Proposals: Certificate of Lawfulness for a 4 person, 4 bedroom Small HMO (C4 use class)

Case Officer: Mr David Brett

Applicant: Mr D Keaney

Date received (valid from): 16/02/2022

Target Date: 11/05/2022, extension of time on decision agreed from 13/04/2022.

Site Description and Surrounding Area

The proposal site is a two-storey middle terraced dwelling along Blenheim Road. The surrounding area is considered largely residential, with similarly designed Victorian terraced rows.

The application site is not listed, nor in a conservation area. The proposal site is, however, located within an Article 4 area, restricting the change of use from residential (Use Class C3) to small HMO (Use Class C4). The Article 4 Direction was introduced on 16/05/2012.

Description of Use or Development

This application seeks to demonstrate the existing use of 12 Blenheim Road, Reading, RG1 5NQ as a 4 person, 4 bedroom Small HMO (C4 use class).

Relevant Planning History

211520/CLE - Certificate of Lawfulness for a 4 person, 4 bedroom Small HMO (C4 use class). - Application Refused on 26/11/2021.

Reason for refusal: The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 12 Blenheim Road, Reading, RG1 5NQ as a 4 person, 4 bedroom Small HMO (C4 use class) has been ongoing continuously for at least ten years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

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 04/03/2022

- Number of electors at the property:

Year	Property 12 Blenheim Road Number of Registered Electors	Property 12 Blenheim Road Number of Pending Electors	Comments
2022	0	4	
2021	0	4	
2020	2	1	
2019	2	1	
2018	0	0	
2017	0	4	
2016	0	4	
2015	0	0	Foreign nationals
2014	0	0	Foreign nationals
2013	0	0	Foreign nationals
2012	0	0	Foreign nationals
2011	0	0	Foreign nationals
2010	0	0	
2009	4	0	
2008	4	0	
2007	4	0	
2006	4	0	
2005	7	0	

Reading Borough Council, Environmental Health - Response received on 07/03/2022

- I can find no relevant records relating to this address.

Reading Borough Council, HMO Team - No response received.

Reading Borough Council, Council Tax - Response received on 08/03/2022

- This property is banded as a single dwelling and has been banded for council tax purposes since at least 01.04.1997.
- Our records show this property has been let out to groups of tenants on the same tenancy agreement so we don't class this property as a HMO.

Reading Borough Council, Enforcement - Response received on 07/03/2022

- Having checked our records (which go back to 2003) I can confirm that we have had no dealings with this property.

Reading Borough Council, Legal Services- Response received on 10/05/2022

- The Certificate of Lawfulness should be granted.
- The first break - 2013/14 - the 'break' was quite a long time ago and the property was continually used after that period as a 'student' HMO. Considered likely to conclude on the balance of probabilities that the break in use is acceptable in the round, particularly looking at it from now in 2022.
- The second break in 2020/21; Legal Services' view is that it was an unforeseen break in the continuity of the use owing to the COVID pandemic. As long as the use at whatever point before the CLEUD application was made, it demonstrates that the 'student' HMO has remained a 'student' HMO as it is now being used as such.

Submitted Evidence

The applicant provided the following evidence to support the use of 12 Blenheim Road, Reading, RG1 5NQ as a 4 person, 4 bedroom Small HMO (C4 use class):

- Location Plan
- Letter from Tappen Homes Limited dated 16th February 2022
- Evidence Table

Received on 16/02/2022

- Existing Floor Plan
- A1. Extract of tenancy agreement July 2004 - June 2005
- B1. Extract of tenancy agreement July 2005 - June 2006
- B2. Deposit confirmation
- B3. Tenant application form
- B4. Tenant proof of ID
- C1. Extract of tenancy Agreement July 2006 - June 2007
- C2. Application forms
- C3. Letter RBC re council tax
- D1. Extract of tenancy Agreement July 2007 - June 2008
- E1. Extract of tenancy Agreement July 2008 - June 2009
- J1. Council Tax Section response to question re student exemption periods
- J2. Rent payment receipts Dec 2012 & Jan 2013
- J3. Student visa, passports, accommodation requests, guarantees
- K1. Email explaining renovation works carried out
- K2. Photos taken in March 2012 for letting purposes
- K3. Invoice for part of the renovation works
- K4. Photos after renovation works taken in November 2014

- L1. Letter from previous lettings agent confirming names
- M1. Email from tenant confirming tenancy July 2015 - June 2016
- M2. Statement of payment of 1st month rent
- N1. Email from tenant confirming tenancy July 2016 - June 2017
- N2. Tenancy contract
- O1. Email from tenant confirming tenancy July 2017 - June 2018
- Q1. Email from tenant confirming tenancy July 2018 - June 2019
- Q2. Signature page of tenancy agreement July 2018 - June 2019
- R1. Energy bill paid by landlord during empty period
- R2/3/4. Council Tax demands and statements, paid by landlord during empty period
- R5. Link to archived letting advert during empty period
- S1. Extract from solicitor's report on property stating vacant possession on purchase
- S2. Extract from conveyancing queries confirming vacant on possession
- S3. Statutory Declaration
- S4. Emails between conveyancing lawyers requesting more evidence of HMO use for the purposes of continuing that HMO use
- T1/2/3/4/6. Evidence of tenancy July 2021 - June 2022
- T5. Email encouraging finding tenants for short period January 2021 to June 2021
- U1. Link to current lettings advert, showing as "let agreed" for 4 students from July 2022

Received on 01/03/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 12 Blenheim Road as a 4 person, 4 bedroom Small HMO (C4 use class) began more than 10 years before the date of this application of 16/02/2022. The application form states that the use began on 28/09/2005.

With regards to internal consultee responses, the Council Tax Team have confirmed that the property is banded as a single dwelling and has been since at least 01/04/1997. It is considered that confirming 12 Blenheim Road as being banded as a single dwelling does not demonstrate occupancy or use in supporting the statements made within this application.

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".

An application letter provided by the applicant, dated 16th March 2022, provides a background to the application, a detailed chronology of 12 Blenheim Road, and responds to points made in the delegated report for application 211520. A significant amount of evidence has been presented by the applicant to support the proposal that 12 Blenheim Road is a small HMO (Use Class C4) and that this has been the case for at least 10 years to the date that this application was submitted. The evidence also needs to demonstrate that the use as a small HMO (Use Class C4) have been continuous.

The evidence table submitted with the application is a useful vehicle for the evidence submitted in support of this application. Significant periods of the site's history are explained, and evidence is cited for each period. The types of evidence provide for each period varies, presumably based on the evidence that's readily available for that period in question.

The use of the property when the Article 4 Direction came into effect

Evidence has been submitted for the use of 12 Blenheim Road as small HMO for the period between 01/07/2004 to 30/06/2009, this is in the form of assured tenancy agreements. Only the cover pages have been provided for these agreements, providing the names of the tenants, the property address, the name of the Landlord, the Landlord's Agent, the date and the duration (start date and end date) of the agreement. Whilst the full agreements have not been provided, including the signature pages, there is no information or evidence to contradict the information provided within the cover pages of the tenancy agreements provided for this period.

With regards to the tenancy spanning the introduction of the Article 4 Direction, which was introduced on 16/05/2012; it is stated that the property was occupied by 5 tenants from 01/01/2012 to 17/03/2013. The names of two of the tenants have been provided along with completed Rent Guarantee and Indemnity, and Student Tenancy Application Forms to the letting agent - Cintra Estates. A Statement of Receipt of Rent has been submitted that provides details of a rent payment made by one of the tenants for 12 Blenheim Road on 03/12/12. This does confirm the tenancy of one of the five tenants that are stated to have occupied 12 Blenheim Road from 01/01/2012 to 17/03/2013. A second Statement of Receipt of Rent has also been submitted that provides details of a rent payment for 12 Blenheim Road on 08/01/13. This payment is vague in detail, however, as it simply states that the payment is made by 'Tenants'.

The use of the property after the Article 4 Direction

Two breaks are identified and are explained in detail by the applicant within the application letter dated 16/02/2022.

The first gap being from 18th March 2013 to 19th November 2014, a period of 611 days. It is explained that during this period the property was renovated due to bad treatment of the property from previous tenants. Legal Services have advised that due to the break occurring very early on in the ten-year period, the explanation of the break cannot clearly be tested. The applicant has provided evidence demonstrating that renovations were taking place, along with invoices relating to

the renovations. The renovations that took place during this break as described by the Lettings Agent consisted of:

- Chimney breasts taken out
- New stairs and laminate flooring throughout
- New kitchen
- Bathroom / WC changed into shower room and washing machine area (kitchen back wall shortened)
- New gas boiler
- Utility tidied up, flooring and double doors
- Garden paved

On the balance of probabilities this break is acceptable, given the extent of the renovations as listed above, and the fact that the use as a Small HMO resumed following the renovations.

The second gap in tenancy has been identified as from July 2020 to June 2021, or more specifically from 30th June 2020 to 1st July 2021. The applicant has explained that the property was available to rent during this period, however, there was no uptake due to the conditions of the Covid-19 pandemic. The property was declared vacant when the property was sold to the applicant on 11/12/2020.

With regards to the second gap from July 2020 to June 2021, Legal Services advised during the previous application (211520) that currently there is no case law or appeal decisions compelling the Council to accept this as a valid reason for a break in continuity. To the knowledge of the case officer, case law or appeal decisions regarding this specific matter are still yet to come forward. During the break from 30/06/2020 to 01/07/2021, enforcement action could not be taken against any use of the property as a small HMO as the property was vacant, meaning it should not be considered as part of the 10-year immunity period.

Additional justification has been provided by the applicant within this application concerning the gap. Legal Services have considered the matter afresh and consider that the Covid pandemic was an unforeseen circumstance, and that so long as the use resumed following the Covid pandemic, then the use as a Small HMO cannot be considered abandoned. The applicant has also demonstrated that the property was advertised as small HMO and was advertised on [zoopla.co.uk](https://www.zoopla.co.uk). As it has now been demonstrated within this application that the use as a small HMO resumed in July 2021 and that the property was advertised to rent as a small HMO during the gap in question, it is considered that 12 Blenheim Road remained a small HMO and is now being used as such.

A Statutory Declaration has also been provided to support the statements made within this application. The Statutory Declaration is signed and dated 11/12/2020, and is also co-signed by a solicitor. The Statutory Declaration provided appears to have been completed by the previous owner of the property, stating (1) that the property has been in their ownership since 28/09/2005, and (2) that the property has been rented as student accommodation throughout their ownership. The applicant has stated on the application form that he is the owner of 12 Blenheim Road, so it is presumed that the Statutory Declaration has been made by the previous owner of 12 Blenheim Road. According to [zoopla.co.uk](https://www.zoopla.co.uk), the property was sold in December 2020.

The Statutory Declaration is considered lacking in specific detail in relation to what this application seeks to demonstrate. The Statutory Declaration instead appears to state information that is not disputed. It is not disputed that the person named on the Statutory Declaration owned 12 Blenheim Road since 28/09/2005. It is also not disputed that the property has been rented out to tenants since 28/09/2005. Nevertheless, the evidence submitted within this application is considered to appropriately demonstrate the use of 12 Blenheim Road as a small HMO despite the shortcomings of the Statutory Declaration.

Conclusion

Since the previous refusal at the site the applicant has submitted fresh evidence as part of this application, seeking to address previous concerns raised. Planning Officers and Legal Services have accordingly considered the proposals afresh. In short, the applicant has now provided sufficient evidence to justify the two gaps previously questioned, with the use as a small HMO resuming following these gaps and there is no evidence before officers that would suggest any intervening use.

On the balance of probabilities, it is therefore considered to have been suitably demonstrated that 12 Blenheim Road 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

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 12 Blenheim Road as a 4 person, 4 bedroom Small HMO (C4 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

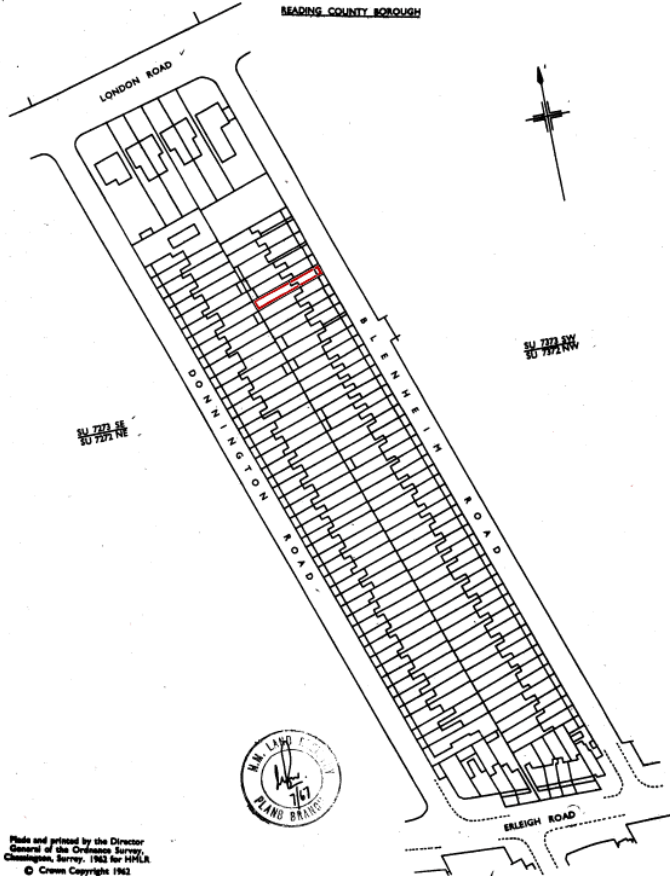
Positive and Proactive - Approval

H. M. LAND REGISTRY

NATIONAL GRID PLAN SU 7372 SECTION A
BERKSHIRE

Scale 1/1250

READING COUNTY BOROUGH



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