

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: 220575/CLE

Address: 46 Chester Street, Reading, RG30 1LP

Proposals: Certificate of Lawfulness for Existing Use as 2x C3 dwellings (1 ground floor flat and 1 first floor flat)

Case Officer: Mr David Brett

Applicant: Mr R McCarthy

Date received (valid from): 19/04/2022

Target Date: 22/07/2022, extension of time on decision agreed from 14/06/2022

Site Description and Surrounding Area

The proposal site is a two-storey terraced dwelling along Chester Street. The surrounding area is considered largely residential, with similarly designed Victorian terraced rows. Tesco Superstore is located directly east of the application site.

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 46 Chester Street as two self-contained flats (1 ground floor flat and 1 first floor flat).

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 26/04/2022

- Number of electors at the property:

Year	No. of electors 46 Chester Street	No. of electors Flat 1, 46 Chester Street	No. of electors Flat 2, 46 Chester Street
2022	4	0	0
2021	4	0	0
2020	4	NA	NA
2019	4	NA	NA
2018	4	NA	NA
2017	1 registered 1 pending	NA	NA
2016	1 pending	NA	NA
2015	2	NA	NA
2014	2	NA	NA
2013	2	NA	NA
2012	2	NA	NA
2011	2	NA	NA
2010	1	NA	NA
2009	Listed as only ground floor flat - 0	NA	NA
2008	Listed as only ground floor flat - 2	NA	NA
2007	Listed as ground floor flat - 2 Top flat - 0	NA	NA
2006	Listed as single property - 0	NA	NA
2005	Listed as single property - 1	NA	NA

Reading Borough Council, Council Tax - Response received on 26/04/2022

- Our records show this property was split into two separate flats (gnd & 1st flr flats) from 01.10.2006. Both flats have been separately banded for CT purposes since this date and both flats have been separately let to various tenants since the date of banding.

Reading Borough Council, Enforcement - Response received on 26/04/2022

- According to our records which go back to 2003, we have had two planning enforcement investigations into this property (06/00550 and 09/00211). Both were to do with the unauthorised conversion of the property to flats.
- 06/00550 was closed on 10/12/2007.
- 09/00211 was closed on 20/11/2009 after it was established that the property was in use as a single dwellinghouse.

Reading Borough Council, Legal - Response received on 19/07/2022

- I have considered the evidence that has been submitted and conclude that the use of the two dwellings for a period of more than 4 years is probable. The accumulation of evidence from the Council Tax records illustrates the property was physically split. The spreadsheet and details of the Tenancies show that there were/are tenants in each split/dwelling of 46 Chester Street. The rest of the evidence in my view provides evidence on the balance of probabilities that both dwellings have been occupied for 4 years plus. I agree with the Planning Officers assessment that the purported short break of 2021 for a period of 18 days from approximately the 5 October 2021 - 23 October 2021 (or potentially 19 days) that this break is not significant or sufficient to break the use of the dwellings. I would therefore agree that the application should be granted. It should be made clear that the property has been subdivided and allocated a number or letter to highlight each property, it would be useful to have a plan to illustrate this as well as a Location Plan.

Submitted Evidence

The applicant provided the following evidence to support the use of 46 Chester Street as two self-contained flats:

- Location Plan
- Site Photos
- Tenancy Agreements
- Council Tax Bill
- Statutory Declaration
- Tenancy Deposit Certificate
- Letter from Letting Agent confirming vacation of property details.
- Letter from tenant giving notice to vacate.

Received on 19/04/2022

- Existing Floor Plan - 7905-07-01 Rev A

Received on 20/07/2022

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 46 Chester Street as two self-contained flats (both C3 use class) began more than 4 years before the date of this application of 19/04/2022. The application form states that the use began on 20/10/2016.

With regards to internal consultee responses; the Council Tax Team have confirmed that 46 Chester Street has been separately banded as two separate flats since 01/10/2006. It is considered that confirming 46 Chester Street as being separately

banded does not demonstrate occupancy or use in supporting the statements made within this application. One Council Tax bill has been provided by the applicant to support the claims of occupancy and use made within this application. The bill in question refers to the top floor flat at 46 Chest Street.

Planning Enforcement have confirmed that there have been two enforcement cases at the site. One in 2007 referred to a breach that appears to have been resolved. Whilst the second case in 2009 refers to use of 46 Chester Street being established as a single dwelling. This aligns with the statement by the applicant that the use as two self-contained flats commenced on 20/10/2016, after the last enforcement case.

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**”.*

A statutory declaration has been provided (dates 01/11/2021), which is made by the tenant of the ground floor flat at 46 Chester Street. The declaration states that the tenant has his partner have lived at the ground floor flat of 46 Chester Street since 22/10/2016 and that they are currently residents of the property. The declaration also describes 46 Chester Street as a self-contained flat on the ground floor, and a self-contained flat on the first floor, both of which were occupied by tenants and continue to be so. The declaration made is brief but provides a description of 46 Chester Street and its use from 22/10/2016 onwards.

Three tenancy agreements have been provided by the applicant. Two of the tenancy agreements provided commence on 22/10/2016, one simply refers to four tenants and 46 Chester Street, the other lists two tenants that are also listed on the other tenancy agreement, but for “Ground Floor, 46 Chester Street”. A tenancy deposit certificate has also been provided in relation to the tenancy agreement commencing on 22/10/2016 for “Ground Floor, 46 Chester Street”. The third tenancy agreement relates to “Top Flat, 46 Chester Street” for two tenants and covers the period from 23/10/2021 to 22/04/2022.

The applicant has provided brief commentary on the tenancy of both the ground floor flat and the top floor flat. It is stated that two have the tenants have continuously occupied the ground floor flat since 22/10/2016, and that two tenants have continuously occupied the top floor flat since 22/10/2016 but moved out on 05/10/2021. A tenancy agreement has been provided for the top floor flat which commences on 23/10/2021, with a council tax bill dated 29/11/2021 also provided with the tenant named on the tenancy agreement also appearing on the council tax bill.

When taking all of the evidence into account submitted to demonstrate the occupancy of 46 Chester Street, gaps have been identified in tenancy. An 18-day gap has been identified from 05/10/2021 to 23/10/2021 with regards to the occupation of the top floor flat. The tenancy agreements otherwise cover a five-and-a-half-year period, above the four years required in which to demonstrate continuous occupancy. The 18-day break in occupancy of the top floor flat is considered on balance not to be a meaningful break that would alter the use of 46 Chester Street as a self-contained dwelling. There is no evidence to suggest that the top floor flat was used for any other purpose during the 18 days in question. It should be noted that this could also be a 19-day gap given that the tenant states in their letter of notice that they intend to vacate the top floor flat on 04/10/2021 rather than 05/10/2021. Nevertheless, the period in question is still not considered a meaningful break.

On the balance of probabilities, it is considered to have been suitably demonstrated that 46 Chester Street has been a continuously occupied as 2 self-contained flats (1 ground floor flat and 1 first floor flat) for a four year period prior to the receipt of this application.

Recommendation

Grant

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 46 Chester Street as two self-contained flats (Use Class C3 - 1 ground floor flat and 1 first floor flat) has been ongoing for continuously for at least four years. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

Informatives

Positive and Proactive - Approval



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