

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: 210934/CLE

Address: 28 Norfolk Road, Reading, RG30 2EE

Proposals: Certificate of Lawfulness for existing use as 1 x 2 bedrooms flat (C3) and 1 x 1 bedroom flat (C3).

Case Officer: Mr David Brett

Applicant: Mrs Q Rukhsar

Date received: 08/06/2021

Valid from: 17/06/2021

Target Date: 29/07/2022, extension of time on decision agreed from 12/08/2021

Site Description and Surrounding Area

The proposal site is a two-storey end terrace property located at the corner of Norfolk Road and Rutland Road. The immediate surrounding area is residential. The proposal site is within 200m of Kensington Park, Battle Primary Academy, and Cranbury College.

Description of Use or Development

This application seeks to demonstrate the existing use of the main house at 28 Norfolk Road as two self-contained flats (C3); one to the ground floor (number 28), one to the first floor (number 28a). The applicant seeks to demonstrate this by providing evidence that the property has been in use as such for more than four years prior to the application date (08/06/2021).

Relevant Planning History

141507/HOU - Conversion of existing workshop/storage building to provide additional residential - Application Permitted on 15/01/2015

210936/CLE - Certificate of Lawfulness for Existing use of rear outbuilding as one self-contained studio flat - Certificate Granted on 25/11/2021.

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 16/06/2021, further response received on 15/07/2021

- Table 1. Number of electors at the property:

	28 Norfolk Road	28a Norfolk Road
Year	No. of electors	No. of electors
2021	1	1
2020	1	1
2019	0	1
2018	0	0
2017	1	1
2016	2	0
2015	2	0
2014	2	0
2013	2	1
2012	1	1
2011	1	1
2010	2	0
2009	1	-
2008	1	-
2007	2	-
2006	2	-
2005	2	-

Reading Borough Council, Environmental Protection - Response received on 20/07/2021

- We don't have any past inspection history for the building.
- No comments to make on this application.

Reading Borough Council, Council Tax - Response received on 18/06/2021

- Our records do show there are two separate dwellings here in addition to 28B. 28 & 28A, both have been separately banded for Council Tax purposes since 15.05.2004. They've been separately let out to various tenants since the date of banding.

Reading Borough Council, Planning Enforcement - Response received on 21/06/2021

- I refer you to planning enforcement investigation E20161 which may contain some useful information as may investigation 14/00145 (these are both to do with the outbuilding).
- There is also another investigation completed back in 2004 (04/00093) in relation to the main building and its conversion to two flats. The file was closed.

Reading Borough Council, Legal Services

- I have considered your report and the further information provided. I do not think that the Statement of Accounts which are documents provided by the applicants themselves are sufficient, there will hopefully be other third party documents to deal with that gap, for example utility bills, bank statements etc.

Submitted Evidence

The applicant provided the following to support the existence of 28 Norfolk Road as 1 x 2 bedrooms flat (C3) and 1 x 1 bedroom flat (C3):

- Location Plan
- Existing Floor Plan - LDC01
- Tenancy Agreements for the last four years for both 28 Norfolk Road and 28a Norfolk Road
- Letter to Council Tax Offices concerning new tenant at 28 Norfolk Road - dated 17/05/2016.
- Council Tax bill for 28 Norfolk Road addressed to Mr R Bashir - dated 30/12/2016
- Landlord's Gas Safety Record for 28 Norfolk Road - dated 08/07/2016
- Energy Performance Certificate for 28a Norfolk Road - dated 30/04/2012
- Statutory Declaration - dated 12/08/2021
- Letter from Estate Agent to tenant at 28 Norfolk Road regarding surveyor visit to property - dated 22/02/2020
- Vacating Details for 28a Norfolk Road - dated 09/03/2018
- Statement of Accounts - six statements from 24/09/2019 to 23/03/2020

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as a of the two self-contained flats as C3 began more than 4 years before the date of this application of 08/06/2021.

The tenancy agreements provided as evidence by the applicant to support this application are considered to appropriately demonstrate that uses of the two self-contained C3 flats at 28 Norfolk Road. The table below demonstrates the tenancy agreements that have been in place since 14/05/2016 for 28 Norfolk Road and 29/06/2014 for 28a Norfolk Road.

Table 2. 28 Norfolk Road - Tenancy Agreements

Tenancy start date	Tenancy End Date	Tenant(s) (Quantity)	Gap/time period vacant if any
14/05/2016	14/05/2017	2	None

06/03/2017	06/09/2017	2	None - same Tenant but on new terms
11/09/2017	11/09/2018	1	5 Days
24/09/2018	24/09/2019	2	13 Days
01/04/2020	01/04/2021	1	See table 4
02/04/2021	Not yet ended.	1	None

Table 3. 28A Norfolk Road - Tenancy Agreements

Tenancy start date	Tenancy End Date	Tenant(s) (Quantity)	Gap/time period vacant if any
29/06/2014	09/03/2018	2	None
09/03/2018	Not yet ended.	2	None

The tenancy agreements provided for 28 Norfolk Road demonstrate that the ground floor flat has been used as a C3 dwelling over a four-year period prior to the application date. It is noted that there are some gaps in tenancy, such as from 06/09/2017 to 11/09/2017 (5 days), and from 11/09/2018 to 24/09/2018 (13 days). In this instance, these gaps are considered de minimis and it is not considered that there was a material change of use as a result of these gaps.

There was one gap in particular that required clarification from the agent. Based solely on the tenancy agreements provided for 28 Norfolk Road, a gap in tenancy of 190 days appeared from 24/09/2019 to 01/04/2020. The former tenancy agreement covered a 12 month period from 24/09/2018 to 24/09/2019, with the latter agreement commencing on 01/04/2020.

The applicant provided a letter, which was sent to the tenant named on the agreement commencing on 24/09/2018, stating that a surveyor would be visiting number 28. The letter was dated 22/02/2020, with a handwritten note on the letter stating that the tenant moved out on 31/03/2020. Whilst the letter is dated 22/02/2020, the handwritten note on the letter stating when the tenant moved out is not considered reliable in confirming when the tenant moved out. Indeed, this handwritten message could have been written at anytime after the letter was printed.

The applicant has also provided Statement of Accounts in an attempt to further clarify the gap. The Statement of Accounts indicate that the tenant named on the tenancy agreements for number 28 from 24/09/2018 to 24/09/2019 continued to pay rent for 28 Norfolk Road up to 23/03/2020. This information combined with the letter to the tenant dated 22/02/2020 (not including the handwritten note) is considered to sufficiently demonstrate that 28 Norfolk Road was occupied between 24/09/2019 and 01/04/2020 on the balance of probabilities. With the Statement of Accounts indicating that rent was paid for 28 Norfolk Road up to 23/03/2020. Therefore, for gap in tenancy is considered to be between 23/03/2020 and 01/04/2020. This 9-day gap in tenancy is considered de minimis and not a break in use of 28 Norfolk Road as a self-contained flat.

Table 4. 28 Norfolk Road - Statement of Accounts

Statement Reference Number	Date of Statement	Rent for Period
1-24	27/09/2019	24/09/2019 to 23/10/2019
1-25	06/11/2019	24/10/2019 to 23/11/2019
1-26	26/11/2019	24/11/2019 to 23/12/2019
1-27	09/01/2020	24/12/2019 to 23/01/2020
1-28	11/02/2020	24/01/2020 to 23/02/2020
1-29	12/03/2020	24/02/2020 to 23/03/2020

The applicant was asked if they would be able to supplement the Statement of Accounts provided with third party documents such as utility bills or bank statements. The applicant responded in writing, stating that all utilities would have been in the tenants names and as a result the applicant is not able to provide these. On balance, it is considered that there is nothing to suggest that the information submitted is dishonest or does not support the claims made the applicant. The Statement of Accounts as presented demonstrate that payment of rent was received from the tenant named on the tenancy agreement between 24/09/2018 and 24/09/2019. The comments from Legal Services regarding the Statement of Accounts are acknowledged, however, the Council has no evidence to suggest that the information provided within the Statement of Accounts is false.

It is considered that the applicant has been able to sufficiently demonstrate occupancy at 28 Norfolk Road a self-contained flat for the required 4 year period on the balance of probabilities. Where there are breaks in tenancy for 28 Norfolk Road these are considered di minimis given the duration of the breaks and the use of the 28 Norfolk Road as a C3 dwelling resumed in all instances as evidence by the tenancy agreements.

The tenancy agreements provided for 28a Norfolk Road demonstrate that the first floor flat has been used as a C3 dwelling over a four-year period prior to the application date. Two tenancy agreements have been provided, both for long serving tenants of 28a Norfolk Road. The first tenancy agreement commenced on 29/06/2014. The applicant provided a vacating details sheet for the first tenancy agreement, stating that the tenant vacated 28a Norfolk Road on 09/03/2018. The latest tenancy commenced on 09/03/2018, which the applicant has confirmed is still ongoing.

A Statutory Declaration has been provided to support the claims made within this application, stating the following:

*"I Usman Quadri of RB Estates, 156 Oxford Road, Reading, Berkshire, RG1 7PJ with passport number 514917419 do solemnity and sincerely declare as follows:
I can confirm that RB Estates have managed 28 & 28A Norfolk Road, as ground floor flat and first floor flat since 2004 and till date are still managing this property for the new owners QSSZ Ltd.
To the best of my knowledge and belief this property has been rented out for more than 17 years. RB Estates have had property maintenance carried out and have some bills to provide. As well as tenancy contracts. I believe Council Tax in Reading also have records of past tenants."*

The Statutory Declaration provided to support this application was signed by an employee of RB Estates, who have managed the property for the last 15 years. The agent has stated that the employee has signed the declaration as he has access to all records and knowledge of the property. The declaration has also been stamped by a solicitor. The Statutory Declaration is considered vague and does not indicate specific details of dates and use. Nevertheless, the Statutory Declaration does support the claims made within this application and the Council has no evidence to refute the declaration made.

It is considered that sufficient first-hand evidence has been provided to support the claims that the ground floor flat (28 Norfolk Road) and the first floor flat (28a Norfolk Road) have maintained a continuous use as a self-contained C3 dwelling over a four-year period on the balance of probabilities. Tenancy agreements have been submitted as evidence to support these claims, with gaps in tenancy satisfactorily explained. The evidence submitted is considered to corroborate with Council records concerning Council Tax and electoral registration. In line with the NPPG; the evidence submitted by the applicant is considered sufficiently precise and unambiguous in demonstrating that 28 and 28a Norfolk Road have been in use as self-contained C3 dwellings for a period of four or more years prior to the date of this application.

Conclusion

On the basis of the available evidence and on the balance of probabilities, it is considered the use of 28 Norfolk Road as two self-contained flats (C3); one to the ground floor (number 28), one to the first floor (number 28a) began more than 4 years before the date of this application (08/06/2021). It is therefore considered a Certificate of Lawfulness should be granted.

Recommendation

Grant

SITE LOCATION PLAN

AREA 2 HA

SCALE: 1:1250 on A4

CENTRE COORDINATES: 469574 , 173190

