

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: 212065/CLE

Address: 174 Oxford Road, Reading, RG1 7PL

Proposals: Certificate of Lawfulness for Existing use as self-contained retail unit (barbershop) (Use Class E) on the ground floor and two flats (Use Class C3)

Case Officer: Mr David Brett

Applicant: Mr Antonio Mariano

Date received (valid from): 21/12/2021

Target Date: 08/04/2022, extension of time agreed on decision from 15/02/2022.

Site Description and Surrounding Area

The proposal site is a two-storey middle terraced building along Oxford Road. 174 Oxford Road is identified as a Building of Townscape Merit within the Castle Hill/Russell Street/Oxford Road Conservation Area. The proposal site is also within an Air Quality Management Area.

Description of Use or Development

This application seeks to demonstrate the existing use of 174 Oxford Road as one Class E unit and two residential (Use Class C) units.

Relevant Planning History

0000009025 - Shopfront - Conditional Consent Granted on 27/10/1961

98/00909/FD - The premises with no alterations are to be used as a tattooing and piercing studio - Conditional Consent on 18/11/1998

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 13/12/2021

- Number of electors at the property:

Property Details	No. of Electors 174A Oxford Road	No. of Electors 174B Oxford Road	No. of Electors 174 Oxford Road
Year			
2022	0	1	Not Listed
2021	0	1	Not Listed
2020	1	0	Not Listed
2019	1	0	Not Listed
2018	1	0	Not Listed
2017	1	1	Not Listed
2016	2	2	Not Listed
2015	2	1	Not Listed
2014	1	Not Listed	Not Listed
2013	1	Not Listed	Not Listed
2012	1	Not Listed	1
2011	1	Not Listed	1
2010	1	Not Listed	1
2009	1	Not Listed	0
2008	1	Not Listed	1
2007	Not Listed	Not Listed	1
2006	Not Listed	Not Listed	1
2005	Not Listed	Not Listed	1

Reading Borough Council, Council Tax - Response received on 17/01/2022

- Our records do already reflect these properties on our system.
- The shop has been entered into the business rates list and rated since at least 01.04.1995.
- The two flats (174A & 174B) are both been banded for council tax purposes, 174A since at least 01.04.1997 & 174B since 08.06.2013.

Reading Borough Council, Enforcement - Response received on 12/01/2022

- 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 11/01/2022

- No comment on the application.

Reading Borough Council, Legal - Response received on 03/05/2022

- Agree to recommendation as outlined within the report.

Submitted Evidence

The applicant provided the following evidence to support the use of 174 Oxford Road as one Class E unit and two residential (Use Class C) units:

- Location Plan
- Existing Block Plan
- Land Registry Details
- Statutory Declaration - Mr P Forsey
- Assured Tenancy Agreements for 174a and 174b Oxford Road
- Commercial Lease Agreements for 174 Oxford Road
- Tenancy Deposit Protection Certificates
- Council Tax Bills for 174a and 174b Oxford Road
- Energy Performance Certificates for 174a and 174b Oxford Road

Received on 21/12/2021

- Commercial Lease Agreement for 174 Oxford Road
- Statutory Declaration - Mr J J Dickson
- Tenancy Agreements for 174a and 174b Oxford Road
- Energy Performance Certificate for 174a Oxford Road
- Email from applicant explaining the submitted evidence

Received on 07/02/2021

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 174 Oxford Road as one Class E unit and two self-contained flats (both C3 use class) began before the date of this application of 21/12/2021. The application form states that the use began on 03/01/2007. With regards to the Class E unit, the applicant needs to demonstrate this use for a period of 10 years prior to the date of this application, and 4 years prior to the date of this application for the two residential units.

With regards to internal consultee responses; the Council Tax Team have confirmed that the Class E unit entered into the business rates list and has been rated since at least 01/04/1995. With reference to the two residential units; 174a has been separately banded for Council Tax purposes since at least 01/04/1997, whereas 17b has been separately banded since 08/06/2013. It is considered that confirming 174, 174a and 174b as being separately banded does not demonstrate occupancy or use in supporting the claims made within this application, but does demonstrate that 174, 174a and 175b are recognised for Council Tax purposes as separate units.

Electoral Services have responded confirming that electors have been registered to 174, 174a and 174b Oxford Road since at least 2005 for 174, 2008 for 174a, and 2015 for 174b. Whilst this information is helpful in demonstrating occupancy, it is also

recognised that it is not a requirement for occupants to register with electoral services. Therefore, it is conceivable that on occasion the units may have been occupied without the occupant(s) registering for electoral purposes.

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”.

Two statutory declarations have been submitted in support of this application. The Statutory Declaration made by Mr P Forsey was signed on 07/11/2021 and is signed by Mr P Forsey and witnessed by a solicitor. Four declarations are made within the document; Mr Forsey states that he is the current tenant of 174b Oxford Road and has been since 20/08/2018, Mr Forsey states that previous tenants had lived at 174b Oxford Road since at least 05/02/2014 for a continuous period until he moved in on 20/08/2018. Mr Forsey claims that he previously occupied 174a Oxford Road from 30/01/2004 until 20/08/2018. Mr Forsey also claims that Mr JJ Dickson has been the tenant of the shop (174) since at least 02/02/2007, moving out in 2018.

The statements made within the Statutory Declaration have been supported through the submission of assured tenancy agreements and commercial lease agreements. The assured tenancy agreements provided which state Mr Peter Forsey as the tenant are as follows:

Name of Tenant	Unit	Start of Tenancy	End of Tenancy
Mr Peter Forsey	174a	30/01/2007	29/01/2008
Mr Peter Forsey	174a	17/11/2015	16/09/2016
Mr Peter Forsey	174a	17/11/2016	16/09/2017
Mr Peter Forsey	174a	17/11/2017	16/09/2018
Mr Peter Forsey	174b	17/09/2018	16/09/2019
Mr Peter Forsey	174b	17/09/2019	16/09/2020
Mr Peter Forsey	174b	17/09/2020	16/09/2021
Mr Peter Forsey	174b	17/09/2021	16/09/2022

Due to the lengthy tenancy of 174 Oxford Road that has been demonstrated for Mr Forsey, considerable weight is given to the statements made by Mr P Forsey within the statutory declaration provided.

The Council Tax Team have been consulted on the evidence submitted. One query was raised by the case officer with regards to the line of a Council Tax bill, which stated “Empty & Unoccupied discount” in reference to a Council Tax bill submitted for 174b Oxford Road. The Council Tax Team responded stating that the property was noted as being unoccupied from 11/12/2016 to 02/01/2017, a gap of 22 days.

Given the length of this gap and the fact that this gap took place over the festive period, this gap is considered by officers as de minimis. The gap is also considered not to meaningfully contradict the statements made by Mr Forsey within the Statutory Declaration with regards to the occupancy of 174b. There is no evidence before me that meaningfully contradicts the statements made by Mr Forsey within the Statutory Declaration provided.

The second Statutory Declaration provided has been made by Mr JJ Dickson, formerly known as Joseph Kibaza, as explained in the header of the declaration. Two declarations are made; the first stating that Mr JJ Dickson was the tenant of the ground floor shop and yard, 174 Oxford Road from 02/02/2007, the second declaration stating that the ground floor of 174 Oxford Road was converted from a large shop into a studio flat and a smaller shop on 05/02/2014. This declaration was signed by Mr JJ Dickson on 13/02/2018. It appears that the declaration was made before the solicitor. Though the date stamp on the declaration has faded, the declaration was made at the address of a Solicitor's office.

The first Commercial Lease Agreement for 174 Oxford Road specifies that Joseph Kibaza as the tenant of 174 Oxford Road and Mark Ellis Coombes as the landlord, the date of the agreement being 03/01/2007. The agreement refers to 174 Oxford Road as being the ground floor shop and yard. The contractual term of the agreement is from 01/01/2007, expiring on 31/12/2022. A second Commercial Lease Agreement has been provided, the agreement is between Assure Investments Limited (the applicant) and Mr G Stoica and commences on 20/03/2018 for a period of 12 months. This agreement includes a plan that reflects the conversion of the retail unit to a flat and a smaller retail unit as described in the Statutory Declaration made by Mr JJ Dickson. A third Commercial Lease Agreement has been provided, the agreement is between Assure Investments Limited (the applicant) and Mr G Stoica and commences on 20/03/2019 for a period of 12 months. A fourth Commercial Lease Agreement has been provided, the agreement is between Assure Investments Limited (the applicant) and Mr G Stoica and commences on 20/03/2020 for a period of 12 months. A fifth Commercial Lease Agreement has been provided, the agreement is between Assure Investments Limited (the applicant) and Mr G Stoica and commences on 20/03/2021 for a period of 12 months.

The Commercial Lease Agreements provided cover a period of at least ten years from 01/01/2007. It is acknowledged that there is a discrepancy in the dates specified for when the Mr JJ Dickson stated his tenancy commenced from the Statutory Declaration (02/02/2007) and from the Commercial Lease Agreement (03/01/2007). A solicitor letter has also been provided that is addressed to Mr JJ Dickson dated 15/10/2015, which confirms the new landlord of 174 Oxford Road as Assure Investments Limited (the applicant). This letter refers to the lease of the property made between Mark Ellis Coombes and Joseph Kibaza on 03/01/2007.

On the balance of probabilities, it is therefore considered to have been suitably demonstrated that 174 Oxford Road has been as; one Class E unit has been ongoing continuously for at least ten years, and two self-contained flats have been ongoing for continuously for at least four years prior to receipt of this application. There is no evidence before me that otherwise makes the applicant's statements and version of events less than probable.

Recommendation Grant

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 174 Oxford Road as one Class E unit has been ongoing continuously for at least ten years, and two self-contained flats have been ongoing 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

