

Delegated Application Report

Address: 8A Prospect Street, Reading

Application No: 211632/CLE

Proposal: Certificate of lawfulness for existing use as two self-contained flats (C3 use)

Extended Target Date: 07/01/22

Case Officer: Connie Davis

Introduction & Proposal

The application site is a semi-detached property located on the western side of Prospect Street.

The surrounding area is predominantly residential.

The Certificate seeks to confirm that the property has been in use as two self-contained dwellings (flats) (C3 use). In order for the certificate to be granted, it needs to be demonstrated that the building has been in use as two self-contained flats ('8a Prospect Street' and 'The Flat, 8 Prospect Street') for a continuous period of 4 years. 'The Flat, 8 Prospect Street' has recently been put forward and accepted under Reading Borough Council's Rent Guarantee Scheme (RGS).

On the application form, the applicant claims the use has been ongoing since 1972.

Relevant Planning History:

None of relevance to this application.

Relevant Planning Policy & Guidance:

Annexure 8 "Lawfulness and the Lawful Development Certificate" of Planning Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' sets out the procedure for assessing applications for certificates of lawfulness:

Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision on whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

The onus of proof in a LDC application is firmly on the applicant. Subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application'.

Para 8.3 states, 'by virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them **and** they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), *a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful"* if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.'

Consultation Responses:

Planning Enforcement: No dealings with this property.

Electoral Registration:

Year	No. of electors
2021	0
2020	0
2019	0
2018	0
2017	0
2016	0
2015	0
2014	3
2013	2
2012	2
2011	1
2010	0
2009	0
2008	0
2007	0
2006	1
2005	1

Council Tax: Our records show this property is banded as a single dwelling since at least 01.04.1997.

This property has continued to be let out to various groups of tenants, as the tenants are on a joint tenancy agreement we do not class this property as a HMO for C/Tax purposes.

Legal: Considers that sufficient evidence has been provided to allow the certificate to be granted

Submitted Evidence**Flat 8a, Prospect Street**

Tenant Name	Start Date	End Date	Other Information
Mr Frank Spencer	10 th April 2017	Currently occupied by this tenant	Assured Shorthold Tenancy in place for the first 12 months (until 10 th April 2018). Currently on a periodic tenancy ie month to month (letter from Vanderpump Property Agents dated 11 th November 2021)

The following evidence has been provided to demonstrate occupation of the above tenant whilst the rolling tenancy agreement was in place:

Statement dated 18/05/17 from Vanderpump & Wellbelove outlining expenditure and rent between 10/04/17 - 09/05/17.

Statement from Vanderpump Property Agents dated 16th April 2021 showing expenditure and income for 10/04/21 - 09/05/21

Statement from Vanderpump Property Agents dated 11th May 2020 showing expenditure and income for 10/04/20 - 09/06/20

Statement from Vanderpump Property Agents dated 20th May 2019 showing expenditure and income for 10/04/19 - 09/05/19

Statement dated 09/05/18 from Vanderpump & Wellbelove outlining expenditure and rent between 10/04/18 - 09/05/18

Statement dated 10/07/17 from Vanderpump & Wellbelove outlining expenditure and rent between 10/05/17 - 09/06/17

Statement from Vanderpump Property Agents dated 12th October 2021 showing expenditure and income for 10/10/21 - 09/11/21

The Flat, 8 Prospect Street

Tenant Name	Start Date	End Date	Other Information
Ms Danuta Bzducha & Ms Jadwiga Genowefa Swiniarska	15th July 2016	14th September 2020	Tenancy agreement provided for first 12 month period, letting agent then confirms the tenancy became a rolling contract until 14 th September 2020
GAP IN OCCUPATION	15th September 2020	4th March 2021	
Miss Chelsea Boyd	5 th March 2021	5 th March 2022	Tenancy agreement provided

Email dated 18th September detailing maintenance to be carried out

Invoice from Greater Reading Maintenance & Property Services dated 19/09/20

Invoice from AB Electrical Services dated 05/10/20

Invoice from Fixation Property Maintenance dated 19/10/20

Invoice from Greater Reading Maintenance & Property Services dated 18/12/20

Invoice from Gary Bertin Electrical Contractor dated 14/01/21

Invoice from 1st Choice carpets dated 20/01/21

Email from Vanderpump Property Agents dated 11/02/21 confirming viewing of property

Email from Vanderpump Property Agents dated 24/02/21 confirming viewing of property

Statement from Vanderpump Property Agents dated 22nd March 2021 showing expenditure and income for 05/03/21 - 31/03/21

Received 15th November 2021

Floor Plans

Received 21st December 2021

Letter from Vanderpump Property Agents dated 11th November 2021
Tenancy Agreements for 15th July 2016 - 14th September 2020 and 10th April 2017 - 10th April 2018

Received 11th November 2021

CIL Form
1:1250 Location Plan

Received 8th October 2021

Block Plan

Council Tax bill for 2014/2015 dated 1st May 2014
Council Tax bill for 2010/2011 dated 16th September 2010
Land Registry details
Grant of Probate Letter
Application Form

Received 30th September 2021

The gap in occupation of 'The Flat, 8 Prospect Street' between 15th September 2020 - 4th March 2021 was due to renovation works. A full breakdown of this has been provided by the applicant in an email dated 12th November 2021 and the invoices are listed above:

(1) Agent's email 12/08/2020 informing me that the tenants had given notice to end tenancy on 14/09/2020. This includes advice that a thorough inspection will be required once the property is vacant because inspection photos already indicate problems. The agent already knows we need a new EPC - works have been carried out as specified following an inspection on 01/04/2019 (costing £1356) but COVID fears have prevented that tester inspecting the changes. They also point out that an Electrical installation report will be needed, any faults rectified and a Safety Certificate issued. I asked that everything be done ASAP as we not only lose rent but incur Council Tax and insurance problems while empty.

(2) Agent's email 18/09/2020 after checkout notifying me that contractors have been instructed for EPC and electrical checks but dates awaited. Further informs me that extensive redecoration is required and that severe leak damage is apparent thus roof repairs will be required first (roof was repaired 13/01/2020 but unsuccessful). Further notifies me that all but one window needs attention, carpets are worn and that Reading Borough Council's RGS team have been consulted on possible works to the kitchen (see page 2 of Greater Reading Maintenance invoice W087 18/12/2020).

(3) Quotation 19/09/2020 for redecoration indicating that roof repairs definitely needed plus window works. Estimates were then sought for the roof - one terribly high - second tolerable but neither could start straight away and both needed full height scaffolding.

(4) 05/10/2020 minor electrical works to provide lighting and renew faulty parts.

(5) 09/10/2020 Electrical test EICR issued.

(6) 14/10/2020 Extensive repairs to windows completed (see invoice). Repair and decoration can commence.

(7) 16/12/2020 at last roofing works completed - the roofer's backlog of work plus the need to provide and remove scaffolding caused delay plus the work was pretty extensive (see invoice).

(8) 18/12/2020 interior redecoration now complete (see invoice). Clearly the roof leak has been fixed a few days before 16/12 (final bill above) and these works (started in October) were finished as soon as could be - some having to be redone once the leak was finally fixed.

(9) 14/01/2021 the heating works identified as needed by the second EPC inspection company (their October visit not dated) were completed (see invoice). The first contractor we appointed to do this was first struck down by COVID and then could not get the heating units he had quoted for - supply problems due to COVID. Mr Bertin stepped in at short notice - only 1 week between quotation and completion - using available but much dearer heaters.

(10) 20/01/2021 other works having been completed the new carpets and vinyl were installed (see invoice).

(11) 22/01/2021 an EPC "pass" certificate issued ASAP after works done and inspected. At this point Reading RGS team inspect again (video call) and request new bathroom lock and handle - fitted 08/02/2021.

(12) 12/02/2021 first RGS tenant views flat but finds it too small (see our agent's email).

(13) 26/02/2021 further RGS tenant Miss Chelsea Boyd views and wants the flat. After vetting process her tenancy commenced on 05/03/2021 (after full flat clean on 02/03/2021 - see first rent invoice). You already have the tenancy agreement attached to prior email.

(14) Minor extra works are completed on 06/03/2021.

This empty period was the minimum possible in the circumstances given the extensive and varied works and the difficulty of phasing jobs and arranging willing and available repairers at that time. Apart from lost rent this cost us £724.25 in Council Tax, £130 for electricity, £344.80 for raised insurance and £9,625 for repair works. I do hope that allowance will be made for the fact that the house is about 115 years old and does need a lot of TLC preventing continuous occupation - and especially for the fact that everyone from our agents to the contractors to the RGS team was hampered by the COVID pandemic.

Assessment:

In order to grant a Certificate of Lawfulness for existing use as a two self-contained flats (C3 use), sufficient evidence must be supplied to confirm that the flats have been in use continuously for a period of 4 years.

Tenancy agreements and a supporting letter from the letting agent has been provided to demonstrate that Flat 8a has been in continuous occupation for 4 years prior to the date

the application was submitted. Rental statements have also been provided for a period of time each year which confirms the tenant remained the same over the last 4 year period (30/09/17 - 30/09/21).

With regards to The Flat, 8 Prospect Street, a tenancy agreements have been provided for 15/07/16 - 14/07/17. The tenancy agreement then continued (a 'rolling contract') until 14/09/20. As such, continuous occupation for over 4 years has been demonstrated. However, in order for the certificate to be granted, it needs to be established if the use continued to the date the application was submitted.

Following the departure of the tenant on 14/09/20, Flat 8 was vacant from 15/09/20 - 04/03/21. This gap in occupation is due to renovation works taking place which was delayed due to staff shortages due to the Coronavirus pandemic. A full schedule of the works that were carried out is indicated earlier in the report, and invoices for some of the said works have been provided.

It is considered relevant to assess if this break serves to reset the immunity clock to zero. There are three ways in which the immunity clock can be reset, through:

- 1) Abandonment
- 2) Change of planning unit
- 3) Material change in use

[Secretary of State for Environment & Anor v Thurrock Borough Council]

It needs to be considered if the break from renovation works is considered abandonment, or the use being dormant (the later outlined in the case of *Panton and Farmer v. SSETR* [1999]). Land can have a dormant use even though unauthorised activities may not be functioning for significant periods of time.

There are two High Court judgements to consider when deciphering if the break would constitute as abandonment or dormant use. Firstly, *Swale Borough Council v The First Secretary of State* [2005] EWCA Civ 1568. Keene L J referred to the judgement of Newman J at first instance in *Thurrock*, subsequently approved by the Court of Appeal, and in particular to the following summary by Schiemann L J at paragraph 15 of the Court of Appeal judgement, as follows: *"The rationale of the immunity is that throughout the relevant period of unlawful use, the LPA, although having the opportunity to take enforcement action, has failed to take any action and consequently it would be unfair and/or could be regarded as unnecessary to permit enforcement. If at any time during the relevant period the LPA would not have been able to take enforcement proceedings in respect of a breach (for example, because no breach was taking place) then any such period cannot count towards the rolling period of years which give rise to the immunity. It was for the land owner to show that at any time during the relevant period enforcement action could have been taken"*

During this break, it is considered the enforcement team could have taken action against the unauthorised use. Whilst 'The Flat, 8 Prospect Street' was vacant, Flat 8a was not, and continued to be occupied. As such, it is considered reasonable to conclude that should an enforcement investigation be carried out at the property, it would have been apparent the building was not being used as one self-contained dwelling, rather it would be evident that a portion of the building was being used as a '8a Prospect Street' (continuously occupied by Frank Carter) and therefore a breach would have been apparent, even without The Flat, 8 Prospect Street' was vacant. As such, it is considered that the time spend carrying out works would not count as an abandonment in this specific case and enforcement action could have

still be taken against the whole building being subdivided. As such, the break is not considered to reset the immunity clock and this gap not to weigh against the granting of the certificate. It is considered the use was dormant, as opposed to abandoned. As such, the accrued planning right has not been lost as a result of the renovation works.

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 known as 8 and 8A Prospect Street have operated as two self-contained flats (C3) have operated for a period of 4 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness for the use of the building as two flats (C3 use) should be granted.

GRANT certificate

1:1250 Location Map (Not to scale)

