

TAPPEN HOMES LIMITED

FAO David Brett, Planning Case Officer
Reading Borough Council Civic Offices
Bridge Street
Reading
RG1 2LU

16 February 2022

Dear Mr Brett

CERTIFICATE OF LAWFULNESS – 12 Blenheim Road – App Ref 211520/CLE

I am writing in response to your refusal notice dated 26 November.

I will first set out some background information, then provide a detailed chronology and then respond to the specific questions raised in your Delegated Application Report, following the order of that report.

Background

The property was owned by Mrs Satwant Kaur from 28 September 2005 until 11 December 2020 when it was purchased by Tappen Homes Limited.

It is of no bearing to the status of the property in question but in the interest of clarity some of the evidence provided from prior to September 2005 includes correspondence to both Mrs Kaur and a Mr Bhullar at the same residential address of 29 Clevedon Drive, Earley, Reading.

It was always the intention of Tappen Homes to apply for the certificate of lawfulness to regularise the property's use as a small HMO and you will see from the evidence provided that we made attempts to gather the required information before and after the purchase of the property.

Due to the bulk of the period in question being owned by someone else it is not an ideal situation and we do not have all the information suggested by you. It was noted by Mrs Kaur's lawyer that she did not keep good records herself. It is therefore time-consuming to collect this information and we are obviously reliant on the goodwill of others to provide that information, so it has taken some time to apply initially and subsequently to respond to your refusal report.

We gathered and submitted on 13 September 2021 what we felt was sufficient evidence for the application, including 2 signed documents by independent third parties. We felt this was, on balance of probabilities, sufficient proof that the property had indeed been let as a 4 bed, 4 person HMO for the period in question.

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High level chronology of the property

28 Sep 2005	Mrs Satwant Kaur purchases the property
28 Sep 2005 – 16 May 2012	Let to 4 or 5 individuals each academic year
16 May 2012	Article 4 Directive is ratified
16 May 2012 – 17 Mar 2013	Let to 4 or 5 individuals each academic year
18 Mar 2013 to 19 Nov 2014	Property was not let – property had been poorly treated by a succession of tenants and the property underwent significant renovation including reducing from 5 bed to 4 bed.
19 Nov 2014 – 30 Jun 2020	Let to 4 individuals each academic year
1 Jul 2020 – 30 Jun 2021	Empty HMO – despite attempts to let, including changing letting agent, the property remained empty throughout the academic year due to reduced demand due to Covid-19
11 Dec 2020	Tappen Homes Ltd purchases the property
1 Jul 2021 – 30 Jun 2022	Let to 4 individuals each academic year

Please see attached more detailed chronology, additional comments and references to evidence & proof.

Relevant Period of Proof

My understanding is that in order to be deemed to be an HMO through “grandfather” rights and pre-existing use, the property has to have been a small HMO from before the Article 4 Directive was in force. Your responses refer to a 10-year period (13 September 2011) rather than the Article 4 Directive (16 April 2012). Regardless, I have provided as much evidence as possible back as far as 2004.

Tenancy periods to 2004 through to 2013

The chronology table shows that there were 4 or 5 sharing tenants from 2004 through to the point of renovation in 2013/2014. This is evidenced by copies of tenancies and other documents with Appendix references A1, B1-4, C1-3, D1, E1 & J1-2 (provided by Mrs Kaur during the conveyancing in December 2020 as a direct request for proof of HMO use during her ownership).

Renovation March 2013 to 19 November 2014

The date of cessation of student tenancy (evidenced in J1 by the Council Tax department ceasing to have a record of student exemptions) is not the typical end of a tenancy period, nor the end of an academic year, which would indicate a sudden departure. I am informed by the manager at Cintra Estates that the tenants immediately preceding this period had treated the property very badly which resulted in the need for a large-scale renovation. In appendix K you will see a list of refurbishment activities undertaken, an invoice for part of the works and some before (March 2012) and after (November 2014) photos indicating the extent of the work carried out. Whilst the work may not have taken the full 20 months of vacancy, by the time the landlord had realised what

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needed to be done, mobilised a workforce, completed the work and then organised and waited for tenants to arrive, that could easily have taken 20 months in total.

Tenancy periods 19 November 2014 to 30 June 2020

The chronology table shows that there were 4 sharing tenants from November 2014 through to June 2020. This is evidenced by

- a letter confirming tenants from the lettings agency at the time Cintra Estates (L1),
- confirmation of student exemptions to Council Tax by Reading Borough Council (J1) and
- various emails from those tenants to confirm that the period they were resident, the names of the other tenants and the fact they were students at the University of Reading (M1, N1, O1 & Q1)
- other documents confirming tenancy such as rent statements & tenancy agreement (M2, N2, Q2)

Please note that as we were not the landlord at the time we do not have access to copies of every tenancy document. Cintra Estates confirmed that for Data Protection and GDPR purposes they are encouraged to dispose of all records containing personal data which are more than 7 years old, so anything from 2014 or before would not be held anyway and was prior to the normalising of electronic storage. Those tenants I could find via LinkedIn profiles were contacted to confirm the details in the Cintra confirmation letter (L1) and their responses are in M1, N1, O1 & Q1.

Given that Cintra Estates have provided a list of tenant names per year, at least one from five of those six years has independently confirmed those details, plus the RBC Council tax department confirmed that student exemptions applied for those years, and the additional documentation provided, I believe there is no doubt that the property was a 4 person HMO for this period.

Empty period July 2020 to June 2021

It will not have escaped your notice that there was a global pandemic in this period. It is widely acknowledged that applications for and arrival at university was at the lowest level for many years and that those who did attend university did so primarily remotely – leading to many more students returning to their parental homes to study remotely for the year. This all led to well documented lower than normal demand for rental properties and a sense of trepidation amongst student landlords.

I do not know personally the reason for Mrs Kaur wanting to sell, but it is well documented that many landlords, especially those with empty properties, sought to get out of the student let market because of the reasons outlined above and the unknown period of impact.

Having had no success letting the property through Cintra Estates, Mrs Kaur engaged Nicholas Humphries to let and/or sell the property. Having missed the window of opportunity in the winter of 2019/20 to let the property from July 2020, and therefore unlikely to have any tenants until July 2021, Nicholas Humphries were instructed put the property on the market on the 1 October 2020.

Tappen Homes Limited acquired the property on 11 December 2020. Various documents during the conveyancing confirmed vacant possession (S1/S2).

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Due to Mrs Kaur's reluctance to pay a finder's fee for a period for which she was not going to receive any rent, the lettings agency did not commit to any lettings activity until the sale was agreed. However, by the time the sale had completed, and with Tier 3, Tier 4 and then Lockdown #3 in place, it was impossible to get tenants for the short period January to June 2021, although we did try (see R5 for an archived webpage trying to let it in any way possible for that short period as a very reduced rate.

In the meantime Tappen Homes paid utilities and Council tax on the empty property (R1-R4).

Nicholas Humphries did however succeed (following the exchange but before completion in December 2020) in letting the property from July 2021.

Tenancy periods 1 July 2021 onwards

Within our ownership period it is easier to gather information and you will see that we have provided statements of rental receipt, inventory report signed by the tenants, the tenancy agreement & confirmation of student exemption from Council tax by RBC (T1-T6).

The property has been marketed to let to 4 students from 1 July 2022 onwards and we have been successful in finding new tenants. The managing agent is currently handling the deposits and agreements.

Delegated application Report

Your consultations with Environmental Health, HMO Team, Council Tax and Enforcement provide no evidence to contradict my version of events. There are no enforcements in place. As a 4-bed HMO it does not need a licence. Council Tax confirmed banding to you but has, following my Freedom of Information request, confirmed several years of student exemptions have applied to that property (J1).

Legal opinion was requested on 25 November 2021, 1 day before the target deadline for your official response.

Ms Tavernier states she is surprised at the lack of evidence submitted. I find this comment surprising in itself. Firstly, I found very little assistance or guidance provided by RBC and certainly no specific checklist; if a clear expectation is not set then the result will likely be always disappointing. Secondly, I am not an expert in planning applications and this is the first time I have done this. The first time I was provided with guidance about what is expected was 9 weeks after my application was submitted. Thirdly, as a 20+ year Chartered Accountant I felt that two independent, third party, signed documents would provide more than enough evidence to pass the "balance of probabilities" test. I am surprised that this comment is even in this report and I believe this should be disregarded in the decision making process.

Ms Tavernier also notes that we did not respond to the case officer's request for more information. I would like to note that the planning process is permitted to take 8 weeks. I was contacted by the case officer 9 weeks after my initial submission, with a request for more information, but at no point does that email specify or suggest a deadline for that response. Only 8 working days later I am issued with a refusal report including a comment that I had not responded to a further request. I

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find this comment unnecessarily inflammatory and irrelevant to the application process and again should be disregarded in the decision-making process.

Ms Tavernier disregards one of the main pieces of evidence on the basis that the author/signatory of the letter did not want the letter to be used for this purpose. Firstly, I would ask what possible other reason would that Statutory Declaration (S3) have been requested and provided? Secondly, I provide further evidence in the form of emails between Mrs Kaur's and Tappen Homes' solicitors (S4). These show

- S4a - a request for evidence for use as an HMO within Article 4 area (29 Nov 2020)
- S4b - a further request for evidence to avoid planning permission being required (2 Dec 2020)
- S4c - that the evidence provided (A1, B1-4, C1-3, D1, E1, J1-2) is not sufficient to confirm HMO use since prior to Article 4 (9 Dec 2020) and
- S4d - intention of Mrs Kaur to provide a statutory declaration (9 Dec 2020)

The letter does confirm her ownership (which as you say is not disputed but relevant as to why she is the right person to be signing that declaration) and whilst it does not specify "4 person HMO" it does confirm in layman's terms that it has been a student let property (ie a shared household rather than family/single household let) for the entirety of her ownership. This is also a direct follow up from our requests for evidence to support HMO use within an Article 4 area.

Together with the Cintra letter and further evidence provided to validate that letter, I believe that this Statutory Declaration should be treated as valid evidence to support this application.

Ms Tavernier then goes on challenge the empty periods. I find it incredulous that a landlord is not allowed to renovate a property without losing HMO status. Without sufficient and adequate renovations, the quality of HMO properties let to students will deteriorate to a point that there will be much worse issues with student houses which I doubt RBC would want to be promoting. I also find it incredulous that any empty period caused by lack of demand or poor letting management should cause a loss of HMO status. A property being left empty is already a financial and operational nightmare for a landlord and nobody wishes that to happen. This is not something we chose to do. So to penalise HMO landlords further by potentially losing their HMO status is unbelievable.

Of course there is no case law yet about Covid related vacant properties, it is too recent. But surely a global pandemic that isn't even covered for business interruption insurance would not be something the council would penalise a landlord for! We did everything possible to reduce the empty period including significantly dropping the monthly rent and for commercial reasons will seek to always have the property fully let.

At no point in these periods was the property NOT a 4-bed, 4-person HMO, even if it were an empty 4-bed HMO.

Conclusion

In summary therefore I believe I have provided a clear chronology of the last 15 years, with as much clear evidence as is available, corroborated by third parties where possible, for the periods which the property was let to show that this has been let as a 4 bed HMO for the last 15 years.

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The only periods that this is not the case is when it was empty for renovation or empty due to Covid related low demand for student property. And despite efforts to let the property as a 4 bed HMO, it remained a 4-bed HMO, only an empty one.

I believe therefore that the local authority has no evidence itself, nor from any others, to contradict or otherwise make my version of events less than probable; and that I have provided sufficiently precise and unambiguous evidence to justify the grant the certificate of lawfulness on the balance of probability.

Yours faithfully



Dale Keaney
Director

Enclosures:

Chronology

Appendices:

- 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

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- 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:
<https://www.zoopla.co.uk/property-history/12-blenheim-road/reading/rg1-5nq/56631074/>
- 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
<https://www.nicholashumphreys.com/branch/reading/student-lets/reading/blenheim-road-2?propsearch=c1dcd5>