

DELEGATED APPLICATION REPORT

Address: 41 Elm Park Road

Application No: 220565/CLE

Proposal: Certificate of Lawfulness for existing use as 2 x 1-bedroom flats (C3 use)

Extended Target Date: 04/08/22

Case Officer: Connie Davis

Site Description

The application site relates to a mid-terrace, two storey dwelling located on the eastern side of Elm Park Road.

The applicant states that the property was converted to two flats on 28/04/16.

Description of Use or Development

Certificate of lawfulness for the existing use of the building 2 x 1-bedroom flats (C3 use); one at ground floor and one at first floor.

Relevant Planning History

None.

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 if 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 a planning permission. The planning merits of the 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 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".

Consultations

Planning Enforcement: *No dealings with the property*

Council Tax - *We only have this property banded as a single dwelling, this had been banded this way since at least 01.04.1997.*

We have tenants liable for the single dwelling and they have confirmed this property consists of 2x1 bed flats. The Council Tax department will be carrying out a visit and then be raising a report to the valuation office to request the property is split into two flats from 01.04.2022

Electoral Registration:

Year	Property 41 Elm Park Road Number of Registered Electors	Property 41 Elm Park Road Number of Pending Electors
2022	3	
2021	3	
2020	3	1
2019	3	1
2018	2	
2017	2	1
2016	0	3
2015	1	
2014	1	
2013	1	
2012	1	
2011	1	
2010	1	
2009	1	
2008	2	
2007	2	
2006	2	
2005 YEAR DATA ELECTRONICALLY STORED	2	

Legal: Based on the evidence submitted, and on the balance of probabilities, concluded that the certificate should be granted.

Information Submitted

PL-0 - Location Plan

PL-01 - Proposed Ground Floor Plan

Photographs

Statutory Declaration from the occupier of 'Top Flat' dated 10th February 2022

Email from McCarthy Properties dated 18th May 2016

Received 14th April 2022

Ground Floor Flat

Tenant	Start Date	End Date	Other information
Rafal Kazimierski	30/04/16	29/05/16	Signed
Statutory declaration confirms this flat was occupied September 2019 - 10 th February 2022			

- Tenancy deposit certificate for Rafal Kazimierski
- Energy Performance Certificate
- RBC Council Tax letter dated 26th April 2022 to Rafal Kazimierski

GAP:

- 30/05/16 - 30/08/19
- 11/02/22 - 14/04/22

The above gaps have been addressed by the applicant stated that Rafal Kazimierski had a rolling tenancy agreement from 30/04/16 to the time the application was submitted. This is supported by a letter from Reading Borough Council, Council tax department being sent to Rafal Kazimierski dated 26th April 2022 which demonstrates that he still resides in the flat.

First Floor Flat

Tenant	Start Date	End Date	Other information
Lukasz Adamowski and Milena Rogacka	30/04/16	29/05/16	Signed
Letter from Lukasz Adamowski and Milena Rogacka confirming that they terminate their contrat from 4 th March 2019			
Ricardo Paiva and Kirsty Jones	20/03/19	31/03/19	Signed

- Tenancy deposit certificate for Ricardo Paiva
- Energy Performance Certificate
- Landlord Closing Inventory of fixtures, fittings & furnishings - check out date 01/03/2019
- Tenancy deposit certificate for Lukasz Adamowski and Milena Rogacka
- Letter from RBC Council Tax addressed to Ricardo Paiva and Kirsty Jones

GAP:

- 11/02/22 - 14/04/22

The above gaps have been addressed by the applicant stated that Ricardo Paiva and Kirsty Jones had a rolling tenancy agreement from 20/03/19 to the time the application was

submitted. This is supported by an RBC Council Tax letter being sent to Ricardo Paiva and Kirsty Jones dated 26th April 2022 which demonstrates that they still resides in the flat.

APPRAISAL

In order for the certificate to be granted, it needs to be demonstrated that the two flats in question have been continuously occupied for a period of 4 years prior to the date of the application. As such, the relevant time period is 14/04/18 - 14/04/22.

Tenancy agreements have been provided but these do not cover the entirety of the 4 year period in question. The following gaps are noted (not covered by a tenancy agreement or a statutory declaration):

Ground Floor Flat:

- 30/05/16 - 30/08/19
- 11/02/22 - 14/04/22

First Floor Flat:

- 11/02/22 - 14/04/22

However, as discussed above, through the submission of Council Tax letters being addressed to the individuals to which the last tenancy agreement related, this is considered acceptable and sufficient to address the aforementioned gaps.

Although Council tax advised the dwelling was banded as a single dwelling, the evidence submitted by the applicant is considered to be sufficient to demonstrate that the property was in fact split and used as two self-contained dwellings.

The LPA has no sufficient evidence to the contrary to prove that the property has not been used as 2 x self- contained flats.

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 at 41 Elm Park Road has operated as a 2 x flats (use class C3) 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 C3 (flats) should be granted.

Recommendation:

GRANT Certificate

1:1250 Location Plan (Not to scale)

