

DELEGATED APPLICATION REPORT

Ward: Redlands

App Ref: 211520/CLE

Address: 12 Blenheim Road, Reading, RG1 5NQ

Proposals: Certificate of Lawfulness for a 4 person, 4 bedroom Small HMO (C4 use class)

Case Officer: Mr David Brett

Applicant: Mr D Keaney

Date received (valid from): 13/09/2021

Valid from: 01/10/2021

Target Date: 26/11/2021

Site Description and Surrounding Area

The proposal site is a two-storey middle terraced dwelling along Blenheim Road. The surrounding area is considered largely residential, with similarly designed Victorian terraced rows.

The application site is not listed, nor in a conservation area. The proposal site is, however, located within an Article 4 area, restricting the change of use from residential (Use Class C3) to small HMO (Use Class C4).

Description of Use or Development

This application seeks to demonstrate the existing use of 12 Blenheim Road, Reading, RG1 5NQ as a 4 person, 4 bedroom Small HMO (C4 use class).

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 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 02/09/2021

- Number of electors at the property:

Year	No. of electors
2021	2
2020	2
2019	2
2018	0
2017	0
2016	0
2015	0
2014	0
2013	0
2012	0
2011	0
2010	0
2009	4
2008	4
2007	4
2006	4
2005	6

Reading Borough Council, Environmental Health - Response received on 11/11/2021

- No comment to make on this application.

Reading Borough Council, HMO Team - Response received on 25/11/2021

- Private Sector housing records do not show any information for this property.
- Please also note that as your correspondence indicates that it is occupied by 4 persons it would not require a HMO licence.

Reading Borough Council, Council Tax - Response received on 24/11/2021

- This property is entered into the Council tax banding list as a single dwelling and has been banded since at least 01/04/1997.

Reading Borough Council, Enforcement - Response received on 12/10/2021

- I can confirm that Planning Enforcement have had no dealings with this property.

Reading Borough Council, Legal - Response received on 26/11/2021

- I find that as a matter of fact and degree and on the balance of probabilities, the applicant has not made a convincing case that the property has been in a lawful use as a Class C4 HMO continuously for a period of 10 years or more and recommend the Certificate of Lawfulness is REFUSED for the use of the Property as 4-person, 4 bedroom Small HMO and enforcement action is commenced.

Submitted Evidence

The applicant provided the following evidence to support the use of 12 Blenheim Road, Reading, RG1 5NQ as a 4 person, 4 bedroom Small HMO (C4 use class):

- Location Plan
- Letter from Tappen Homes Limited dated 13th September 2021
- Letter from Cintra Estates providing list of tenants who lived at the applicant site
- Statutory Declaration from the previous owner, Mr Satwant Kaur

Received on 14/09/2021

- Existing Plan (not to scale)

Received on 01/10/2021

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as 12 Blenheim Road as a 4 person, 4 bedroom Small HMO (C4 use class) began more than 10 years before the date of this application of 14/09/2021. The application form states that the use began on 28/09/2005.

With regards to internal consultee responses; the Council Tax Team have confirmed that the property is banded as a single dwelling and has been since 01/04/1997. It is considered that confirming 12 Blenheim Road as being banded as a single dwelling does not demonstrate occupancy or use in supporting the claims made within this application. No Council Tax bills have been provided by the applicant to support the claims of occupancy and use made within this application.

The HMO Team have confirmed that there are no Private Sector housing records for 12 Blenheim Road on the system. As the application is seeking to demonstrate the use of 12 Blenheim Road as a small HMO (C4 use class) for 4 persons, it would not require a HMO licence. The response from the HMO Team is not considered to support or dispute the use of 12 Blenheim Road as small HMO.

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”.

An application letter provided by the applicant, dated 13th September 2021. The letter states that other than from 2013 to November 2014 and from July 2002 to June 2021, the property was been let to groups of 4 students and this has been the case since before the Article 4 Directive was in place.

Regarding the gap in tenancy from 2013 to November 2014 the letter states that this was due to refurbishment at the property. Further explanation has not been provided regarding this gap in tenancy, such as the exact date that the refurbishment commenced, and the date the refurbishment ended. No further first-hand information has been provided to support this claim such as invoices, photographs and other documents associated with the refurbishment works.

It is also stated in the letter provided by the applicant, dated 13th September 2021, that the reason that the property was vacant between July 2020 and June 2021 was due to the Covid-19 pandemic and the decline in demand during this period. Legal Services have advised that currently there is no case law or appeal decisions compelling the Council to accept this as a valid reason for a break in continuity. Occupancy of 12 Blenheim Road from June 2021 to the date of this application has also not been demonstrated/evidenced.

A list of tenants has been provided to support the claims made within this application. The list is dated 13/09/2021 and was provided by Cintra Estates. The list is signed by the Office Manager at Cintra Estates. The list contains names of tenants that have occupied 12 Blenheim Road between 19th November 2014 and 30th June 2020. No other information has been provided to support the claims made within the list, such as tenancy agreements, bills or other first-hand evidence. The list also only covers a six year period, no information has been provided prior to 19th November 2014 in terms of occupancy. Likewise, no information has been provided regarding tenancy between 30th June 2020 and the 13th September 2021.

A Statutory Declaration has been provided to support the claims made within this application. The Statutory Declaration is signed and dated 11/12/2020, and is also co-signed by a solicitor. The Statutory Declaration provided appears to have been completed by the previous owner of the property, stating (1) that the property has been in their ownership since 28/09/2005, and (2) that the property has been rented as student accommodation throughout their ownership. The applicant has stated on the application form that he is the owner of 12 Blenheim Road, so it is presumed that the Statutory Declaration has been made by the previous owner of 12 Blenheim Road. According to [zoopla.co.uk](https://www.zoopla.co.uk), the property was sold in December 2020.

The Statutory Declaration is considered lacking in specific detail in relation to what this application seeks to demonstrate. The Statutory Declaration instead appears to state information that is not disputed. It is not disputed that the person named on the Statutory Declaration owned 12 Blenheim Road since 28/09/2005. It is also not disputed that the property has been rented out to tenants since 28/09/2005. What is to be demonstrated to support this CLEUD application is the use of the 12 Blenheim Road as a four person small HMO (C4 use class), this has not been addressed within

the Statutory Declaration. The claims made within the Statutory Declaration have not been supported by first-hand evidence such as tenancy agreements.

Legal Services are also of the view that no reliance can be placed on the declaration, as it does not appear to have been produced for this CLEUD application and furthermore we do not have any evidence that the previous owner wanted this letter submitted as part of the CLEUD application. The declaration appears to have been made 9 months prior to the submission of this application.

It is considered that insufficient first-hand evidence has been provided to support the claims that the existing use of 12 Blenheim Road is as a 4 person, 4 bedroom Small HMO (C4 use class), and has been the case for over a ten-year period. No tenancy agreements, bills or any other forms of evidence have been provided to support the claim made within this application. Due to this lack of first-hand evidence and the quality of the evidence that has been submitted, it is therefore recommended that this Certificate of Lawfulness (Existing) application be refused.

The evidence submitted by the applicant does not account for the full ten year period prior to receipt of the application on 13/09/2021. It is considered that the application has failed to demonstrate on the balance of probabilities on the applicant's evidence alone that 12 Blenheim Road has been in continuous use as a small HMO (C4 use class) for a ten year period prior to 13/09/2021.

The applicant was invited to provide further evidence, however, no further evidence was forthcoming.

Recommendation

Refuse

Reason for refusal:

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 12 Blenheim Road as a 4 person, 4 bedroom Small HMO (C4 use class) has been ongoing for continuously for at least ten years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

Informatives

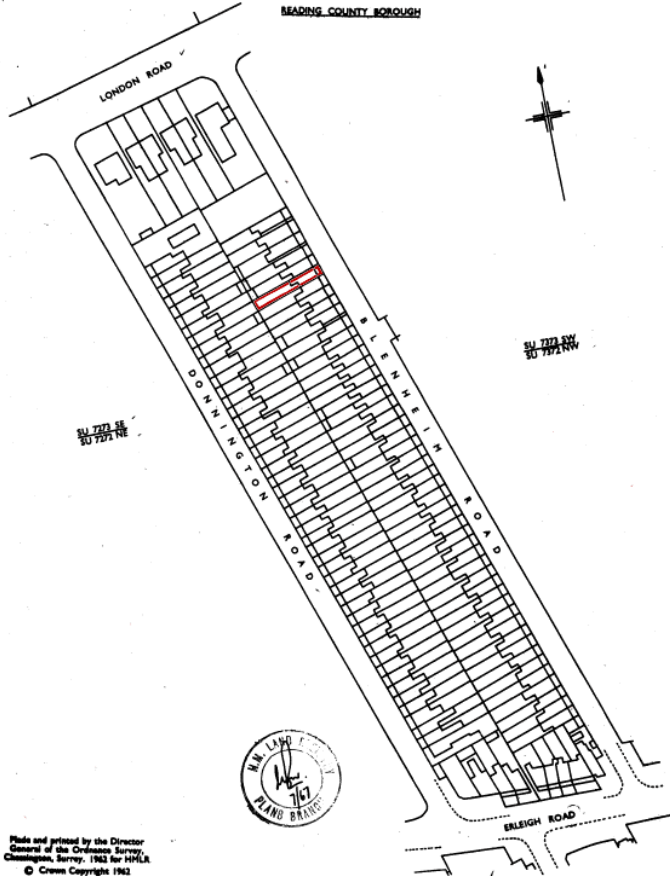
Positive and Proactive - Refusal

H. M. LAND REGISTRY

NATIONAL GRID PLAN SU 7372 SECTION A
BERKSHIRE

Scale 1/1250

READING COUNTY BOROUGH



Made and printed by the Director
General of the Ordnance Survey,
Chiswick, Surrey, 1962 for HM/LA
© Crown Copyright 1962

Filed Plan of Title No. **BK 67901**