

Delegated Application Report

Extended Target Date: 16/11/2021

Address: 301 London Road

Application No: 211303/CLE

Proposal: Certificate of Lawfulness for Existing use for over 4 years- Ground floor used as a one bed, self contained flat. First floor used as a one bed, self contained flat.

Case Officer: Nathalie Weekes

Introduction & Proposal

The application site is a two storey mid-terrace property. The surrounding area is predominantly residential. The proposal is for a certificate of lawfulness for the existing use of the ground and first floors as one bed flats. The site is opposite Reading Cemetery in an AQMA.

A site visit could not be undertaken by the case officer due to external circumstances however the applicant was asked to provide additional photos. The routine property inspection reports appear to show that the ground and first floor of the building was in the configuration shown on the floor plan received on 9 August 2021. There was evidence of the property being used for residential accommodation. The applicant provided video evidence that the front door provides entry into a communal hallway and that there is a separate locked entrance into the ground floor and first floor flats. Each flat is self-contained and has its own gas and electric meters.

The applicant asserts that the existing use of the property has been as separate ground floor and first floor one bedroom flats for over 4 years, since 20/05/2016.

Relevant Planning History:

None

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:

- RBC Planning Enforcement - The enforcement team had no objections. There have been no previous enforcement dealings with the property.
- RBC Council Tax Team - There are two flats at this property both separately banded for C/Tax purposes since 20.05.2016. Both flats have been separately let to various tenants since the date of banding.
- Ground floor flat and First floor flat. RBC Electoral Registration Team - No response has been received at the time of writing this report.
- Legal team - The legal team had no objections and were satisfied that the evidence provided was adequate to recommend the Certificate of Lawfulness is granted for the use of the Property as two separate self-contained flats.

Submitted Evidence

The applicant supplied the following information:

Location plan

Title deeds BK88246 on 8 Aug 2021 at 13:09:43 Anthony and Linda Philbin

Ground floor plan

First floor plan

CIL form

Parkers routine inspection top floor flat 301 London Road, 28th July 2020

Parkers routine inspection ground floor flat 301 London Road, 11th May 2021

As received 9 August 2021

Samuel James, ground floor flat property listing 27 May 2017, bathroom and kitchen

Samuel James, first floor flat property listing 22 February 2018, bathroom and kitchen

EPC ground floor flat, 8930-7826-7080-7086-3292, date of assessment 16 June 2020, date of certificate 10 July 2020

EPC top floor flat, 9752-0031-4201-8309-0200, valid until 3 October 2031

Inventory of ground floor flat, 301 London Road, initialled by landlord, dated 10 August 2018

Inventory of top floor flat, 301 London Road, initialled by landlord, dated 8 March 2018

Reading Council Tax 2016/2017, 5 October 2016, first floor flat

Ground floor flat

20/07/2016	Landlord gas safety certificate 228413, M Patten, Bottom flat, 301 London Road
25/07/2017	Landlord gas safety certificate 228413, M Patten, Bottom flat, 301 London Road, 3421971
28/07/2018	Landlord gas safety certificate 228413, M Rush, Bottom flat, 301 London Road
20/07/2019	Landlord gas safety certificate 228413, M Patten, Bottom flat, 301 London Road
18/07/2020	Landlord gas safety certificate 228413, M Rush, Bottom flat, 301 London Road 8007803

First floor flat

20/07/2016	Landlord gas safety certificate 228413, M Patten, Top flat, 301 London Road
25/07/2017	Landlord gas safety certificate 228413, M Patten, Top flat, 301 London Road, 3421972
28/07/2018	Landlord gas safety certificate 228413, M Rush, Top flat, 301 London Road
20/07/2019	Landlord gas safety certificate 228413, M Rush, Top flat, 301 London Road
18/07/2020	Landlord gas safety certificate 228413, M Rush, Top flat, 301 London Road, 8007804

As received 18 October 2021

Tenancy agreements

Tenancy Start Date	Tenancy End Date	Tenant(s)	Agent	Notes and supporting Document	Gap/time period vacant if any
26 July 2017	25 July 2018	2	Yes	Assured household tenancy agreement - Samuel Jones Ground floor flat, Landlord gas certificate	
11 August 2018	10 August 2019	2	Yes	Assured household tenancy agreement - Samuel Jones Ground floor flat, Landlord gas certificate	
11 August 2019	10 August 2020	2	Yes	Assured household tenancy agreement - Parkers Ground	

				floor flat, Landlord gas certificate	
12 months 11 August 2020	10 August 2021	2	Yes	Assured household tenancy agreement - Parkers Ground floor flat, Landlord gas certificate	
1 March 2017	28 February 2018	2	Yes	Assured household tenancy agreement - Samuel Jones - <i>no specification as to which flat is being rented.</i> Landlord gas certificate	Think this is for top flat as ground floor tenanted 26 July 17 - 25 July 18
9 March 2018	8 March 2019	2	Yes	Assured household tenancy agreement - Samuel Jones Top floor flat, Landlord gas certificate	
9 March 2019	8 March 2020	2	Yes	Assured household tenancy agreement - Samuel Jones Top floor flat, Landlord gas certificate	
9 March 2020	8 March 2021	2	Yes	Assured household tenancy agreement - Parkers Top floor flat, Landlord gas certificate	
9 March 2021	8 March 2022	2	Yes	Assured household tenancy agreement - Parkers Top floor flat	7mths to Oct 2021

As received 9 August 2021

Assessment:

In order to grant a Certificate of Lawfulness for existing use of the ground and first floors of 301 London Road as a two 'one bedroom flats', sufficient unambiguous and precise evidence must be supplied to confirm that the property has been in this use continuously for a period of 4 years from the date the application was made. The relevant time period is therefore 9th August 2017 to 9th August 2021.

The application form submitted by the applicant states that the existing use of the property has been as separate ground floor and first floor one bedroom flats for over 4 years, since 20/05/2016. This application is supported by property inspections, the property title deeds and tenancy agreements for both properties in use from 26 July 2017 to 10 August 2021.

Both properties are metered separately for fuel and water and photos of the meters have been provided. No installation date has been submitted.

The legal definition of self-contained unit is defined as "since 2001 a dwelling is defined (in line with the 2001 Census definition) as a self-contained unit of accommodation. Self-containment is where all the rooms (including kitchen, bathroom and toilet) in a household's accommodation are behind a single door which only that household can use."

The applicant has confirmed that entry is from the ground floor and although the entry to the house is via the front door, that inside there are two self-contained units, comprising a Ground floor and First floor flat; both of which have their own set of keys and entry points. Each flat has its own internal access door and is self-contained, including a kitchen, bathroom and toilet.

The case officer considers that on balance and with no evidence to prove otherwise, the ground and first floor flats have been in C3 use. The two flats have been banded separately for council tax purposes since 20 May 2016.

On the basis of the available evidence and on the balance of probabilities, it is considered that the property known as Ground Floor Flat 301 London Road, RG1 3NZ has operated as a self-contained C3 one bedroom flat for a period exceeding 4 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness for the use of First Floor Flat 301 London Road, RG1 3NZ has operated as a self-contained C3 one bedroom flat should be granted, as shown on the location plan received 9th August 2021.

Recommendation

Issue Certificate of Lawfulness

Location map (not to scale)

