

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: 210936/CLE

Address: 28 Norfolk Road, Reading, RG30 2EE

Proposals: Certificate of Lawfulness for Existing use of rear outbuilding as one self-contained studio flat (C3).

Case Officer: Mr David Brett

Applicant: Mrs Q Rukhsar

Date received (valid from): 08/06/2021

Target Date: Originally 03/08/2021, extension of time agreed until 10/11/2021

Site Description and Surrounding Area

The proposal site is a two-storey end terrace property at the corner of Norfolk Road and Rutland Road. The immediate surrounding area is residential. The proposal site is within 200m of Kensington Park, Battle Primary Academy, and Cranbury College.

Description of Use or Development

This application seeks to demonstrate the existing use of the outbuilding at 28 Norfolk Road as a self-contained studio flat (C3). The applicant seeks to demonstrate this by providing evidence that the property has been in use as such for more than four years prior to the application date (08/06/2021).

Relevant Planning History

141507/HOU - Conversion of existing workshop/storage building to provide additional residential - Application Permitted on 15/01/2015

210934/CLE - Certificate of Lawfulness for existing use as 1 x 2 bedrooms flat and 1 x 1 bedroom flat. - Application to be determined.

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 16/06/2021

- Number of electors at the property:

Year	No. of Electors
2021	1
2020	1
2019	1

Reading Borough Council, Environmental Protection - Response received on 20/07/2021

- We don't have any past inspection history for the building.
- No comments to make on this application.

Reading Borough Council, Council Tax - Response received on 18/06/2021

- Our records show there is a flat known as 28B Norfolk Road which is located at the rear of the existing property (28), this flat has been separately banded for Council Tax purposes since 05.06.2017. The flat has been let out to various tenants since the date of banding.

Reading Borough Council, Planning Enforcement - Response received on 21/06/2021

- Open planning enforcement investigation into the unauthorised change of use to three flats under reference number E20161.

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

- I note in your delegated report that you are content on the balance of probabilities that that 28b (the rear unit) should be granted. I agree with this on the basis of the evidence provided.

Submitted Evidence

The applicant provided the following to support the existence of 28b Norfolk Road as a self-contained studio flat (C3):

- Location Plan
- Existing Floor Plan - LDC02
- Tenancy Agreements for the last four years for 28b Norfolk Road
- Statutory Declaration - dated 12/08/2021
- Council Tax Bill for 28b Norfolk Road - dated 19/12/2017
- Council Tax Bill for 28b Norfolk Road - dated 18/02/2019
- Property Maintenance Invoice - dated 06/09/2015

- Gas Maintenance Invoice - dated 10/02/2016
- Vacating Property form - dated 10/04/2021
- Vacating Property form - dated 05/02/2019

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use of the outbuilding to the rear of 28 Norfolk Road as one self-contained studio flat (C3) began more than 4 years before the date of this application of 08/06/2021.

The tenancy agreements provided as evidence by the applicant to support this application are considered to appropriately demonstrate the use of the outbuilding to the rear of 28 Norfolk Road as a self-contained C3 flat. The table below demonstrates the tenancy agreements that have been in place since 05/01/2015 for “28b” Norfolk Road.

28B Norfolk Road - Tenancy Agreements

Tenancy start date	Tenancy End Date	Tenant(s) (Quantity)	Gap/time period vacant if any
05/01/2015	05/01/2017	1	1 Day
06/01/2017	06/01/2018	1	12 Days - Cleaning
18/01/2018	05/02/2019	1	6 Days 12 month tenancy, vacated on 05/02/2019 as per deposit return.
11/02/2019	11/08/2019	2	33 Days - Repairs
12/09/2019	11/11/2019	1	1 Day
12/11/2019	10/04/2021	1	5 Days
15/04/2021	6 month tenancy term ongoing	2	

The tenancy agreements provided for 28b Norfolk Road demonstrate that the outbuilding has been used as a C3 dwelling over a four-year period prior to the application date. It is noted that there are some gaps in tenancy, such as from 05/02/2019 to 11/02/2019 (6 days). In this instance, these gaps are considered de minimis and it is not considered that there was a material change of use as a result of these gaps. The gap in tenancy from 11/08/2019 to 12/09/2019 (33 days) has been explained by the applicant as to allow for repair works and maintenance. Despite the gap in tenancy of 33 days, it should also be noted that the tenancy agreements demonstrate that the outbuilding has been used as a C3 dwelling over a four-year period prior to the application date, with the first tenancy agreement commencing on 05/01/2015 showing occupancy with small gaps up until 11/08/2019.

A Statutory Declaration has been provided to support the claims made within this application, stating the following:

“I Usman Quadri of RB Estates, 156 Oxford Road, Reading, Berkshire, RG1 7PJ do solemnity and sincerely declare as follows:

I can confirm that RB Estates have managed 28 B Norfolk Road, as self-contained studio since Jan 2015 and till date are still managing this property for the new owners QSSZ Ltd.

To the best of my knowledge and belief this property has been rented out for more than 5 years. RB Estates have had property maintenance carried out and have some bills to provide. As well as tenancy contracts. I believe Council Tax in Reading also have records of past tenants."

The Statutory Declaration provided to support this application was signed by an employee of RB Estates, who have managed the property for the last 15 years. The agent has stated that the employee has signed the declaration as he has access to all records and knowledge of the property. The declaration has also been stamped by a solicitor. The Statutory Declaration is considered vague and does not indicate specific details of dates and use. Nevertheless, the Statutory Declaration does support the claims made within this application.

Nevertheless, the applicant has demonstrated that the outbuilding to the rear of 28 Norfolk Road is a self-contained C3 flat and has been separately let for a period of four years or more. It is considered that sufficient first-hand evidence has been provided to support the claims that the outbuilding has been maintained a continuous use as a self-contained C3 dwelling over a four-year period. Tenancy agreements have been submitted as evidence to support these claims, with gaps in tenancy satisfactorily explained. The evidence submitted is considered to corroborate with Council records concerning Council Tax and electoral registration. In line with the NPPG; the evidence submitted by the applicant is considered sufficiently precise and unambiguous in demonstrating that the outbuilding known as 28b Norfolk Road has been in use as self-contained C3 dwellings for a period of four or more years prior to the date of this application.

Conclusion

On the basis of the available evidence and on the balance of probabilities, it is considered the use of the outbuilding to the rear of 28 Norfolk Road as one self-contained studio flat (C3) began more than 4 years before the date of this application (08/06/2021). It is therefore considered a Certificate of Lawfulness should be granted.

Recommendation

Grant

SITE LOCATION PLAN

AREA 2 HA

SCALE: 1:1250 on A4

CENTRE COORDINATES: 469574 , 173190

