

Delegated Application Report

Address: 84 Grange Avenue, Reading

Application No: 211200/CLE

Proposal: Certificate of Lawfulness for Existing use as a 7 person, 7 bedroom HMO (Sui Generis)

Agreed Target Date: 28/10/21

Case Officer: Connie Davis

Introduction & Proposal

The application site is situated within a terrace of houses on the southern side of Grange Avenue, an unclassified road between Wokingham Road to the west and Wykeham Road to the east.

The surrounding area is predominantly residential.

The Certificate seeks to confirm that the property has been in use as a 7 person/ 7 bedroom HMO (Sui Generis use). In order for the certificate to be granted, it needs to be demonstrated that the building has been in this use for a continuous period of 10 years.

Relevant Planning History:

210266/HPA - Rear extension measuring 6.0m in depth, with a maximum height of 3.65m, and 3.0m in height to the eaves level. Notification of the construction of an extension under Class A Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 - Prior Approval Notification Refusal

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:

Planning Enforcement: No dealings with this property.

Electoral Registration:

Year	No. of electors
2021	5
2020	5
2019	5
2018	7
2017	7
2016	5
2015	2
2014	1
2013	7
2012	6
2011	6
2010	6
2009	0
2008	0
2007	3
2006	3
2005	3

Council Tax: Our records show this property is banded as a single dwelling since at least 01.04.1997.

This property has continued to be let out to various groups of tenants, as the tenants are on a joint tenancy agreement we do not class this property as a HMO for C/Tax purposes.

Legal: The applicant has failed to illustrate that the property has been in use as a Sui Generis House in Multiple Occupation for a 10-year indemnity period as the house changed use to a 5 person House in multiple occupation from 01 July 2018 to 30 June 2019. Therefore, being a C4 Class Use (*small shared houses occupied between three and six unrelated individuals as their only or main residence who share basic amenities such as a kitchen or bathroom*). This further material change of use breaks the chain of immunity for a 7 person HMO to be Lawful and could be subject to enforcement action. The certificate should be refused on this basis.

Submitted Evidence

Start Date	End Date	Number of occupiers	Other information
1 st July 2009	30 th June 2010	7	Signed letter from letting agent (Adams Estates) confirming number of occupiers and tenant names
1 st July 2010	30 th June 2011	7	None submitted
1 st July 2011	30 th June 2012	7	Signed letter from letting agent (Adams Estates) confirming number of occupiers and tenant names

1 st July 2012	30 th June 2013	7	Signed letter from letting agent (Space) confirming number of occupiers and tenant names
1 st July 2013	30 th June 2014	7	Signed letter from letting agent (Adams Estates) confirming number of occupiers and tenant names
1 st July 2014	30 th June 2015	7	Signed letter from letting agent (Adams Estates) confirming number of occupiers and tenant names
1 st June 2015	30 th June 2016	7	Signed letter from letting agent (Rushden Estate Agents) confirming number of occupiers and tenant names
1 st July 2016	30 th June 2017	7	Signed letter from letting agent (Cintra Estates) confirming number of occupiers and tenant names
1 st July 2017	30 th June 2018	7	Signed letter from letting agent (Cintra Estates) confirming number of occupiers and tenant names (same occupiers stayed)
1 st July 2018	30 th June 2019	5	Signed letter from letting agent (Adams Estates) confirming number of occupiers and tenant names
1 st July 2019	30 th June 2020	7	Signed letter from letting agent (Cintra Estates) confirming number of occupiers and tenant names
16 th September 2020	16 th September 2021	7	No agent information

Received 21st July and 7th September 2021

Application Form
828 31 - 1:500 Block Plan
828 30 - 1:100 Existing Floor Plans
Planning Statement

Received 21st July 2021

Assessment:

In order to grant a Certificate of Lawfulness for existing use as a 7 bedroom / 7 person HMO (Sui Generis use), sufficient evidence must be supplied to confirm that the HMO has been in this use continuously for a period of 10 years from the date the application was made. The relevant time period is therefore 20/07/11 - 20/07/21.

Tenancy agreements have been provided for the 10 years in question showing the date of occupation and the names of occupiers. However, the tenancy agreements are not complete (ie. they do not contain the signatures of occupiers). Nevertheless, signed letters from various letting agents over the majority of the 10 year period confirming the occupiers/ how many occupiers were residing in the dwelling have been provided. These support the occupiers in the tenancy agreements.

However, in the period 1st July 2018 - 30th June 2019 the property was occupied by 5 tenants rather than 7, as confirmed in the tenancy agreement and the letter from Adam Estates dated 12th July 2021. The agent was of the opinion that as the property was 'marketed, licensed and available' as a 7 person HMO throughout the relevant time, this, on the balance of probability should support a certificate for 7 occupiers. However, the HMO has not been in continuous use by 7 occupiers as specified in the description of the certificate, which is required to be demonstrated. It is considered that a certificate for a maximum of 5 occupiers (C4 use) could be granted however the applicant did not wish to amend the certificate applied for.

As such, the applicant has failed to illustrate that the property has been in use as a Sui Generis House in Multiple Occupation for a 10-year indemnity period as the house changed use to a 5 person House in multiple occupation therefore being a C4 Class Use (*small shared houses occupied between three and six unrelated individuals as their only or main residence who share basic amenities such as a kitchen or bathroom*). This is considered a material change of use, reflected in the change of use class and there has not established an accrued planning right for the relevant time period.

It has been established in High Court and Court of Appeal cases *Thurrock Borough Council v Secretary of State for the Environment [2001]* and *[2002]* that a building can lose an accrued right is through one or more of the following:

- 1) Abandonment
- 2) Change of planning unit
- 3) Material change in use

In this case, the reduction in occupiers for 1 year is considered a substantial break which resulted in a material change of use and resulted in the property having a change in use class turning from a Sui Generis HMO to a C4 HMO. This is considered a material change as planning permission is required for developments moving into an out of the Sui Generis use class.

Conclusion

Based on the evidence provided, it has not considered that it is has been demonstrated there has been continuous occupation of 7 occupiers over the relevant 10 year period, due to the property only being occupied by 5 tenants between 1st July 2018 - 30th June 2019. This is supported by *Islington LBC v SSHCLG* [2019] EWHC 2691 (Admin). This case confirmed well established law that there is the need for the **continuous, uninterrupted** residential use as set out in the cases of *Thurrock* and *Swale*.

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”.

The law on applications for existing use certificates is clear and in relation to the submitted application it is incumbent on the applicant to prove, on the balance of probabilities, that the building had an existing lawful use as a 7 person, 7 bedroom HMO (Sui Generis use) for the relevant time as noted above. The applicant’s evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and consequently the application will be refused for the reason set out below.

Recommendation - Refuse Certificate

Reason for refusal:

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of the property as a 7 person, 7 bedroom HMO (Sui Generis use) has been ongoing continuously for at least ten years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

Location Plan (Not to scale)

