

DELEGATED APPLICATION REPORT - CERTIFICATE OF LAWFULNESS

Application No: 210295/CLE

Site Address: 56 Prince of Wales Ave, Reading

Proposal: Certificate of Lawfulness for Existing Use as 2 flats.

Changed to: ***Existing use of Flat 1 on the ground floor and Flat 2 on the first floor as 2 bedroom flats each with living room, kitchen and bathroom within the principal building known as 56 Prince of Wales Avenue - excludes the outbuilding.***

See note below.

Case Officer: Julie Williams

Target Date: 9/2/2021 Extended to 6 September 2021

SITE DESCRIPTION

The 2 storey Edwardian property is located on the corner of Prince of Wales Avenue and Elm Park Road. On the opposite corner is 56a.

The submitted plans show that each flat (one on ground floor flat and one on first floor) has two bedrooms, a living room, bathroom and kitchen. Both are accessed from doors facing Prince of Wales Avenue. There is an outbuilding at the rear but is not included in the description or on the floor plans provided.

PROPOSAL

A certificate is sought to confirm that the existing use as two self-contained flats is lawful development by virtue of them both being in place continuously for in excess of 4 years preceding the date the application was made.

Given the description of the two flats and the site it is relevant for the certificate issued to be unambiguous and precise that the description used for the Certificate is changed to:

Existing use of Flat 1 on the ground floor and Flat 2 on the first floor as 2 bedroom flats each with living room, kitchen and bathroom within the principal building known as 56 Prince of Wales Avenue - excludes the outbuilding.

The NPPG provides guidance on details that must be included in each type of lawful development certificate (section 191(5) or 192(3) of the Act. Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it.

In particular a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided.

PLANS & INFORMATION SUBMITTED

Location Plan

Block plan

Evidence:

Tenancy agreement,

Letters from RBC to tenant

Photographs

Additional information provided included utility bills and details of letting the properties.

RELEVANT PLANNING HISTORY OF THE SITE

None found for 56 Prince of Wales Ave.

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.

RESPONSE TO CONSULTATIONS

Legal -have provided the following advice:

The applicant has submitted a range of evidence which when viewed as a whole adequately supports the claim that the existing use of the building is that of two separate self-contained flats and has been used as such for the requisite four year period.

First floor flat

The tenancy agreements submitted clearly evidence the first floor flat has been occupied, continuously, in excess of the required four year period. There are no gaps

in the continuity of its use and there is no evidence to contradict the applicant's claim that the flat has operated as a separate dwelling for the required four year period.

Ground floor flat

The ground floor flat has had various tenants throughout the four year period and tenancy agreements, bills and check-out emails have been provided to evidence this. There are however several short periods in which tenants were not in occupation. The applicant has provided evidence to support the explanation that during these periods the flat was advertised/marketed as available for occupation. Copies of viewing requests/confirmation emails have also been provided. Accordingly, the gaps in occupation can be seen to be reasonable and the explanation suitably evidenced.

There was one gap between 26.10.19 and 22.11.19. The applicant has however provided information that the flat was occupied during this period and has explained that the fixed term tenancy, from the previous six month period, rolled over for a further period of one month. The LPA has no evidence itself, nor from any others to contradict or otherwise make the applicant's explanation less than probable. The information provided is clear and unambiguous.

Enforcement History

There does not appear to be a history of enforcement against this property and Local Land Charges have confirmed that there are no planning enforcement charges registered against the property.

Council Tax

Council tax records show these flats have been separately banded for council tax purposes since at least 01.04.1997.

Conclusion

On balance, the evidence submitted seems to support the claim that the building has been in continuous use, as two self-contained flats, for four years prior to the application being submitted. In the absence of evidence to contrary, on the balance of probabilities, it is considered that the premises at 56 Prince of Wales Avenue, Reading has been in continuous use as two separate flats (Use Class C3) for a period of 4 years and is therefore immune to enforcement action.

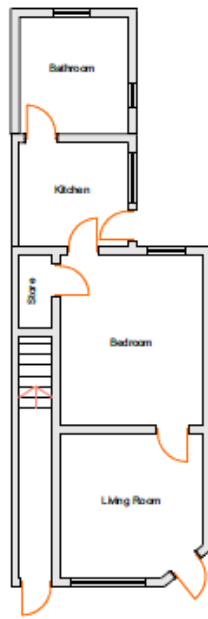
To avoid ambiguity, the description on the certificate, as amended by the officer, should be adopted.

If the application is to be permitted - it should be limited to the subject land/building by reference to a plan with the subject land/building shown in the approximate position hatched black thereon.

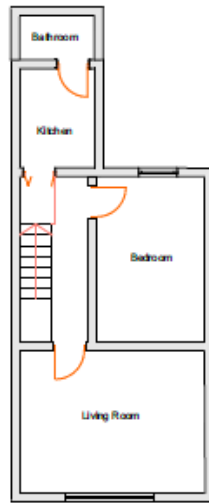
RECOMMENDATION

GRANT Certificate

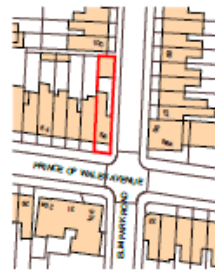
Add info about parking permits



Ground Floor Plan



First Floor Plan



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