

Delegated Application Report

Address: The Kiln, 16A Romany Lane

Application No: 191318/CLE

Proposal: Existing use a self-contained studio (C3 use)

Agreed Target Date: 10/11/20

Case Officer: Connie Davis

Introduction & Proposal

The application site relates to a claimed self-contained outbuilding under the address of '16A Romany Lane', within the rear curtilage of 16 Romany Lane. The surrounding area is residential and mainly comprises of semi-detached dwellings. The applicant owns a number of properties in the vicinity; those included within the blue line, with the outbuilding subject of this application depicted in yellow.



The application seeks to demonstrate that the outbuilding has been used as a self-contained studio (C3 use) for a period of 4 years. Although described as a studio, the building has been described as an 'Annexe' in the documents submitted.

Relevant Planning History:

091187 - Erection of a one bedroom dwelling in the garden of property - Application Withdrawn

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:

Electoral Register

2018 - x 4 residents

2017 - x 3 residents

2016-2015 - x 4 residents

2014 - x 4 residents

2013 and years prior - no data for 16A

Enforcement

No dealings with the property.

Council Tax

The property The Kiln 16a Romany Lane Tilehurst Reading RG30 6AP is showing as a single dwelling and has been banded for c.tax purposes since at least 01.04.1997.

The case officer was advised on 22nd May 2020 that the annex is now registered for separate Council tax. It has been separately banded from 06.11.2019.

Legal

Caselaw makes it clear that a landowner is not entitled to a certificate of lawfulness of existing use and development where conduct and behaviour on the part of the applicant has been such as to practice a deception on the Council which has directly undermined the planning process and public interest would not be served if a landowner could gain immunity from enforcement action through such

conduct. The principle being a person should not benefit from his own wrongdoing. Appeal decisions have held that a positive deception can be by other means by for example not applying for building regulation approval; or registering on the electoral roll; or not applying for Council Tax banding for the dwelling. Lord Brown in Welwyn stated that, "Inevitably the breaches of planning control statutorily said to become immune from enforcement under section 171B involve a spectrum of wrong doing. These range from cases at one end where the developer is simply unaware of the need for planning permission to those intent on unpermitted development designed to circumvent planning control and escape enforcement."

After consultation with the Council's planning solicitor, it was concluded that the certificate should be refused based on the information specified in this report.

Submitted Evidence

Plans provided:

507-02-00 - Site Location Plan As Existing
507-01-00 - Ground Floor As Existing
507-02-01 - Block and Roof Plan As Existing

Received 9th August 2019

507-01-00 Rev 1 - Ground Floor Plan As Existing

Received 9th July 2020

Tenancy Agreements:

Tenancy Agreement covering 18th January 2013 - 17th January 2014 - Signed
Assured Shorthold Tenancy: Notice Requiring Possession: Fixed Term Tenancy
(January 2013 - January 2014)

Received 9th August 2019.

Other information:

HM Land Registry plan and titles
Statutory Declaration from Mark Robert Young dated 30th July 2019 (Tenant)
Statutory Declaration from Amarjit Kaur dated 30th July 2019 (Letting agent)
Letter received from Thompson Leatherdale Solicitors dated 31st July 2019
Covering letter titled '507 - Land to the Rear of 16a Romany Lane, Reading, RG30 6AP' Rev 1 dated 28th Sept 2018
Received 9th August 2019

Statutory Declaration from Denise Darlow dated 30th July 2019 (Freeholder)
Received 5th November 2019

Assessment:

In order to grant a Certificate of Lawfulness for existing use as a C3 self-contained studio/ annexe at 16A Romany Lane, sufficient evidence must be supplied to confirm that the building 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 the relevant time period is 8th August 2015 - 8th August 2019. A site visit was carried out

by the Council's Council Tax officer on 24th October 2019 and by the case officer on 20th January 2020.

The applicant has provided three signed statutory declarations. The first is from the occupier of 16A Romany Lane (Mark Robert Young) who states that they have occupied the studio/ annexe continuously for 6 years from 18th January 2013. A tenancy agreement between Mark Robert Young and the freeholder (Denise Darlow) was provided which covered the period 18th January 2013 - 17th January 2014, however the tenancy agreement then 'rolled over' for the further 5 years. There is no evidence of this in terms of further Tenancy agreements and the tenancy agreement provided makes it clear it is for a definite period of 12 months only. Nor proof of rent payments have been received or indeed any utilities for the property throughout. The Statutory Declaration of Mark Young states he occupied the Annex for 6 years since January 2013. This shows he left in January 2019, leaving from then until August 2019 as a gap in tenancy.

A Statutory Declaration was also made by the Lettings Agent (Amarjit Kaur) confirming that they prepared an Assured Shorthold Tenancy Agreement between Mark Robert Young (tenant) and Denise Darlow (freeholder) in January 2013. This statutory declaration also indicates Mark Young paid for rent and utilities. Lastly, a Statutory Declaration was provided by Denise Darlow swearing that the studio/ annexe has been let to Mark Robert Young for at least 6 years.

However, it is noted that the annex was not separately banded for Council Tax during the relevant time period in question; it has only been banded for Council Tax since so this does not hold weight when assessing the submitted evidence. No utility bills have been provided to support the application. Furthermore, as can be seen from the planning history of the site an application to construct a separate annexe was withdrawn in 2009. However, a single storey out building was nonetheless constructed in the rear garden without the necessary planning permission being in place. It is clear the applicant having previously applied for planning permission for a single self-contained annex in the garden back in 2009 was well aware of the need for planning permission.

From the application submitted, it is also noted that the internal layout of the studio/ annexe has changed since the application was put in and this was evidenced by a Council officer's site visit on 24th October 2019 and case officer's visit on 20th January 2020.

On the visit made by the Council Tax officer, it was stated that the Annex could only be accessed through the garden gate. Mr William Darlow (the applicant) stated no rent had been paid and the Annex had been occupied by a close friend for 5 years. The officer confirmed the Annex looked like an outbuilding and not a dwelling and you could not see the annex from any public view. The location of the annex to at the rear of the site is well away from the main street view of Romany Lane. The Officer spoke with Mrs Denise Darlow and she stated rent had been paid at £50.00 per week. This is contradicted by the tenancy agreement which states

the rent to have been £300 pcm from January 2013 which equates to between £60-£75 per week. The evidence provided is therefore not clear and is considered ambiguous.



View of the studio/ annexe from above to give a greater perspective of the building in relation to surroundings. The building is highlighted with a red circle (Image: Google Maps)

The floorplan included as part of the Statutory Declarations (reference 507-01-00 - Ground Floor As Existing) by Denise Darlow and Mark Robert Young is inaccurate, as confirmed on a site visit by the officers. The applicant has since submitted a revised floor plan (reference 507-01-00 Rev 1 - Ground Floor Plan As Existing), however the incorrect plan still remains signed as part of the Statutory Declaration and as such the Statutory Declarations are not reflective of what is actually on the ground despite being sworn on 30th July 2019. The revised floor plan was only submitted when brought to the attention of the applicant following the site visit carried out by the case officer.

The location plan (reference 507-02-00 - Site Location Plan As Existing) and title plan does also not match but this is due to boundary changes over time, as stated by the applicant, but this again leads to inconsistency within the submission.



RECCOMENDATION: Refuse certificate

Reason for refusal:

- 1) The applicant has provided contradictory and insufficient evidence or other information that does not demonstrate to the Local Planning Authority that the use of the self-contained studio (C3 use) has been ongoing for continuously for at least four years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

Informatives:

- 1) The Local Planning Authority worked positively and proactively to determine the application within an agreed time frame. After a series of discussions with the Council's Planning Solicitor, the agent was advised that the application would be refused if not withdrawn but opted for the refusal of the certificate.

1:1250 Location Plan (Not to scale)

