

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: 211218/CLE

Address: Flat 7, 222 Oxford Road, Reading, RG30 1AB

Proposals: Certificate of Lawfulness for Existing use of Flat 7 as a self-contained flat

Case Officer: Mr David Brett

Applicant: Mr Y Stern

Date received (valid from): 23/07/2021

Target Date: 01/10/2021, extension of time on decision agreed from 17/09/2021

Site Description and Surrounding Area

The proposal site is a two-storey end terraced dwelling along Oxford Road. The surrounding area is considered a mix of residential and commercial use. Oxford Road is an arterial road, linking the centre of Reading with West Reading.

The application site is not listed, nor in a conservation area.

Description of Use or Development

This application seeks to demonstrate the existing use of Flat 7, 222 Oxford Road, Reading, RG30 1AB as a self-contained flat (C3).

Relevant Planning History

None

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 02/09/2021

- Number of electors at the property:

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

Reading Borough Council, Environmental Health - Response received on 08/09/2021

- Records from 2018 which sets out our understanding of the use of the property from 2008 to 2018. The Licence that was issued included the use of the ground floor self-contained flat for occupation by 3 persons forming 1 household. A subsequent Licence was issued on the 26th of November 2018 for 9 persons including the use of the ground floor self-contained flat for 3 persons forming 1 household this licence was due to expire in November 2023 however the property has been sold so we are currently processing a new licence application from the new owner.

Reading Borough Council, Council Tax - Response received on 30/07/2021

- Our records show 222 Oxford Road as being banded as a single dwelling since at least 01.04.1997; it's been let out as a HMO.
- I will need to investigate whether it should be only Flat 7 that's considered self-contained for C.tax purposes or whether all the room/flats are considered self-contained.
- Zoopla has some details for Flats 1-8 at 222.

Reading Borough Council, Council Tax - Updated response received on 06/09/2021

- Currently the property is classed as a single dwelling for Council Tax purposes. However, following a recent investigation of this property, a report has been

sent to the Valuation Office to request for the 6 rooms and 1 flat (flat 7) to be separately banded for c/tax purposes.

Reading Borough Council, Enforcement - Response received on 06/08/2021

- Planning Enforcement looked into the use of the property back in 2018 under reference number E18078. The investigation was closed on 25/05/2018.
- Investigation E18078 established that the property (222 Oxford Road) has been in continual use as a thirteen person HMO for in excess of ten years with the first thirteen person HMO licence being granted in January 2008. The use as a large HMO became lawful through the passage of time.

Planning Officer Note: The enforcement case did not refer to a specific self-contained flat.

Reading Borough Council, Legal - Response received on 28/09/2021

- Legal have advised that on balance, the evidence submitted does not support the claim that the existing use of “Flat 7” is as a self-contained (C3) dwelling.
- Legal consider the evidence submitted with the application to be ambiguous and not specific.

Submitted Evidence

The applicant provided the following evidence to support the use of Flat 7, 222 Oxford Road, Reading, RG30 1AB as a self-contained flat:

- Location Plan
- Existing Floor Plans - ORR.222.EX.01
- Planning Statement
- HMO Licence (Commencing on 11/04/2013, ending on 10/04/2018)
- HMO Licence (Commencing on 11/04/2013, ending on 10/04/2018)
- Fire Brigade Report dated 1981

Received on 23/07/2021

Assessment

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use as Flat 7 as a self-contained C3 dwelling began more than 4 years before the date of this application of 23/07/2021. The application form states that the use began on 11/04/2013.

The two HMO Licences submitted to support this application refer to a ground floor rear self-contained flat forming one household. The Fire Brigade Report submitted demonstrates the ground floor rear flat on a plan. The Background Report submitted, which appears to have been conducted on a previous occupant of Flat 7 lists occupants associated with the address, as well as provides electoral roll information which appears to conflict with the information received from Electoral Services. The Background Report appears to demonstrate fewer electors than on the information received from Electoral Services.

The Background Report also demonstrates residents that have resided at Flat 7 since 2002. No specific dates are provided within the report as to when the residents

resided at Flat 7. This section within the Background Report also has a disclaimer stating that the subject of this report either resided at the address for the period shown or was registered as a company director at that address. Therefore, it cannot be confirmed on this evidence that Flat 7 has been used as a dwelling (C3) or as a business address.

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 agent has explained that given that the applicant has just bought the property, it is unlikely that they would be able to submit a Statutory Declaration to support their claim. The agent considers the evidence submitted to be ample, however, it is considered by officers that the evidence submitted is not precise or unambiguous enough on its own merits to grant a certificate in this instance. The evidence provided is not considered to show continuous occupation over a four-year period.

The consultation response from Environmental Health is in line with the HMO licenses submitted by the applicant. Whilst the HMO licence states the intended use of the ground floor flat to the rear, no first hand evidence such as tenancy agreements, council tax bills or other bills have been submitted. The response from Council Tax provides no clearer picture regarding the use of the ground floor flat to the rear, stating that 222 Oxford Road has been banded as a single dwelling for Council Tax purposes since 1997. An updated response was received from Council Tax on 6th September 2021, stating that for Council Tax purposes 222 Oxford Road is classed as a single dwelling. A report has been sent to the Valuation Office to request the 6 rooms and Flat 7 to be separately banded for Council tax purposes.

It is considered that insufficient first-hand evidence has been provided to support the claims that Flat 7 has maintained a continuous use as a self-contained C3 dwelling over a four-year period. No tenancy agreements, Statutory Declarations, bills or any other forms of evidence have been provided to support that Flat 7 has been used as a C3 dwelling more than four years before the date of this application. This application appears entirely reliant on Council records referring to Council Tax and Electoral Roll, with very little first-hand evidence of consequence to support the claim of Flat 7 as a C3 dwelling. Due to this lack of first-hand evidence and the quality of the evidence that has been submitted, it is therefore recommended that this Certificate of Lawfulness (Existing) application be refused.

Recommendation

Refuse

Reason for refusal:

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of Flat 7, 222 Oxford Road as a self-contained C3 dwelling 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

Positive and Proactive - Refusal

