

Delegated Application Report

Address: 18 Addington Road

Application No: 210512/CLE

Proposal: Certificate of Lawfulness for Existing Use as 6 person, 6 bedroom HMO

Agreed Target Date: 01/09/21

Case Officer: Connie Davis

Introduction & Proposal

The application site is a semi-detached property located on the southern side of Addington Road, near the corner with Alexandra Road.

The site is located in close proximity to the Royal Berkshire Hospital and just outside the Alexandra Road Conservation Area. It is also located within an Article 4 area preventing unrestricted changes of use from C3 to C4 use.

A certificate is sought to confirm the use of the building as a 6 bedroom/ 6 person HMO (C4 use)

Relevant Planning History:

None.

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	4
2019	4
2018	3
2017	2
2016	2
2015	2
2014	2
2013	2
2012	2
2011	2
2010	1
2009	0
2008	0
2007	0
2006	0
2005	3

Council Tax: The property has been banded as one single dwelling for c/tax purposes since at least 01.04.1997.

Our records show this property has been let out as a HMO since 01.07.2005.

HMO Team: No response, however the property does have a HMO licence.

Legal: Considers sufficient evidence has been provided to demonstrate that on the balance of probability, the HMO has been in continuous occupation for the required time period.

Submitted Evidence

Assured shorthold Tenancy Agreements provided covering the following periods:

Room 1

Name	Start Date	End Date	Rolled to/ date left
Lianne Menzies	9 th June 2009	9 th September 2009	28 th December 2011
Kevin Inuk	1 st January 2012	1 st June 2012	14 th December 2012
Andriy Aleksyeyev	5 th January 2013	5 th July 2013	
Markes Tremanis	2 nd March 2013	3 rd July 2013	
Oliver Hymas	11 th August 2013	11 th November 2013	11 th December 2013
Luke Ruffler	28 th January 2014	28 th April 2014	28 th June 2014
Mohammad Ajmal	1 st August 2014	1 st November 2014	4 th December 2015
David Mingo	30 th October 2015	30 th April 2016	
Carina Morgado	1 st December 2015	1 st June 2016	6 th June 2016
Patrick Burel	14 th June 2016	14 th December 2016	31 st March 2021 - current resident. Signed confirmation

Room 3

Name	Start Date	End Date	Rolled to/ date left
Michael Ward	2 nd August 2007	1 st August 2008	27 th June 2013
Louis Leeves	9 th July 2013	9 th October 2013	10 th November 2013
Sebastian Botosezzy	17 th November 2013	17 th March 2014	29 th March 2014
Gonzalo Gonzalez	11 th July 2014	11 th September 2014	6 th September 2014
Akka Ofori-Ampfo	23 rd September 2014	23 rd July 2015	26 th May 2015
Lucio Carta	16 th June 2015	16 th September 2015	31 st March 2021 - current resident - signed confirmation

30th March 2014 - 10th July 2014 - Cleaning

Room 4

Name	Start Date	End Date	Rolled to/ date left
Subayan Sriyoganathan	28 th April 2008	28 th July 2008	6 th November 2012
Michael Ormerod	23 rd February 2013	23 rd May 2013	26 th March 2014
Christian Pithers	2 nd April 2014	2 nd October 2014	1 st May 2018
Jean-Luc Gallet	7 th January 2019	7 th July 2019	13 th June 2019
Yordan Gerchev	17 th July 2019	17 th January 2020	13 th January 2020
Amine Messaolli	7 th September 2020	7 th December 2020	6 th February 2021

2nd May 2018 - 6th January 2019 - Clean

14th January 2020 - 6th September 2020 - Lockdown

7th February 2021 - 31st March 2021 - Lockdown and tier confusion

Room 5

Name	Start Date	End Date	Rolled to/ date left
Johannes Schelze	20 th September 2010	20 th March 2011	20 th May 2012
Parivesh Sintina	18 th October 2012	18 th April 2013	12 th December 2012
Michael Weatherley	28 th February 2013	28 th May 2013	24 th February 2014
Edward Cliffe	15 th May 2014	15 th November 2014	5 th January 2015
Paul Abbot	28 th January 2015	28 th July 2015	24 th April 2014
Gareth Nelson	7 th June 2015	7 th September 2015	7 th August 2015
Virgine Frederique	15 th September 2015	15 th June 2016	19 th March 2016
Songrui Zhao	20 th March 2016	20 th June 2016	19 th June 2016
Karla Acuna	29 th June 2016	29 th September 2016	28 th June 2017
John Jenkins	25 th November 2017	24 th May 2018	29 th September 2018
Thomas Raju	29 th October 2018	28 th April 2019	30 th May 2019
Pranshu Agrawal	23 rd June 2019	23 rd December 2019	14 th December 2019

Mohammed Abouhashen	15 th September 2020	15 th December 2020	31 st March 2021 - current resident - signed confirmation
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15th December 2019 - 14th September 2020 - Lockdown

Room 6

Name	Start Date	End Date	Rolled to/ date left
Phillip Elliott	7 th July 2007	7 th October 2007	27 th January 2013
Zhoro Zhekov	1 st September 2013	1 st March 2014	27 th June 2014
Justo Ruiz	4 th July 2014	4 th September 2014	1 st September 2014
Martynes Suirskis	29 th September 2014	29 th March 2015	1 st September 2015
Jose Calderon	22 nd September 2015	22 nd March 2016	11 th February 2016
Antonio Santos	15 th March 2016	15 th September 2016	15 th January 2021 - died and room cannot be re-let yet

28th January 2013 - 31st August 2013 - Police Investigation

Room 7

Name	Start Date	End Date	Rolled to/ date left
Ben Deeley	15 th October 2010	15 th July 2011	13 th July 2013
Paulo Almeida	19 th November 2013	19 th February 2014	5 th June 2014
Daphne Guerro	1 st July 2014	1 st February 2015	31 st August 2014
Carl Benson	7 th September 2014	7 th March 2015	6 th May 2015
Giedrius Kaskonas	24 th June 2015	24 th June 2016	29 th July 2016
Tudor Daniel	29 th July 2016	29 th January 2017	18 th November 2017
Gary Patrick	1 st May 2018	1 st November 2018	30 th August 2019
Tania Kaholn	28 th September 2019	28 th March 2020	16 th March 2020
Matthew Warwick	1 st June 2020	1 st December 2020	29 th September 2020

Room vacant from 30th September 2020 until 31st March 2021 due to maintenance Covid restrictions.

Other evidence:

- Landlord accreditation scheme certificates from 2006 -2011
- Electricity bills between 2011- 2021 sent every 3 months
- Annual water bills from April 2010 to March 2021
- Statement from applicant
- List of documents submitted

Received 7th July 2021

Assessment:

In order to grant a Certificate of Lawfulness for existing use as a 6 bedroom / 6 person HMO (C4 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 31/03/11 - 31/03/21.

A complete set of tenancy agreements has been provided for the 10 years in question. These are signed. A tenancy schedule has also been provided, addressing any short gaps in occupancy. These are for various reasons such as cleaning, maintenance and complete utility bills have also been provided for the 10 years, however these are addressed to '18 Addington Road' as opposed to be addressed to individual rooms. As such, from the utility bills, it cannot be conclusively known how many occupiers have been residing in the property over 10 years, only that it has been occupied.

It is acknowledged that achieving absolute continuous occupation of all rooms within a HMO is highly unlikely due to changes in tenant. Explanations have been provided for any such gaps which are plausible and reasonable. This also takes into account that gaps in occupation were due to the Covid-19 lockdown, where government advice prevented non-essential trips which therefore preventing people viewing rooms.

The LPA acknowledge the only way in which a building can lose an accrued right is one of the following 3 ways:

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

There is no information to suggest that the property (or any room within the property) was used for any other purpose other than a HMO during the 10 year period, or lost its accrued right through these means. Whilst acknowledged there were small gaps in occupancy between tenants, the LPA do not consider these amount to abandonment due to the nature of the use and the explanations given for the short gaps, which are mindful of the global pandemic. These gaps are considered de minimis. Sufficient and complete evidence has been provided and supported by the Council's records in terms of Council Tax and HMO records. The Council does not have any information to contradict or make the applicant's versions of events less probable.

CONCLUSION

In the absence of the information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises at 18 Addington Road has operated as a 6 person/ 6 bedroom HMO (C4 use) for a period of 10 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness for the use of the building as C4 (6 person/ 6 bedroom HMO) should be granted.

GRANT certificate

1:1250 Location Map (Not to scale)

