

Delegated Application Report

Address: 21 Carnarvon Road

Application No: 200090/CLE

Proposal: Certificate of Lawfulness for Existing use as a garden studio flat (ground floor) (C3 use)

Target Date: 29/07/20

Case Officer: Connie Davis

Introduction & Proposal

The application site is an end of terrace three storey property located on the north-eastern side of Carnarvon Road. The property comprises of 3 lawful flats (plus the studio which this certificate relates to).

A certificate is sought to confirm the use of the ground floor studio flat (C3) for a continuous period of 4 years.

Relevant Planning History:

090304 - The property is used as 3 flats. (Resubmission of planning application 08/00021/CLE) - Application Permitted

081076 - Certificate of Lawfulness for existing use of property to 4 flats - Application Refused

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:

Council Tax

The property has 4 registered flats at the address. The studio flat has been registered for council tax purposes since 2008.

Legal:

Following the receipt of additional information (received 3rd and 6th July 2020) covering the identified 4 month gap in occupancy, the planning solicitor agreed the certificate could be granted.

Submitted Evidence

Signed tenancy agreement	24 th September 2015 - 23 rd September 2016
Signed tenancy agreement	2 nd July 2016 - 1 st January 2017
Signed tenancy agreement	1 st August 2016 - 31 st January 2017
Signed tenancy agreement	15 th September 2016 - 14 th September 2017
Signed tenancy agreement	27 th April 2019 - 26 th April 2020
Signed tenancy agreement	30 th April 2019 - 19 th April 2021

Received 22nd April 2020

In addition, the applicant provided the following table to give further detail and to account for 2018 (there was no tenancy new agreement due to a rolling tenancy agreement).

	Name	Comment
a	Witczak	24 Sep -23 Sep 2016 -Absconded
b	Alina Bucur	2 Jul 16 – 1 Jan 17 -left after 1 month
c	Bustian	1 Aug 16 - 31 Jan 17 – Moved out in Sep 2016
d	Kurenda	15 Sep 2016 – 14 Sep 2017 (stayed until March/April 2019)
		Place empty from March/April 2019 to 27 April 2019
e	Michalek	27 Apr 2019 – 26 Apr 2020 -Absconded 3 Dec 2019
		Place Empty until 20 April 2020
f	Bell	20 Apr 2020 – 19 Apr 2021 Current Tenant

In addition, the following was submitted:

Floor Plan

Location and Block Plan

Electricity bill dated December 2007

Tenancy Agreement dated 12th July 1991

Received 17th February 2020

Emails between July 2016 - January 2017 to and from SSE and RBC Council Tax

Emails sent to and from SSE within the months of January, April and July 2019.

Received 22nd April 2020

Adjudication Decision

Received 3rd July 2020

Evidence to Council for Certificate of Lawfulness - 06/07/20

Submission for Certificate of Lawfulness 06/07/20 (to be read in conjunction with the above)

Received 6th July 2020

Assessment:

In order to grant a Certificate of Lawfulness for existing use as 1 x studio flat, sufficient evidence must be supplied to confirm that the studio 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 19/02/16 - 19/02/20.

Signed tenancy agreements have been provided to cover the relevant time period (with explanation as to the gaps in tenancy agreement - due to the rolling tenancy agreement). Although utility bills are incomplete (due to the applicant not receiving a response from the electricity provider when asked for copies), council tax records indicate that the studio has been registered for council tax purposes since 2008. It is noted that there is a gap in occupancy between December 2019 - April 2020 which has been accounted for through invoices for repair works; the absconded tenant left the property in a poor state, as supported by submitted photographs. The rolling tenancy agreement from September 2017 - March 2019 has been supported by a Payment Schedule signed by the tenant.

Furthermore, a CLE application was submitted in 2008 for the use of the whole property as 4 flats, and although refused (due to a lack of information), it indicates that the flat was in situ at this time. The studio flat was subsequently removed from the resubmission in 2009 where the other 3 flats were granted a certificate for their lawful use (see planning history).

Conclusion

In the absence of information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises known as the 'Garden Studio Flat' has operated as a studio flat (C3 use) for a period of 4 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness should be granted.

Recommendation:

GRANT Certificate

1:1250 Location Plan (Not to scale)

