

Delegated Application Report

Address: 7 Christchurch Gardens

Application No: 190942/CLE

Proposal: Certificate of lawfulness for the existing use as a 7 person HMO (Sui Generis)

EOT: 31/01/20

Case Officer: Connie Davis

Site Description

The application site is 3 storey semi-detached dwelling located on the northern side of Christchurch Gardens. The site is located adjacent to the Rose Garden Early Years Centre however the vast majority of properties within the vicinity are residential.

Description of Use or Development

Certificate of lawfulness for the existing use of the building as a 7 person HMO (Sui Generis).

Relevant Planning History

190751 - Construction of single storey rear extension to improve communal living accommodation and internal alterations to provide 8no. en-suite bedrooms - Application Pending

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.

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 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".

Consultations

- Planning Enforcement - no records.
- Council Tax -

Response from Council Tax officer:

Council tax records show this property as one single dwelling since at least 01.04.1997 banded for council tax purposes. There are no records of this property being let out as a HMO in the past as the tenants have been liable. going forward, I believe the new owner from 11.04.2019 will be using this property as a HMO for council tax purposes

- Electoral Registration:

Year	Number of Registered Electors	Pending Electors (Electors that applied, but did not make it on in that year)
2019	2	0
2018	2	0
2017	2	1
2016	1	7
2015	9	7
2014	7	0
2013	7	0
2012	5	0
2011	4	0
2010	7	0
2009	No data for the property.	

HMO Team:

The HMO team confirmed that the property has had an HMO licence since 2007.

Legal:

The RBC Planning Solicitor has reviewed all the information submitted by the application. It was acknowledged that it was a fine balance between the certificate being granted and refused. The solicitor raised some queries regarding the gaps in evidence, the fact the property has never been registered as a HMO for Council Tax purposes, and the accrued planning right the applicant claims the property has (which was accrued in years before those in question as part of this application). However the solicitor stated that ultimately the application is with the remit of officers and is in consultation with legal. Therefore the final analysis is with planning officers.

Submitted evidence

The applicant submitted the following evidence for each room of the property:

Room 1:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)

- Tenancy agreement dated 1st September 2010 (12 months - 1st September 2010 - 1st September 2011)
- Tenancy agreement dated 4th April 2011 (12 months - 4th April 2011 - 4th April 2012)
- Tenancy agreement dated 28th August 2012 (12 months - 28th August 2012 - 28th August 2013)
- Tenancy agreement dated 29th March 2014 (12 months - 29th March 2014 - 29th March 2015)
- Tenancy agreement dated 15th September 2014 (12 months - 15th September 2014 - 15th September 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)
- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019.

Room 2:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)
- Tenancy agreement dated 1st September 2010 (12 months - 1st September 2010 - 1st September 2011)
- Tenancy agreement dated 23rd March 2013 (12 months - 23rd March 2013 - 23rd March 2014)
- Tenancy agreement dated 25th March 2014 (12 months - 25th March 2014 - 25th March 2015)
- Tenancy agreement dated 16th January 2015 (5 months - 16th January 2015 - 16th June 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)
- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019

Room 3:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)
- Tenancy agreement dated 11th September 2010 (12 months - 11th September 2010 - 11th September 2011)
- Tenancy agreement dated 26th December 2010 (12 months - 26th December 2010 - 26th December 2011)
- Tenancy agreement dated 15th October 2011 (2 months - 15th October 2011 - 15th December 2011)
- Tenancy agreement dated 13th January 2012 (12 months - 13th January 2012 - 13th January 2013)
- Tenancy agreement dated 16th April 2013 (12 months - 16th April 2013 - 16th April 2014)

- Tenancy agreement dated 23rd October 2013 (12 months - 23rd October 2013 - 23rd October 2014)
- Tenancy agreement dated 22nd January 2014 (12 months - 22nd January 2014 - 22nd January 2015)
- Tenancy agreement dated 15th February 2014 (12 months - 15th February 2014 - 15th February 2015)
- Tenancy agreement dated 4th September 2014 (12 months - 4th September 2014 - 4th September 2015)
- Tenancy agreement dated 27th September 2014 (12 months - 27th September 2014 - 27th September 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)
- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019

Room 4:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)
- Tenancy agreement dated 7th September 2010 (7th September 2010 - no time period specified)
- Tenancy agreement dated 21st September 2012 (12 months - 21st September 2012 - 21st September 2013)
- Tenancy agreement dated 22nd February 2014 (12 months - 22nd February 2014 - 22nd February 2015)
- Tenancy agreement dated 26th April 2014 (12 months - 26th April 2014 - 26th April 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)
- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019

Room 5:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)
- Tenancy agreement dated 1st August 2010 (12 months - 1st August 2010 - 1st August 2011)
- Tenancy agreement dated 20th March 2012 (12 months - 20th March 2012 - 20th March 2013)
- Tenancy agreement dated 28th March 2014 (12 months - 28th March 2014 - 28th March 2015)
- Tenancy agreement dated 16th January 2015 (4 months - 16th January 2015 - 16th May 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)

- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019

Room 6:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)
- Tenancy agreement dated 1st September 2010 (12 months - 1st September 2010 - 1st September 2011)
- Tenancy agreement dated 18th October 2011 (18th October 2011 - no specified)
- Tenancy agreement dated 19th October 2012 (12 months - 19th October 2012 - 19th October 2013)
- Tenancy agreement dated 4th October 2013 (12 months - 4th October 2013 - 4th October 2014)
- Tenancy agreement dated 6th September 2014 (12 months - 6th September 2014 - 6th September 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)
- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019

Room 7:

- Tenancy agreement dated 1st July 2009 (12 months - 1st July 2009 - 1st July 2010)
- Tenancy agreement dated 1st September 2010 (12 months - 1st September 2010 - 1st September 2011)
- Tenancy agreement dated 14th July 2011 (12 months - 14th July 2011 - 14th July 2012)
- Tenancy agreement dated 29th December 2011 (12 months - 29th December 2011 - 29th December 2012)
- Tenancy agreement dated 17th January 2014 (12 months - 17th January 2014 - 17th January 2015)
- Tenancy agreement dated 3rd September 2014 (12 months - 3rd September 2014 - 3rd September 2015)
- Tenancy agreement dated 1st July 2016 (12 months - 1st July 2016 - 1st July 2017)
- Tenancy agreement dated 1st July 2017 (12 months - 1st July 2017 - 1st July 2018)

Received 14th June 2019

- Tenancy agreement dated 1st July 2015 (12 months - 1st July 2015 - 1st July 2016)

Received 9th August 2019

In addition the following was submitted:

Letter from Reading Lettings (dated 9th August 2019)

Received 9th August 2019

18017-PL-10 - Location Plan

Statutory Declaration dated 28th March 2019

Received 14th June 2019

Other information submitted

Legal response prepared by Blandy & Blandy

Received 4th October 2019.

Legal response received by Blandy & Blandy
Statutory Declaration

Received 20th November 2019

Analysis of Evidence

The applicant has submitted a lawful development certificate to establish the use of the building as 7 person HMO (Sui Generis). Evidence must be submitted to demonstrate continuous occupation of the property as a 7 person HMO between 13th June 2009 - 13th June 2019 (10 years prior to the date the application was received by the LPA).

It is noted that the building has been vacant since July 2018 to present due to the death of the owner (as stated in the Statutory Declaration). As such, the case officer raised concerns that this would result in a considerable gap that meant the building has not been in continuous use as a HMO.

To combat this, the applicant has provided several letters prepared by Blandy & Blandy which in summary, state that the building has an accrued right as a HMO before the 10 year period relating to this application.

The Statutory Declaration stated that the building began being used as a HMO in 1999 (and has been done so continuously until 2018). As such, the building accrued its legal right as a HMO in 2009. Case law was referenced to support this. 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

It is considered that none of these have occurred between 1999- 2009 and the LPA has no evidence to the contrary that the accrued planning right has been lost through one of these means. Although the property has been vacant 2018 - present, this is not considered abandonment by the LPA due to the exceptional circumstances; namely the death of the owner. In this specific instance, this justification is considered acceptable. It is also not considered that the property was used for an alternative use between this time, to break

the continuity of it being a HMO. If the property had been used during this time period for an alternative means (e.g. a family dwelling), this would have constituted a break in the HMO usage and would likely have been unacceptable for the certificate to be granted.

Tenancy agreements have been provided for other years, and the HMO team have confirmed that the property has had a HMO licence since 2006. The statutory declaration from the occupiers of a neighbouring property also confirms the building as being a long standing HMO.

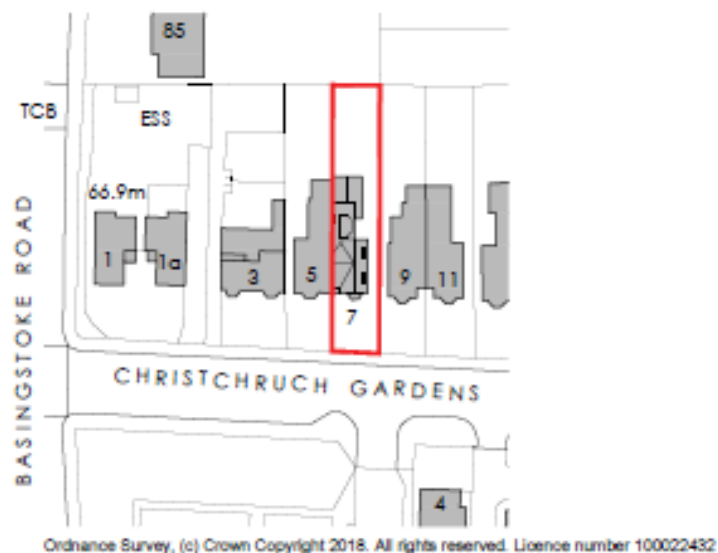
Conclusion

Based on all the submitted information, responses from internal consultees and lack of evidence to the contrary. The relevant case law submitted, combined with consultee responses from the HMO team, and lack of evidence to the contrary, on balance, it is considered that on this occasion the certificate can be granted.

RECOMMENDATION: GRANT CERTIFICATE with the following:

Based on all submitted information, on balance, it is considered that the premises at 7 Christchurch Gardens has operated as a 7 person HMO for a period of at least 10 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness for the use of the building as a 7 person HMO (Sui Generis) should be granted.

1:1250 Location Plan (Not to scale)



LOCATION PLAN 1:1250