

Delegated Application Report

Target Date: 13/12/2019

Address: 8 William Street

Application No: 191668/CLE

Proposal: Certificate of lawfulness for existing use of a one dwelling house changed to two dwelling houses (basement and upper maisonette)

Case Officer: Tom French

Introduction & Proposal

The application site comprises a mid-terrace dwelling on the north side of William Street. The application property has been sub-divided into a basement level flat and a maisonette.

The applicant seeks to demonstrate that the building has been in use as two flats for long enough so as to become immune from enforcement action.

Relevant Planning History:

031306 - FUL - Retrospective application for the conversion of the basement of house into a self-contained flat - Application Refused

050360 - FUL - Retrospective conversion of basement into self-contained flats - Application Refused - Appeal Dismissed (Appeal Ref. APP/E0345/A/05/1180274)

060700 - FUL - Conversion of basement into self contained flat (retrospective) and the erection of a single storey rear extension and an external staircase - Description amended following submission to include proposed extension - 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

The planning enforcement team provided a consultation response detailing that an enforcement notice was served against the use of this property as two flats in July 2005. The enforcement records also note that the notice was complied with in March 2007.

Council Tax

The council tax team confirm that the records show that the property consist of two separate dwelling (basement flat and remaining upper dwelling) and that both dwellings have been separately banded for council tax purposes since at least 2003.

Electoral Services

The electoral services team have provided a consultation response that shows that on the electoral register the application building was listed as two dwellings in 2012 - 2013.

Public Consultation

There is no statutory requirement for a public consultation process with this type of application. As such, none has been undertaken. No responses have been received.

Submitted Evidence

The applicant supplied the following information (received 16/10/2019):

- Location Plan
- Evidence pack reference in covering letter as 'Statutory Declaration with exhibits'
- Cover letter dated 15/10/2019 Ref. DJC/77118/1

Assessment

Section 171B of the Town and Country Planning Act 1990 states that:

'171B Time limits.

(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

...

(4)The preceding subsections do not prevent—

(a)the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

The Reading Borough Council planning enforcement team issued an enforcement notice against the application property on 6/07/2005. The breach of planning permission described on the enforcement notice is as follows:

'Without planning permission, the change of use of the building on the Land from a single dwelling house to use as 1 no. self-contained two-bedroom maisonette and 1 no. self-contained one-bedroom basement flat.'

Considering the above in the context of this application for a certificate of lawfulness for existing use of a one dwelling house changed to two dwelling houses (basement and upper maisonette), it is concluded that an enforcement notice has already been served against this use. As such, pursuant to subsection (4)(b) of Section 171B (Time Limits) the four year time limit (described in subsection (2)) does not prevent the local planning authority taking further action with respect to this breach of planning control.

Section 191 of the Town and Country Planning Act 1990 (2) states that:

'(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.'

As outlined above, Reading Borough Council may still pursue enforcement action against the use of the property as two flats and the existing use being applied for is in contravention of the enforcement notice that was served against the property. Therefore the use cannot be considered lawful as directed by Section 191 of the Town and Country Planning Act 1990 (2) (a) & (b). For this reason this application for a certificate of lawfulness should be refused and the certificate should not be issued.

Recommendation

REFUSE certificate

Location Plan (not to scale):

