

DELEGATED REPORT

Ward: Katesgrove

App Ref: 190969/CLE

Address: 7 Grange Avenue, Reading, RG6 1DJ

Proposals: Certificate of Lawfulness for Existing use of property as C4 HMO

Case Officer: Nathalie Weekes

Applicant: Mr and Miss Butt

Date received (valid from): 15th July 2019 Target Decision date: 23 October 2019

Site Description and Surrounding Area:

The site is a three storey mid-terrace property on a residential street. The application site is a two storey mid-terraced dwelling, located within an Article 4 area controlling the change of use from a dwellinghouse (Class C3) to a House in Multiple Occupation (HMO) (Class C4). The dwelling has recently undergone extensions to the rear and to the loft, pursuant to previous applications (see below). These have been completed. The surrounding area is predominantly residential.

Proposal:

The proposal is for a certificate of lawfulness for the existing use of the property as a C4 small HMO (for up to 6 persons) for more than 10 years, within an Article 4 area (where such rights have been withdrawn). At the time of the officer site visit in September 2019, the ground floor is located a bedroom, a kitchen, a room suitable for communal occupation and two bathrooms. At the first floor are located three bedrooms. Two bedrooms and a further bathroom are now located at the second floor. Bin storage and two bicycle stands would be located to the site frontage.

Following the refusal of planning application 180083 and the associated Appeal refusal, the applicant asserts that the existing use of 7 Grange Road has been as an HMO for over 10 years. It should be noted that in the Inspector's decision letter dated 17 September 2018, the Inspector's starting point was that the property being assessed for conversion was in C3 use.

Plans considered:

Letter from Adams Estates dated 7 March 2008 for payment of missed rent for 7 Grange Avenue
Student pass 19/04/2008 4 students

Addendum to tenancy agreement date of agreement 22/04/2008 for guarantor for 4 students

Adams Estates Account statement 14/05/2008 number 3127

Tenant application form 7 Grange Avenue for 4 students 22/04/2005

Financial statement, number 01 08/01/05 7 Grange Avenue for rent and keys cut

Email from agent on Monday 14th October 2019, with title deeds and names of tenants listed.

Relevant Planning History:

180083 Change of use from dwellinghouse (Class C3) to House in Multiple Occupation (Class C4) within Article 4 area - 07/03/2018 Application refused. Appeal dismissed 17 September 2018.

171411/HPA - Single storey rear extension [to C3 dwelling] - Prior Approval not required 13/09/17 IMPLEMENTED. Reading Borough Council made an Article 4 Direction in May 2012, which came into force on 16th May 2013, which removes permitted development rights to convert from a dwellinghouse (C3 use) to a house in multiple occupation (C4 - small HMO for 3-6 unrelated persons sharing at least one basic amenity) in parts of Redlands, Katesgrove and Park Wards. The officer report stated that 'The application site is in the Article 4 Direction Area and there are no records of permission being granted for conversion from a C3 dwellinghouse'.

172073/CLP - Loft conversion [to C3 dwelling] including L-shaped rear box dormer - Permitted 19/12/17 IMPLEMENTED. The application form stated 'The existing building is a private dwelling which has been in existence and used for the purpose since the early 1930's.' dated 21/11/2017.

Equality Act 2010:

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

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. There is still time to take enforcement action at this address.

The planning application submitted by Mr Sanaullah Butt, dated 15/1/18, has signed the certificate of ownership for the property certifying that "on 21 days before the date of this application nobody except myself/the applicant was the owner (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of any part of the land to which the application relates". The Statutory declaration of Sanaullah however states the owner of the land is Aqsa Butt and he has sworn this to be true, when clearly it is false. The declaration on the planning application goes on to say the facts stated therein are true and accurate. The fact stated in the application confirms the use of the property as a "private dwelling" and not an HMO. An enforcement notice could therefore be served to ensure this property is returned to a private dwelling to prevent students or others from forming a single household.

Under the Town and Country planning Act 1990 section 65 (6) states:

If any person—

(a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or

(b)recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
he shall be guilty of an offence.

(7)A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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.'

The Town and Country Planning Act 1990 (as amended) defines the time limits for enforcement action within Section 171B.

Criterion (3) of S171B is relevant to unauthorised changes of use for anything other than the creation of a single dwellinghouse and is therefore relevant to this application.

This provides that:

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Consultation Responses:

- RBC Planning Enforcement has had no previous dealings with this property.
- Business rates confirmed that 7 Grange Avenue was not on their system.
- Council tax: This property is banded as one single dwelling on the council tax banding list and banded since at least 01.04.1997. There are records which show this dwelling has been let to groups of students, all on the same tenancy.
- Electoral role confirmed the number of residents registered.

Electoral Role

Address	Year	Registered Electors
7 Grange Avenue, Reading, RG6 1DJ	2009	4
	2010	1
	2011	2
	2012	2
	2013	2
	2014	unknown ^a
	2015	unknown*
	2016	unknown*
	2017	unknown ^o
	2018	unknown ^o
	2019	unknown ^o

^a Property classed as empty.

*Property notes state that there are "Nepalese residents", who are not able to vote. No number of residents given.

°Property notes state that there are “foreign residents”, who are not able to vote. No number of residents given.

Submitted Evidence

The agent submitted the following information:

- Site location plan
- Statutory declarations
- Statutory declaration signed by Mr Qaiser Mahnood on 12th April 2019, that he has worked as a general maintenance, handyman for over 12 years his understanding that the property 7 Grange Avenue has been used as an HMO, let to unrelated individuals. - Not signed by a solicitor, no stamp
- Statutory declaration signed by Zahid Butt, a local landlord in the area, on 13th April 2018 stating that his understanding that 7 Grange Avenue the property has been an HMO for over 13 years - Not signed by a solicitor, no stamp
As received 18th June 2019
- Statutory declaration signed by Sanaullah Butt on 15th April 2019 that between the dates of December 2004 and January 2008 it had been his understanding that the property 7 Grange Avenue and it had been in use as an HMO for at least 14 years. The property was transferred to the ownership of Miss Aqsa Butt in January 2008. The declaration is signed by Mr Dilmeet Singh, Chatham Chambers Solicitors. Copies of the tenancy agreements were attached.
- Statutory declaration signed by Miss Aqsa Butt on 15th April 2019 that between the dates of January 2008 to present it had been her understanding that the property 7 Grange Avenue in use as an HMO. The declaration is signed by Mr Dilmeet Singh, Chatham Chambers Solicitors. Copies of the tenancy agreements were attached.

Tenancy agreements

- 19/01/2017 for 12 months 2 tenants on tenancy contract
- 27/04/2016 for 12 months 1 tenant on tenancy contract
- 09/01/2016 for 12 months 1 tenant on tenancy contract
- 09/01/2015 for 12 months 2 tenants on tenancy contract
- 27/04/2015 for 12 months 1 tenant on tenancy contract
- 11/08/2015 for 12 months 1 tenant on tenancy contract
- 11/08/2014 for 12 months 1 tenant on tenancy contract
- 10/01/2014 for 12 months 1 tenant on tenancy contract
- 09/01/2014 for 12 months 2 tenants on tenancy contract
- 06/01/2013 for 12 months 2 tenants on tenancy contract
- 08/09/2013 for 12 months 1 tenant on tenancy contract
- 09/01/2012 for 24 months 2 tenants on tenancy contract
- 10/01/2011 for 12 months 1 tenant on tenancy contract
- 01/05/2012 for 12 months 1 tenant on tenancy contract
- 05/01/2011 for 12 months 1 tenant on tenancy contract
- 10/01/2011 for 12 months 1 tenant on tenancy contract
- 20/02/2011 for 12 months 1 tenant on tenancy contract
- 15/03/2010 for 12 months 1 tenant on tenancy contract
- 06/08/2009 for 6 months 1 tenant on tenancy contract

- Letter from Adams Estates dated 7 March 2008 for payment of missed rent for 7 Grange Avenue
- Student pass 19/04/2008 4 students
- Addendum to tenancy agreement date of agreement 22/04/2008 for guarantor for 4 students
- Adams Estates Account statement 14/05/2008 number 3127
- Tenant application form 7 Grange Avenue for 4 students 22/04/2005
- Financial statement, number 01 08/01/05 7 Grange Avenue for rent and keys cut

As received 15th July 2019

- HMO licence

As received 9th September 2019

- Email from agent on 14th October stating which tenants were overlapping during this period.
- Title deeds

As received on 14th October 2019

Assessment:

In order to grant a Certificate of Lawfulness for existing use of 7 Grange Avenue as an HMO, sufficient evidence must be supplied to confirm that the property 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 15th July 2009 to 15th July 2019.

The application form and application letter submitted by the applicant states that the property has been used as an HMO for more than 10 years. The applicant has provided 4 affidavits, 2 of which signed by a solicitor stating that the property has been continually used as an HMO for more than 13 years. The current HMO licence was submitted. However, this is contradicted by the applicant's own evidence in submitting a planning application for a change of use from a private dwelling (C3) to a HMO (C4). Additionally he has signed the declaration as owner of the property when this is false and he knows this to be false having sold the property to his sister some many years before in 2008 as he states in his statutory declaration in respect of this application for a certificate of lawful use.

This application form is supported by nineteen tenancy agreements covering the period March 2010 to January 2018. However, as shown above, these tenancies do not show the house has been a house in multiple occupation for a period of 10 years. Indeed most of the tenancy agreements show 1 or 2 parties occupying the house as a single residence and not as multiple households which is a requirement for a HMO. The email from the agent on 14th October 2019 was insufficient evidence.

At the site visit, the applicant explained that the house is being used for Council lettings.

The evidence submitted is not precise or unambiguous; indeed the evidence offered contradicts the applicant's version and therefore makes that less probable. The planning application for a HMO was refused and that of itself confirms the previous use of the property as being a private dwelling. On balance therefore the certificate is refused and is not immune from enforcement action for breach of the use of the property as a private dwelling for student accommodation contrary to the Article 4 Direction.

Recommendation

Refuse Certificate of Lawful Use.

Location Plan - Not to scale



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