

Delegated Application Report

Target Date: 21/06/2018

Address: 7 Argyle Street

Agreed Extension of Time: 28/09/2018

Application No: 180707/CLE

Proposal: Existing use as three separate flats

Case Officer: Tom French

Introduction & Proposal

The application site comprises a three storey mid-terrace dwelling on the east side of Argyle Street.

The applicant asserts that the existing use of the property is as three separate flats.

Relevant Planning History:

141293 - CLE - Certificate of Lawfulness for Existing Use as 3 separate self-contained units - 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 RBC Planning Enforcement Manager provided a consultation response stating that they have nothing in their records at this address

Electoral Registration

The RBC Electoral Services Officer provided the electoral register for the application site from 2005 to present.

Council Tax

The RBC Customer Services Property Inspector confirmed that the council tax records show that the property is split into three separate flats and that the flats are separately banded for council tax purposes with effect from 01/04/2002.

Submitted Evidence

The applicant supplied the following information:

- A Customer Side Leakage Shared supply survey, dated 12/07/2013 and addressed 7, 7A, 7B Argyle Street.

Relating to Flat 1 (Ground Floor Flat):

- A Zoopla listing to rent the flat, dated 29/09/2011
- A tenancy agreement for the period 15/03/2013 to 30/09/2013
- A council tax reminder dated 23/12/2013

Relating to Flat 2 (First Floor Flat):

A tenancy agreement for the period 01/05/2013 to 31/10/2013

Relating to Flat 3 (Top Floor/Studio Flat):

- Zoopla listings to let the flat dated 29/09/11 and 07/04/2013
- Tenancy agreements for the periods of:
 - 20/04/2013 - 19/04/2014
 - 17/07/2015 - 16/01/2016
 - 01/05/2016 - 01/11/2016
 - 01/04/2018 - 31/03/2019
- A declaration from the letting agent (Hamlet Homes) stating that the flat was 'rented as a single self-contained unit' from 12/04/2013 - 26/06/2015
- A signed declaration from a tenant stating they lived in flat 3 as a separate self-contained unit from 17/07/2015 to 30/04/2016.

Received: 26/04/2018

- A Completion Statement from Rich & Carr Phillips & Powell Solicitors, relating to the purchase of the property
- A supporting letter outlining the evidence provided and offering justification as to why the applicant believes the certificate should be granted, signed by both applicants

Relating to Flat 1 (Ground Floor Flat):

- A signed declaration from a tenant stating that they have been a tenant in Flat 1 from 15th March 2013 to present with no breaks in the tenancy

Relating to Flat 2 (First Floor Flat):

- A signed declaration from a tenant stating that they have been a tenant in Flat 2 from 1st May 2013 to present with no breaks in the tenancy

Relating to Flat 3 (Top Floor/Studio Flat):

- A signed letter of confirmation of tenancy from the letting agent for the period of 12th April 2013 to 26th June 2015
- A signed declaration from a tenant stating that they had been a tenant in Flat 3 for the period of 17th July 2015 to 30th April 2016
- A signed declaration from a tenant stating that they have been a tenant in Flat 3 from 1st May 2016 to present with no breaks in the tenancy

Received: 24/09/2018

Assessment:

In order to grant a Certificate of Lawfulness for existing use as 3 x C3 flats numbered as Flat 1, Flat 2 and Flat 3 7 Argyle Street, sufficient evidence must be supplied to confirm that the property 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 24th April 2014 to 24th April 2018.

The letter submitted in support of the application, by the applicant, states that the property has been divided into three flats that have been separately let since they purchased the property in December 2012. This declaration is supported by signed statements from tenants, during the relevant time period, of each of the flats and is supported by various tenancy agreements, property listings and declarations from letting agents. A council tax reminder dated 23/12/2013 and a Customer Side Leakage Shared supply survey from a Thames Water technician (dated 12/07/2013) have also been supplied. The address on the Customer Side Leakage Shared supply survey is noted as 7, 7A, 7B Argyle Street, implying that at the time of technician's visit to the site the property was in use as three separate flats. This is supported by the information regarding council tax provided by the RBC Customer Services Property Inspector (see Consultation Responses above).

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 property known as 7 Argyle Street has operated as 3 separate C3 flats numbers as Flat 1, Flat 2 and Flat 3 for a period exceeding 4 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness for the use of the building as 3 C3 flats should be granted.

Recommendation

Grant certificate