

## **DELEGATED PLANNING APPLICATION REPORT**

**Ward: Park**

**App Ref: 240062/CLE**

**Address: 395 London Road, Reading, RG1 3PB**

**Proposals: Certificate of lawfulness for existing use as 8 bed HMO**

**Case Officer: Marcie Rejwerska**

**Date received (valid from): 22 January 2024      Target Decision date: 9 May 2024 (ext.)**

### **1. SITE DESCRIPTION**

The application site comprises a mid-terraced two-storey dwelling on the north side of London Road. The property has an existing two storey outrigger at the rear of the property and rear dormer extensions. There is a communal kitchen/dining room on the ground floor. The surrounding area is predominately residential, although just east of Cemetery Junction centre. The application site is not within an Article 4 Direction area.



Photo taken by case officer in November 2023.

### **2. PROPOSAL AND SUPPORTING INFORMATION**

The application seeks to demonstrate the existing use of the property as an 8-bedroom, 8-person large HMO (Sui Generis). The property currently has 9-bedroom as a result of a recent rear dormer extension, however, as the 9<sup>th</sup> bedroom does not meet the 10-year qualifying period, it has been excluded from this application.



### 3. RELEVANT PLANNING HISTORY

231529 - Retrospective change of use of C3 dwelling to 9-bedroom large HMO (Sui Generis) (amended description) - Application withdrawn

### 4. LEGAL AND PLANNING POLICY CONTEXT

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 is 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 planning permission. The planning merits of 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 applicants version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability’.

#### **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.

## **5. CONSULTATIONS**

RBC Electoral Registration, response received on 24/01/2024:

| Year | Registered electors |
|------|---------------------|
| 2024 | 2                   |
| 2023 | 2                   |
| 2022 | 2                   |
| 2021 | 1                   |
| 2020 | 1                   |
| 2019 | 1                   |
| 2018 | 0                   |
| 2017 | 0                   |
| 2016 | 1                   |
| 2015 | 1                   |

RBC Council Tax, response received on 25/01/2024:

- I can confirm we have this property banded for CT purposes as a single dwelling since at least 01.04.1997. We do have this property marked as being let out as a HMO for CT purposes since the date of banding.

RBC Private Sector Housing, response received on 07/03/2024:

- We have records for this property indicating it as a HMO since 2007 with the owners making an application for a HMO licence. Records from 2013 do indicate that it was an 8 bed HMO including a HMO licence that was issued with the number and location of bedrooms.

RBC Planning Enforcement, response received on 24/01/2024:

- This has been triggered by HMO consultation and a simple letter sent out to ask for an application. I have no evidence to challenge the claim.

RBC Legal Services, response received on 26/04/2024:

- Enough evidence has been submitted and there is no evidence to contradict the applicant's claim.

## 6. SUBMITTED EVIDENCE

The applicant has provided the following evidence to demonstrate the use of 395 London Road as an 8-bedroom, 8-person large HMO (Sui Generis):

Various tenancy agreements from 2002 to 2023, received on 8 April 2024  
 PP-12724272v1 - Location Plan, dated 17 January 2024, received on 18 January 2024  
 PL01 - Floor Plans as Existing, dated 1 October 2023, received on 22 January 2024  
 RBC HMO License ref. 466104, dated 19 December 2013, received on 18 January 2024  
 RBC HMO License ref. 181439, dated 21 August 2008, received on 18 January 2024  
 Various Electrical Installation Certificates, received on 18 January 2024  
 Various Gas Safety Certificates, received on 18 January 2024

## 7. ASSESSMENT

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use of 395 London Road as an 8-bedroom, 8-person large HMO (Sui Generis) began more than 10 years before the date of this application on 22 January 2024. The application form states that the use began on 01 November 2002, which is supported by the submitted tenancy agreements dating from 2002. It is possible the use began even before then due to evidence from RBC Council Tax.

With regards to internal consultee comments, the Council Tax records show that the property was banded in 1997 for tax purposes, and has been banded as an HMO since then, which supports the applicant's claim. The Electoral Register records do not indicate occupation numbers and is therefore not considered to have significant weights. The Private Sector Housing team also have records on file that the property has held HMO licenses in the past, although does not indicate the historic occupancy limits. The Private Sector Housing team referred the property to the Planning Enforcement team in 2023 as an unauthorised HMO, and records to that effect are held by the Enforcement team.

Turning to the evidence submitted by the applicant to support the claim made within this application, the PPG makes the position clear on how the evidence submitted is to be considered,

*"In the case of applications for existing use, 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"*

The applicant has submitted tenancy agreements dating from 2002 to 2023, previous HMO licenses, and gas and electricity safety records to demonstrate the continuous use of the property since 2002. The applicant has also provided additional information with regards to move-out dates for each submitted tenancy agreement to allow the officers to establish levels of occupancy. This evidence has a number of time gaps which the applicant explains as periods when no new tenants were signed on (in 2017 due to an outbreak of bed bugs in the property, and in 2020 due to Coronavirus). The evidence is sufficient to demonstrate the continuous use of the property as an 8-bedroom, 8-person large HMO.

RBC Legal Services are in agreement that on balance the applicant's claim shows a consistent level of occupancy, and that the LPA does not hold any contradictory evidence. It is therefore considered that the evidence is sufficiently precise to justify the grant of a certificate on the balance of probabilities.

## **RECOMMENDATION**

### **GRANT CERTIFICATE**

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 395 London Road as an 8-bedroom, 8-person large HMO (Sui Generis) began more than 10 years ago, and there is no evidence to suggest that this use was changed or lost. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

### **Location Plan (scale 1:1250)**

