

DELEGATED PLANNING APPLICATION REPORT

Ward: Thames

App Ref: 240503/CLE

Address: 97a York Road, Reading, RG1 8DU

Proposals: Certificate of Lawfulness for Existing Use as one self-contained converted garage used as such for more than four years

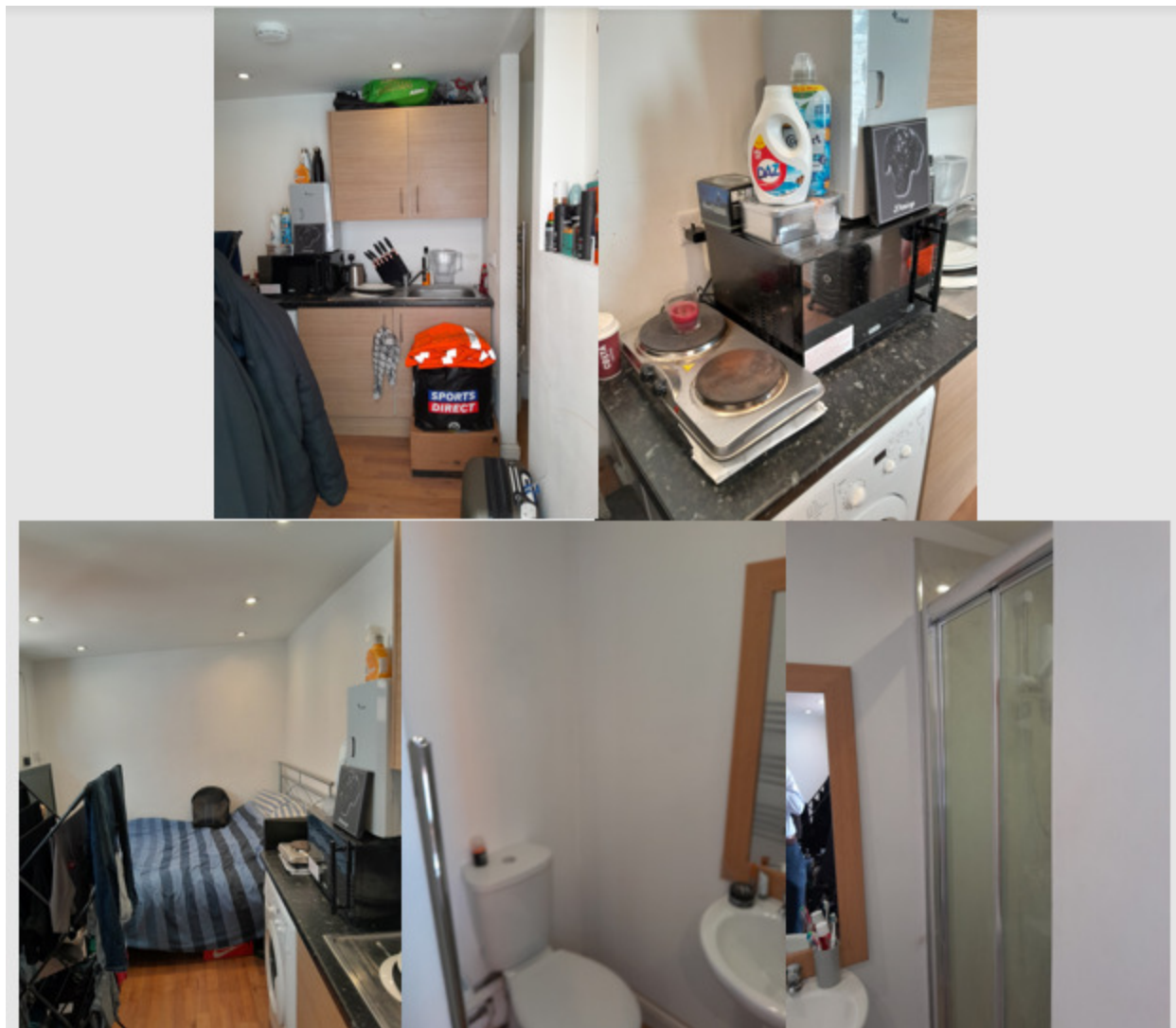
Case Officer: Mr Anthony Scholes

Date received (valid from): 19 April 2024 Target Decision date: 21 June 2024

1. SITE DESCRIPTION

Site visit date: 20/05/2024

Site visit photos:



The application site, is a converted garage to the rear of no's 2 and 4 Newport Road, addressed as 97a York Road. Upon arrival to the site visit, I was greeted at the side gate which provides access to the application site. The building is a converted garage, with a shower, toilet, and small benchtop applicant for the cooking of food. There is also a sink, and handwashing basin separate to one another. There is a washing machine, ad space for a bed, and small cupboard. There was no indication at the front of the property that there was a dwelling there, such as a street number. The property did not have any waste receptacles (black and maroon bins for collection).

2. PROPOSAL AND SUPPORTING INFORMATION

This application is seeking to certify that the ~12m² converted garage has been in use as a separate dwelling for at least four years.

3. RELEVANT PLANNING HISTORY

221037/CLE - Certificate of Lawfulness for Existing use of a converted garage to studio flat for use as a C3 dwelling for the last 4 years. WITHDRAWN 7 February 2023 *Note: Application made over no.2 Newport Road*

4. CONSULTATIONS

The following addresses were consulted by letter.

Council Tax

This flat has been banded for CT purposes since 01.07.2022; a tenant has been liable for the CT charge since the date of banding.

Planning Enforcement

No enforcement history exists.

Electoral Registration

No electors registered 2024-2022 and no property listing on the register from 2021 and before.

Legal

The applicant has failed to illustrate that the property has been in use as a separate dwelling, rather than a self-contained flat ancillary to the main house.

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. LEGAL AND 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.*'

SUBMITTED EVIDENCE

- Council Tax Bill (2024/2025) dated 4 March 2024
- A package of Tenancy documents for building covering 2017-2021
- A statutory declaration from the occupant stating they have occupied the dwelling since may 2018
- A package of Tenancy documents for the occupant from 2022-2023
- Dwg No. 9107-101-Proposed Ground Floor Plan, dated 13 July 2022
- Location Plan, dated 13 July 2022

ASSESSMENT

In order to grant a Certificate of Lawfulness for existing use as a self-contained C3 dwelling, sufficient evidence must be supplied to confirm that the converted garage had been in use as A C3 dwelling for a continuous period of 4 years.

The statutory declarations, and tenancy agreements relate to no.2 Newport Road. They refer to a self-contained studio. It seems from the plans/photos that the flat would pass the Gravesham test (facilities required for private domestic existence - sleeping, eating, bathroom, lockable door), but that does not confirm it was used as such.

The first tranche of tenancy agreements, 2017-2021 give the address as 2 Newport Rd, which is the address of the main house, and also refer to the lease as being of "a room let", with access to shared facilities in the main house. This implies the flat is ancillary to the main house.

The electricity and water for the flat are paid by the landlord, presumably from the main house. This appears to demonstrate that the converted garage is ancillary to the main house with services provided through the main house, and no separate meter boxes.

The access to the flat is by the side door rather than through the main house, but the access arrangements have not been identified in the application. The application plan shows only the building itself and no access, and does not even cover the land between the flat and the side door. Therefore, the certificate could not be issued based on the red line plan supplied as shown on figure 1 below.



Figure 1 - Site plan and legend

There is also no indication as to how the flat receives post given there is no indication of the property to the side, or address to York Street, post appears to be through the main house as there is no separate postbox, as such it solidifies the point that the operation of the converted garage is a bedsit associated with the HMO operation at 2 Newport Road, as shown in figures 2 and 3 below, a mailbox, albeit without any identifying features was added between 2022 and 2024. Again, this remains to show that the converted garage would not operate without the main dwelling.

All submitted documents are addressed to the primary dwelling (and it is assumed mail is deposited to the same); therefore 'living arrangements' do not indicate a character of independence from it. To all extent and purposes those who have resided in the converted garage have done so as lodgers are not considered to be tenants. Additionally the land is not subdivided. All external areas are shared.



Figure 2 - 2022 Site Photo (No mailbox)



Figure 3 - 2024 Site Photo (Mailbox without number identifier)

Conclusion

The PPG makes the position clear on how the evidence submitted is to be considered. It says:-

“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 law on applications for existing use certificates is clear and in relation to the submitted application it is incumbent on the applicant to prove, on the balance of probabilities, that the building had an existing lawful use as a 6 bedroom HMO for a continuous period of 10 years. The applicant’s evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and consequently the application will be refused for the reason set out below.

Recommendation - Refuse Certificate

Reason for refusal:

The applicant has not provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of the property as an independent C3 dwelling has been ongoing continuously for at least four years. It follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.

Location Plan

