

DELEGATED HOUSEHOLDER APPLICATION REPORT

Ward: Redlands

App Ref: 231806/CLE

Address: 72 South Street, Reading, RG1 5LY

Proposals: Nine person Sui Generis large HMO at basement, ground, first and second floor levels (amended)

Case Officer: Mrs Alison Amoah

Applicant: Chris Sturmer & Nicholas Wallwork

Date received (valid from): 13th Dec 2023
2024 (ext)

Target Decision date: 19th August

1. SITE DESCRIPTION

Site visit date: 8th February 2024

The application site relates to a semi-detached dwelling set over basement, ground, first and second floors on the southern side of South Street comprising 12 separate bedrooms, some ensuite, separate bathrooms and communal kitchen facilities at basement and ground floor levels.

- The basement comprises 3no. bedrooms, a kitchen/dining room and shared bathroom.
- The ground floor comprises 2no. bedrooms with individual ensuite facilities in both rooms and a kitchen/breakfast room.
- The first floor comprises 4 no. bedrooms; 2 ensuite and 2 sharing a shower room.
- On the top floor the accommodation comprises 3no. bedrooms, two of which share a shower-room whilst the third has individual ensuite facility.

There is a car park to the rear shared with nos. 74 and 76 South Street.

The property is currently in use as a large HMO occupied by 11 persons as single occupancy, as observed during the site visit. Bedroom 2 on the ground floor was currently vacant.

2. PROPOSAL AND SUPPORTING INFORMATION

The original submission was for a Certificate of Lawfulness for an existing Sui Generis Large HMO for 12 persons.

The applicant's submission states that the property was purchased in May 2012 and that it was converted from offices to a 12 person HMO with tenants occupying it since July 2012 and that it has been continuously let since that time.

Following review of the submitted evidence and consultation with Legal it was determined that a Certificate could only be issued for nine persons and the description was amended with agreement from the applicant.

Plans and other information considered:

As received 14th December 2023, unless otherwise stated:

- Location Plan
- Existing Floor Plans - DWL 01 Rev J, received 12th July 2024
- Covering letter from Bell Cornwell (agent), dated 12/12/23
- Statutory Declaration from Nicholas Wallwork dated 6/12/23 (one of the owners). This comprises the following:
 - Decision Notice for permission 10/02260/FUL
 - Statement of Account for purchase 24/5/12
 - Title Register for 72 South Street for joint owners Nicholas Wallwork and Christopher Sturmer
 - Account Transactions of costs paid for contractors and goods for refurbishment May-October 2012
 - Rent in Transactions monthly from June 2012 to October 2023 (shows names and dates when rent paid)
 - Notice of Council's intention to issue a licence for a HMO signed 16/8/2012 (RBC)
 - Draft Licence 418843 (states up to 15 persons)
 - Letter from RBC dated 22/8/17 confirming that HMO licence 418843 due to expire 19/9/17
 - Letter from RBC 9/5/12 re HMO licence at 74 South Street
 - Notice of Council's intention to issue a licence for a HMO signed 9/5/12 (RBC) for 74 South Street
 - Draft HMO licence 402319 for 74 South Street (states up to 15 persons)
 - HMO Licence for 72 South Street from 6/9/18 to 5/9/23 for max 12 persons
- Statutory Declaration from Christopher Sturmer dated 9/11/23 comprising the same information as listed above.

3. RELEVANT PLANNING HISTORY

10/02260/FUL – Conversion of Offices to dwellinghouse with integral basement flatlet – Approved 21/12/21

4. CONSULTATIONS

Planning Enforcement: This CLE is a result of an Enforcement case.

Council Tax - Our records show this property banded as one single dwelling and as being banded for CT purposes since 17.08.2012; this property is showing as being let out as an HMO since the date of banding.

Electoral Registration: Maximum number registered electors 4no. 2017-2023.

HMO Private Sector: Records show that the property held a HMO licence for 15 people from July 2012 until 2018 and for 12 people from September 2018 until 2023 for 12 people. A further HMO licence for up to 12 people is currently being processed.

Legal: The CLE would be based on the lowest level of use, which has acquired immunity, so the minimum number of occupants over the relevant 10-year period. Based on the evidence this would be 9 people.

5. 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 if 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 a planning permission. The planning merits of the 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 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”*.

6. APPRAISAL

In order for the certificate to be granted, it needs to be demonstrated that the property has been in continuous use as a large Sui Generis HMO for 12 persons for a period of 10 years prior to the date of the application. As such, the relevant time period is **13/12/2013 – 13/12/2023**.

No joint tenancy agreements have been provided, but the Statutory Declarations submitted separately by each of the two joint owners confirm that following the purchase of the property in May 2012 work began on refurbishing the property and that this was completed by September 2012, albeit some tenants started to occupy in July 2012, and the Statutory Declarations identify that there has never been fewer than 7 occupants. It is evident from the Rent In Transactions sheets that there have been between 9 and 13 occupants of the property from December 2013 until October 2023.

No detail was provided for November or December 2023, but it has been assumed that this is because of when the documents were prepared, signed and submitted for this CLP. Of these 118 months' worth of records provided of tenants paying rent: 8 no. had 9 persons; 18 no. had 10 persons; 35 no. 11 persons; 48 no. 12 persons and 9 no. 13 persons.

Council tax has advised that the property has been in HMO use since 17/8/2012 and the HMO Team confirms that the property has been licensed as a large HMO since 2012, initially for up to 15 persons maximum (expired 19/9/17) and then for a maximum of 12 persons from 6/9/18-5/9/23. The Licence being confirmed at present will also be for a maximum of 12 persons.

It is evident that the Sui Generis HMO use has been continuous during the relevant period, however, the number of tenants has varied across the qualifying period between 9 and 13 and based on advice from Legal a CLE could only be issued for the lowest number across the relevant qualifying period, which in this case is 9. Having liaised with the agent it has been agreed that the CLE could only be issued for a nine person HMO and they have been advised to either submit a planning application or CLP to address the occupancy for up to 12 persons, which is what their HMO Licence allows.

7. CONCLUSION

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 premises at 72 South Street has been in use as a Sui Generis Large HMO for nine persons for a period of at least 10 years. It is, therefore, considered that a Certificate of Lawfulness for the use of the building as a Sui Generis Large HMO for nine persons should be granted.

8. RECOMMENDATION

GRANT Certificate

Location Plan

