

DELEGATED PLANNING APPLICATION REPORT

Ward: Battle

App Ref: 231755/CLE

Address: 534,534 and 536 Oxford Road, RG30 1EG

Proposals: The existing building at 532,534 and 536 Oxford Road has been used as 21 dwellings for more than 4 years

Case Officer: Mr Anthony Scholes

Date received (valid from): 4 December 2023

Target Decision date: 28 August 2024

1. SITE DESCRIPTION

Introduction & Proposal

The application sites are three mid-terraced dwellings over four floors including basement and loft, with associated three-storey rear extensions and rear box dormers, located on the southern side of Oxford Road. The surrounding area is a mix of residential dwellings in terms of type and size. In total the building has 21 dwellings.

The Certificate seeks to confirm that the property has been in use as 21 separate flats. In order for the certificate to be granted, it needs to be demonstrated that the building has been in this use for a continuous period of 4 years.

Relevant Planning History:

020295/CLE - 1no. flat and 5 no. bedsits PERMITTED 28/3/2002

101098/FUL - Three storey rear extensions and alterations to dormer windows at 532 and 534 Oxford Road WITHDRAWN 26/07/2010

101306/CLE - Certificate of lawfulness for existing residential use of basement flat and House in Multiple Occupation (Ground, first and second floors) WITHDRAWN 3/06/2010

111818/CLP - Construction of storage building within rear garden of 536 Oxford Road PERMITTED 12/03/2012

120207/CLE - Certificate of Lawfulness for existing use of basement as flat. PERMITTED 15/06/2012

120227/FUL - 2x Three storey extensions at the rear of 534 and 532 Oxford Road. WITHDRAWN 27/03/2012

120654/FUL - Three storey rear extensions and alterations to dormer windows at 532 and 534 Oxford Road (resubmission of 12/00235/FUL) PERMITTED 12/09/2012

121388/CLE - Residential APPLICATION RETURNED

152025/FUL - Three storey rear extension and alteration to dormer windows together with associated external works. PERMITTED 21/01/2016

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: No enforcement action noted for properties.

Council Tax: The five flats have been separately banded for CT purposes since at least 2018.

Legal: Based on the extended timeframe of the use, the evidence provided, and the lack of contradictory evidence to suggest any other use of the building, it is considered that the certificate can be issued.

Submitted Evidence

- Tenancy agreements for all tenants over 4+ years
- Council Tax information
- Existing Plans
- Location Plan

Received 4 December 2023

- Additional tenancy agreements

Received 17 July 2024

Assessment:

In order to grant a Certificate of Lawfulness for existing use as a 21 no. flats, sufficient evidence must be supplied to confirm that the basement had been in use as such for a continuous period of 4 years.

The evidence submitted is able to provide circumstantial proof that the building has been maintained as 21 flats for some time, with historic street view images showing the various mail slots and waste receptacles dating back since ~2019. The Council Tax Records are considerable in duration as to suggest the status is unchanged. As such, it appears that there is no obvious evidence to suggest that the building has been in use as other than that which the certificate is sought for, and the certificate is recommended to be given on that basis.

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 5 no. flats for a continuous period of 4 years. The applicant’s evidence appears sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and consequently the application will be granted.

Recommendation - Grant Certificate