

DELEGATED PLANNING APPLICATION REPORT

Ward: Redlands

App Ref: 240716/CLE

Address: 127 London Road, Reading RG1 5DD

Proposals: The existing building at 127 London Road as an 8-bed, 8 person Sui Generis HMO for more than 10 years (as amended)

Case Officer: Mr Anthony Scholes

Date received (valid from): 3 June 2024

Target Decision date: 29 July 2024 (agreed extension of time to 30 September 2024)

1. SITE DESCRIPTION

Introduction & Proposal

The application sites is a mid-terraced dwelling over four floors including basement and loft, with associated, located on the northern side of London Road. The surrounding area is a mix of residential dwellings in terms of type and size. In total the building has 8 self-contained rooms with kitchens, with a ground floor flat without a bathroom.

The Certificate seeks to confirm that the property has been in use as an 8-bed Sui Generis HMO. 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 10 years.

Relevant Planning History:

None applicable.

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 property.

Council Tax: The site has been separated banded from 2010-2023, due to a change in how HMO's are banded, the property was re-branded in December 2023.

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
- Statutory declarations
- Existing Plans
- Location Plan
- Planning Statement

Received 3 June 2024

Assessment:

In order to grant a Certificate of Lawfulness for existing use as a Sui Generis HMO, sufficient evidence must be supplied to confirm that the basement had been in use as such for a continuous period of 10 years.

The evidence submitted is able to provide circumstantial proof that the building has been maintained as a 8-person, 8-bed Sui Generis HMO for some time, with the previous owners statutory declaration stating the arrangement has been in place since 1981. The Council Tax Records are considerable in duration as to suggest the status is unchanged. In addition, the site has held a HMO license since 2012, which although varied, has been for at least 8 persons since 2012. 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