

DELEGATED APPLICATION REPORT

Ward: Redlands Ward

App Ref: PL/24/1369 Lawful development: Existing use

Address: 43 DONNINGTON GARDENS, READING, RG1 5LZ

Proposal: The existing use as a C4 small HMO for four persons for in excess of 10 years

Applicant: Mrs Zubda Hussain

Received date: 14/10/2024

Target Decision date: 20/12/2024 (ext)

Case Officer: Alison Amoah

1. SITE DESCRIPTION

Site visit date: 24th October 2024

The application site relates to an end of terrace dwelling set over ground and first floors on the eastern side of Donnington Road comprising 4 bedrooms, communal lounge and kitchen, bathroom and separate shower room.

- The ground floor comprises 1no. bedroom, lounge, kitchen and bathrooms.
- The first floor comprises 3 bedrooms.

There is a garden to the rear.

The property is currently in use as a C4 small HMO occupied by 4 persons, as observed during the site visit. The ground floor bedroom and lounge were the opposite way round to the submitted existing floor plan, so an amended plan was requested and subsequently received.

2. PROPOSAL AND SUPPORTING INFORMATION

The submission is for a Certificate of Lawfulness for an existing C4 small HMO for 4 persons.

The submitted application form identifies that the use commenced on 15th January 2013. A previous CLE application (ref: 191019) was withdrawn due to insufficient evidence at that time.

Plans and other information considered:

As received 14th October 2024, unless otherwise stated:

- Drawing no: DG43.501 – Site and Block Plan
- Drawing no: DG:503 Rev P1 – Existing Floor Plans, received 12th December 2024
- Drawing no: DG:504 – Existing Elevations
- Covering letter dated 13/10/24 from Rammurti Design Ltd
- Assured Shorthold Tenancy Agreements:
 - 23rd February 2013 – 30th June 2013 (n.b. outside of required 10-year period)
 - 1st July 2014 – 30th June 2015
 - 1st July 2015 – 30th June 2016
 - 1st July 2016 - 30th June 2017
 - 1st July 2017 – 30th June 2018

- 1st July 2018 – 30th June 2019
- 1st July 2019 – 30th June 2020
- 1st July 2020 – 30th June 2021
- 15th July 2021 – 30th June 2022
- 7th July 2022 – 30th June 2023
- 7th July 2023 – 30th June 2024

3. RELEVANT PLANNING HISTORY

181227/CLE – Certificate of Lawfulness for proposed loft conversion and with new rear dormer and roof lights – Agreed 5/12/2018

181226/HOU – Single Storey side and rear extension – Refused 29/1/2019

191019/CLE – Certificate of Lawfulness for existing use as HMO – Withdrawn 11/10/2020

4. CONSULTATIONS

Planning Enforcement: No records.

Electoral Registration: The number of electors registered from 2015-2024 is as follows:

	Number of Electors Registered at 43 Donnington Gardens
2024	2
2023	3
2022	1
2021	1
2020	2
2019	3
2018	1
2017	1
2016	1
2015	1

Council Tax - This property is banded as a single dwelling for council tax purposes since at least 01.04.1997. We do not consider this property to be a HMO for Council Tax purposes as the tenants are all named on the same tenancy agreement.

HMO Private Sector: I have checked the Private Sector Housing Team records in relation to this address and the only information we hold relates to information that was provided to us by a customer in 2021 to say that the property was occupied by 4 people sharing.

Legal: The applicant has submitted tenancy agreements covering the 10 year period to support their application and we consider the certificate can be safely granted as the evidence is precise and unambiguous and we do not hold any contradictory evidence to state otherwise.

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 C4 small HMO for 4 persons for a period of 10 years prior to the date of the application. As such, the relevant time period is **14/10/2014 – 14/10/2024**.

Joint Assured Shorthold Tenancy agreements have been provided to cover the whole period, albeit there is a gap of 2 weeks, and then two gaps of a few days between the end dates of tenancy agreements and the start of another. However, it is considered that these gaps are very limited in overall timescale, over this 10-year period, and do not indicate an abandonment of the use.

In terms of evidence that the Council holds the private sector housing records include some correspondence from 2021 to state the property was in use as an HMO. There was also a previous CLE in 2019 (ref: 191019) for C4 HMO use, but this was withdrawn at that time as there was insufficient evidence to demonstrate 10 years' worth of evidence, however another 5 years has elapsed and it is evident that the C4 small HMO use has been continuous during the relevant period.

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 43 Donnington Gardens has been in use as a C4 small HMO for four 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 C4 small HMO for four persons should be granted.

8. RECOMMENDATION

GRANT Certificate

Location Plan

