

DELEGATED PLANNING APPLICATION REPORT

Ward: Ward

App Ref: 241361/CLE

Address: 25 Pangbourne Street, Reading, RG30 1HS

Proposals: Certificate of Lawfulness for the Existing use of a house divided into 2x one bedroom flats for a period in excess of 10 years.

Case Officer: Nathalie Weekes

Date received: 10/10/2024 **Extended Target Decision date:** 21 January 2025

1. Site Description and Proposal

The application site comprises a 3-storey, with roof space room, mid terraced building on the western side of Pangbourne Street opposite the junction with Ledbury Close. The character of Pangbourne Street is residential terraced housing.

The proposal is for a certificate of lawfulness for the existing use as 2 x 1 bed dwellings 'Flat 1' on the ground floor and 'Flat 2' on the first and second floor level.

A site visit was undertaken by the case officer on 20 November 2024 to confirm the layout of Flat 1 and Flat 2.

Flat 1

The ground floor flat is entered from the ground floor hallway, with a separate locked internal front door. It contains a bedroom at the front, accessed from the living room, with a kitchen and bathroom and storage cupboard to the rear.

Flat 2

The first floor flat is accessed from the ground hallway and the entrance is at the top of the stairs, leading up to a second lockable internal front door. Entry on the first floor is into the living room of flat 2 with access to the kitchen/diner and bathroom at the rear. The bedroom is located up another flight of steps in the second floor roof space.

The applicant asserts that the existing use of the 2 x 1 bed separate and self-contained flats flat have been in continuous use for more than 10 years, from 01 March 2010. The property was last sold on 27/11/2009 as a terraced house.

Flat 1 - ground floor



Flat 2 first floor layout



Flat 2 bedroom on second floor



Site visit date: 20 November 2024

Site visit photos:



Plans considered

Location Plan

As received 11 October 2024

Ground floor flat

Assured Shorthold Tenancy Agreement front page dated 30/01/2012, 01/03/2013, 25/03/2014, 01/07/2015, 02/07/2016, 01/07/2017, 30/06/2018, 30/04/2021, 01/01/2023 and 21/08/2023

First floor flat

Assured Shorthold Tenancy Agreement front page dated 28/01/2022, 06/01/2023, 05/06/2023

Other

Photos of correspondence addresses

Letter from SGN Connections dated 08-Feb-2010 for a quote for a new gas supply pipe

SGN Connections

Invoice from SGN Connections for services provided at the above address

Photos including: the front of the house, 2 food recycle bins, 2 meters, A sign for 2x1 flats for sale, a lockable internal door, and internal door with a key, smoke alarms, electric meter and boiler.

As received 4 November 2024 and on 10 December 2024

Ground floor plan

First floor plan

Second floor plan

As received 18 November 2024

Emails from the applicant received on 10 December 2024

2. Relevant Planning History

None

3. 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:

Council Tax:

Records show this property is split into two separate flats, Flat 1 (ground floor) & Flat 2 (first floor), both flats have been separately banded for Council Tax purposes since 23.03.2021; both flats are separately let out to tenants since the date of banding. Prior to 23.03.2021; this property was banded as one single dwelling.

Environmental Protection: No comments.

Planning Enforcement: There is no record on file for the application subject.

Electoral Services confirmed the following Electoral Register records which are for 25 Pangbourne Street rather than split by flat:

	Number of Electors Registered at 25 Pangbourne Street
2024	2
2023	2
2022	2
2021	2
2020	2
2019	2
2018	1
2017	1
2016	3
2015	2

Private sector housing - between November 2021 and October 2022, the Public Sector Housing team received three service requests concerning this property one of which indicated that the building was converted in to two flats. No inspection carried out at that time as the complainant was not at home.

Legal Services

The CLE application is for C3 use.

It is considered that the applicant has provided sufficiently clear evidence of use as two dwellings over the requisite period.

Based on the case law (notably *Van Dyck*), the requisite period for conversion of a single dwelling to multiple dwellings is 4 years, not 10. (One case where it is 10 years is where a dwelling is converted to an HMO; this is because an HMO is also a dwelling and so there has been no change of use to a dwelling - both C3 and C4 are uses as a dwelling). With that in mind, I think the evidence clearly shows 4 years' use.

While the council tax situation would seem to contradict this, the failure to register the two dwellings for council tax is not conclusive as to how the building was actually being used; the use is more clearly established by the tenancy agreements.

It is agreed that the certificate can be granted, based on the evidence provided.

Submitted Evidence

Evidence had been submitted to verify the application for a lawful development certificate for 'Flat 1' at ground floor and 'Flat 2' at first and second floor level for use as separate flats. The application form states the use was begun from 01/03/2010.

Correspondence with the applicant:

The applicant provided additional information and tenancy agreements and a gumtree advert for a duplex flat on Pangbourne Street after the case officer mentioned there were gaps in information provided at the site visit.

Assessment:

In order to grant a Certificate of Lawfulness for existing use of 2x 1 bedroom flats at 25 Pangbourne Street, sufficient unambiguous and precise evidence must be supplied to confirm that the property has been in this use continuously for a period of 10 years from the date the application was made valid. The relevant time period is therefore 10 October 2014 to 10/10/2024.

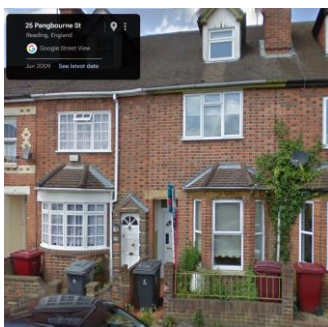
The application form submitted by the applicant states that the existing use of the property has been as separate flats for over 10 years. This application is supported by the front page of eleven tenancy agreements for flat 1 on the ground floor covering 2012 to 2023 with the applicant named as living on the first floor flat until 2018. The front pages of three additional tenancy agreements have been provided as evidence for the first floor flat covering 2022 to 2023. There is a gap in information for 2010 to 2012 and 2019 for the ground floor flat and from 2018 to 2022 for the first floor flat.

The legal definition of self-contained unit is “since 2001, a dwelling is defined (in line with the 2001 Census definition) as a self-contained unit of accommodation.

Self-containment is where all the rooms (including kitchen, bathroom and toilet) in a household’s accommodation are behind a single door which only that household can use.” The case officer considers that on balance, based on the evidence submitted, it appears that each of the flats have been in use as self-contained flats since October 2012 with separate lockable entrances. A quote and an invoice have been provided as evidence that gas works were undertaken at the property in 2010 when the building was stated to have been converted, although the gas works do not explain the nature of works being undertaken. No building control records are on file to confirm that the building had been sub-divided. The applicant provided email communications regarding a duplex property on Pangbourne Street being listed to rent on gumtree however there was no link to the address at ‘25’ Pangbourne Street. Document headers have been provided with no content or dates as sent provided. No statutory declarations have been provided.

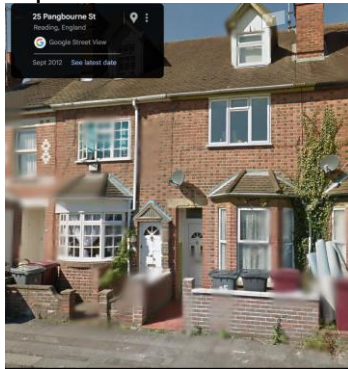
The RBC council tax team have in contrast confirmed that until 2021 the property was banded as a single premises. The property was also subject to an investigation by the private housing team in 2021. Electoral records have listings for 1, 2 or 3 occupants for the premises.

On streetmap in 2009 only 1 set of bins was viewable
June 2009

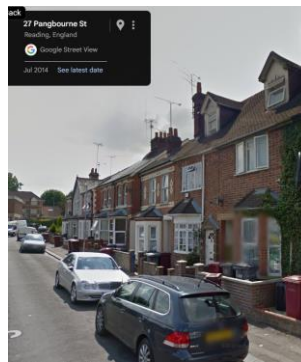


By September 2012 additional bins were viewable for 25 Pangbourne Street.

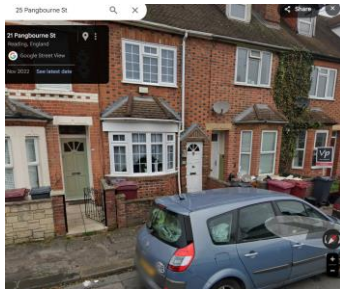
Sept 2012



July 2014



November 2022



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 property had an existing lawful use as a flat for the relevant time as noted above. The applicant's evidence alone is considered sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability and consequently the application will be permitted for the reason set out below.

Having regard to the foregoing, it is considered on the balance of probability, the applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 25 Pangbourne Street, Reading, RG30 1HS, as 2 x one bedroom flats (C3 use) began more than 10 years ago and there is no evidence to suggest that this use was changed or lost. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

Recommendation
Grant

Location map (not to scale)



Informatives

1. The Local Planning Authority has worked positively and proactively with the applicant.
2. In reaching this decision the local planning authority has taken the following submitted information into consideration:

Location Plan

As received 11 October 2024

Front page screenshots of tenancy agreements

Photos

Invoice and payment due for gas works

As received 4 November 2024

Ground floor plan

First floor plan

Second floor plan

As received 18 November 2024

Emails from the agent

Additional front pages of tenancy agreements

As received 10 December 2024.