DELEGATED APPLICATION REPORT
Ward: Katesgrove Ward
App Ref: PL/24/1380 Lawful development: Existing use
Address: 112 SOUTHAMPTON STREET, READING, RG1 2QX
Proposal: The building comprising of x2 flats has been used continuously for more than 4 years.
Applicant: Mr Surjit Jutla
Received date: 16/10/2024
Target Decision date: 19/12/2024 extended to 03/03/2025
Case Officer: James Schofield

Introduction & Proposal

The application site comprises a mid-terrace 2-storey dwelling which has been subdivided into two flats, one on each floor of the dwelling.

The proposal is for a certificate of lawfulness for the existing use as 2 flats, a one-bedroom flat on the ground floor, and a two-bedroom flat on the first floor.

It is noted that the site location plan submitted with the application shows a red line boundary around the entirety of 112 Southampton Street.

A site visit was undertaken by the case officer on 22nd of January 2025 to confirm the layout of the property. And it appears the use and layout closely resemble that of the submitted floor plans.

<u>Flat 1 (Ground floor)</u>

- The room described as being a 'Reception Room' on the floor plans (ref:) appears to be being used as a bedroom. is being used as a bedroom.
- The room labelled as "Bedroom' appears to be being used for storage.
- It is the view of the Planning Officer that this is a choice on the part of the tenant to gain outlook. And that the number of tenants is at the time of the site visit, reflective of the number of bedrooms shown on the plans.

<u>Flat 2 (First floor)</u>

- This flat appears to be being used as shown on the plans

The applicant asserts that the existing use of the first floor as a 2 bed flat has been in continuous use for more than 4 years, from August 2020.

Relevant Planning History:

None.

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:

The following were consulted:

- Council Tax Consultations
- Electoral Registration Consultations
- Planning Enforcement Consultations
- Environmental Protection
- Legal Services

Council Tax:
Our records show that Council Tax has been paid for the application site and that there is currently an application in to change the banding of the site to two separate flats.

Electoral Services: No comments.
Planning Enforcement: No comments.
Environmental Protection: No comments.

Legal Services:
"...I am satisfied that the Applicant has provided sufficiently precise and unambiguous evidence to show that the property has been used as two single dwellinghouses since 01/08/2020 and continued that use until the application was made on 16/10/2024. Further, none of the evidence you have gathered yourself – either from consulting other Council departments or from your site visit – contains anything to make the Applicant's evidence less than probable. For these reasons, your recommendation is correct in my view and the certificate can be granted."

Submitted Evidence

Evidence to verify application for a lawful development certificate for the two flats include:

Location Plan
Floor Plan
Statutory Declaration
Site Photos (*submitted by applicant*)
Tenancy agreement Ground Floor – 05/08/2020 to 04/08/2021
Tenancy agreement Ground Floor – 05/08/2021 to 04/08/2022
Tenancy agreement Ground Floor – 05/08/2022 to 04/08/2023
Tenancy agreement Ground Floor – 05/08/2023 to 04/08/2024
Tenancy agreement Ground Floor – 04/08/2024 to 03/08/2025
Tenancy agreement Top Floor – 01/08/2020 to 31/07/2021
Tenancy agreement Top Floor – 15/02/2021 to 14/02/2022
Tenancy agreement Top Floor – 15/02/2022 to 14/02/2023
Tenancy agreement Top Floor – 15/02/2023 to 14/02/2024
Tenancy agreement Top Floor – 15/02/2024 to 14/02/2025

Deposit Protection Certificate (Ground) – For tenancy agreements 05/08/2020 to 04/08/2023
Deposit Protection Certificate (Ground) – For tenancy agreements 05/08/2023 to 03/08/2025
Deposit Protection Certificate (Top) – For tenancy agreement 01/08/2020 to 31/07/2021
Deposit Protection Certificate (Top) – For tenancy agreement 15/02/2021 to 14/02/2022
Deposit Protection Certificate (Top) – For tenancy agreement 15/02/2022 to present

Assessment:

In order to grant a Certificate of Lawfulness for existing use of 112 Southampton Street as two flats, sufficient unambiguous and precise evidence must be supplied to confirm that the property has been in this use continuously for a period of 4 years from the date the application was made valid. The relevant time period is therefore August 2020 to August 2024.

The application form submitted by the applicant states that the existing use of the property has been as two separate flats, one on the ground floor and the other on the first floor, for over 4 years. This application is supported by ten tenancy agreements, five for the ground floor flat and five for the top floor. The period from 15/02/2023 to 14/02/2024 was not covered for the top floor flat. However, the same tenant, had signed tenancy agreements for the periods of immediately prior to and after this tenancy agreement in question. As such, it seems to reasonably follow that the tenant was continuously in occupation of the flat for the entire period from 2022 to the present and they operated without signing an additional tenancy agreement.

The legal definition of self-contained unit is defined as "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, there is no ambiguity in terms of the use of the dwelling being in use as two flats since 2020.

The relationship between the various tenants and the dates of the terms of their leases shows a near continuous use, and similar pattern throughout. The number of named tenants never exceeds the number of bedrooms. There are frequent overlaps in the terms of tenancy agreements, however, this is not atypical in cases where tenants are allowed to leave the agreement early and the landlord is keen to re-let the property in short order. The appearance of the site during the site visit seems to match what one would expect of a house divided into two separate flats. There is a corridor leading to two doors, one for each flat. The first floor flat includes the staircase down to the ground floor. The front door has a separate key from either of those for either of the two flats. Each flat has its own amenities. The layout closely resembles that of the floor plans.

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 is 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
Location map
Informatives

1. The plans and submitted information has been assessed and it can be confirmed that, on the balance of probability, the site has been in use as two flats for over four years and that a certificate should be granted.

2. The Local Planning Authority has worked positively and proactively with the applicant. And the decision to grant the certificate has been made within the agreed extended time period.
3. In reaching this decision the local planning authority has taken the following submitted information into consideration:

    Location Plan
    Floor Plan
    Statutory Declaration
    Site Photos (*submitted by applicant*)
    Tenancy agreement Ground Floor – 05/08/2020 to 04/08/2021
    Tenancy agreement Ground Floor – 05/08/2021 to 04/08/2022
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