

DELEGATED PLANNING APPLICATION REPORT

Ward: Redlands Ward

App Ref: PL/24/1383/CLE

Address: FLAT 1 & 2, 17 DONNINGTON ROAD, READING, RG1 5NE

Proposals: Use of the property as two self-contained flats (Class C3) within a two-storey, mid-terrace house comprising 1x1-bedroom flat at ground floor (Flat 1) and 1x1-bedroom flat at first floor (Flat 2) (amended description)

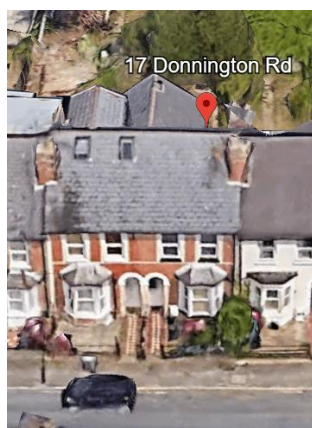
Case Officer: Huimin Chen

Date received (valid from): 11/11/2024

Decision date (ext): 04/04/2025

SITE DESCRIPTION

The site address is Flat 1 (at ground floor level) and Flat 2 (at first floor level), 17 Donnington Road, located within the middle of a terrace on the east side of the road. Both self-contained flats have their own living room, bedroom, kitchen and bathroom. Flat 1 has an extra utility room, as witnessed during the officer site visit (although this is not shown on the plan submitted). The application site falls within Article 4 direction, the permitted development rights regarding convert C3 dwelling to C4 HMO has been removed.



Site visit date: 06/02/2025

(Planning Officer's note: The officer requested to visit the property on 18th December 2024, and the applicant arranged it on 6th February 2025.)

PROPOSAL AND SUPPORTING INFORMATION

The application seeks to demonstrate that the terraced dwellinghouse has been in continuous use as two self-contained residential flats (Use Class C3) for more than 10 years prior to the submission of this application, from 11th November 2014 to 11th November 2024.

However, it has subsequently transpired (after application stage correspondence between the applicant and case officer) that as the breach occurred prior to 25th April 2024, the relevant test (qualifying period) is actually a 4 year period, as per planning practice guidance on Enforcement and post-permission matters (Paragraph: 004 Reference ID: 17b-004-20180222 Revision date: 25 04 2024).

Accordingly, the proposals have officially been assessed on the basis of a 4 year period from 11th November 2020 to 11th November 2024.

RELEVANT PLANNING HISTORY

None.

Equality Act 2010:

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

CONSULTATIONS

Reading Borough Council, Enforcement – Response received on 17/01/2025

No records/history for this property

Reading Borough Council, Environmental Health – No objection confirmed on 14/01/2025

Reading Borough Council, Electoral Registration – Response received on 15/01/2025

Number of registered electors at the residential property using data from the Electoral Register that are electronically stored (Xpress):

	Flat 1, 17 Donnington Road	Flat 2, Donnington Road
2025	1	2
2024	1	2
2023	1	2
2022	1	1
2021	1	1
2020	1	1
2019	2	1
2018	1	1
2017	1	1
2016	1	1

Reading Borough Council, Council Tax – Response received on 27/01/2025

There are two separate dwellings banded at this property for Council Tax purposes. Ground Floor & top floor flats, both separately banded since 01/11/2007. Both flats have been let out to various tenants since the date of banding.

Prior to 01/11/2007, the whole property was banded as a single dwelling since at least 01/04/1997.

Reading Borough Council, Legal Services – Response received on 18/03/2025

After reviewing the evidence provided, including the email correspondence between the case officer and the applicant, the legal consultee confirmed that numerous inconsistencies and contradictions have been identified in the applicant's submission. Specifically, the applicant's rental schedule conflicts with the tenancy agreements, and in the absence of supporting

evidence, such as a signed statutory declaration to support their application, this has significantly weakened their case.

SUBMITTED EVIDENCE

- Location Plan received on 17/10/2024.
- Application Form received on 17/10/2024.
- Tenancy Agreement from 18/07/2009 to 03/07/2010 for Flat 1 received on 17/10/2024.

Following the above-submitted documents, the Officer requested the Existing Plan to validate this application, along with more evidence covering a 10-year period (11/2014–11/2024) to support the application. See below:

- Drawing No. 20/001 – Existing Plans received on 11/11/2025.
- Tenancy Agreements received on 16/12/2024 & 25/02/2025
- Rental Schedules received on 13/03/2025.

The first and second submissions of evidence (Tenancy Agreements, TAs) were received on 16/12/2024 and 25/02/2025, respectively, seek to demonstrate the continued use of Flats 1 and 2, 17 Donnington Road, Reading, as two 1-bedroom self-contained flats for 10 years. Following these submissions, the case officer requested further clarification on the issues of gaps, inconsistencies, overlap and contradictions raised by the evidence. An email response, along with a copy of the rental schedule, was received on 13/03/2025. Please see the table below for the relevant TAs. For the full list of submitted TAs, please refer to Appendix A. *(Planning Officer's note: The date in italics in brackets represents the end date of the tenancy, as calculated from the submitted tenancy agreements. The tenant, referred to as 'Tenant X.X.X' (an alias) throughout this report.)*

Flat 1:

TA, Tenants X.X.X	Commencement Date, term	Notes
(18) G. A. B / j. z. o	02/07/2013 (<i>to 01/07/2014</i>), 12	Outside 10-year period
2/7/2014 – 1/7/2015, regarding this gap, please refer to Point 1		
205836, G. A. B / j. z. o	02/07/2015 (<i>to 01/07/2016</i>), 12	
205816, G. A. B / j. z. o	02/07/2016 (<i>to 01/07/2017</i>), 12	
205800, G. A. B / j. z. o	02/07/2017 (<i>to 01/07/2018</i>), 12	
(7) P. K / J. K	01/07/2018 (<i>to 30/06/2019</i>), 12	Rental Schedule states that the tenant departed on 01/10/2019.
(25) O. S / E. W	07/10/2019 to 06/04/2020	The applicant clarified on 13/03/2025 that this tenancy agreement is for Flat 1, and that TA 201235 and TA 205613 are the same agreement.
(23) V. J. D	30/05/2020 to 29/05/2021	It is the same tenant as listed below; therefore, it is assuming this tenant is for Flat 1, although the flat number is not explicitly stated.
(22) V. J. D	30/05/2021 (<i>to 29/05/2022</i>), 12	
(11/12//16/17) V. J. D	31/05/2022 (<i>to 30/05/2023</i>), 12	
204927, V. J. D	31/05/2023 (<i>to 30/05/2024</i>), 12	
204906, V. J. D	31/05/2024 (<i>to 30/05/2025</i>), 12	

Flat 2:

Agreement, Tenants	Commencement Date, term	Notes
201537, G. A. B / j. z. o	02/07/2013 (<i>to 01/07/2014</i>), 12	Outside 10-year period
2/7/2014 – 01/03/2015, regarding this gap, please refer to Point 1		

(20), J. M. S.	01/03/2015 (to 30/06/2016), 16	
201439, J. M. S.	01/07/2016(to 30/06/2017), 12	
The applicant clarified on 13/03/2025 that 201439 was a periodic tenancy to 01/01/2018		
(21) J. M. S.	01/01/2018 (to 30/06/2018), 6	
(8) J. M. S.	01/07/2018 (to 30/06/2019), 12	
(10) J. M. S.	02/07/2019 (to 06/10/2019)	The applicant clarified on 13/03/2025 that the tenant departed on 06/10/2019.
Please refer to Point 2		
(24) M. M /K. M	01/04/2020 to 30/09/2020	
(14) M. M /K. M	01/10/2020 (to 30/09/2021), 12	
201049, M. M /K. M	01/10/2021 (to 30/09/2023), 24	
(15) M. M /K. M	03/10/2023 (to 02/10/2024), 12	
202052, I. D. C / E.C	01/10/2024 to 31/09/2025, 12	

Point 1: Inconsistencies and Contradictions in tenancy agreements.

Agreement, Tenants X.X.X	Commencement Date	Flat no. is identified by TA
(1), G. A. B / j. z. o	02/07/2014 (to 01/07/2015)	Flat 1
201516, G. A. B / j. z. o	02/07/2014 (to 01/07/2015)	Flat 2
(13), P.U. L	03/09/2014 (to 02/09/2015)	Flat 2
205852, P. U. L	03/09/2014 (to 02/09/2015)	Flat 1
(18), G. A. B / j. z. o	02/07/2013 (to 01/07/2014)	Flat 1
201537, G. A. B / j. z. o	02/07/2013 (to 01/07/2014)	Flat 2

Point 2: There are gaps in the 10-year period prior to the application becoming valid:

Based on the final clarification received on 13/03/2025 from the applicant, there is still a gap where no tenancy agreement covers the period from 07/10/2019 to 31/03/2020 for Flat 2. The tenancy agreement listed in the 'Rental Schedule' to cover this gap was not provided.

Point 3: There is no independent supporting evidence (such as tenant confirmations, bank statements, or signed declarations) to support the response from the applicant received on 13/03/2025 regarding the inconsistencies, overlaps, gaps, and contradictory issues raised by the submitted tenancy agreements. For example, tenancy agreement (13) clearly references a different flat number but with the same tenant, term, and commencement date. However, the applicant's response states that 'Tenancy agreement 13 dated 3/9/2014 should read Flat 1, not Flat 2,' without providing any explanation as to why this is the case.

Please see below for detail assessment.

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.

Section 191 of the Town and Country Planning Act 1990 is the relevant section dealing with issues for Certificates of Lawful Existing Use or Development. This section provides the mechanism for any person to ascertain whether an existing use or development would be lawful, which is by the submission of an application. Section 191(2) states that the use will be lawful if no enforcement action could be taken in respect of the use and that the use or development does not constitute a contravention of any of the requirements of an Enforcement Notice then in force. If there is a Notice in force, then the time period for the Certificate cannot run in relation to that particular breach.

Section 191(4) provides that if the LPA is satisfied that the existing use or development is lawful, then a Certificate must be granted. The burden of proof to prove that this use has existed for 4 years rests with the applicant and the test is on the balance of probabilities. Additionally, as a local authority we are advised that if we have no evidence to the contrary and the applicant's evidence is sufficiently clear and unambiguous then the certificate should be granted. Section 191(4) further provides that the authority can grant such certificate as described in the application or such description as modified or substituted by us.

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"*.

ASSESSMENT

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use of Flats 1 and 2, 17 Donnington Road, as two self-contained flats began more than 4 years before the date this application became valid on 11th November 2024. The 4-year period for this application runs from 11th November 2020 to 11th November 2024, albeit the applicant has sought to provide information on the basis of a 10 year period, as outlined above.

With regards to internal consultee responses, the Council Tax team has confirmed that both flats have been separately banded since 01/11/2007. This is considered to be a strong element of evidence to demonstrate that on the balance of probabilities the building has been in use as two flats during the qualifying period.

The Electoral Registration team has confirmed that there have been separate entries for Flats 1 & 2 at the address since at least 2016. This is considered to be a further strong component of evidence to demonstrate that on the balance of probabilities the building has been in use as two flats during the qualifying period.

The Planning Enforcement Team has confirmed that there is no enforcement history at this address. Whilst Legal Services have raised some concerns, Planning Officers have further assessed the proposals to downplay such concerns.

The site visit carried out by the planning officer on 6th February 2025 confirmed the layouts as

shown below (which further supports the application), but also noted an additional element at the rear/side of the property, which is not shown on the submitted existing plan. Considering its wooden structure and plastic roof, it is not considered to significantly impact the assessment of this proposal (see Fig. 1).

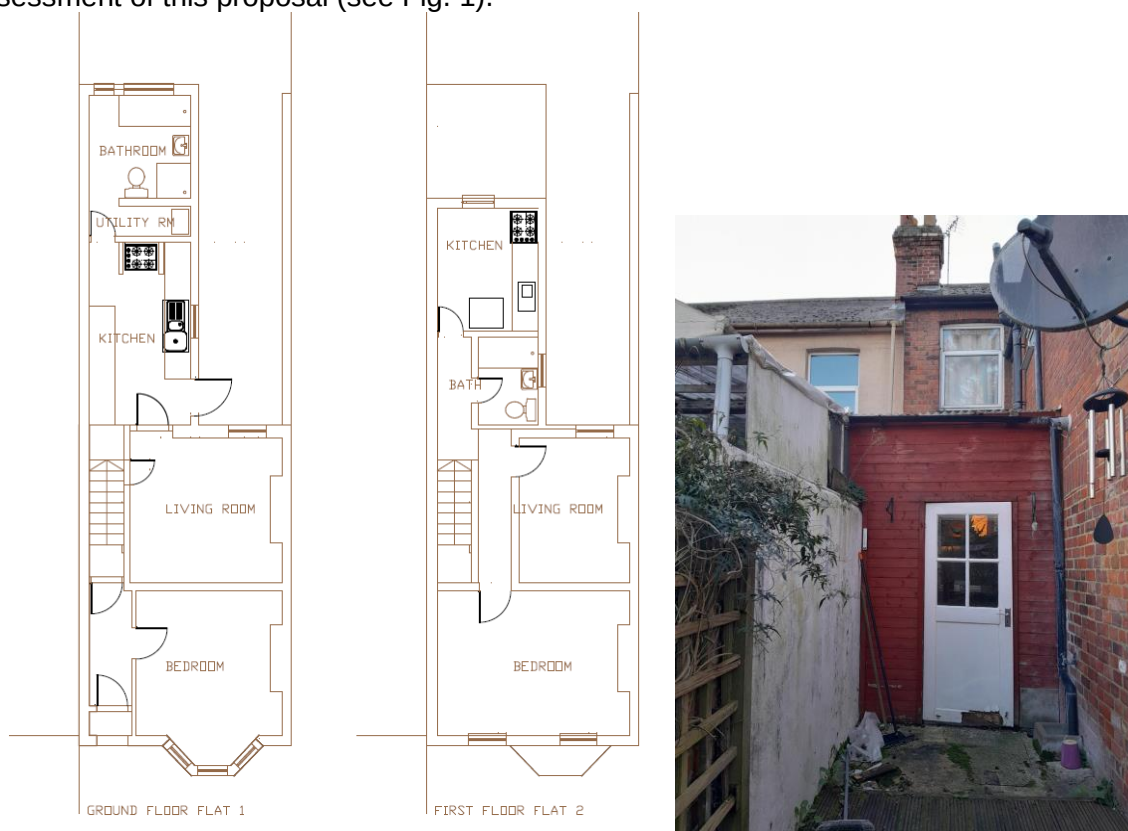


Fig 1: Existing Plan vs View from the rear of the property (6/2/2025)

Whilst there are some inconsistencies and gaps in the tenancy agreement information across a 10 year period, summarised in the table below, within the qualifying 4 year period, when considered alongside the Council Tax and Electoral Roll evidence, these are not considered to be significantly undermine the overriding evidence in favour of the application.

- The timeline of the tenancy agreements in the rental schedule does not fully match the evidence provided in the first and second submissions. For instance, the applicant states that Tenant G. A. B. moved from Flat 2 to Flat 1 on 2/7/2025, yet Tenant J. M. S.'s tenancy for Flat 2 commenced on 1/3/2025 for a duration of 16 months, which means two tenancy agreements overlap.
- Some tenancy agreements for the same tenant, covering the same period and terms, reference different flat numbers. Please refer to the table in Point 1 above. There is no supporting evidence or justification provided by the applicant to substantiate these discrepancies.
- Gaps still exist for Flat 2, even when following the rental schedule provided.

Therefore, on the balance of probabilities, it can be confirmed that Flat 1 (at ground floor level) and Flat 2 (at first floor level) at 17 Donnington Road has operated as two self-contained flats (Use Class C3 residential) for at least a period of 4 years and is, therefore, immune to enforcement action.

The applicant has provided sufficient evidence or other information that satisfies the Local

Planning Authority that the use of 17 Donnington Road as two self-contained flats, comprising a 1 bedroom flat at ground floor and a 1 bedroom flat at first floor, began more than 4 years ago and there is no substantial evidence to suggest this use was lost or changed. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

RECOMMENDATION

GRANT

In the absence of the information or substantial evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises at 17 Donnington Road has been in continuous use as two flats for a period of at least 4 years. It is, therefore, considered that a Certificate of Lawfulness for the use of the building as two flats (Class C3) should be granted and the certificate will relate only to the subject land, shown edged red on the plan below.



Location Plan (not to scale)

Appendix A: Table of all submitted Tenancy Agreements

Tenancy Agreement Name	Flat No. (in the document)	Commence date, Term (months)	Received Date
tenancy agreement 17 Don rd- Mara Vejby Patrick Grogan		18/07/2009-03/07/2010	17/10/2024
1 17 Don Rd- Andrew tenancy Agreement 2014-2015	1	02/07/2014, 12	16/12/2024
2 17 Don Rd Flat 1 Tenancy Agreement 2011-2012	1	01/07/2011, 12	
3 17 Don Rd Flat 2 Marlgorzata Tenancy Agreement 2011-2012	2	02/09/2011, 12	
4 17 Don Rd Tenancy Agreement Anna Aug 2012-July 2013	1	03/08/2012, 11	
5 17 don rd tenancy agreement malgorzata 2012-3rd september 2012	No	03/09/2012, 12	
6 17 don rd tenancy agreement mara vagby 2009-3rd July 2010	1	18/07/2009-03/07/2010	
7 17 don road flat 1 contract 2018-2019	1	01/07/2018, 12	
8 17 don road flat 2 contract 2018-2019	2	01/07/2018, 12	
9 17 Don Up. Aline Esposito Rental Agreement 1st sept 2009-3rd July 2010	1	01/09/2009-01/07/2010	
10 17 donnington flat 2 tenancy agreement 2019-2020	2	02/07/2019, 12	
11 17 donnington road contract 2022 b	No	No date, no	

		term	
12 17 donnington road contract 2022	1	No date, 12	
16 17 donnington st contract Jael 2022 c	No	No date, no term	
17 17 donnington st contract Jael 2022	1	31/05/2022, 12	
13 17 Donnington Road Renewal Contract 2014-2015	2	03/09/2014, 12	
14 17 donnington road tenancy agreement 2020	2	01/10/2020, 12	
15 17 donnington road tenancy agreement 2023-2024	2	03/10/2023, 12	
18 130624 Tenancy Agreement 17 don rd 2013	1	02/07/2013, 12	
19 130721 17 Donnington Road Tenancy Contract 2013-2014	No	03/09/2013, 12	
20 150221 joanna maria scheller contract 17 donnington road flat 2 2015	2	01/03/2015, 16	
21 180101 17 Don rd Contract 2018	2	01/01/2018, 6	
22 210610 Signed 17 donnington road tenancy contract jael 2021-2022	1	30/05/2021, 12	
23 A S T Agreement V1 3 (Let Only Professional)-Jael-Damarsin-17 Donnington Road-15-05-2020-03-39-24	No	30/05/2020-29/05/2021	
24 A S T Agreement V1 3 (Let Only Professional)-Mario-Matok-First Floor-30-03-2020	1	01/04/2020-30/09/2020	
25 A S T Agreement V1 3 (Let Only Professional)-Oliver-Stewart-17 Donnington Road-02-10-2019-11-27-29 (1)	No	07/10/2019-06/04/2020	
26 tenancy agreement 17 Don rd- Mara Vejby Patrick Grogan 18 July 2009-3rd July 2010	Flat 1	18/07/2009-03/07/2010	
Flat 1: (Identify by the applicant's email subject)			25/02/2025
210040	1	02/07/2009, 12	
210057	1	02/07/2009, 12	
210114	1	01/07/2008, 12	
210132	1	01/07/2008, 12	
210149	1	02/07/2007, 12	
204906	1	31/05/2024, 12	
204927	1	31/05/2023, 12	
204945	1	31/05/2022, 12	
205003	1	30/05/2021, 12	
205227	No	30/05/2020-29/05/2021	
205613	No	07/10/2019-06/04/2020	
205704	2	01/04/2020-30/09/2020	
205741	1	01/07/2018, 12	
205800	1	02/07/2017, 12	
205816	1	02/07/2016, 12	
205836	1	02/07/2015, 12	
205852	1	03/09/2014, 12	
205909	1	03/09/2013, 12	
205926	1	03/09/2010, 12	
210002	1	01/07/2011, 12	
210022	1	01/09/2009-01/07/2010	
Flat 2: (Identify by the applicant's email subject)			
201637	2	02/05/2010-01/07/2011	
201656	2	18/07/2009-	

		03/07/2010	
201717	2	26/03/2009, 3	
201744	2	25/03/2006, 6	
201802	2	25/09/2007, 12	
201838	2	25/09/2007, 12	
202052	2	01/10/2024- 31/09/2025	
200554	2	03/10/2023, 12	
201049	2	01/10/2021, 24	
201235	No	07/10/2019- 06/04/2020	
201330	2	02/07/2019, 12	
201354	2	01/07/2018, 12	
201418	2	01/01/2018, 6	
201439	2	01/07/2016, 12	
201500	2	01/03/2015, 16	
201516	2	02/07/2014, 12	
201537	2	02/07/2013, 12	
201555	2	03/09/2012, 12	
201613	2	03/08/2012, 11	