

DELEGATED APPLICATION REPORT

Ward: Battle

App Ref: PL/23/1583 Lawful development: Existing use

Address: 45 Elm Park Road, Reading

Proposal: Certificate of Lawfulness for Existing use of property as 2x flats

Applicant: Forrest Property Services

Received date: 07/11/2023

Extended Target Decision date: 11/04/2025

Case Officer: Nathalie Weekes

1. SITE DESCRIPTION

The application site relates to a mid-terrace, two storey dwelling located on the eastern side of Elm Park Road. The site is not within an Article 4 Direction area.



The application site as taken by the case officer at a site visit on 31/01/2024

2. PROPOSAL AND SUPPORTING INFORMATION

The applications seeks to demonstrate the use of 45 Elm Park Road as two self contained flats (C3use), comprising a one bedroom flat on the ground floor and a one bedroom flat on the first floor.

The applicant states that the property has been in use as 2 flats since 2002, the flats have been banded separately for Council Tax since 2006 and that the property was purchased in 2018.

3. RELEVANT PLANNING HISTORY

None.

4. 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".

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.

5 CONSULTATIONS

Planning Enforcement: No dealings with the property

Council Tax - This property is split into two separate flats, ground floor & top floor flats. The flats have been banded for Council Tax purposes since October 2006. Both flats have been separately occupied since the date of banding.

Electoral Registration:

Number of registered electors at the residential property using data from the Electoral Register that are electronically stored (Xpress): Pending elector numbers not provided.

Year	45 Elm Park Road	Flat 1	Flat 2
2023	0	1	1
2022	2	0	0
2021	2	0	0
2020	2	N/A	N/A
2019	2	N/A	N/A
2018	2	N/A	N/A
2017	1	N/A	N/A
2016	1	N/A	N/A
2015	1	N/A	N/A
2014	1	N/A	N/A

Legal: There are no concerns about the recommendation to grant a CLEUD;

6 SUBMITTED EVIDENCE

The applicant has provided the following evidence to demonstrate the use of 45 Elm Park Road as 2x 1 bedroom self-contained flats:

Location plan

As received 7 November 2023

Energy Performance certificate (EPC) January 2023

Assured shorthold tenancy April 2009 and June 2023 for the same tenant for the ground floor flat

Check out letter for February 2025 for the ground floor flat tenant

Housing and council tax benefit letter in respect of the ground floor flat occupancy, dated 2009

Electrical installation reports and Domestic/Landlord gas safety records ground floor flat

Assured shorthold tenancy June 2014, November 2023 and November 2024 for the same tenant for the top floor flat

Change of occupancy letter for 12 June 2014 for the existing top floor flat tenant, stating 'From 03/06/2014 to 12/06/2014 the property was empty and unfurnished and there was no council tax liability.'

Electrical installation reports and Domestic/Landlord gas safety records top floor flat

As received 23 March 2025

Ground floor plan

First floor plan

As received 9 April 2025

7 APPRASIAL

In order for the certificate to be granted, it needs to be demonstrated that the house was used as two self-contained flats on the date of application, and had been used as such since at least 7 November 2019, or for any continuous 4 year period at some point before the date of application. The application form states that the change of use began in 2002.

Reading Borough Council Council tax records show that both flats have been individually banded since 2006 and that both flats have been separately occupied since the date of banding. Electoral registration records show electors registered to Flat 1 and Flat 2 since 2021, with one registered elector at the property between 2014 and 2017.

The Council hold no records of planning enforcement on the site.

Turning to the evidence, submitted by the applicant to support the claim made within this application, the PPG makes the position clear on how the evidence submitted is to be considered:

"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".

At the site visit the case officer confirmed that there is a shared front door and entrance hall. Each flat has its own separate lockable entrance and separate electric and gas metres.

The ground floor flat entrance is straight ahead next to the bottom of the stairs and leads round to a living room, bedroom, kitchen and bathroom.

The top floor flat entrance is at the top of the stairs which leads into the living room, there is also a kitchen, bathroom and bedroom.

Tenancy agreements have been provided to evidence that the ground floor flat has been occupied from 2009 to 2024 by the same tenant but these do not cover the entirety of the 4 year period in question for the top floor flat. The following gaps are noted (which are not covered by a tenancy agreement or a statutory declaration): There is a gap in evidence between 7 November 2013 and 3 June 2014 for the top floor flat. A change of occupation letter confirms that the top floor flat was empty and unfurnished from 03/06/2014 to 12/06/2014 with no liability to council tax.

The applicant has submitted various evidence to demonstrate continuous occupation of the two flats and a fairly consistent record of separate gas safety certificates for each flat (showing distinct kitchen appliance models, separate readings etc). The Council hold information regarding the council tax banding, which supports the applicant's claim in addition to correspondence from RBC's Housing Benefit team indicating that there was a Housing Benefit award covering the tenant's rent for the bottom flat from roughly 2009 to at least 2020.

The LPA has no sufficient evidence to the contrary to prove that the property has not been used as 2 x one bedroom self-contained flats. Therefore, on the balance of probabilities it is considered that the certificate should be granted.

8 RECOMMENDATION

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that 45 Elm Park Road has been used as two self-contained one-bedroom flats (use class C3) for the requisite 4 year period and there is no evidence to suggest that this use was changed or lost. The Council holds supporting information for the applicant's claim. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

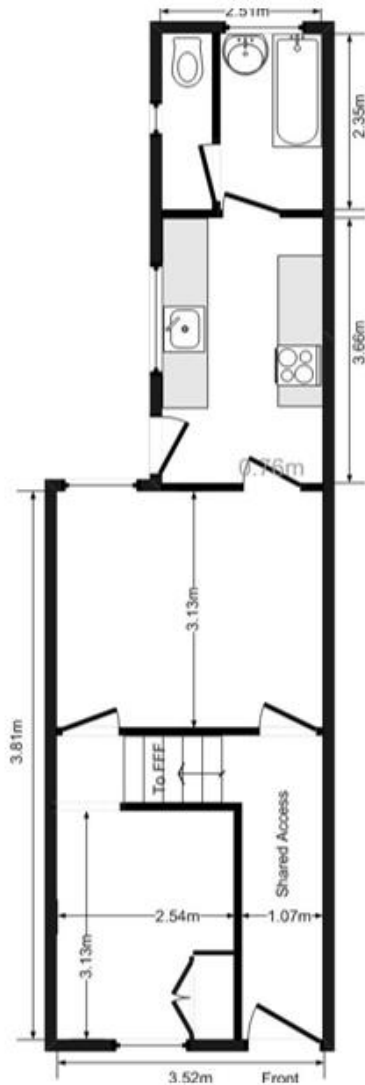
Recommendation:
GRANT Certificate

Location plan



Floor plans

Ground floor



First floor



Ground Floor Flat
45 Elm Park Road
Reading
RG30 2TP
Scale 1:50