

DELEGATED APPLICATION REPORT

Ward:

App Ref: PL/25/0127 Lawful development: Existing use

Address: 156 SOUTHAMPTON STREET, READING, RG1 2RD

Proposal: Certificate of Lawfulness for Existing Use as x4 separate dwellings continuously since 2019

Applicant: Mrs Raju Lakshmanan

Received date: 24/01/2025

Target Decision date: 9/1/26

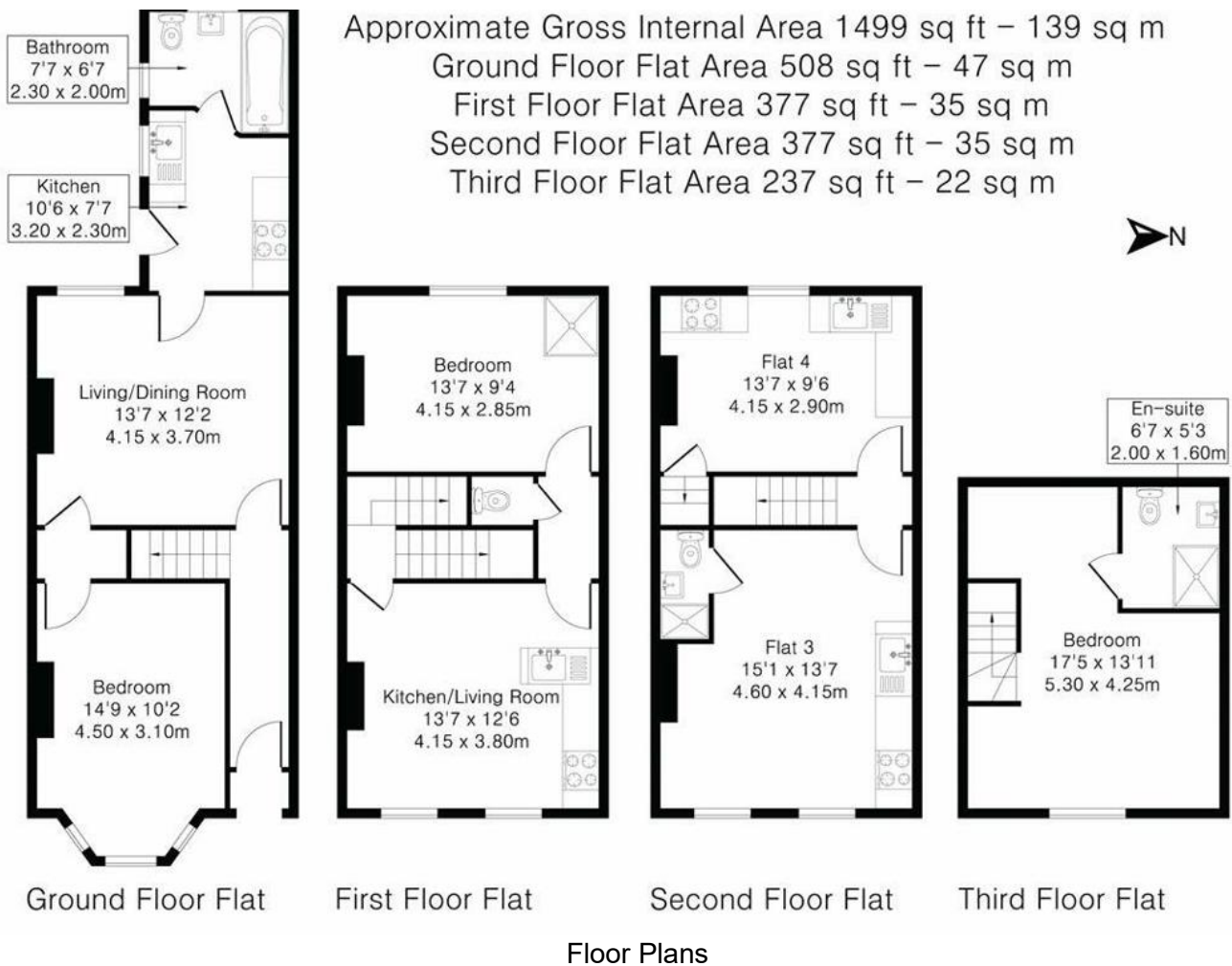
Case Officer: Catrin Davies

1. SITE DESCRIPTION

The application site relates to 156 Southampton Street, located on the western side of Southampton Street.



Location Plan



2. PROPOSAL AND SUPPORTING INFORMATION

The application is for a Certificate of Existing Lawful Development under Section 191 of the Town and Country Planning Act 1990 (as amended). The applicant is seeking to demonstrate that there have been 4 separate residential units at the site since 2019.

The application is supported by the following:

- Excel Spreadsheet of tenants
- Floor Plans
- Location Plan

Flat 1

- Mr Crawford Tenancy agreement 10/7/2020-9/1/2021 (6 months)
- Carbon Monoxide declaration dated 10/7/2020
- Mr and Mrs Jankovski tenancy agreement 27/3/2021-26/9/2021 (6 months)
- Mr and Mrs Jankovski tenancy agreement 27/12/2022-26/6/2023 (6 months)
- Ms Hristina Andonova-Jankovska & Mr Ilco Jankovski 1/2/25-31/7/25
- Ms Hristina Andonova-Jankovska & Mr Ilco Jankovski tenancy agreement 1/8/25-31/7/26

Flat 2

- Mr Nandan tenancy agreement 1/8/2019- 1/2/2020 (6 Months)
- Toilet notification dated 1/9/2019



- Tenancy deposit Mrs Nandan 27/8/2019
- Mr and Mrs Banva 13/10/2021-12/4/2022 (6 months)
- Mr Nandan tenancy agreement 25/6/2022- 24/10/2022 4 months
- Deposit protection Mr Nandan dated 25/6/2022
- Mr Carroll tenancy agreement 25/1/2023-24/7/2023 (6 months)
- Mr Mcshera tenancy agreement 22/7/2024-21/3/2025 (6 months)
- Tenancy deposit Mr Mcshera dated 22/7/24
- Mr Anthony McShera tenancy agreement 1/2/25- 31/7/25
- Mr Anthony McShera tenancy agreement 1/8/25- 31/7/26

Flat 3

- Mrs Cuevas tenancy agreement for flat 3 25/4/2020-24/4/2021
- Mr Raja tenancy agreement 23/11/2022- 22/5/2023 6 months
- Carbon monoxide declaration dated 23/11/22
- Deposit protection dated 23/11/22 Mr Raja
- Mr Kamil Krystian Stawarz tenancy agreement 3/3/2025-31/3/2026

Flat 4

- Mr and Mrs Young tenancy agreement 1/6/2019-1/12/2019- 6 months
- Toilet system awareness flat 4 Mr Young dated 1/6/2019
- Tenancy deposit Mr Young dated flat 4 dated 1/6/2019
- Mr Glazer tenancy agreement 1/11/2022-1/5/2023 6 months
- Spoke alarm declaration Mr Glazer dated 1/11/2022
- Deposit protection Mr Glazer dated 1/11/2022
- Mr Swayne tenancy agreement dated 17/5/2023-16/11/2023 6 months
- Toilet system acknowledgement Mr Swayne dated 17/5/2023 Flat 4
- Mr Swayne deposit protection dated 17/5/2023
- Mr anyiam-osigwe tenancy agreement 30/9/2023-29/3/2024 6 months
- Smoke alarm declaration flat 4 Mr • Mr anyiam-osigwe dated 30/9/2023
- Toilet declaration Mr anyiam-osigwe dated 30/9/2023
- Deposit protection Mr anyiam-osigwe dated 29/9/2023
- Mr Chiwuike Anyiam-Osigwe tenancy agreement 1/8/25-31/7/26
- Mrs Nwayinbuzor Mabel Onoruvie & Mr Robert Ejekemeyovwi Onoruvie tenancy agreement 10/9/25-30/9/26

Other:

Emails from Chris Young to Stephanie. **Comment:** these emails provide no exact location or flat as such do not provide evidence of occupancy.

Planning History:

No relevant planning history

3. CONSULTATIONS

RBC Electoral Registration Consultations:

Number of electors registered at the site.

156	156	Flat	1	156	Flat	2	156	Flat	3	156	Flat	4
2025		1		N/A			N/A			1		1
2024		N/A		0			0			1		1
2023		N/A		0			0			0		2
2022		N/A		0			2			1		1
2021		N/A		0			2			1		1
2020		N/A		1			1			1		2
2019		N/A		0			2			1		0
2018		N/A		0			1			0		0
2017		N/A		0			0			0		0
2016	2	0	N/A	0	0							

RBC Council Tax records

No Comment

RBC Private sector housing

No Comment

RBC Legal

BACKGROUND

156 Southampton Street is a 4 storey building. It is used as 4 self-contained flats; the submitted floor plans show each flat has its own bedroom / living space, bathroom and kitchen facilities. Flat 1 is on the ground floor, Flat 2 on 1st, Flat 3 on 2nd and Flat 4 is split across the 2nd and top floors. The applicant has applied for a CLE under s191 of the Town and Country Planning Act 1990 (TCPA).

The grounds for their application is that the use as 4 flats has continued for more than 4 years at the of their application, meaning that the time limit for taking enforcement action has expired (see s171B and s191(2)(a) TCPA). As you have identified, the shorter 4 year time limit for enforcing the change of use to single dwellings still applies in this case because the breach began before 25 April 2024. Specifically, the applicant asserts that the breach / change of use began on 1 August 2019.

SUBMITTED EVIDENCE

The onus is on the applicant to prove that, on the balance of probabilities, the house has been used continuously as 4 flats for more than 4 years. Their evidence should be sufficiently precise and unambiguous. I have reviewed the submitted documents and agree that there are multiple gaps which mean the evidence falls short of proving 4 years continuous use of the 4 flats any point since 2019. These can't be discounted as 'de minimis' gaps, several of them last for over a year.

For the purposes of showing an unlawful use is immune to enforcement action under s171B, it cannot simply be presumed that the use continued in the gaps, they have to show the use affirmatively. That point was made in the case of *Swale v Borough Council v Secretary of State for the Environment* [2005] EWCA Civ 1568 which was referred to in the *Ocado* case you cite in your report. In this case, I have not seen any correspondence from the applicant to explain the gaps.

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. APPRAISAL

The application is for a Certificate of Existing Lawful development for the use of an existing building within use Class C3 (dwellinghouses). The purpose of this Certificate of Lawfulness has been described as to establish whether the use has been for a continuous uninterrupted period of 4 years before the date of the application and is therefore immune from enforcement action. The standard of proof in considering such applications is on the balance of probability and the onus is on the applicant to demonstrate that the site has been used for the requisite period.

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 they shall issue a certificate to that effect; and, in any other case, they shall refuse the application’.

The NPPG (lawful development certificates section) states that an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application

relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. The guidance further states that the applicant is responsible for providing sufficient information to support an application. There is no good reason to refuse an application for existing use, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The application form states the breach begun on the 01-08-2019. It is claimed that there is evidence to demonstrate that on the balance of probabilities the building has been in residential use in excess of 4 years prior to the date of this application.

The time limits for the taking of enforcement action are set out in s172(b) of the Town and Country Planning Act 1990 (as amended). The time periods for taking enforcement action were amended by Section 115 of the Levelling-up and Regeneration Act 2023, this introduced a change from 'four years to ten years' for sites in England. The Levelling-up and Regeneration Act 2023 included transitional provisions. Essentially the time limits for enforcement do not apply where the operations were substantially completed, or the breach occurred before the new regulations came into force on 25th April 2024.

A site visited was carried out on the 28th of October 2025 and the site appeared as illustrated within the floor plans.

The submitted evidence is summarised as follows:

Flat 1

Evidence	Date
Carbon Monoxide declaration	10/7/2020
Mr Crowford Tenancy agreement	10/7/2020-9/1/2021
Mr and Mrs Jankovski tenancy agreement	27/3/2021-26/9/2021
Mr and Mrs Jankovski tenancy agreement	27/12/2022-26/6/2023
	Gap of 1 year 7 months
Ms Hristina Andonova-Jankovska & Mr Ilco Jankovski tenancy agreement	1/2/25-31/7/25
Ms Hristina Andonova-Jankovska & Mr Ilco Jankovski tenancy agreement	1/8/25-31/7/26
Email from agent to tenant Ms Andonova with Ms Andonova confirmed tenancy agreement confirming residency of flat 1 from 27 March 2021- 21 Nov 2025	27/3/21-21/11/25

Comment: The evidence shows flat 1 was rented out from 27/3/21 however the tenancy agreement are not consistent and do not over the entire period. It is acknowledged that there is an email however email addresses can be fabricated and there is no certainty that the email addressed belong to the tenant. It is not considered that these prove beyond reasonable doubt the flat was rented out. It is therefore not considered the evidence demonstrate flat 1 was continuously rented out for over 4 years.

Flat 2

Evidence	Date
Toilet notification Mrs Nandan	1/9/2019



Tenancy deposit Mrs Nandan	27/8/2019
Mr Nandan tenancy agreement	1/8/2019- 1/2/2020
	Gap of 1 year and 8 months
Mr and Mrs Banva tenancy agreement	13/10/2021-12/4/2022
	Gap of 1 month
Deposit protection Mr Nandan	25/6/2022
Mr Nandan tenancy agreement	25/6/2022- 24/10/2022
	Gap of 3 months 1 day
Mr Carroll tenancy agreement	25/1/2023-24/7/2023
	Gap 10 months a 29 days
Tenancy deposit Mr Mcshera	22/7/24
Mr Mcshera tenancy agreement	22/7/2024-21/3/2025
	Overlap of tenancy agreement
Mr Anthony McShera tenancy agreement	1/2/25- 31/7/25
Mr Anthony McShera tenancy agreement	1/8/25- 31/7/26

Comment: The evidence has not demonstrated that Flat 2 has been rented out continuously for a period of 4 years or more

Flat 3

Evidence	Dates
Mrs Cuevas tenancy agreement	25/4/2020-24/4/2021
	Gap of 1 year and 6 months
Mr Raja tenancy agreement	23/11/2022- 22/5/2023
Carbon monoxide declaration	23/11/22
Deposit protection	23/11/22
	Gap of 1 year 9 moths
Mr Kamil Krystian Stawarz tenancy agreement	3/3/2025-31/3/2026

Comment: The evidence has not demonstrated flat 3 has been used continuous for a period of over 4 years.

Flat 4

Evidence	Dates
Toilet system awareness flat 4 Mr Young	1/6/2019
Tenancy deposit Mr Young dated flat 4	1/6/2019
Mr and Mrs Young tenancy agreement	1/6/2019-1/12/2019
	Gap 2 years 11 months
Spoke alarm declaration Mr Glazer	1/11/2022
Deposit protection Mr Glazer	1/11/2022
Mr Glazer tenancy agreement	1/11/2022-1/5/2023
	Gap of 16 days
Toilet system acknowledgement Mr Swayne	17/5/2023
Mr Swayne deposit protection	17/5/2023
Mr Swayne tenancy agreement	17/5/2023-16/11/2023
Deposit protection Mr anyiam-osigwe	29/9/2023
Smoke alarm declaration flat 4 Mr anyiam-osigwe	30/9/2023
Toilet declaration Mr anyiam-osigwe dated	30/9/2023

Mr anyiam-osigwe tenancy agreement	30/9/2023-29/3/2024
	Tenancies overlap and not clear justification has been provided explain the overlap
	Gap of 1 year 4 months
Mr Chiwuike Anyiam-Osigwe tenancy agreement	1/8/25-31/7/26
Mrs Nwayinbuzor Mabel Onoruvie & Mr Robert Ejekemeyovwi Onoruvie tenancy agreement	10/9/25-30/9/26
	The tenancy agreement overlap with not clear justification explaining the overlap

High Court case R (on the application of Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin) [2021] EWHC 1509 (Admin) 7 June 2021 states that breach of condition, or material change of use must be continuous for the relevant period for immunity from enforcement to be gained, in the evidence submitted with the application it is clear that there are gaps within the evidence which illustrate the use was not continuous. T

The application has not been supported by evidence which explains the gaps. These gaps are significant. The applicant was given an opportunity to provide further information and / or explain gaps. However, whilst some further information was provided, as above, the gaps remain significant and without satisfactory explanation. When reviewing the evidence, it has not been demonstrated the proposed breach has been continuously used for over 4 years.

6. CONCLUSION

The applicant has not provided sufficient evidence or other information that satisfactorily demonstrates that, on the balance of probability, the building has been used as four separate residential flats (Class C3) for a continuous and uninterrupted period of at least four years. Therefore, it follows that there is no justification to grant the certificate of lawfulness applied for by the applicant.