

DELEGATED APPLICATION REPORT

Ward: Park

App Ref: PL/25/1168 Lawful development: Existing use

Address: 72 CHOLMELEY ROAD, READING, RG1 3NB

Proposal: Use as three separate self-contained C3 properties comprising 1x 2 bed (ground), 1x studio (first) and 1x1 bed (loft) for more than 4 years

Applicant: Mr Shakeel Khan

Received date: 18/08/2025

Target Decision date: 10/4/2026 (Ext)

Case Officer: Alison Amoah

1. SITE DESCRIPTION

Site visit date: 12th September 2025

The application site relates to a 2 storey (plus loft conversion) terraced dwelling on the eastern side of Cholmeley Road.

The property is currently in use as three flats – 1x 2 bed (ground floor A (1)); 1x studio (first floor B (2)); and 1x 1 bed (loft – C (3)), which are all occupied.

2. PROPOSAL AND SUPPORTING INFORMATION

Applications for a Lawful Development Certificate for existing use under section 191 of the Town and Country Planning Act 1990. A certificate is sought to confirm that the existing use 1x 2 bed ,1x studio and 1x 1 bed flat (current Use Class C3) based on evidence that the use has been in existence for at least 4 years continuously before the application was submitted.

To comply with [section 191\(5\)](#) or [192\(3\)](#) of the Act the applicant needs to submit evidence to substantiate the claim for the established existing use.

The submitted application form identifies that the use commenced on 1st August 2019.

Submitted Plans and other information considered:

As received 18th August 2025, 19th January 2026 and 6th February 2026:

- Application Form
- Photos -
 - Flat A (1) - bathroom, kitchen, living area and Bedroom 2
 - Flat B (2) - Living area, bathroom and kitchen
 - Flat C (3) - Kitchen, bedroom, bathroom and living room
- Certificate of Tenancy Deposit Protection – Flat B (2)
- Thames Water Bills (*the name on the bills is the same as the tenant on ASTs for Flat A, although the bills do not specifically state a flat number*)
4/4/19-31/3/25

- Tenancy Agreements –

Flat A (1)

1/3/20-28/2/21
1/3/21-28/2/22
1/3/22-28/2/23
1/3/23-28/2/24
1/3/24-28/2/25
1/3/25-29/2/26

Flat B (2)

1/6/21-31/5/22
27/6/22-31/5/23
1/9/23-31/8/24
1/9/24-31/8/25

Flat C (3)

25/11/21 – 31/5/22
1/6/22-31/5/23
22/8/23-21/8/24
22/8/24-21/8/25

3. RELEVANT PLANNING HISTORY

PL/17/0786/CLE - Proposed rear dormer extension – Agreed 28/6/2017

PL/17/0790 - Rear extensions measuring 4.2m & 3.9m in depth, with a maximum height of 2.9m & 3.0m, and 3m in height to eaves level. Notification of the construction of an extension under class A Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 – Approved 28/6/2017

PL/19/1378 - Single Storey Rear Extensions (Retrospective) – Refused 6/12/2019; Allowed under Appeal ref: APP/E0345/D/20/3247239, 3/7/2020

4. CONSULTATIONS

Planning Enforcement:

Dormer extension case only.

Council Tax:

Our system shows these three flats have been separately banded since 01.09.2023; Flats 1 & 2 have been occupied in tenants' names since 01.04.2024 and Flat 3 since 01.05.2024.

Electoral Registration:

The number of electors registered at 72 Cholmeley Road is as follows:

2025 2
2024 2
2023 2
2022 2
2021 2

Legal: I am satisfied that the applicant has provided evidence, that is sufficiently precise and unambiguous, to show that the unauthorised change of use of 72 Cholmeley Road to 3 self-contained dwellings is immune from enforcement action as the 3 dwellings had been continuously used for at least 4 years at the date of application. I have no concerns about your recommendation to grant a certificate of lawful existing use (CLE) on that basis.

5. 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...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."*

6. ASSESSMENT

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use of 72 Cholmeley Road, as 1x 2 bed, 1x studio and 1x 1 bed flat, began more than 4 years before the date of this application of 18th August 2025 and has been in continuous use as three flats for the relevant time period which is **18/8/21-18/8/25**. Within the application form and accompanying information, it states that the use of all flats began in August 2019.

With regards to internal consultee responses the Council Tax Team has confirmed that the flats have been separately banded since 1/9/23 and Flats 1 (A) & 2 (B) have been occupied in tenants' names since 1/4/24 and Flat 3 (C) since 1/5/24.

The Planning Enforcement Team has confirmed that there are no active enforcement cases at this address.

The Electoral Registration Team has confirmed that 2 people have registered from 2021 to present.

The evidence that the LPA holds, as above, would not fully support the case that the flats have been in continuous use for at least 4 years.

Turning to the evidence submitted by the applicant to support the claims made within this application, the PPG makes the position clear on how the evidence submitted is to be considered. It says: *"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"*

A review of the evidence submitted, which includes tenancy agreements and some bills does not fully support the claim that the property has been in use as 1 x2 bed flat, 1x studio and 1x 1 bed flat for at least four years, prior to the application being submitted.

Within the qualifying period of 18/8/21-18/8/25 there are gaps in tenancy as follows:

Flat B (2) there is a gap between 1/6/22-26/6/22 and 1/6/23-31/8/23

Flat C there are gaps from 18/8/21 to 24/11/21 and 1/6/23 to 21/8/23

The explanation provided for the gaps are periods of light refurbishment, cleaning and marketing. There are other periods prior to the dates of the relevant 4 year period of evidence submitted which show that the use obtained immunity from enforcement in another period. It is considered that the evidence alone is *"sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability"* and that the use as C3 flats was not lost during the periods of no tenancies.

The site visit carried out by the planning officer on 12th September 2025 confirmed the floor layout of the flats, although no floor plans were submitted.

There is no evidence to the contrary, albeit some lack of corroborating evidence held by the Council, and on the balance of probabilities, it can, therefore, be confirmed that 72 Cholmeley Road has operated as three self-contained flats (Use Class C3 residential) for a period of 4 years and is, therefore, is immune to enforcement action.

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 72 Cholmeley Road as three self-contained flats – 1x2 bedroom at ground floor, 1x studio at first floor and 1x1 bed at loft level (C3 use), began more than 4 years ago and there is no evidence to suggest this use was lost or changed. There is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

On this basis, and without being made aware of any information to the contrary, the Certificate should be granted. The certificate will relate only to the subject land, shown edged red on the plan below.

7. CONCLUSION

In the absence of the information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises at 72 Cholmeley Road has been in use as three self-contained C3 flats – 1x 2 bed (ground floor A (1)); 1x studio (first floor B (2)); and 1x 1 bed (loft – C (3)) for a period of at least 4 years 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.

8. RECOMMENDATION

GRANT Certificate



Not to scale