

Application Number	14/2063/CLUED	Agenda Item	
Date Received	6th January 2015	Officer	Michael Hammond
Target Date	3rd March 2015		
Ward	Newnham		
Site	15A Derby Street Cambridge Cambridgeshire CB3 9JE		
Proposal	Application for a Certificate of Lawfulness under Section 191 for use as an independent dwelling (C3)		
Applicant	Mr Desmond & Dr Pam Hirsch C/O Agent United Kingdom		

SUMMARY	There is sufficient evidence to suggest, on the balance of probability, that the first floor studio of the application site building has been used as a separate dwelling (c3) for a continuous period of more than 10 years and that the continued residential use of it is lawful and immune from enforcement action.
RECOMMENDATION	That a Certificate of Lawfulness be granted

1.0 SITE DESCRIPTION/AREA CONTEXT

1.1 15A Derby Street is comprised of the first floor of a two-storey outbuilding which is attached to the end terrace 15 Derby Street. The building is situated on the east side of Derby Street, close to the junction with Merton Street. The surrounding area is predominantly residential and the site is within a Conservation Area. The building was originally built as a garage to 31 Grantchester Street.

2.0 BACKGROUND

2.1 This is an application for a Certificate of Lawfulness of an existing use in breach of a planning condition. The application is

made under Section 191 of the Town and Country Planning Act 1990. **It is not a planning application.**

- 2.2 On 24th June 1998 planning permission was granted for the erection of a first floor extension over the existing double garage to form a studio room (98/0129). That permission was granted on the condition that the studio was only to be used in conjunction with and incidental to 31 Grantchester Street (the host dwelling). The extension over the garage was subsequently built (as amended under 99/0931). The application for the certificate of lawfulness sets out to demonstrate that since April 2000 (in breach of the condition) the studio has been occupied continuously as an independent dwellinghouse (C3).
- 2.3 The application is being brought to Committee because of the public interest in the application and an associated planning application for the conversion of the ground floor garage element of the outbuilding (15/0065/FUL) for a 1 bedroom studio -flat.

3.0 CERTIFICATES OF LAWFULNESS

- 3.1 Applications for Certificates of Lawfulness are not normally considered by Committee and are routinely dealt with by officers under delegated powers. An application for a Certificate of Lawfulness differs from a planning application in that its purpose is to establish whether:
- a) any existing use of buildings or other land is lawful
 - b) any operations which have been carried out in, on, over or under land are lawful
 - c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful
- 3.2 Criteria C applies in this case.
- 3.3 Uses and operations are considered lawful if no enforcement action can be taken against them and the uses and operations do not contravene the requirement of an enforcement notice.
- 3.4 If a Certificate is granted then the development is immune from enforcement action. The judgment as to whether a use or

operation is lawful is based on an assessment of evidence; the planning merits of the proposed development cannot be considered. For applications involving an unauthorised change of use in breach of a condition, the applicants have to prove, on the balance of probability, that the breach and separate use occurred more than 10 years ago and has been continuous up to the date of the application.

- 3.5 When an application for a Lawful Development Certificate is made, the onus of proof is on the applicant to demonstrate to the local planning authority that a certificate should be issued. The evidence submitted should be clear and convincing.
- 3.6 Without sufficient or precise enough information, the authority will be justified in refusing a certificate. This does not preclude another application if more information can be produced later on.

4.0 THE PROPOSAL

- 4.1 This is an application for a Certificate of Lawfulness (s191) for the use of the first floor of the building as an independent dwelling (C3).
- 4.2 The application is supported by the following evidence:
- Statutory declaration (including details of furnished letting agreements from 2000)
 - Site Location Plan
 - Floor plans

5.0 SITE HISTORY

Reference	Description	Outcome
C/67/0159	Erection of double garage (31 Grantchester Street)	A/C
15/0065/FUL	Application for a Certificate of Lawfulness under Section 191 for use as an independent dwelling (C3)	Pending
C/98/0129	Erection of first floor extension over existing double garage fronting onto Derby Street to provide studio room.	Approved with conditions.

C/99/0931	Amendment to planning permission ref: C/98/0129/FP, for alterations to rear elevations and roof.	Approved with conditions.
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6.0 PUBLICITY

6.1	Advertisement:	No
	Adjoining Owners:	No
	Site Notice Displayed:	No

7.0 POLICY

7.1 See Appendix 1 for full details of Central Government Guidance, Cambridge Local Plan 2006 policies, Supplementary Planning Documents and Material Considerations.

7.2 Relevant Development Plan policies

PLAN	POLICY NUMBER
Town and Country Planning Act 1990	Section 191: Certificate of lawfulness of existing use or development

8.0 REPRESENTATIONS

8.1 The owners/occupiers of the following addresses have made representations:

- 1 Merton Street
- 3 Merton Street
- 1 The Cenacle
- 13 Newnham Croft Street

8.2 The representations can be summarised as follows:

- The garage has always been within the boundary of 31 Grantchester Street and is registered there for council tax purposes.
- The studio described in the application has only 'existed' since early 2014 due to the attachment of this new address

to the garden gate and so there is no letting history and this should be treated as a new application.

- There are no UPRN numbers attached to these house numbers.

8.3 The above representations are a summary of the comments that have been received. Full details of the representations can be inspected on the application file.

9.0 ASSESSMENT

9.1 The application is accompanied by a statutory declaration from a Mr Desmond Hirsch of 31 Grantchester Street. This includes a detailed chronology of the use of the studio building and details of furnished letting agreements from 2000 under short-hold tenancy agreements. The table below outlines the supporting information submitted with the application.

LIST OF DOCUMENTS

Reference	Document	Date
Plan 1	Plans showing 31 Grantchester Street outlined in blue and The Loft 15A Derby Street outlined in red	09/12/2014
Plan 2	Copy plans submitted for Planning Permission C/99/0931/FP and Building Regulations 99/0014/FP. Plan reference DRG GS/02.	Undated
Plan 3	Plan showing internal layout of The Loft 15A Derby Street as laid out since construction in 2000	17/12/2014
Exhibit A	Planning Permission C/98/0129/FP	24/06/1998
Exhibit B	Planning Permission C/99/0931/FP	03/11/1999
Exhibit C	Cambridge City Council Building Regulations Department Certificate of Completion ref: 99/0014/FP	17/10/2000
Exhibit D	Cambridge City Council Finance Department Notice of Council Tax assessment of Studio Flat, 31 Grantchester Street as completed on 30 th May 2000	24/05/2000
Exhibit E	Direct Gov District Valuer Council Tax assessment Band B from on-line records	Effective 01/04/2000
Exhibit F	Exterior and Interior photographs	11/9/2004
Exhibit G1	Assured Shorthold Tenancy Furnished Letting Agreement (AST) to [REDACTED]	01/04/2000
Exhibit G2	First and last pages of AST to [REDACTED]	30/09/2001
Exhibit G3	First and last pages of AST to [REDACTED]	28/09/2002
Exhibit H 1	First and last pages of AST to [REDACTED]	08/04 2003
Exhibit H 2	First and last pages of AST to [REDACTED]	18/09/2004
Exhibit H 3A	First and last pages of AST to [REDACTED]	19/09/2005
Exhibit H3B	First and last pages of AST to [REDACTED]	15/09/2006
Exhibit H3C	Tenancy extension letter to [REDACTED]	09/09/2007
Exhibit H3D	Tenancy extension letter to [REDACTED]	04/02/2008
Exhibit H 4	First and last pages of AST to [REDACTED]	29/06/2009
Exhibit H 5	First and last pages of AST to [REDACTED]	04/08/2010
Exhibit H 6	First and last pages of AST to [REDACTED]	22/07/2011
Exhibit H7A	First and last pages of AST to [REDACTED]	25/08/2012
Exhibit H7B	First and last pages of AST to [REDACTED]	29/06/2013
Exhibit I1	E mail from [REDACTED] Revenues Officer, Cambridge City Council regarding 'unoccupied liability' when available to let short term	14/11/2014
Exhibit I2	E mail from [REDACTED] regarding tenant responsibility for Council Tax	19/12/2014
Exhibit J	Cambridge Accommodation web page description for short-term availability of Studio, 15A Derby Street.	Created 2007

9.2 I have reviewed all of the supporting information included with the statutory declaration and considered the third party representations. I give no weight to the lack of a separate UPRN number for the property or the recent attachment of a new address to it. From the evidence put forward it appears as though the property has been subject to separate Council tax payments.

9.3 Based on the evidence provided in the application and in consideration of the information received from residents, I am satisfied that on the balance of probability there is sufficient evidence to be satisfied that the first floor studio at 15A Derby

Street has been rented out as an independent dwelling and used continuously for a period of 10 years up until the point of the application having being made to the Council and is therefore immune from enforcement action and a lawful use.

- 9.4 I have sought legal advice on the submission and they confirm my view and that the evidence provided is sufficient to determine the application.

10.0 RECOMMENDATION

- 10.1 That a Certificate of Lawfulness be granted under Section 191 of the Town and Country Planning Act 1990 (as amended) for use of the first floor of the garage as an independent dwelling (C3).

1. It appears to the Local Planning Authority that on the basis of probability and evidence submitted, the premises has been used as self contained residential unit for more than 10 years.
2. 15A Derby Street, Cambridge, as identified outlined in RED on the location plan attached to this Certificate.
3. The use of the first floor of the garage of no.31 Grantchester Street, known as 15A Derby Street, as an independent dwelling (C3).