

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 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		

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

15A Derby Street; Update to the report dated 29/04/15

- 0.1 This update is in response to questions asked by Members of Planning Committee (29/04/2015) regarding the application for a Certificate of Lawful Use in respect of 15A Derby Street. At the meeting the matter was deferred for further information and advice.
- 0.2 The two questions raised were:
- Q1. Is the lack of a tenancy agreement for the periods of short or holiday lets fatal to the Applicant's application?

Q2. If there were short lets can these count towards the period of the unlawful use of the property as a separate dwelling house?

- 0.3 A1. Advice from a City Legal Officer is as follows: The Applicant has to prove on a balance of probabilities that 15A Derby Street has been used as a separate C3 dwelling house for more than 4 years. The Applicant has provided a Statutory Declaration and copy leases (for most of the material period) but he has not produced any tenancy agreements or licenses in respect of the period of short lets. He states (under oath) that during summer periods (01/06/2003 – 13/09/2003, 13/06/2004 – 17/09/2004, 06/08/2005 – 17/09/2005, 09/08/2009 – 28/08/2009, 29/08/2010 – 30/09/2010, 01/07/2011 – 14/09/2011, 15/07/2012 – 30/09/2012) he has let out the property to visitors etc. The Council has no evidence to contradict this and given the strength of the Cambridge rental market, especially for short term lets over the summer months, it appears to the Planning Officer unlikely that the Applicant would leave empty a fully furnished and self-contained unit whilst continuing to pay Council tax in respect of the property. Therefore, on the balance of probabilities the Legal Officer accepts the contents of the Statutory Declaration.
- 0.4 Notwithstanding a lack of documentary evidence for the short term lets the Planning Officer having made a site visit, is of the opinion that the unit has been functionally set up and used as a dwelling house for some time and has no reason to doubt the Applicant's assertion in his Statutory Declaration that it has been so used since 1st April 2000. To emphasise the importance of a Statutory Declaration, if the information contained in it were false, the Applicant would be liable for perjury.
- 0.5 A2. The case of *Gravesham Borough Council v Secretary of State for the Environment and Another* (1984) 47 P & CR 142 provides a helpful definition of a dwelling house. It is a building which ordinarily affords the facilities required for day-to-day existence. (There is no requirement that the dwelling house must be used as a permanent residence nor is the nature of the

type of tenancy relevant). Applying that test to 15A Derby Street and the facilities present (a kitchen bathroom lounge /bedroom) the Planning Officer is satisfied that 15A is a dwelling house.

- 0.6 The Planning Officer accepts that the building has been let as an independent dwelling for more than 4 years continuously prior to the date of the application taking all the above factors into account and the fact that that Council Tax has been paid by the tenants (during the tenancy agreements) and by the Applicant at the other times.

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.

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).