

Application Number:	2019/0777/RG3
Site Address:	152-154 Browning Drive, Lincoln, Lincolnshire
Target Date:	19th November 2019
Agent Name:	None
Applicant Name:	City of Lincoln Council
Proposal:	Continued use of property as C3 Dwellinghouse (Application for Certificate of Lawfulness).

Background - Site Location and Description

This is an application under Section 191 of the Town and Country Planning Act (as amended) (the Act), to determine the lawful use of the building. The application site is 152-154 Browning Drive a two storey end-terrace building. The application site is situated on the south east side of Browning Drive within Glebe Ward.

The application is to be considered by Planning Committee as the property is owned by the City of Lincoln Council.

Site History

No relevant site history.

Case Officer Site Visit

Undertaken on 24th October 2019.

Policies Referred to

National Planning Policy Framework

Issues

The only issue that can be considered with this application is the consideration as to whether the applicant has provided sufficient evidence to demonstrate that, on the balance of probabilities, the property has been in use as a dwelling for at least four years prior to the date of this application.

Consultations

Consultations were carried out in accordance with the Statement of Community Involvement, adopted May 2014.

Public Consultation Responses

No responses received.

Consideration

Sections 191 and 192 of the 1990 Town and Country Planning Act allow for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a Certificate of Lawfulness. A certificate is a statutory document certifying, in the case of an application under section 191, the lawfulness, for planning purposes, of existing

operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. In this case, for the use to be lawful it needs to be proven, on the balance of probabilities that the property has been used as a dwellinghouse for at least four years prior to the submission of the application.

In determining an application for a Certificate of Lawful Use, the burden of proof is borne by the applicant and the appropriate test is on the balance of probability. For the Council to issue a Certificate of Lawful Use (Existing), it is necessary for the applicant to demonstrate that on the balance of probability the property has been used as a single dwelling (Use Class C3) for at least four years prior to the submission of the application.

The evidence provided is a tenancy agreement, for the property to be occupied as a dwelling, dated December 1996 and a Deed of Assignment dated 2012. Council Tax records also indicate a historic residential use of the property. Prior to 1996 the property was used as a "residential institution" The evidence therefore demonstrates that the property has been occupied as a dwelling for at least four years prior to the submission of the application – the evidence is clear that it has been in this use since 1996. We are satisfied that the evidence submitted that the application meets the tests for a Certificate of Lawfulness in that it has demonstrated that on the balance of probability the property was in use as a dwelling house at least four years prior to the submission of the application.

Application Negotiated either at Pre-Application or During Process of Application

No.

Financial Implications

None.

Legal Implications

None.

Equality Implications

None.

Conclusion

The building was lawfully used as a residential dwellinghouse at least four years prior to the submission of the application and there has been no material change in circumstances that would suggest that a different conclusion should be reached. It is therefore recommended that the certificate be granted upon this basis.

Application Determined within Target Date

Yes.

Recommendation

That the application is granted.