

# Planning Statement

Application for a certificate of Lawfulness of a  
proposed use or development (CLOPUD)

137 Milton Road Hoyland Barnsley



## **1.0 Introduction**

This Planning Statement has been prepared by Andrew Bailey Architects. It is intended to assist Barnsley Metropolitan Borough Council in its determination of a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) submitted with respect to the conversion of 137 Milton from 2 flats into a single C3 dwellinghouse.

A search of the planning history confirms that no.137 Milton road was previously a public house, the building was subsequently converted into two flats in the mid 1990's under approved planning application reference B/95/1189/HN. It is the applicants intention to convert these flats into a single dwellinghouse, the purpose of the certificate is to confirm that such works would not constitute development or a material change of use and consequently does not require planning permission.

In addition to this Planning Statement, the planning application should be considered in recognition of the following plans:

- Site Location Plan ref P01A
- Existing plans ref P02A
- Proposed plans ref P03A

## **2.0 Application Property**

The certificate refers to no.137 Milton Road, it is a two storey pitched roof detached building of a Georgian appearance. The property is located on the western side of Milton Road to the south of Hoyland town centre. The property has an extensive garden to the rear which is accessed via a private driveway to the south of the building. To the front there is a modest enclosed garden which is sited square to the highway.

## **3.0 Proposals**

The applicant's intention is to amalgamate flat no.s 1 & 2 into a single 4 bedroom family property.

The property is currently in the process of refurbishment whereby it is intended to be converted into a single family dwelling. The purpose of applying for the certificate is to establish that the amalgamation of flats 1 & 2 137 Milton Road does not constitute development requiring planning permission

## **4.0 Planning History**

Pre application consultation with the LPA confirmed the following recorded planning history at the property:

B/93/1418/HN - Change of use of premises to house in multiple occupation and formation of car parking area

B/95/1189/HN - Conversion of former public house into two flats

2020/1291 - Demolition of existing building last used as flats and residential development of 1no dwelling (outline with all matters reserved apart from means of access)

## **5.0 Consideration**

## **SECTION 192 OF THE TOWN & COUNTRY PLANNING ACT 1990**

Town and Country Planning Act 1990 Section 192(1) relates to Certificates of lawfulness of proposed use or development and states;

‘If any person wishes to ascertain whether –

any proposed use of buildings or other land; or:

any operations proposed to be carried out in, on, over or under land, would be lawful,

they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question’.

Section 192(2) states ‘If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect’.

### **SECTION 55(1) OF THE TOWN & COUNTRY PLANNING ACT 1990**

The act defines the term “development,” as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Building Operations is defined as;

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder.

The Act identifies that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a)the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i)affect only the interior of the building, or

(ii)do not materially affect the external appearance of the building,

Section 55(f) states;

‘The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class’

### **PLANNING PRACTICE GUIDANCE – LAWFUL DEVELOPMENT CERTIFICATES**

Planning Practice Guidance supplements the information provided with the National Planning Policy Framework. In relation to applications for Lawful Development Certificates for a proposed use, paragraph 002 of the guidance states; that anyone can apply to the local planning authority to obtain a decision on whether an existing use or development is lawful for planning purposes or not. If the local planning authority is satisfied that the appropriate legal tests have been met, it should grant a lawful development certificate.

Paragraph 003 of the PPG reiterates the statutory framework covering “lawfulness” which is applicable for the consideration for lawful development certificates is set out in section 191(2) of the

Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Paragraph 005 of the PPG advises that that for the purposes of an application for a lawful development certificate the following should be provided:

- A plan identifying the land;
- Evidence to verify the information in the application;
- A statement setting out the owner's interest in the land.

Paragraph 005 advises that an application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application along with the relevant application forms and fees.

Paragraph 006 of the PPG advises that it in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

## **THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015**

The GPDO defines a "dwellinghouse," Class C3 as follows:

"dwellinghouse", except in Part 3 of Schedule 2 to this Order (changes of use), does not include a building containing one or more flats, or a flat contained within such a building;

"flat", except in the expression "flat roof", means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally;

### **6.0 Description**

As identified on drawing ref; 'Proposed plans P03A' the proposals would necessitate only internal alterations being undertaken to the building. All existing external openings would be retained, albeit for routine maintenance and repair to existing fabric there would be no material changes to the external appearance of the building undertaken.

Section 55(3)(a) of the TCP ACT 1990 identifies that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building, and of each part of it which is so used, the absence of any reference to the converse effect is a clear marker that the amalgamation of uses that fall squarely within the same C3 Use Class does not constitute a material change of use. It is therefore considered that planning permission is not required.

With respect to the intended occupation of the building, it is asked that Barnsley MBC respectfully confirm that the amalgamation of the flats into to a single dwellinghouse does not constitute development requiring planning permission. The use of the property would fall within Class C3 of the Town and Country Planning (use Classes) Order.

### **7.0 Conclusion**

The Certificate is sought under section 192 of the Town and Country Planning Act 1990. Sub section 3 of which states that a certificate under this section should;

- (a) specify the land to which it relates;
- (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use or operations to be lawful; and
- (d) specify the date of the application for the certificate.

It is considered that the requirements of section 192 have been met. The pre-existing uses and the single resulting use would both fall within Use Class C3, as such section 55(2)(f) of the TCPA applies. It is held that in recognition of the established use of the premises as C3 accommodation the proposals would not constitute a material change of use as it would not represent an intensification of use or result in a change in use class at the property for which planning permission would otherwise be required. As such it is not considered to be development, by virtue of Section 55 (2) of the Town and Country Planning Act 1990.

In light of the above submitted evidence, the balance of probability is in favour of the issue of a Lawful Development Certificate. The evidence submitted confirms that the building would be occupied as a single household within the properties established C3 use Class.

The use of the property as a single dwellinghouse would not be significant as to materially change the use of the building from its established classification of Use Class C3; consequently the proposals would be lawful for planning purposes.

It is therefore respectfully requested that a Lawful Development Certificate be granted for the use of 137 Milton Road as a single dwellinghouse.

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