2023/0122

Applicant: Thomas Duggan

Description: Use of property as 4no self-contained flats (Lawful development certificate for an existing use)

Address: 35 Carlton Road, Smithies, Barnsley, S71 1UF

Site Description

The application site is a two-storey mid terrace property with a room within the attic space, located on Carlton Road in Monk Bretton. The property is constructed from stone, with the frontage immediately adjacent to the road and a flat roof dormer on the rea roof slope. To the rear of the property is a grassed garden.

There is no planning history for the site and the planning statement is unclear as to whether the property has undergone some form of alteration or change of use in the past. The site is located in the Urban Fabric with the surrounding area largely comprised of residential properties.

Background

No planning history to the site.

Proposed Development

The applicant has applied for a lawful development certificate for an existing use of the building as 4 x self-contained flats.

To support the application, the applicant has provided a 47-page information document/statement containing the following:

- Plans (no label) which show 5 x flats – 2 x on the ground floor, 2 x on the first floor and 1 x in the attic/second floor
- Documents 1 to 5 - Energy Performance Certificates (EPCs) for flats 1 to 5.
- Document 6 – Council tax bands properties identified as flats 1, 2, 3, 4 and 5.
- Document 7 – Email correspondence between the applicant and BMBC Council tax indicating that the entire property (identified as a HMO) and flats 3, 4 and 5 (identified as self-contained flats) were given Council tax band A in April 1997.
- Document 8 – Email correspondence between the applicant and the Case Management Officer in Public Health indicating that the Council has records of the property being used as flats or HMOs (with an element of sharing) since 1993/1995.

Consultations

Legal – The applicant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Public Health – I've reviewed records held for this property and confirm it has been used as an HMO/Self-Contained flats for in excess of 10 years. Notes suggest property would have been subject to mandatory licencing as of 8th June 2009. I inspected this property on 28th April 2021 and can state both rooms situated on ground floor share the ground floor

bathroom, therefore an element of sharing. Both units of accommodation on the first floor and the one on the second floor could be deemed as self-contained flats.

Representations

None

Assessment

The LPA can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990. The applicant has submitted this application for lawful use of the relevant area of land under Section 191 of the Town and Country Planning Act 1990. Section 191(1) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(4) further provides that if, on the basis of the information provided in the application, the Council is satisfied at the time of the application of the use, and the Council is obliged to issue a certificate to the effect that the use is lawful. It should therefore be assessed whether the use of the land is lawful under the Town and Country Planning Act 1990 on the basis. If the 10 years is established for the use the Council would not be entitled to take enforcement action in respect of the breach and the present use would thus be lawful.

The application relates to the property addressed as 33 Carlton Road. The key issues within the assessment of this Lawful Development Certificate application is whether appropriate evidence has been presented to establish that 10 years continuous use for 4 x self-contained flats within the property, at what periods and whether a material change of use has occurred (either during or after the 10 years), which has disrupted the continuous use.

The applicant has submitted a 47-page document which is considered to be somewhat unclear and in parts contradictory.

Firstly, the plans shown within the document (which do not feature any labels indicating whether they are existing, historic or proposed) are not accurate to the present time as the site visit (20th March 2023) showed that flat 1 on the ground floor has now been changed into a kitchen/dining area. Subsequently, this has disrupted the layout of the property as shown within the plans.

Within the BMBC licensing guidance note, a self-contained flat is described as the following:

'Under the Housing Act 2004 a self-contained flat is a unit of accommodation which:

> *1.Has access to all three basic amenities (personal washing, WC and cooking facilities);*
> *2.These amenities are available for the exclusive use of the occupier;*
> *3.The amenities are available without passing through the common parts of the accommodation*

The presence in the dwelling of additional shared facilities such as a shared kitchen or laundry room would not change the fact that a unit of accommodation with its own exclusive facilities would be seen as a self-contained flat.'

The site visit showed that flats 3, 4 and 5 all have some elements of self-containment with sleeping, cooking/dining, washing facilities and a WC. Although there has been no supporting

evidence that these facilities form the sole area in which the tenants/residents would reside/use rather than another shared part of the property. All of the users of the flats are required to enter through a shared door to the front of the property, into a shared hallway serving the entire property, with free access into the shared bathroom and living/kitchen on the ground floor. Indeed, the site visit showed that the majority of the ground floor facilities (kitchen/living and bathroom) were now freely accessible by all users of the properties. This can therefore be deemed as the 'common parts of the accommodation'.

The alteration of flat 1 therefore has presented a greater element of sharing within the property and in any case, any such 10-year period has been disrupted.

Further, flat 2 on the ground floor does not contain any washing or toilet facilities and has always used the ground floor bathroom, which is accessed by the communal hallway area. The ground floor flat therefore has to pass through the common parts of the accommodation (hallway) into what can be used as a shared bathroom, thereby not complying with points 2 and 3 in the above guidance. There is therefore no feasible argument to suggest that flat 2 is self-contained. The third page of the supporting document consolidates this by reading: '*Flats 1 & 2, 33 Carlton Road is one ground floor unit consisting of two flats. The reason the unit consists of two flats is that they share a bathroom, so the flats are not self-contained units in their own right'.* There is clearly some admittance within the applicant's own statement that there are elements of sharing within the property and that flat 2 is not self-contained.

Colleagues in Legal and Public Health have been consulted with legal stating that the overriding conclusion from the information submitted and officer's report is that the applicant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. Public Health indicating that the property has been used as a HMO/self-contained flats for in excess of 10 years. The property was visited by public health in April 2021 and it is noted that both rooms on the ground floor share the ground floor bathroom, therefore having an element of sharing. In the opinion of the Local Planning Authority, the use resembles somewhat of a hybrid of HMO (use class C4) and self-contained flats (C3) and therefore due to the mixed use element, the property would likely be classed as sui generis.

The Public Health response is therefore pretty clear in indicating that there are elements of self-containment and sharing facilities within the property. Ultimately, the applicant is seeking for the Council to grant an LDC for 4 x self-contained flats and the onus is on the developer to submit sufficient details in order for the LPA to grant. The information submitted lacks clarity, continuity and it is therefore considered that the supporting document does not provide clear and unambiguous evidence of 10 years continued use as 4 x self-contained flats. In view of this, the application cannot be supported and is recommended for refusal – a view which is supported by the Council's Legal Officer.

Recommendation:

Refuse