2022/0763

Applicant: Mr J Bougnot

Agent: Mr J Blackburn

Description: Lawful development Certificate for existing use as an HMO.

Address: 1 Smiley House, Edward Street, Barnsley, S75 6BL

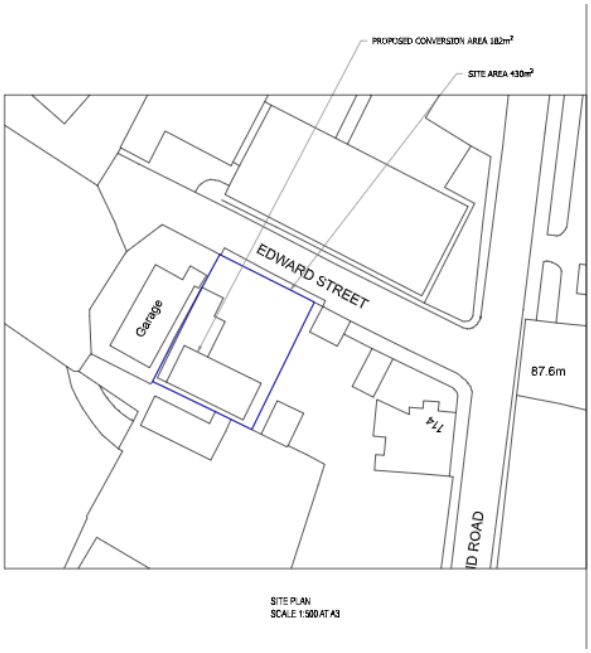
Site

The application site is a two- storey, detached L shaped property sited to the south-west of Edward Street, Barnsley. The two storey part of the property has a dual pitched roof and the whilst the single storey element has a flat roof with a balcony.

The submitted planning statement refers to the fact the building was formerly a paint store and garage with residential accommodation to the first floor that was granted under application B/94/0910/DT and ceased to be used in 2008. It states that in 2008 it was converted to a residential use however there does not appear to be a planning application to support this, only a building control application in 2008 for the installation of some steels during the conversion. The statement also states that the property was converted to a HMO at this time, however there was also no permission for this.



Front elevation of the site.



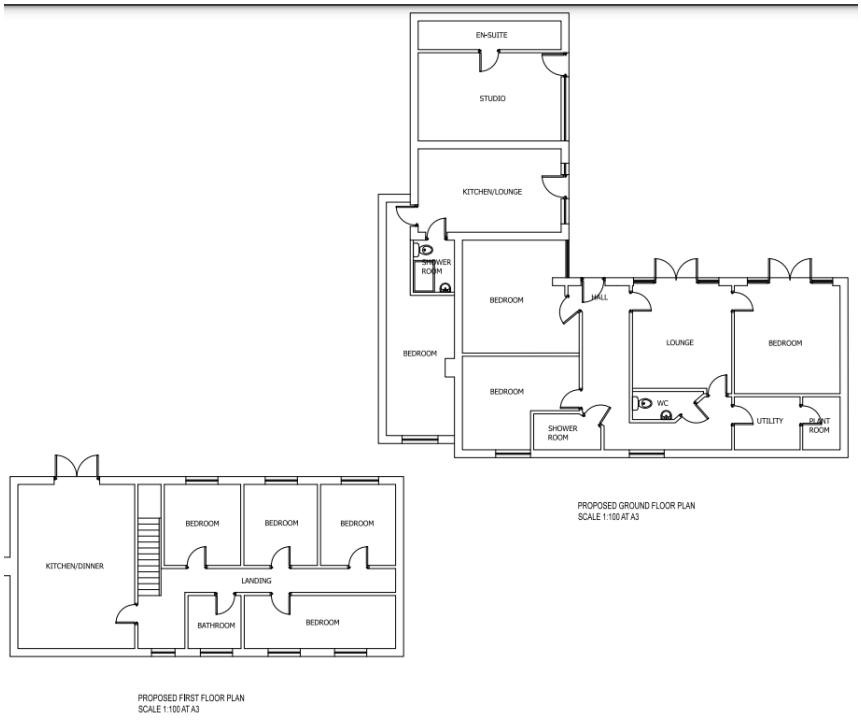
Site Plan

Background

B/94/0910/DT- Erection of two-storey building having ground floor store and first floor office and flat- Approved.

Proposed Development

The applicant has applied for a Lawful development certificate for the existing use of the property as a HMO.



In the applicant's initial submission they provided the following information:

- Council Tax Bill for band property B dated 8th March 2014.
- Landlord information letter dated 20th August 2014.

An email was sent to the applicant on 15th August 2022 explaining that the planning statement does not provide sufficient evidence and there have only been two documents submitted from 2014 which does not show a continuous use of the property. As such, the applicant provided the following additional information:

- Payment claim records dated from 19.03.2014 to 13.01.2015 which reference various tenants and Mr John Bougnot as the landlord.
- Council tax bill dated 08.03.2014.
- IDs of tenants.
- Three tenancy agreements dated 10.01.2022 for three separate tenants for 6 months.
- Tenancy agreement dated 30.11.2020 for a single tenant for 6 months.
- Tenancy agreement dated 02.02.2020 for a single tenant for 6 months.
- Tenancy agreement dated 24.02.2019 for a single tenant for 6 months.
- Tenancy agreement dated 13.08.2018 for a single tenant for 6 months.
- Tenancy agreement dated 06.01.2018 for a single tenant for 6 months.
- Two tenancy agreements dated 26.07.2017 for separate tenants for 6 months.
- Tenancy agreement dated 10.01.2017 for a single tenant for 6 months.
- Tenancy agreement dated 12.12.2016 for a single tenant for 6 months.
- Two tenancy agreements dated 05.04.2016 for two separate, single tenants for 6 months.
- Three tenancy agreements dated 18.02.2016 for three separate, single tenants for 6 months.
- Two tenancy agreements dated 30.11.2015 for separate tenants for 6 months.
- Nine tenancy agreements dated 23.11.2015 for tenants for 6 months.
- Two tenancy agreements dated 11.08.2015 for two separate, single tenants for 6 months.

Consultations

Legal – The burden of proof of the continuous use is held by the applicant. The information submitted is significantly short of what would be required. We would at least need some evidence of the occupations.

Representations

1 neighbour representation received which can be summarised as follows:

- HMOs appeal to less stable public members and their behaviours/actions could directly impact negatively on my children.
- Have two disabled and vulnerable children who may be at risk if there are larger numbers around the property.
- Already have loud noise at weekends- a verified HMO would make this worse.
- Highways- largest concern. Very dangerous when merging from side streets and business onto Wentworth- an increase in traffic would not help.

In response to the above, this application is not for a proposed HMO and rather is a certificate of lawful existing use to establish whether the property land use is lawful as such

would either be lawful or not and therefore other material planning considerations would not be taken into consideration in this type of application.

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 dwelling at 1 Smiley House, Edward Street. The main assessment of the application is whether they have provided sufficient evidence to show 10 years continued use as an HMO and whether the evidence they have provided is clear and unambiguous.

The initial evidence provided was considered to be insufficient and did not show a continuous use of the property. As such it was requested that further evidence to be submitted to support the case, examples of evidence to be provided by the applicant were as follows:

- Photographs (dated)
- Statutory Declarations (to be signed in the presence of a solicitor)
- Electoral roll records
- Utility bills
- Accounts
- Receipts for materials or services
- Leases and tenancy agreements
- Council tax records
- Evidence of a HMO licence.

The information submitted includes payment claims from 2014-2015, one council tax bill dated 2014, IDs of tenants and various tenancy agreements ranging from 2014 to 2022, however it should be noted there is no evidence dating back to 2012, nor any documents dated in the years 2013 or 2021.

The information submitted lacks continuity and it is therefore considered that the supporting document does not provide clear and unambiguous evidence of 10 years continued use as an 8 bed HMO. In view of this the application cannot be supported.

Recommendation: **Refuse**