2023/0159

Mr S Kripalani

Lawful development certificate for existing use as five flats in relation to part of the first floor and the full second floor of the building

The Crescent, 303 - 307 Barnsley Road, Cudworth

Description

The site is in relation to a row of attached, 2 and a half storey buildings located on Barnsley Road in Cudworth. The buildings are constructed from stone with retail units at the ground floor and residential accommodation above. There are 2 x dormer windows on the roof plane facing onto the road. The site is located to the North-East of the District Centre of Cudworth. There is no allocated parking for the existing building.

To the rear of the site is a small courtyard area which is accessed by a small walkway with a flying freehold above. The rear elevation of the building has a metal external staircase leading to the first floor of the building.

Background

2007/1853: Conversion of ground floor shop units into three bed sits - Approved with conditions

2020/1345: Change of use of ground floor retail units with HMO above to 6no.apartments including external alterations - Refused due to inadequate room sizes, lack of dedicated parking, and lack of private amenity space

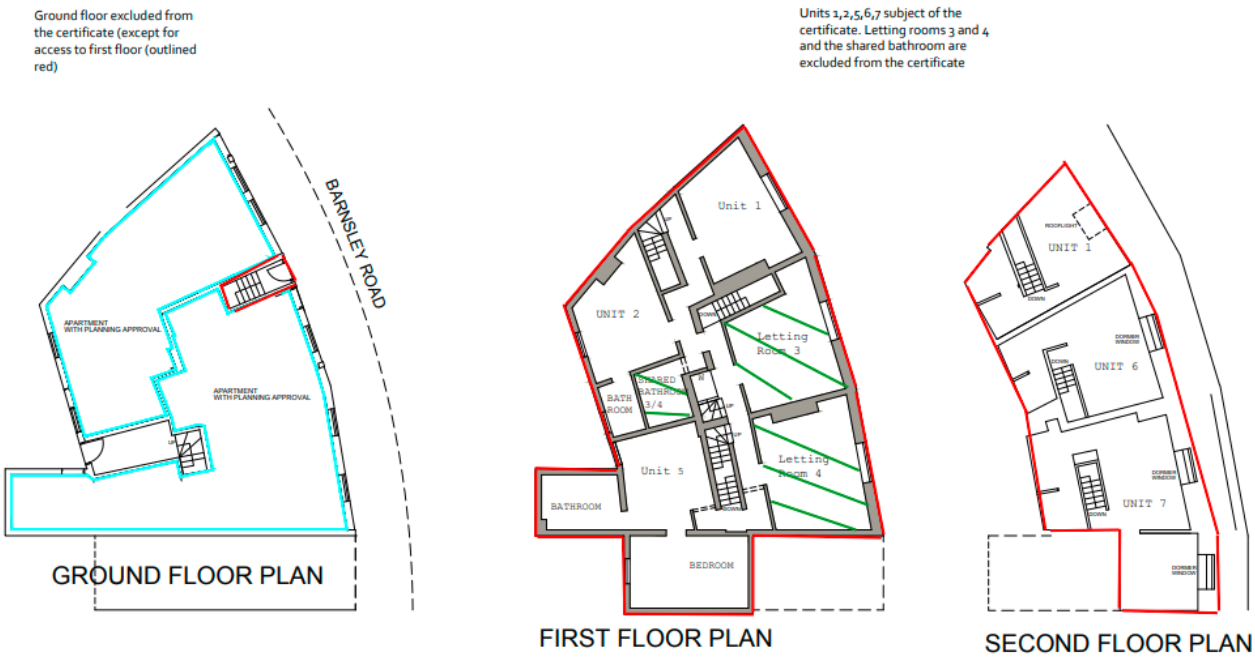
2021/0301 - Change of use of ground floor retail units to 2no. flats - Approved with conditions

2022/0170 - Lawful development certificate for existing use of first and second floor of building as 8no. bed HMO at 303 - 307 Barnsley Road – Refused due to lack of evidence.

2022/0904 - Change of use of first and second floor to 8 bedroom house in multiple occupation (HMO) and installation of dormer to front at 303 - 307 Barnsley Road, - refused planning permission on 11/11/22 due to over concentration of HMOs, inadequate internal amenity space, noise and disturbance to neighbours, and lack of off street parking

Proposed Development

The applicant has applied for a Lawful development certificate for the existing use as five flats in relation to a staircase on the ground floor, part of the first floor and the full second floor of the building



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

- Tenancy information from 2LET2U for the five flats
- Council Tax Bill dated 19th October 2022 for Flat 7
- BidX1 auction brochure for site dated 18th September 2019 describing the building as "substantial freehold terraced building arranged as two ground floor shops and a ground floor studio flat with residential upper parts arranged as six letting rooms"
- Council Tax e-mail
- Electric Certificate for Flat 1
- Council Tax bills dated 30th September 2022 for Flats 1,2,5, and 6
- Letter from property owner who bought the site at auction
- Electric certificates for flats 5 and 6
- Street numbering e-mail
- Photos from 2Let2U
- Project Manager Photos

Consultations

Legal – Considers they are entitled to the LDC for the flats

Representations

Ward councillors oppose the 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.

The applicant has provided a variety of evidence to support their claim regarding the usage of the areas under consideration as residential flats. This includes auction details, tenancy information, electric certificates and Council tax information. Separate to this it is also noted that a previous application for an LDC for an HMO at this site under application reference 2022/0170 was refused as the evidence was not sufficient and was contradictory in that it referenced flats on the upper floors. Although it led to the refusal of that application it does now fit in better with this submission which is seeking a lawful development certificate for 5 flats and not an HMO.

Given the level of information provided it is considered that they have proved on balance that the areas they have identified have been used as flats. Notwithstanding this there have been various discussions with the Council's legal department as to whether an LDC can be applied to part of a building and also whether there would need to be evidence of a 4 year use or 10 year use. The legal officer is satisfied that the red edge areas they have identified on the floor plans are specific and that the proposal does not include other areas of the building such as the ground flor shops. On this basis, the LDC can apply to part of the building. In terms of the 4 year or 10 year rule the legal officer has researched whether a flat can be classed as a dwelling house for planning purposes and whilst they have seen some argument to the contrary the majority view is that a self-contained flat can amount to a dwelling house. On this basis the 4 year rule would apply and the evidence is sufficient to show that. This would be on the basis that the flats would have had a different use before that but even if they didn't the evidence would be that it started off as a flat so this would be the lawful use in any case.

On the basis of the above the legal officer has recommended granting the certificate.

<u>Other matters</u>

It is noted that the ward members have written in to oppose the application. A response was given noting that no reasons were given for the opposition and explaining that we couldn't take into account 'usual' planning matters in the application like residential amenity, highway safety etc. The ward members were asked for any details that may contradict the evidence provided but none were forthcoming.

Recommendation: Approve