

2023/0509

Applicant: Mr David Robinson

Description: Lawful Development Certificate for existing use as a single dwellinghouse

Address: 66a High Street, Goldthorpe, Rotherham, S63 9LQ

Site Description and background

The application site is a two-storey detached bricked building located on the corner of High Street and Lesley Road in Goldthorpe. The building is the former Job Centre which gained permission for a change of use into a dog day care centre (ground floor) and residential flat (first floor) in 2019 (ref. 2019/0562). However, a part of this LDC application is seeking confirmation that only the use of the first floor as a residential flat commenced from this permission.

The site is located in the Urban Fabric, close to the District Centre of Goldthorpe (70m to the North). The surrounding area is predominantly residential but there are a range of commercial uses nearby.

Planning History

2018/0656: Change of use from Job Centre (A2) to Sui Generis (15 bedroom HMO) – Withdrawn

2018/1126: Change of use from Job Centre (A2) to 9 apartments with manager's office, associated parking and amenity space – Approved with conditions (Decided at PRB)

2019/0562 – Change of use from job centre to dog day care centre (D1) at ground floor and residential (C3) at first floor with associated parking and secure dog space and amenity areas (Approved with conditions)

Proposed Development

The applicant has applied for a lawful development certificate for the existing use of the building as a residential dwelling being used for a continuous period (including to the present day) for 4+ continuous years. The applicant submitted several pieces of evidence which were not coherent/lacking and required amendments and further detail. Further information/clarification was therefor sought from the applicant. For the purpose of clarity in the report, only the amended information shall be described below.

The applicant has submitted the following amended/additional information to support the LDC application:

1. 2 x signed affidavits from neighbours which state the following:
 - The neighbours have known the applicant, his partner and their children for about 4 years
 - The applicant and his wife took over the building in the first quarter of 2019.
 - The applicant and his wife were planning on opening a dog day care business on the ground floor of the building and live upstairs in a flat/house.
 - The applicant has used the whole building as a dwelling which the neighbours can ascertain as there are no curtains into the building and can clearly see into the ground floor of the building. Lights are turned on and off at night and all of the rooms downstairs are in use.
 - The applicant and his wife have had many family/domestic parties downstairs and also use the outdoor space of the building for these purposes.
 - The ground floor use is also used as a personal/domestic gym for sole use of the applicant.
2. A third affidavit (unsigned as it was sent via email) from a prospective business partner in the previously approved (2019/0562) dog day care centre has been provided which indicated the following:
 - The dog day care centre business was never implemented due to various personal/family difficulties.

- The ground floor of the building has been used as a dining room, gym and playroom for the family, children and dogs since January 2019. The whole business has been solely occupied as a residence which the individual has frequently visited as well as attending parties and domestic Christmas events in the ground floor of the building.
 - There has never been any other use in the building which remains in sole domestic use.
3. A PDF document containing 26 x photographs (extracted and dated from Facebook and iPhone images) of various locations on the ground floor, first floor and the external area of the building which seeks to provide evidence that the whole building has been used as a single dwelling solely for domestic purposes. The photographs provide visual evidence of various family members using the whole building for various purposes including family events, Christmas parties, birthday parties, bonfire night, for a storage room, playing games, as a personal gym and other general domestic activities. The images present the building to be used as a sole residence with the main living accommodation being on the first floor and the ground floor being used primarily as a 'dog room', for events, as a home office and for general storage.

Consultations

Legal – The time period for continuous use in relation to the use of a building as a single dwellinghouse is 4 years. The initial statements, affidavits and photographs didn't really show anything worthwhile. However, the amended information was clearer and provided evidence that the entire building had been used as a single dwelling to which the Council did not have any evidence to contest this claim. Agreed that the LPA had enough to go on within the submitted information to be able to grant the LDC.

Ward Councillors – No comments received.

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.

The period to submit and successfully grant a Lawful Development Certificate is a period of 10 years with the exception of the use as a single dwelling which is 4 years. If the 4 continuous 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 66a High Street, Goldthorpe. The key issues within the assessment of this Lawful Development Certificate application is whether appropriate evidence has been presented to establish that 4 years continuous use for the entire building (both ground and first floors) being used as a single domestic 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 various pieces of information to support the application which includes the following:

1. 2 x signed affidavits from neighbours.
2. 1 x email from a prospective business partner in the dog day care centre.

3. A PDF document with 26 x dated photographs of the ground floor, first floor and external area of the building.

A site visit was undertaken by the Case Officer on 25th July 2023 which confirmed that the location and descriptions of the photographs were accurate.

The onus is on the applicant to submit proof that the Lawful Development Certificate should be granted. The LPA is then required to make a judgement on whether the use or development of the land is lawful using a balance of probabilities test. Should the LPA be reasonably sure that the use/development is lawful based on the information presented, and the LPA has no evidence to disprove the evidence presented by the applicant, the LDC should be granted.

After consultation with the Council's Legal Officer, the initial submitted information was lacking in terms of providing a solid and coherent evidence base and the applicant was asked to go through the information again, in line with the requirements of the Council's Planning Advice Note (PAN) for Lawful Development Certificates. Upon resubmission of this information, the 2 x signed affidavits were clear as to who they were from and to what level of knowledge the relevant parties knew the whole building had been used as a single dwelling and from which date. The date which has been indicated is early 2019/The first quarter of 2019 which is 4+ years ago from the time of writing (late July 2023).

The email (whilst unsigned) is from a prospective business partner of the approved dog day care centre indicating that this business use approved under the 2019 application did not commence and they have frequently visited the ground floor of the building which has been used as a sole residence since early 2019.

The photographs show that various areas of the building, including the ground floor, first floor and external areas have been used for domestic purposes. The photographs are extracted from iPhone photographs and Facebook with the dates included onto the images from early 2019 with the latest image from October 2022. This provides a slight gap from October 2022 to the first quarter of 2023, however there is no evidence to suggest that the building has been used for any other purpose than domestic/residential in this period. The Site Visit on 25th July showed that that photographs are accurate in the positions that they have been described as, and the current use of the building remains for sole domestic purposes.

The Council's Legal Officer has had several discussions with the Case Officer who has visited the site and stated that the updated information was a lot clearer and that the Council did not have evidence to contest the building being used as a single dwellinghouse for 4+ years continuously.

The LDC application is therefore recommended to be granted.

Recommendation: Grant Lawful Development Certificate