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Item No: 7.8

Application: 211010

Applicant: Mr Peter Wong

Agent: Ms Gemma Smith, Unique Design Creations Limited

Proposal: Lawful Development Certificate for existing use: residential dwelling converted to include 4 beds, 1 communal breakfast room, bathroom, WC, kitchen, and living room/dining room to be shared with 4 x residents

Location: 9 Mayberry Walk, Colchester, CO2 8PS

Ward: Berechurch

Officer: Eleanor Moss

Recommendation: On the balance of probability based on the information provided and available to the Council, the change of use from C3 to C4 with the occupation of up to four unrelated people living in 9 Mayberry Walk at any one time is considered to be permitted development.

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the Certificate of Lawful Use (existing) was called in by Cllr Harris for the following reason:

Residents in Mayberry Walk are concerned over category of HMO of overcrowding safety with fire in an upstairs kitchen past anti-social behaviour in Mayberry Walk.

2.0 Synopsis

- 2.1 The key issues for consideration are whether the existing use is lawful.
- 2.2 It is recommended that a Certificate of Lawfulness of an Existing Use be granted for 9 Mayberry Walk in respect of the C4 use of the property.

3.0 Site Description and Context

- 3.1 The site relates to a four bedroom semi-detached dwelling in Mayberry Walk. There are two off road car parking spaces to the front of the property and a garden located to the rear.

4.0 Description of the Proposal

- 4.1 A Certificate of Lawful Use is sought to confirm the use of the property as a house in multiple occupation under use class C4, which allows for 3 – 6 non related people occupying the property at any one time.

5.0 Land Use Allocation

- 5.1 Residential

6.0 Relevant Planning History

- 6.1 None relevant

7.0 Principal Policies

- 7.1 A Lawful Development Certificate is a legal document which confirms the lawfulness of past, present or future building use, operations, or other matters. If granted by the local planning authority, the certificate means that enforcement action cannot be taken against the development referred to in the certificate. However, the certificate will not protect from enforcement action by the planning authority if the specified use is then changed 'materially' without a planning application for it.
- 7.2 The certificate is not an application for planning permission and conditions cannot be attached. The planning merits of the use are not relevant. The issue of a certificate depends entirely on factual evidence about the history and

planning status of the building or other land and the interpretation of any relevant planning law or judicial authority.

- 7.3 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, on the balance of probabilities that the appropriate legal tests have been met, it must grant a lawful development certificate. Where an application has been made under section 191, a lawful development certificate only confirms what is lawful as at the date of the certificate application.
- 7.4 The amended section 194 of the 1990 Act states that it is an offence to provide false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the Council to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

- 8.2 Highway Authority – no objections

- 8.3 Private Sector Housing:

HMOs are only subject to mandatory licensing in Colchester where there are 5 or more occupants, consisting of 2 or more households that share one or more facilities i.e. bathroom, kitchen etc. From the information I have obtained, a licence would not be required under Housing Act 2004 legislation as there are no more than 4 persons occupying. This may be different in other Local Authorities where they may have adopted additional licensing.

Private Sector Housing would only take necessary action once aware of the existence of a HMO and not retrospectively and we have no control to prevent or regulate the conversion of properties to HMOs, only to ensure that they meet necessary standards. However, if the HMO is identified as licensable and has been operating without a licence we may issue a Civil Penalty Notice (CPN) for the offence. Please see the link to PSH enforcement policy below email signature for further information.

I am in the process of carrying out checks to ensure that the HMO meets with safety and management standards

9.0 Parish Council Response

- 9.1 Non Parished

10.0 Representations from Notified Parties

10.1 The application resulted in fourteen notifications to interested third parties including neighbouring properties. The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

- Multiple people living in the property
- Anti-social behaviour
- Already a busy street with vehicles
- HMO out of keeping with family community
- Overcrowding
- Health and safety concerns
- House insurance concerns
- License required
- Overlooking
- Drainage issues
- Congestion
- Mortgage concerns

NB: Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

11.0 Parking Provision

11.1 There are two off-road car parking spaces retained on the front driveway.

12.0 Accessibility

12.1 Not applicable

13.0 Open Space Provisions

13.1 Not applicable

14.0 Air Quality

14.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

15.0 Planning Obligations

15.1 This application is not classed as a "Major" application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

16.0 Report

Assessment

16.1 Section 191 of the Act provides a person with the opportunity to apply to the Local Planning Authority (LPA) for a Certificate to confirm that an existing use or building operation is lawful. The application is an evidence based application and not a determination of the planning merits of the proposal. The applicant is required to describe the proposal with sufficient clarity and precision to enable the LPA to understand from a written description and plans exactly what is involved in the claim. The burden of proof for establishing lawfulness rests firmly with the applicant, and the evidential test applied is on the "balance of probabilities". The question can be phrased "is it more likely than not that the existing use is lawful?" The LPA should accept the applicant's evidence, provided that it is sufficiently precise and unambiguous, unless they have evidence to contradict or undermine it. Section 191(4) of the Act provides that if the LPA is satisfied on the evidence provided with the application that the existing use or operations are lawful, they shall issue a certificate; in any other case they shall refuse the application.

16.2 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows a property to change from a C3 use (family dwellinghouse) to a C4 use (house in multiple occupation) with the occupation of 3 to 6 unrelated people living in the property at any one time as permitted development. The relevant section of the General Permitted Development Order is provided below:

Class L – small HMOs to dwellinghouses and vice versa

Permitted development

L. Development consisting of a change of use of a building—

- (a) *from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;*
- (b) *from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.*

Development not permitted

L.1 Development is not permitted by Class L if it would result in the use—

- (a) *as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule;*
or
- (b) *as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) of that Schedule.*

16.3 In this instance, the owner of this property is seeking a certificate of lawfulness of an existing use to confirm that the existing C4 use of the property is lawful because the change of use from C3 to C4 allowed under the General Permitted Development Order.

- 16.4 The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.
- 16.5 The application site is not subject to an Article 4 Direction and the existing use relates to up to four occupiers. As such, the change of use from C3 to C4 with the occupation of 3 to 6 unrelated people living in the property at any one time is considered to be permitted development.
- 16.6 It is noted a number of concerns are raised in relation to the scheme including overcrowding, a family estate, drainage issues, house insurance etc. have been raised by interested parties. While these comments are sympathised with, as this application is for a certificate of lawful use, these concerns cannot be taken into consideration as the planning merits do not form part of the assessment for these types of applications.
- 16.7 Further to this, comments in relation to a license and fire safety have been raised. The Private Sector Housing Team have confirmed that due to the number of occupiers, a HMO license is not mandatory. The Private Sector Housing team are also ensuring the HMO meets required standards for fire safety, however this should not delay the determination of this certificate as the local planning authority is satisfied, on the balance of probabilities that the appropriate legal tests have been met, it must grant a lawful development certificate.

17.0 Conclusion

- 17.1 To summarise, taking all submitted evidence into account as well as the checks undertaken with internal departments, it is considered that on the balance of probabilities the change of use from C3 to C4 for up to four occupiers is lawful. On this basis it is recommended that a Certificate of Lawfulness of an Existing Use be granted for 11 Mayberry Walk in respect of the C4 use of the property.

18.0 Recommendation to the Committee

Recommendation that the application is APPROVED for the following reason:

On the balance of probability based on the information provided and available to the authority, the change of use from C3 to C4 with the occupation of up to four unrelated people living in 9 Mayberry Walk at any one time is considered to be permitted development.

19.0 Informatives

19.1 The following informatives are also recommended:

1. ZT0 – Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

2. INS - Highways

All work within or affecting the highway is to be laid out and constructed by prior arrangement with and to the requirements and specifications of the Highway Authority; all details shall be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at development.management@essexhighways.org or by post to:

SMO1 – Development Management
Essex Highways Ardleigh Depot,
Harwich Road,
Ardleigh,
Colchester,
Essex
CO7 7LT