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Item No: 7.2

Application: 211010

Applicant: Mr Peter Wong

Agent: Ms Gemma Smith

Proposal: Existing 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 (amended application)

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 Cllr Harris called in this lawful development certificate for the following reason:

Residents I have met have convinced me of the need to deal with building quality on alterations, with regard to Safety of neighbours and residents who will rent and reside at Number 9

2.0 Synopsis

- 2.1 The key issues for consideration are whether the existing/proposed use is lawful. Members may recall the consideration afforded previously to this application at the meeting of 27 May 2021 (Item 7.8) when it was resolved to grant the certificate. This item is now returned for consideration following readvertisement as a consequence of errors highlighted in the original application form. The planning considerations remain unchanged.
- 2.2 The certificate is not an application for planning permission and conditions cannot be attached. The planning merits of the use are not relevant, nor it is relevant who resides at the property.
- 2.3 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.
- 2.4 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, regulations 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. 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

Updated Private Sector Housing:

I inspected 9 Mayberry Walk last Thursday for which the owner and landlord Mr Wong was present. These are my findings:

Layout & Use

This is basically as indicated in the floor plan provided to Planning. On the ground floor there is one bedroom (front left), WC, shared lounge (mid right) shared kitchen (mid left) and bedroom (rear), which is occupied by Mr Wong. On the first floor there are 2 bedrooms (rear left & right), shared bathroom (front right) and shared kitchen / utility. From a PSH point of view there would be no issue with the shared kitchen / utility, and all seems to be compliant.

Fire Safety

An interlinked and hardwired fire detection and alarm system has been installed that covers all bedrooms, hallway landing and kitchens. For some reason no in the ground floor common use lounge. Emergency lighting has been installed above the landing . I await commissioning certification to BS5839 & BS5266. There are suitably located and wall mounted fire blankets.

Fire doors have not yet been installed but have apparently been ordered and Mr Wong said his contractor is aware of the specification required. He showed me keyless exit locks for doors and door gear that are being stored at the property. I advised that the cupboard doors off of the landing and hallway would also need to be 30 minute.

There are transoms above the kitchen door, which is glazed, and 2 first floor bedroom doors, boarded. These will need to be made 30 minute fire resistant. I looked at the separating wall between ground floor rear bedroom and shared lounge. This seems to be a 100mm stud wall, but it didn't sound very solid as plasterboard either side, the bedroom side being within the bedroom fixed wardrobe. Mr Wong is convinced that it is a plasterboard stud wall and his contractor believes so too. I can ask that this is made 30 minute but difficult to prove otherwise. Is this something you could comment or take action on? As you have already pointed out, there are no escape windows or doors from this bedroom, but Mr Wong said he is getting an estimate for this. The patio doors would have allowed for this, but these have been boarded over, which is another issue. The rear external door (kitchen) lacks a keyless exit lock. There is a shower room off the kitchen close to the door, so I think this is justified.

Excess Cold

The external doors including the rear bedroom (sliding patio) and also to the front ground floor bedroom have been boarded on inside and no insulation

provided. Should this have been required for Building Regulations? There are a few windows where casements / fanlights are either not opening or closing properly or have faulty locking latches. The rear external kitchen door is wood construction half single glazed with a thin lower wood panel. The lower rails and stile are damp and starting to rot.

I have copy of an Electrical Installation Condition Report dated 18/05/2021 which is marked Satisfactory and no C1,C2 or C3 code faults listed. I had a look at the gas pipes and there is what looks like new earth bonding.

8.4 Fire Services:

Access

Access for Fire Service purposes has been considered in accordance with the Essex Act 1987 - Section

Access for Fire Service is considered satisfactory subject to fire brigade access and water supplies for fire fighting purposes to the proposed development being fully compliant with Building Regulations Approved Document B, B5. Your attention is drawn to ADB, B5 Section 13. More detailed observations on access and facilities for the Fire Service will be considered at Building Regulation consultation stage.

Building Regulations

It is the responsibility of anyone carrying out building work to comply with the relevant requirements of the Building Regulations. Applicants can decide whether to apply to the Local Authority for Building Control or to appoint an Approved Inspector. Local Authority Building Control will consult with the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (hereafter called "the Authority") in accordance with "Building Regulations and Fire Safety - Procedural Guidance".

Approved Inspectors will consult with the Authority in accordance with Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 (as amended).

Water Supplies

The architect or applicant is reminded that additional water supplies for fire fighting may be necessary for this development. The architect or applicant is urged to contact the Water Technical Officer at Service Headquarters, telephone 01376-576344.

Sprinkler Systems

"There is clear evidence that the installation of Automatic Water Suppression Systems (AWSS) can be effective in the rapid suppression of fires. Essex County Fire & Rescue Service (ECFRS) therefore uses every occasion to urge building owners and developers to consider the installation of AWSS. ECFRS are ideally placed to promote a better understanding of how fire protection measures can reduce the risk to life, business continuity and limit the impact of fire on the environment and to the local economy.

Even where not required under Building Regulations guidance, ECFRS would strongly recommend a risk based approach to the inclusion of AWSS, which can substantially reduce the risk to life and of property loss. We also encourage developers to use them to allow design freedoms, where it can be demonstrated that there is an equivalent level of safety and that the functional requirements of the Regulations are met.”

8.5 Building Control:

No comments received. An update will be provided once received.

9.0 Parish Council Response

9.1 Non-parished

10.0 Representations from Notified Parties

10.1 The application resulted in twenty-three notifications to interested third parties including neighbouring properties, although a number of these are from the same property. The full text of all of the representations received is available to view on the Council's website. However, a summary of the 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
- Layout concerns
- Building control concerns
- Wrong documents submitted
- Waste concerns
- Parking issues
- Money making scheme
- Change of use unlawful

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:

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 is permitted 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, an 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 9 Mayberry Walk in respect of the C4 use of the property.

18.0 Recommendation to the Committee

- 18.1 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