

<b>Reference:</b>	15/00258/UCOU_B
<b>Ward:</b>	Milton
<b>Breach of Control</b>	Without planning permission change of use of building to House in Multiple Occupation (HMO) installation of windows, erection of porch and provision of soil pipe to South elevation.
<b>Address:</b>	49 Milton Road, Westcliff-on-Sea, Essex.
<b>Case Opened:</b>	05/11/15
<b>Case Officer:</b>	Ian Harrison
<b>Recommendation:</b>	<b>Take No Further Action in relation to the use of the building. Continue to defer enforcement action in relation to all other works.</b>



## **1 Site and Surroundings**

- 1.1 The application site is located at the junction of St Johns Road and Milton Road. The size and contents of the application site are described above. The surrounding buildings are used for a variety of community and residential purposes and include buildings of varied scale and architectural detailing, although the majority of the buildings are of two storey scale.

## **2 Lawful Planning Use**

- 2.1 The most recent lawful use of the site has been accepted to be as a cookware distribution place falling within Use Class B8.
- 2.2 Prior Approval was granted under the terms of application 15/01395/PA3COU for the conversion of the buildings at the site to form three dwellings.

## **3 Present Position**

- 3.1 After the refusal of application 15/00932/PA3COU which proposed a similar change of use, application 15/01395/PA3COU gained Prior Approval for the change of use of the buildings at the site to form three dwellinghouses under the terms of Class P of Part 3 of the Town and Country Planning (General Permitted Development) Order 2015. The granting of prior approval does not provide any form of consent for the alteration of the external appearance of the property.
- 3.2 After complaints were received in late October and November 2015, Officers visited the site and inspected several works that had occurred including:
- The replacement of the shopfront window with windows of domestic appearance.
  - The replacement of first floor windows at the front elevation and windows to all three floors at the side elevation
  - The addition of a soil pipe to the side elevation. The landowner advised that works to the basement were being undertaken that represented repairs to the existing basement, which was not being enlarged.

At that time, landowner stated that the intended use of the building was not certain but that a planning application for the works that had occurred and the use of the building would be submitted. It was made clear that any works occurring without planning permission were being undertaken at the applicant's own risk.

- 3.3 A planning application (16/00184/FUL) was validated on 08/02/16 for the use of the building as a House in Multiple Occupation. Retrospective permission was also sought for alterations to the building that are described above and additional alterations including the erection of dormers and the provision of an open lightwell at the frontage of the site.
- 3.4 During the consideration of the application it emerged that additional works had commenced at the site including:
- The fixing of battens to the outside of the building (to enable the addition of cladding, which has not subsequently occurred)

- The formation of a downpipe to connect to the sewers, overhanging the public highway.
- The formation of a shallow porch on the public highway.
- The increase of the depth of the basement at the site.

To address these additional works and objections that were raised by Officers with respect to some of the proposals, amended plans were submitted and the subject of public consultation. The application was refused for the following reasons:

1. *The proposed development would have insufficient parking to meet the needs of occupiers and would result in vehicles parking on the highway to the detriment of highway safety and the free flow of traffic. The proposal would therefore be contrary to the National Planning Policy Framework and policies DM3 and DM15 of the Council's Development Management DPD.*

2. *The proposal would result in an additional HMO, further adding to a concentration of HMOs in the vicinity, which would be detrimental to the overall character of the area and residential amenities. This would be contrary to policy KP2 and CP4 of the Core Strategy 2007 and policy DM1 of the Development Management DPD 2015.*

### **The Use of the Site**

- 3.5 On the 4<sup>th</sup> and 7<sup>th</sup> July 2016, Officers received three allegations that the building was being put to use as a House in Multiple Occupation. The allegations stated that it had been witnessed that tenants were being shown the property and the building was being occupied.
- 3.6 Officers have regularly exchanged correspondence with the landowner for several months and received an email from the landowner on 06 July 2016 that he had occupied the building. Officers visited the site on 13/07/16 and spoke to the landowner, his planning representative and his builder. In written and verbal communications the landowner has set out the following:
- He has occupied the building since May.
  - He has occupied the building as his family dwellinghouse with the only other occasional occupants being his family members.
  - The works that have occurred have been undertaken with the intention to use the building as a HMO, but as this has not been approved, this has not occurred.
  - He has demonstrated that he is responsible for council tax and utility bills.
  - Photographs have been provided to demonstrate that the landowner has been sleeping at the site and that his car has been parked in the highway outside the application site.
  - Sworn Statements confirming the landowners residential occupation of the building have been received from himself, a colleague and the occupant of a neighbouring building.
- 3.7 On visiting the site, Officers witnessed the following:
- The basement and roofspace accommodation appears not to be occupied or completed.
  - Most rooms, but not all have been rendered and painted.

- The layout reflects the layout that was shown on the plans submitted under the terms of application 16/00184/FUL.
- Two kitchens have been installed, one on each of the ground and first floors and included signs of use such as washed plates and appliances.
- Carpet has been laid on ground and first floor and within the stair areas.
- Each of the bedrooms on the ground and first floor have bed frames in place and some furnishings.
- Only two of the bed frames included mattresses.
- One first floor bedroom showed all signs of having recently been in use.
- Locks have been fitted onto the bedroom doors, but all doors were open and no doors were locked.

3.8 A request to take photos of the condition of the building was refused and Officers were only given time to make limited notes during the site visit as most time was spent in discussion with the landowner. There is therefore no ability to corroborate any of these points with additional evidence. The site visit was however fully filmed by the landowner's builder using a mobile phone.

### **External Alterations**

3.9 With respect to the external alterations that have occurred at the site. As part of the consideration of the recent planning application, Officers raised concerns with respect to the design, positioning and detailing of the windows, the enclosure of the soil pipe, the formation of a porch and the cladding of the building. It was however assessed that these matters could be addressed through the imposition of conditions on any planning permission that was granted. In the absence of such a planning permission to address these items it is considered that the merits of enforcement action should be considered in due course.

3.10 Prior to the July Development Control Committee, it was agreed that the consideration of an enforcement case in relation to the external works should be deferred. The landowner makes the case that a significant amount of time has been spent defending himself from allegations of breaches of planning control and he has not had time to submit an application to address the external works. In this instance, Officers acknowledge that extensive communications have been on-going with the landowner and as such his case is legitimate. As such it is considered that he should be afforded further time to submit an application for these works.

3.11 Works have been undertaken to remodel the block work that formed the porch, resulting in the side elevations being 'cut back' at two staggered intervals to reduce the projection into the highway to a minimal amount.

## **4 Appraisal**

### **The Use of the Building**

4.1 As set out above, the former established use of the building was as a warehouse (Class B8) and prior approval has been granted to use the building as a dwellinghouse within Use Class C3.

- 4.2 Allegations have been received that the building has been used as a HMO. Based on the evidence available to Officers and having visited the site, it is considered that there is no evidence to substantiate these allegations.
- 4.3 It is noted that the landowner openly agreed that the works to the building had been undertaken to enable the conversion of the building to a HMO. Internally, the building is divided in a manner that would reasonably be expected for a HMO and has several features that are indicative of this such as two kitchens, 6 bedrooms that are largely ready for use and locks on all bedroom doors.
- 4.4 The Housing Act definition of a HMO is extensive, but the Town and Country Planning (Use Classes) Order 1987 (as amended) contains an explanatory note which states that small HMOs are “where tenanted living accommodation is occupied by persons as their only or main residence, who are not related, and who share one or more basic amenities.” In this instance, there is no evidence that the building has been used as a HMO of any size.
- 4.5 Whilst the building was adapted to be used as a HMO, it has not been used as such but has been occupied as a dwelling. If somebody should wish to live in a dwelling as a dwellinghouse that happens to have all the features of a HMO, it does not constitute a breach of planning control.
- 4.6 For these reasons and ‘on the balance of probabilities’ the evidence available at this time available indicates that the building has been occupied as a dwellinghouse.

#### **Possible Future Use as a Small HMO**

- 4.7 Notwithstanding the above, it is considered relevant to note that permitted development rights allow the change of use of a dwellinghouse to a small HMO (Use Class C4) which would enable 3 to 6 people to occupy the building as a HMO without needing planning permission.
- 4.8 As the use of the building as a dwellinghouse has been approved, provided that the building was first occupied as a dwelling, the use could subsequently be changed to a small HMO without needing planning permission.
- 4.9 This therefore provides the landowner with a legitimate route to enable the use of the building as a HMO. Although it appears not to be the case, if it emerged that the building had not been occupied as a dwelling and was converted directly to use as a small HMO, the question would need to be asked “what is the difference between this outcome to the outcome that could lawfully be achieved if the building had first been occupied as a dwellinghouse for a single day?” For the reasons set out above, the answer has to be that there is no difference as the end product would still be a small HMO falling within Use Class C4.
- 4.10 As set out above, it appears that this is hypothetical as evidence suggests that the building has probably been occupied as a dwelling. However, even if this was proven to be wrong, as the end result would be the same, it is considered that the use of the building as a small HMO will not cause harm above and beyond that which can occur under the terms of permitted development rights. In these terms, it would not be expedient to take enforcement action in relation to the use of the building.

## **External Works**

- 4.11 As set out above, it is considered that the Local Planning Authority should continue to defer consideration of enforcement action in respect of the unauthorised works that include the porch, the replacement windows and the soil pipes until such time that the applicant has had an opportunity to address these matters through the submission of a planning application.

## **5 Planning History**

- 5.1 Applications 15/00932/PA3COU and 15/01395/PA3COU sought permission for the change of use of the buildings at the site to use as three dwellings. The first application was refused but the second application was approved.
- 5.2 Planning application 16/00184/FUL proposed the *“Change of use of building from storage and distribution use (Class B8) to a House in Multiple Occupation, erect dormers to front and rear, increase depth of existing basement, creation of lightwells to front, layout cycle parking and alter elevations.”* That application was refused for the reasons set out above.

## **6 Planning Policy Summary**

- 6.1 National Planning Policy Framework and National Planning Policy Guidance.
- 6.2 Development Plan Document 1: Core Strategy Policies KP1 (Spatial Strategy), KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance)
- 6.3 Development Plan Document 2: Development Management Policies DM1 (Design Quality) and DM3 (The Efficient and Effective Use of Land).
- 6.4 Supplementary Planning Document 1: Design & Townscape Guide (2009)
- 6.5 Community Infrastructure Levy Charging Schedule.

## **7 Recommendation**

- 7.1 **With respect to the use of the building, it is recommended that there is No Breach of Planning Control.**
- 7.2 **With respect to the unauthorised external works at the site, Members are recommended to defer consideration to enable sufficient time for a planning application to address these matters to be submitted and considered.**