

APPLICATION NUMBER: 23/00308/CPE

## DELEGATED DECISION CHECKLIST AND REPORT

| APPLICATION NO. | CASE OFFICER  | DATE        |
|-----------------|---------------|-------------|
| 23/00308/CPE    | Aimee Bovaird | 16 May 2023 |

**Address:** 20 Mellalieu Street Middleton M24 5DN

**Proposal:** Application for a certificate of lawfulness (existing) relating to the conversion of dwelling to 5 self-contained flats

|           |                            |     |                       |     |
|-----------|----------------------------|-----|-----------------------|-----|
| PUBLICITY | Weekly list expired?       | N/A | Site notice expired?  | N/A |
|           | Neighbour letters expired? | N/A | Press Notice expired? | N/A |

|            |                                                             |     |                                        |   |
|------------|-------------------------------------------------------------|-----|----------------------------------------|---|
| DELEGATION | Significant departure from local plan?                      | N/A | Contrary to national policy?           | N |
|            | Applicant a Council Member or officer?                      | N   | Contrary to previous decision?         | N |
|            | Major with 10 or more objections and recommending approval? | N   | Called in or Planning Panel objection? | N |

|          |                                   |   |
|----------|-----------------------------------|---|
| COMMENTS | Planning Panel comments received? | N |
|          | Neighbour comments received?      | N |

|     |                                                  |   |
|-----|--------------------------------------------------|---|
| EIA | Screening opinion completed and saved to Onbase? | N |
|-----|--------------------------------------------------|---|

|            |                                                                      |   |
|------------|----------------------------------------------------------------------|---|
| CONDITIONS | Pre-commencement conditions proposed?                                | N |
|            | Pre-commencement conditions agreed (or notification period expired)? | N |

|                |       |
|----------------|-------|
| RECOMMENDATION | GRANT |
|----------------|-------|

CHECKED AND SIGNED OFF BY: LA DATE: 01.06.23

SITE

This site relates to a three storey terraced dwelling. This is within Middleton Town Centre Conservation Area and the Defined Urban Area.

The dwelling fronts Mellalieu Street.

### **PROPOSAL**

A certificate of lawfulness is sought for the existing use of the dwelling as 5 self-contained flats.

The applicant have submitted a covering letter and documents to support why they believe the existing use of the development of flats is lawful.

The applicant states the property was converted into 5 self – contained flats just after the war and that they have been occupied ever since.

The applicant has submitted tenancy agreements, floor plans, HMO licence from previous owner, electric reports and energy certificates.

### **RELEVANT PLANNING POLICY**

The Town and Country Planning Act (1990) - S.191

National Guidance

National Planning Practice Guidance (NPPG)

#### *Burden of Proof*

The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (PPG Paragraph: 006 Reference ID: 17c-006-20140306)

### **RELEVANT SITE HISTORY**

None

### **CONSULTATION RESPONSES**

Not applicable.

### **REPRESENTATIONS**

Not applicable.

### **ANALYSIS**

S.55 of the Town and Country Planning Act 1990 sets out:

*Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of*

*building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*

In respect of changes of use, Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 sets out “*Where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land.*”

For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Section 171B of the Town and Country Planning Act 1990 sets out the time limits relevant to enforcement action being taken against breaches of planning control. Paragraph 3 of this section sets out that where there has been a breach of planning control consisting any other breach of planning control (which is the relevant section for this case) no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The details in the energy certificate that has been submitted details the estimated age of the wiring system is 30 years, this is for flat 1. This report is dated November 2018. This alone does not confirm the building has been used as 5 flats continuously for over 10 years.

The applicant claims the property has been used as 5 self-contained flats since 1950, so support this floor plans have been submitted showing each flat.

Further details submitted with the application show individual tenancy agreements for flats 2, 3, 4 and 5 the earliest of these dating back to 2005 and the most recent being an ‘Assured Shorthold Tenancy Agreement Deposit’ dated February 2020 for flat 1.

Submitted details show an HMO licence granted in February 2006 and this was revoked in February 2011. It would therefore be reasonable to assume the flats have been in continuous use since September 2005. No evidence to the contrary is known.

The development currently flats. Confirmation from the Council tax department and looking at public information online demonstrates the property has been paying council tax as five separate units.

In conclusion, on the balance of probabilities, the property 20 Mellalieu Street can be reasonably considered to have been used as five self-contained flats for a continuous period of over 10 years, and the use can be considered to be exempt from enforcement action under the provisions of section 171B of the Town and Country Planning Act 1990 and it is probable that this forms the lawful use of the site.

## **RECOMMENDATION**

### **GRANT**

The use of the building as a five flats is considered lawful by virtue of the provisions of Section 171B of the Town and Country Planning Act 1990, where it is reasonably assumed that the building has been used as five flats in a continuous period in excess of 10 years.

**Notes for Applicant:**

For the avoidance of doubt, this decision relates to the following list of plans:

Location Plan

Floor Plan

Report Author Aimee Bovaird