

DELEGATED REPORT

| | |
|---|--|
| Application No: | P/25/0013 |
| Site Address: | 68 - 70 Brecon Road Merthyr Tydfil CF47 8NN |
| Development: | Use of the property as a House in Multiple Occupancy (HMO) |
| Case Officer: | Rebecca Owens |
| Application Expiry Date: | 10th March 2025 |
| Consultation reply date expired: | |

APPLICATION SITE

The application relates to large, three storey end of terraced property located in a designated local centre and within the settlement boundary. As such the site is in a mixed use area where there are retail, commercial and residential properties present. The property is currently vacant and due to its corner position, height and width of its frontage, is a relatively prominent building within the streetscene. It is also noted that the application site is located within Urban Character Area 7 (Penydarren) and borders Urban Character Area 6 (Williamstown, Cae Pant Tywll and Morgantown).

DESCRIPTION

A Certificate of Lawful Development is sought for the use of the property as a House in Multiple Occupancy (HMO). The information submitted in support of the application highlights that planning permission was granted for a HMO at this property (Planning reference P/85/0119) and this use was implemented. It is indicated that the property became vacant following the death of the original owner (it is not known the date) and remained vacant throughout probate and during the time it has taken to facilitate the sale of the property. It is stated that it was never intended that the property remain vacant for a infinite period of time. It is also noted that the property can readily be used as a HMO again without requiring much work.

PLANNING HISTORY

There is no recent planning history relating to this site. However, it is noted that on 15th July 1985, planning permission was granted for a change of use of this property from a dwelling to a House of Multiple Occupancy (Planning Reference: P/85/0119). Other planning applications following this approval include the following:

P/23/0154 Use of property as House of Multiple Occupancy, conversion of garage to provide additional living space in association with this use together with alterations to garage roof and to fenestration

Withdrawn on 11 July 2024

P/92/0526 Provision of a fire escape
Granted planning permission 3 March 1993

P/91/0384 Front elevation dormer extension
Granted planning permission subject to condition on 13 November 1991

P/89/0168 First floor extension
Granted planning permission 1 July 1989

P/87/0030 Alterations to front elevation
Granted planning permission 11 February 1987

P/86/0471 Erection of extension with pitched roof
Granted planning permission subject to a condition on 7th October 1986.
This condition states:

“The approval hereby conferred shall relate strictly to the use of the premises for the purpose of an extension to the applicant’s private quarters. It does not confer approval for any extension or enlargement of the use of the premises as a house in multiple occupation”

PLANNING CONSIDERATIONS

In terms of applications relating to lawfulness, the onus is on the applicant to provide evidence to substantiate their claim. This is then considered on the balance of probability.

The local planning authority are satisfied that the property in question has previously been granted permission for use as a HMO and does not dispute that this use was implemented. However, the matter for consideration under this application is whether this use is still lawful or whether the use has been abandoned. Abandonment in planning terms refers to the loss of a use which has been lawfully undertaken in the past due to a cessation of that use and in cases of abandonment the right to resume the use is also lost. The main factors which are considered when assessing whether a use has been abandoned are set out below:

1. Whether the former use was a lawful use
2. The length of time the property has been vacant
3. Intervening uses
4. The physical condition of the property and whether it is capable of accommodating its former use
5. Intention of the owner

The former use

The local planning authority do not contest that the former use of the site (namely 68-70 Brecon Road) as a HMO was lawful. This was granted planning permission under planning reference P/85/0119 and there is sufficient evidence to demonstrate that the use was implemented. However, a further application in 1986 (planning reference P/86/0471) proposing an extension to 70 Brecon Road included a condition stating:

"The approval hereby conferred shall relate strictly to use of the premises for the purposes of an extension to the applicant's private quarters. It does not confer approval for any extension or enlargement of the use of the premises as a house in multiple occupation".

This would suggest that a portion of the building did not form part of the larger HMO use and as such the use of the whole of 68-70 Brecon Road as a HMO was never granted permission. It is not part of the considerations of this application to determine what portion of the building may or may not have been used as a HMO.

Period of non use

The supporting information indicates that the property became vacant following the death of the previous owner and *"this continued during probate and the during the time it took to facilitate the sale of the property"*. However, this appears to contradict the applicant's account which suggests that the property has been continuously used as a HMO and was only made vacant to facilitate its sale.

Notwithstanding the ambiguity of the information submitted with this application and the omission of the exact date it became vacant, the Council's own records have provided some further information.

With respect to the date that the property became vacant, the Grant of Probate indicates that the previous owner died in 2019. However, Council records highlight that the Council Tax department were notified that the property was empty and requiring renovation taking effect from the 13 April 1995. On 24 October 1995 the property was removed from Council Tax Rating by the Valuation Officer Agency and this remains the case to date. However, in April 2025 the Council applied a Provisional Council Tax Band with an effective date of August 2022. It is currently listed as long term empty under the council tax records. As such, it would appear that the property became vacant a number of years before the death of the previous owner and has not been in use for approximately 30 years.

In terms of the suggestion that the property has been in use as a HMO in recent years, the above council tax situation would suggest that this is not the case or that occupation has been in contravention of this.

The evidence of the applicant rests on photographs showing furniture in the rooms (including beds) which are in good condition and therefore suggest that the property has only been empty for a short period of time, the comments of the estate agent referring to tenants at the property, rental figures provided by the previous owner and the fact that utilities are still supplying the property (which if not in use would have been disconnected due to the expense). However, the presence of furniture does not in itself indicate recent occupation nor does the fact that it is being served by utilities. Furthermore, it is not clear from the photos whether the rooms that may have been occupied relates to the elements of the building that was granted permission to be used as a HMO or the element that was used as a separate residential unit. The estate agent responses do appear to indicate that there were people at the property when inspected and although referred to as tenants it is not clear if this is indeed the case and does not sufficiently demonstrate a HMO being in operation. In fact the estate agent herself suggests that they may not have been there legally. Furthermore, whilst it is recognised that the applicant was informed that the previous owner was being paid £300 a room, there is no evidence that this is the case (for example, accounts or receipts etc.).

It is also noted that in attachment 3, the applicant requested a copy of the HMO licence which has not been provided with this application. A property of this size, occupying three floors would require a HMO licence and records from the Environmental Health Department would suggest that the property is not currently licenced and has not been licenced in recent years.

Although no formal publicity exercise was undertaken for this application it appeared in the Local Planning Authority's weekly list where it was picked up by local councillors. One of these, resides in close proximity to the application site and has provided a written representation. In this the Councillor has highlighted that they purchased their property in January of 2014 and in the time that they have resided there (over 11 years), 68-70 Brecon Road has not been occupied as a HMO. They have also indicated that other neighbours in the direct vicinity of the site would also be able to verify this and confirm a longer timeframe of non-use.

Indeed a recent planning application for use of property as House of Multiple Occupancy, which was subsequently withdrawn (planning ref: P/23/0154), received thirty letters of objection and a petition comprising one hundred and fifteen names. Given the clear opposition and strength of feeling in relation to the use of the property as a HMO, it would be expected that had a HMO been operating at the site in recent years that the Council would have been made aware of this. Indeed many of the representations received referred to the previous use of the property as a HMO and the associated problems and antisocial behaviour linked to it with a number specifically referring to it being during the 1980's and others stating that it has not been used as a HMO in excess of 10 years (which would now be in excess of 12 years)

Having regard to the above, it is not considered that the evidence submitted would on balance of probability indicate that the property has been used as a HMO since 1995 given the seemingly contradictory information held by the Council.

Intervening uses

Planning permission has not been granted for any changes of use to the property since the application for a HMO in 1985. In addition, council records indicate that the property was removed from Council Tax Rating in 1995 and is currently recorded as vacant. As such there is nothing to suggest that there have been any intervening uses. The applicant has suggested that the property has been occupied in recent years but the evidence put forward does not in the opinion of the Local Authority sufficiently demonstrate that the property has been utilised either as a HMO, and could also be attributed to its use in another other capacity, for example as a single dwelling. Notwithstanding this, there is insufficient information to establish exactly how it has been used, if indeed it has been occupied at all since becoming vacant.

Condition of the building

The supporting statement notes that the building "*to all intents and purposes, can be readily used as a HMO again with little work to enable it to return to its lawful use*". This has been evidenced by the inclusion of photographs and an account from the estate agent which suggest that despite issues with damp and the need for general refurbishment, the property is in reasonable condition. In determining abandonment based on the condition of the building the main consideration is whether the use is still capable of being re-

commenced at the property even if this requires financial investment or technical challenges. In this case, the Local Planning Authority do not contest that the condition of the building is such that it could be reoccupied following necessary works to bring it up to the relevant standards.

Intention

The submitted information suggests that the property became vacant following the death of the previous owner in 2019 with the new beneficiary not wishing to continue managing the HMO and selling it under vacant possession. However, as noted above, the property was removed from the Council Tax List in 1995. As such, it would appear that the property has been vacant for approximately 30 years rather than within the last 5-6 years. No information has been submitted to indicate why the property has been out of use for such an extended period time or indeed to demonstrate the intention of the owner in respect to its use.

Conclusion

In conclusion, it is not considered that the applicant has provided sufficient evidence to demonstrate that on balance of probability the use of the property as a HMO has not been abandoned and as such is lawful. In addition, it would not appear that the original planning permission for use as a HMO extended to the whole of the property subject to this application, with a portion of the building being used as the private living accommodation of the previous owner.

RECOMMENDATION: BE REFUSED for the following REASON:

REASONS:

1. Having regard to the length of time the property has been vacant and a failure to demonstrate an intention to retain the use as a House of Multiple Occupancy, on the balance of probability, the use is found to be abandoned and as such full planning permission would be required for the property to be used as a House of Multiple Occupancy.
2. The original permission for the use of the property has a House of Multiple Occupancy did not apply to the whole building subject to this application. As such the use of the property has a House of Multiple Occupancy would be outside of the scope of the original permission.

RECOMMENDATION ENDORSED _____


Director of Neighbourhood Services

DATE: 01.05.2025