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**2024/0152**

Miss G Smith

Use of dwelling for use class C4 purposes (Houses of multiple occupation) - Application for a Lawful Development Certificate for an Existing Use

17 Tower Street, Worsbrough Common, Barnsley, S70 1QS

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### **Site Location and Description**

The application relates to a 2 storey, stone fronted, mid-terraced dwelling located within a predominantly residential area of identical properties off A6133 Park Road. The property is accessed from the front eastern elevation; beyond the rear elevation, the property benefits from a small, enclosed garden area.

Internally, the ground floor of the property consists of a shared kitchen/dining space and 2no bedrooms. The first floor has a further 3no bedrooms, all the rooms are en-suite.

### **Proposal**

This application is for Section 191 Certificate of lawfulness of existing use or development which is used for the following;

- (1) If any person wishes to ascertain whether—
- (a) any existing use of buildings or other land is lawful;
  - (b) any operations which have been carried out in, on, over or under land are lawful;
- or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

The applicant seeks confirmation that the change of use from Use Class C3 Dwellinghouse to Use Class C4 House of Multiple Occupation is Permitted Development, and the use was introduced prior to the article 4 direction coming into force.

The HMO consists of 5 bedrooms with shared facilities; whilst the rooms are all en-suite, none of the rooms are independent units/bedsits/studios.

‘C4 Houses in multiple occupation’ are defined as - small, shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom’.

It should be noted that this application only relates to a C4 use for up to and including 6 residents, if the rooms are double occupation in the future, and exceed 6 residents, a planning application would be required to change the use from C4 to Sui Generis.

### **Planning Context**

S55 of the Town and Country Planning Act 1990 states;

The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
  - (i) affect only the interior of the building, or
  - (ii) do not materially affect the external appearance of the building,

S191 of The Town and Country Planning Act 1990 relates to the following;

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful;  
or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

Guidance states

If the LPA has no evidence of its own, or 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 is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

This reflects the ministerial advice that was formerly printed in Annex 8 to Circular 10/97, at paragraph 8.15. 'Evidence' from neighbours, or others objecting to the application, consisting of no more than doubt, disbelief or scepticism regarding the evidence adduced by the applicant does not amount to evidence contradicting or otherwise making the applicant's evidence less than probable.

A full award of costs is liable to be made on appeal under section 195 against an LPA which refuses an LDC in ignorance or defiance of the rule in Gabbittas.

Barnsley Metropolitan Borough Council made an Article 4 Direction on 14 May 2020, under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The Article 4 Direction (Article 4 Direction 1/2020) relates to development set out in the First Schedule below and removes permitted development rights for this type of development from the Land identified in the Second Schedule. Planning permission will therefore be required for development comprised within the First Schedule for the Land identified in Second Schedule.

The Direction came into force on 24<sup>th</sup> June 2021

## **FIRST SCHEDULE**

Development consisting of a change of use of a building from a use falling within Class C3 (Dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (Houses in Multiple Occupation) of that Schedule, and removes permitted development rights for this type of development from 23.5.2021 being development comprised within Class L(b) of part 3 of Schedule 2 of Town and Country Planning (General Permitted Development) (England) Order 2015. Planning permission will therefore be required for change of use from Class C3 to Class C4 once the District Wide Article 4 Direction is in force.

## **SECOND SCHEDULE**

All that land known within the administrative boundaries of Barnsley Metropolitan Borough Council as shown edged red on the Plan to the Direction

## **Consultations**

Legal Officer – There are no objections to issuing certificate where the tenancy agreements pre-date the Article 4 direction.

Shared Accommodation Team – the property has never come to our attention as a House of Multiple Occupation and is not listed on our HMO list.

Ward Councillors – No objections received.

## **Representations**

There is no statutory requirement for Local Planning Authorities (LPA) to consult third parties, including neighbouring residents or parish councils on a lawful development certificate (LDC) application since an LDC application is a matter of fact and law and is not determined on its planning merits or judged against National or Local planning policies or guidance. Despite this, 8 letters of representation have been received relating to:

- Lack of family homes
- Exceed quota for HMOs in the area
- Fly tipping
- Unmaintained garden
- Noise and disturbance and anti-social behaviour
- Drug use
- Build-up of rubbish/issues with household waste
- Parking
- Rat infestation

However, whilst these concerns are acknowledged, they cannot be taken into account during the determination of this application for the above reasons.

## **Assessment**

A local planning authority can grant a certificate confirming that an existing use of land, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990. As with all such applications the LPA are only concerned with the factual background in this case to establish that any existing use of buildings; or any operations that have been carried out in, on, over or under land, are lawful.

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application are lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The applicants have confirmed that the proposal is currently operating as a 5-bedroom HMO. Signed and dated Assured Shorthold Tenancy Agreements have been supplied dated between January and May 2018 as such, the change of use from C3 to C4 was implemented prior to the article 4 direction coming into force in June 2021; in addition, copies of the 3-year HMO licences from 2019 and 2024 have been provided. Comments from a local resident also indicate that the premises have been run as an HMO for “few years.” BMBC have no evidence which conflicts with this evidence of the use being in place.

As a result of the comments above the local planning authority are provided with information satisfying them that the use or operations described in the application are lawful and, as such, a certificate should be granted.

**Recommendation**

Lawful development certificate granted.