

2023/0395

Mr James Yeoul

Use of dwelling for use Class C4 purposes (house of multiple occupation) – application for a lawful development certificate for an existing use

47 Longman Road, Barnsley, S70 2LD

Site Description

The application relates to a stone fronted terrace property at the Northern end of Longman Road, just to the North of Barnsley Town Centre. The site is located in the Urban Fabric in what is primarily a residential area but given the close proximity to the Town Centre, the wider area features a more mixed set of use classes, with several Barnsley College buildings in close proximity to the East and South. The property does not benefit from any off-street parking with Longman Road characterised by demarked street parking with a permit scheme.

Proposal

This application is for s191 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 small HMO (3-6 tenants) use has been in operation in excess of 10 years and, as such, is outside of the Councils enforcement powers.

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,

For the purpose of this Act uses and operations are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force

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 Gabbitts.

Representations

None

Consultations

Legal Officer – It is understood that the HMO license has been regularly renewed from 2013 up to the present year and that the BMBC HMO licencing manager has confirmed that the use has subsisted continuously since May 2013.

Case Management Officer (HMOs) – It is confirmed that 47 Longman Road has operated as a HMO since May 2013 with the first application being granted by Barnsley MBC on 1st May 2013. A second license was issued to a new owner on 23rd December 2015, with a renewal issued on 4th January 2021. The current owner submitted a licence application on 8th March 2023 which was due to be granted on 31st May 2023.

Ward Councillors – No comments.

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 applicant has provided the following pieces of evidence to support the LDC application:

- Initial HMO license (ref. ML307) – Dated 1st May 2013
- Second HMO license (ref. ML335) – Dated 23rd November 2015
- Conversion of basement room to living accommodation – Dated 10th February 2017
- Fire certificate – Dated 24th September 2020
- Tenancy agreement – Dated October 2020
- Third HMO license (ref. 400129) – Dated 4th January 2021
- Latest HMO license (ref. 452394) – Dated 6th June 2023

The above evidence has shown that the building has been used as a HMO since May 2013 – i.e. for a period in excess of 10 years. The HMO licensing manager has confirmed that the

above information is correct and has provided the Council's own records/licenses which match up to the details provided by the applicant.

It is noted that there are periods within the above evidence base which provide gaps – such as the gap in HMO license being submitted and granted between late 2015 and early 2021. However, this is simply due to the fact that the second HMO license dated November 2015 was for a 5-year period expiring in 2020. Additionally, BMBC has no evidence that suggests the building was used for a different purpose within this period. As such, the balance of probabilities test is applied and in this instance the applicant has supplied enough evidence to conclude this test is met.

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.