

Application Reference Number:	2026/0027
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Application Type:	<i>Lawful Development Certificate – Existing.</i>
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Proposal Description:	<i>Certificate of Lawful Development for existing use as an HMO (House of Multiple Occupation) (Use Class C4).</i>
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Location:	<i>2 Derby Street, Barnsley, S70 6ER.</i>
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Applicant:	<i>Eyre Assets & Investments Limited.</i>
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Third-party representations:	<i>None.</i>	Parish:	
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Ward:	<i>Kingstone.</i>
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<p>Summary:</p> <p>This lawful development certificate application seeks confirmation that an existing HMO (Class C4) use is lawful and does not require planning permission.</p> <p>Based on the information submitted by the applicant, the LPA determines that the existing use of <i>2 Derby Street, Barnsley, S70 6ER</i> as an HMO (Class C4) is lawful, and therefore, this lawful development certificate should be granted.</p> <p>Recommendation: GRANT.</p>
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Site Description

This application relates to a two-storey end-of-terrace property located within a modest-sized corner plot at the junction of Derby Street with Shaw Lane and within an area that is principally residential characterised by two-storey semi-detached and terraced properties. Shaw Lane allotments and the Horizon Community College are located to the west. A number of primary schools are located to the southeast. Barnsley Town Centre is located to the northeast.



Planning History

There is no planning history associated with the development site.

Proposed Development

This application is for a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 and seeks confirmation that an existing HMO (Class C4) use is lawful and does not require planning permission. A certificate under this section can be sought 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.

Section 191(4) of the Town and Country Planning Act 1990 states that if, on an application under this section, the Local Planning Authority (LPA) are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them, the LPA shall issue a certificate to that effect; and in any other case shall refuse the application.

Guidance states that if an 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 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 of the Town and Country Planning Act 1990 against an LPA which refuses a certificate of lawfulness in ignorance or defiance of the rule in *Gabbitts*.

Normally, development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Class Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule is permitted development under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Class 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.

Barnsley Metropolitan Borough Council (BMBC) made an Article 4 Direction on 14th 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 the Second Schedule.

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 23rd May 2021. This 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 any change of use from Class C3 (dwellinghouses) to Class C4 (houses in multiple occupation) 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.

The Direction came into force on 24th June 2021.

Consultations

There is no statutory requirement for a Local Planning Authority to consult third parties on a lawful development certificate application, including neighbouring residents or parish councils since such applications are a matter of fact and law and are not determined on planning merits or judged against national and local planning policies and guidance. Nonetheless, the application was made available online and no representations were received.

Case Management Officer	<i>No objection(s).</i>
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Assessment

This application relates to an existing 6-bedroom HMO (Class C4) with shared basic amenities.

The applicant has submitted evidence to demonstrate that the change of use to an HMO (Class C4) was implemented prior to the Article 4 coming into force on 24th June 2021. This includes tenancy agreements dated between November 2020 – May 2021, a copy of an HMO variation licence dated March 2021, and a copy of an HMO licence dated September 2021 for six people. Other supporting evidence includes a Building Regulations Certificate of Completion, utility bills, and Gas Safety records, although this evidence is more ambiguous than the submitted tenancy agreements and HMO licences.

The Council's Case Management Officer was consulted, and it was stated that an HMO licence application was refused on 08th August 2020 as the owner at the time intended to partially occupy the property as an Airbnb. After involvement from Barnsley MBC Planning department, a one-year HMO licence was granted on 03rd December 2020 for maximum occupancy of five people. This licence was varied on 23rd March 2021 to increase overall occupancy from five to six people. On 17th September 2021 a 5-year licence was granted after change of ownership. The property has remained in continued use as a licenced HMO (Class C4) since December 2020 to present time. The Council's Case Management Officer therefore raised no objections. They also provided the LPA with copies of all issued HMO licences.

Considering the above, the LPA is satisfied with the supporting information submitted by the applicant to demonstrate a lawful existing use as an HMO (Class C4). Moreover, 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, and therefore there is no good reason to refuse the grant of a certificate "on the balance of probability".

In conclusion, the LPA have been provided with information satisfying them that the existing use or operations described in the application are lawful and a lawful development certificate should be granted.

RECOMMENDATION: Grant.

Informative(s):

1. This application for a certificate of lawfulness for an existing use only relates to a Class C4 (houses in multiple occupation) use which is a small, shared house occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. If more than six unrelated individuals reside in the property at any point, then a change of use application from Class C4 (houses in multiple occupation) to Sui Generis would be required.