

<b>Application Reference Number:</b>	2025/0691		
<b>Application Type:</b>	<i>Lawful Development Certificate – Existing.</i>		
<b>Proposal Description:</b>	<i>Certificate of lawfulness for existing use as a C4 HMO.</i>		
<b>Location:</b>	<i>47 Tune Street, Barnsley, S70 4NR.</i>		
<b>Applicant:</b>	<i>Benz Travel Limited.</i>		
<b>Third-party representations:</b>	<i>None.</i>	<b>Parish:</b>	
		<b>Ward:</b>	<i>Central.</i>

**Summary:**

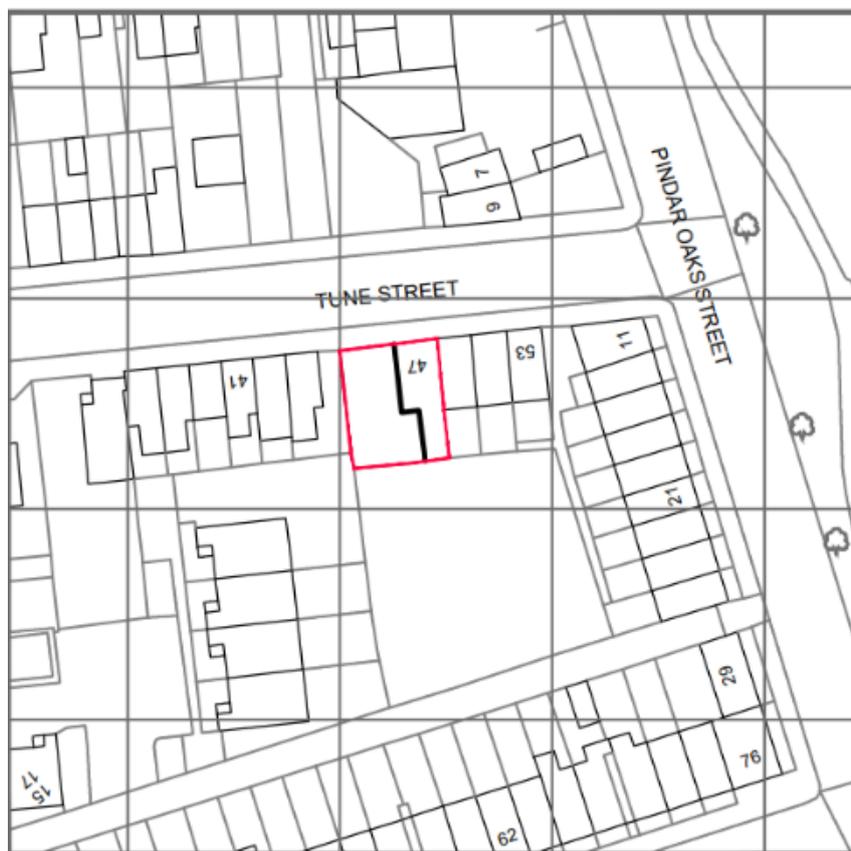
This lawful development certificate application has been submitted by the applicant and seeks confirmation that the existing use of *47 Tune Street, Barnsley, S70 4NR* as a Class C4 House of Multiple Occupation (HMO) is lawful and does not require planning permission.

Based on the information submitted by the applicant, the local planning authority determines that existing use of *47 Tune Street, Barnsley, S70 4NR* as a Class C4 HMO is lawful and this lawful development certificate should be granted.

Recommendation: **APPROVE.**

**Site Description**

This application relates to a two-storey end-of-terrace property constructed of brick painted white. It has a pitched concrete tiled roof and benefits from an existing two-storey and single storey rearward projection which appears to form part of the original building. The property is bounded by a modest sized garden enclosed by brick walls to the south and west and a timber fence and gate to the north. The property does not benefit from off-street parking. The submitted floor plans show a five-bedroom property with shared bathroom and kitchen facilities.



### **Planning History**

There is no relevant or recent 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 C4 HMO 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 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 *Gabbitas*.

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 23<sup>rd</sup> 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.

Legal	<i>No comments received.</i>
Case Management Officer	<i>The first mandatory HMO licence was granted on 24<sup>th</sup> May 2019, and the second licence was granted 11<sup>th</sup> June 2024 which is still valid. We can prove existing use as an HMO for just over 6 years.</i>

### **Assessment**

This application relates to an existing Class C4 HMO occupied by up to six unrelated individuals with shared basic amenities.

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). However, for the change of use to be lawful, it must have been implemented prior to the Article 4 coming into force on 24th June 2021.

The applicant has submitted evidence to demonstrate that the change of use to a C4 HMO was implemented prior to the Article 4 coming into force on 24th June 2021. This includes a copy of a mandatory HMO licence which was issued for the application property on 24<sup>th</sup> May 2019 for 5 occupants and a copy of an HMO license that was re-issued 10<sup>th</sup> May 2024 for a 5-year period also for 5 occupants. This was confirmed by the Council’s Case Management Officer. A total of 8 tenancy agreements has also been provided for the period of 2020 – present which demonstrates a continued use of the property as an HMO.

Considering the above, the LPA is satisfied with the supporting information submitted by the applicant to demonstrate the lawful use of the application property as a Class C4 HMO. 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: Approve.**

### **Informative(s):**

1. This application for a certificate of lawfulness for an existing use only relates to a 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 C4 (houses in multiple occupation) to Sui Generis would be required.