

<b>Application Reference Number:</b>	2025/0651
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<b>Application Type:</b>	Lawful Development Certificate – Existing.
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<b>Proposal Description:</b>	Lawful development certificate for existing use as an HMO (C4 use)
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<b>Location:</b>	12 School Street, Great Houghton, Barnsley, S72 0AE
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<b>Applicant:</b>	Ms Sarah Dunwell
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<b>Third-party representations:</b>	None.	<b>Parish:</b>	Great Houghton
		<b>Ward:</b>	North East Ward

### Site Description

This application relates to a stone built, traditional end terrace property, located on School Street, Great Houghton, in an area that is principally residential. The property comprises of five bedrooms, and four bathrooms and a kitchen/dining area. The property has a small rear garden area. Whilst there is no off street parking, there are no parking restrictions along School Street.





### **Planning History**

B/05/0055/HR - Replacement of existing flat roof with pitched roof – Approved with conditions

### **History of HMO Use**

The submitted planning statement states that the property at 12 School Street, Barnsley, S72 0AE has been in continuous use as an HMO prior to the implementation of the Article 4 Direction in Barnsley. This Direction came into effect on 24th June 2021. Properties in use as HMOs before this date, without any material change or cessation, may qualify for continued lawful use and should be granted planning permission on this basis

To demonstrate the long-standing use of the property as a 5 bedroom HMO, the following evidence has been submitted with the application:-

- Tenancy Agreements dating back to May 2020, confirming multiple unrelated tenants occupying the property.
- Council Tax records, showing payment by the landlord not the tenants.
- Photographic evidence of room layouts and facilities consistent with HMO use.
- The license issued by Barnsley Council under the HMO licensing scheme.

This evidence shows the property has been used as an HMO prior to the Article 4 Direction and has remained in consistent use as an HMO since then, with the exception of a six month period of significant renovation, to improve the standard of the accommodation, before the property was relet again in April 2024.

## **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 *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 23.5.2021. 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 5 neighbouring properties consulted. The following objection has been received:-

'Great Houghton Voluntary Residents group have recently raised concerns with the Parish Council from a number of residents regarding the HMO on School Street. Residents are concerned about the recent public health risk due to the amount of uncollected foul-smelling refuse that has been left dumped in the area and took weeks to be cleared. The area also has very little spare car parking provision, and an HMO would add further strain to this, which creates safety access issues for emergency services. This property has been used as an HMO without the correct permissions, further angering residents.'

Local Ward Councillors	No comments received.
Legal	Advice given on evidence required.
HMO Case Management Officer	Our records indicate this property was converted to a 5 bed HMO in April 2016, which is prior to implementation of Article 4. It appears to be a 2-storey property so did not meet mandatory licencing requirements until the change to legislation.  A mandatory licence was issued for 5 occupants on 27.04.21. A licence remains in place

## **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;-

Tenancy Agreements dating back to May 2020, confirming multiple unrelated tenants occupying the property,

council Tax records, showing payment by the landlord not the tenants,

photographic evidence of room layouts and facilities consistent with HMO use and a copy of the license issued by Barnsley Council under the HMO licensing scheme.

The HMO Officer has also confirmed that:- Our records indicate this property was converted to a 5 bed HMO in April 2016, which is prior to implementation of Article 4. It appears to be a 2-storey property so did not meet mandatory licencing requirements until the change to legislation. A mandatory licence was issued for 5 occupants on 27.04.21. A licence remains in place.'

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.**