

**2022/0689**

*Mr Michail Nowak*

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

*72 Oxford Street, Barnsley, S70 4PH*

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### **Site Description**

The application relates to a 2 storey, stone fronted/sided, end-terraced property. The property is located on a corner plot with Oxford Street to the front and Pindar Oaks to the East. To the front of the property is a porch extension with a front door which opens directly onto the footpath serving Oxford Street. To the rear is a flat roofed single storey extension which opens onto a yard/garden area backing onto an access alley. The property has rooms in the roof space which are served by a rear flat roofed dormer.

The surrounding area is predominantly residential in nature with an attached dwelling to the West and terraced rows to the front and rear. To the East, opposite Pindar Oaks Street, is a cemetery.

The property was refurbished in 2019 and is currently occupied as a HMO.



### **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 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 4 bedrooms with shared facilities. 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 Gabbitts.*

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

### **Representations**

Given the nature of the application as a Lawful Development Certificate i.e. to purely establish whether the existing use/operations would be lawful, neighbouring residents were not consulted.

### **Consultations**

Legal Officer – As with previous similar application there are no objections to issuing certificate where the tenancy agreements pre-date the Article 4 direction.

Shared Accommodation Team – confirmed an approach was made on 19<sup>th</sup> Jan 2021 and Council Tax confirmed multiple occupation at the time.

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 applicants have confirmed that the proposal is currently operating as a 4-bedroom HMO. Works were carried out to refurbish the property in August/September 2019 with the first tenant occupying the property in October 2019 and further tenants moving in in early 2020. Assured Shorthold Tenancy Agreements have been supplied to that effect. This tally's with the comments provided by the

Councils Shared Accommodation Team. As such, the change of use from C3 to C4 was implemented prior to the article 4 direction coming into force in June 2021. 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.