

**Description:** Certificate of existing lawful use for three flats (Use Class C3)

**Address:** Flats A, B, C at 129 Doncaster Road, Barnsley, S70 1UF

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Date: November 2025

## **1.1 Introduction**

- 1.2 This is a certificate of lawful use application for three flats on the first and second floors of 129 Barnsley Road. The flats are registered with the addresses of Flat A, Flat B and Flat C 129 Doncaster Road. An existing floor plan is submitted with the application to identify the three flats subject of the application.
- 1.2 According to the submitted evidence, the historic use, and more than 20 years ago, the first floor of the property was used as a two-bedroom flat with shared amenities. The second floor was a self-contained flat. In the approximate years of 2003-2005, the current owner bought the property and went onto convert the first floor into two separate self-contained flats and the second floor flat remained as a self-contained flat. The conversion took place before 2007.
- 1.3 The property has been under the same ownership for over 20 years. The submitted statutory declaration confirms that the owner has let out the flats to tenants since at least 2007. Council tax enquires confirm that there have been some vacant periods, but they have still been regularly tenanted for over 10 years with no intervening uses or abandonment. The flats are now empty pending a sale as the new potential owner wishes to buy the property with no sitting tenants.
- 1.4 The certificate is submitted on the basis that the use of the upper floors as three flats began more than four years ago and they have continued to be dwellings up to the date of this certificate with no intervening uses or abandonment. The flats have therefore development immunity from enforcement action through the passage of time.
- 1.5 The application is made under Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991 in relation to a certificate of lawfulness of existing use.

## **2.0 Submitted Documents**

- 2.1 The submitted documents are:
- Statutory Declaration from owner
  - Council Tax information (email received 22<sup>nd</sup> July 2025)
  - Existing Floor Plan

- 12 tenancy agreements

### **3.0 Evidence Summary - Statutory Declaration**

3.1 According to the statutory declaration, the owner confirms that sometime prior to 2007, the first floor was converted into two separate flats. The second flat remained as a one-bedroom flat. The owner also confirms by statutory declaration that since they carried out the conversion in approximately 2007, the use as three flats has continued with no intervening uses or abandonment.

### **4.0 Evidence Summary - Council Tax Records**

4.1 According to Council Tax records, which date back to 2015, three flats have been registered with Barnsley Council, and they are now all vacant. The tenants moved out between 2023 and 2025. A short summary of the Council Tax records is provided below:

Flat A: Council Tax became payable from at least 2015. Occupied continuously between 2015 and 2025 (10 years). The property was vacated in 2025.

Flat B: Council Tax became payable from at least 2015. Various vacant periods but occupied continuously between 23.04.19 and 26.06.2023 (4 years, 2 months).

Flat C: Council Tax became payable from at least 2015. Various vacant periods but occupied continuously between 23.04.19 and 26.06.23 (4 years, 2 months).

### **5.0 Evidence Summary - Tenancy Agreement**

5.1 The owner has advised that they have not kept all the tenancy agreements. However, 12 tenancy agreements are available and submitted with the application. The dates of the agreements are between 2005 and 2023. The tenancy agreements are summarised in the table below:

<u>Flat</u>	<u>Date</u>
A	30 <sup>th</sup> November 2008
A	28 <sup>th</sup> August 2015
A	3 <sup>rd</sup> February 2023

B	8 <sup>th</sup> October 2005
B	10 <sup>th</sup> July 2006
B	4 <sup>th</sup> May 2007
B	19 <sup>th</sup> September 2015
B	19 <sup>th</sup> February 2022
C	28 <sup>th</sup> December 2006
C	17 <sup>th</sup> February 2011
C	17 <sup>th</sup> December 2014
C	18 <sup>th</sup> September 2015

5.2 The tenancy agreements demonstrate that all the flats have been a residential use and tenanted since at least 2008.

5.3 The tenancy agreements are annotated as flats A, B, C. One of the tenancy agreements for flat B dates back to 2005. This indicates that the first floor was split into two flats by 2005.

5.4 One agreement available for flat A states that a tenant moved in on 28<sup>th</sup> August 2015. This date corresponds with Council Tax records. Secondly, a tenancy agreement for Flat B dated 19<sup>th</sup> September 2015 also corresponds with Council Tax records.

## 6.0 Legal Position and Relevant Immunity Period

6.1 Section 191B of the TCPA 1990 states

(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,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes 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.

6.2 Section 171B of the TCPA states:

(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of—

(a)in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed,

6.3 The 10-year rule is subject to a transitional period. The transitional provisions confirm that the use of a building as a dwelling is subject to the four-year rule, provided that the use began before 25<sup>th</sup> April 2024.

## **7.0 Immunity**

7.1 According to the statutory declaration, the first and second floors have been used as three self-contained flats for at least 18 years. Council Tax also confirms that there have been three flats registered on their database for at least 10 years. There is no evidence of a different use during the last 18 years. Furthermore, there has been continuous occupancy for a period of more than four years for all three flats.

7.2 Whilst there has been breaks in occupancy and the flats are currently unoccupied; the lawful use is not lost. For instance, if a person lives in a longstanding dwelling but moves out for 6 months for family reasons, the lawful use of the building as a dwelling does not end. The lawful use can only be lost by permanent cessation of the use, intervening use or abandonment. Whilst there have been gaps in occupancy, this would not be unusual for one bedroom flats as one tenant leaves and another tenant moves in. Further, the reason the flats are currently unoccupied is to allow for a sale with vacant possession. If the sale proceeds, the owner intends to carry out some improvements and re-let the properties.

7.3 As these have been flats for at least 18 years, the LPA have had a significant length of time to consider serving an enforcement notice. If the LPA had visited 129 Doncaster Road at any time between 2007 and up to the present date, it may have been noted that one of more of the flats

were unoccupied, but it would have been plainly obvious that the upper floors were split into three residential units and an opportunity to take enforcement action would have existed. In support of this, this was the view taken in APP/K5600/X/14/2217970 (<https://planningjungle.com/wp-content/uploads/2217970-Appeal-Decision-Notice.pdf>). Secondly, in the appeal case APP/R3325/X/11/2167089 (<https://planningjungle.com/wp-content/uploads/2167089-Appeal-Decision-Notice.pdf>), the inspector concluded that active occupancy was not always required and non-occupation for periods of time did not result in cessation of the use. Furthermore, the inspector comments that it would not be unusual to see gaps for rental properties due to a regular turnover of tenants.

7.4 Therefore, it is considered that immunity by passage of time has been reached and the use of the first and second floor as three flats can benefit from an existing lawful use certificate.

Should the LPA have any queries, please do not hesitate to contact me.

Yours sincerely

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