2022/0050

Mr Dominik Businger

Change of use from use class C3 dwellinghouse to use class C4 House of Multiple Occupation (Lawful development certificate for an existing use)

208 Doncaster Road, Barnsley, S70 1UH

Site Description

The application relates to a 2 storey, stone fronted, mid-terraced property fronting Doncaster Road. To the front of the property is a small, enclosed buffer garden and to the rear is a small garden/yard area which backs onto a pedestrian alley. The surrounding area is predominantly residential in nature but the property immediately to the East, and attached to the application property, is a convenience store with residential accommodation above.

The property accommodates 4no. bedrooms with a shared facilities. The property is already 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 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 Gabbitas.

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 24th 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 – no objections to issuing certificate where the tenancy agreements pre-date the Article 4 direction.

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. The applicant has provided 3no. Assured Shorthold Tenancy Agreements which are signed and dated

between December 2020 and April 2021 which pre-dated the Article 4 direction coming into force on 24th 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.