2024/0391

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165 Dodworth Road, Barnsley, S70 6HW

Certificate of lawfulness for existing HMO use

Site Description

The application relates to a two/three storey, stone fronted terrace property located off Dodworth Road, Barnsley. To the front of the property is a small area of hardstanding acting as a small buffer to the footpath serving the highway. To the rear of the property is an open plan yard area and a vehicular access serving the rear of properties on Dodworth Road and Springfield Street.

The dwelling is two stories to the front, but due to the slope of the land, is three stories to the rear. There are dwellings attached to both sides of the dwelling, terraced dwellings to the rear on a lower level and dwellings directly opposite which front Dodworth Road.

Planning History

B/79/3286/BA - Conversion of 3 dwellings to form 6 flats (Historic)

B/90/0037/BA - Conversion of cellars of dwellings into 4 self contained bedsits (Refused)

Proposed Development

This application is for a Section 191 Certificate of lawfulness of existing use or development. 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.

The applicant has applied for a Section 191 Certificate of lawfulness of existing use or development seeking confirmation that the change of use from Class C3 (dwellinghouse) to Class C4 (houses in multiple occupation) is lawful and was introduced prior to the article 4 direction coming into force. The house in multiple occupation (HMO) in question consists of six occupied bedrooms with shared facilities. However, whilst most rooms are en-suite, none are independent units/ bedsits/ studios.

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.

Policy Context

Purely internal alterations are lawful pursuant to section 55(2)(a) of the Town and Country Planning Act 1990.

Section 191(1) of the Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any existing use or operations which have been carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority describing the use or operations in question.

Section 191(4) of the Town and Country Planning Act 1990 states that if, on an application under this section, the local planning authority 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 local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application.

Guidance states that if a local planning authority 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 of the Town and Country Planning Act 1990 against a local planning authority which refuses a certificate of lawfulness in ignorance or defiance of the rule in Gabbitas.

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.

On 14 May 2020, the Local Planning Authority made an Article 4 Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Article 4 direction came into force on 24 June 2021. This means development consisting of a change of use to a building currently used as a dwelling house (Class C3) to an HMO (Class C4) is no longer deemed as permitted development. This is under Class L(b) of part 3 of Schedule 2 of 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. 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.

Consultations

The LPA's Legal team were consulted and raised no objections.

Representations

There is no statutory requirement for local planning authorities to consult third parties, including neighbouring residents or parish councils on a certificate of lawfulness application since such applications are a matter of fact and law and are not determined on their planning merits or judged against national or local planning policies or guidance.

Assessment

Prior to the Article 4 Direction which came into force on 24th June 2021, 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 was permitted development (therefore not requiring planning permission) under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015. 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 local planning authority are only concerned with the factual background. In this case, to establish that any existing use of buildings; or any operations which 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, the local planning authority shall issue a certificate to that effect; and in any other case shall refuse the application.

A copy of the HMO license granted and issued 31st August 2021, and which is valid for 5 years, has been provided by the applicant. This is after the Article 4 Direction came into force however the applicant claims the license submission was on 26th April 2021 which is before. The applicant has also provided a total of 3 tenancy agreements with the latest dating May 2021 which is also before the Article 4 Direction came into force.

Moreover, should any of the bedrooms become double occupation, a planning application will be required to change the use of the property from Class C4 (houses in multiple occupation) to Sui Generis. Failure to comply could result in the applicant being liable to enforcement action.

Finally, 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. As such, there is no good reason to refuse this application, especially as the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". To conclude, and as a result of the comments above, the local planning authority are provided with information satisfying them that the existing use or operations described in the application are lawful and a certificate should be granted.

Recommendation

Certificate of lawfulness granted