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| <b>Application Reference Number:</b> | 2025/0768 |
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| <b>Application Type:</b> | Lawful Development Certificate – Existing. |
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| <b>Proposal Description:</b> | Existing Lawful Development Certificate for House of Multiple of Occupation (Use Class C4). |
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| <b>Location:</b> | 71A Hoyland Road Hoyland Common Barnsley S74 0LT |
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| <b>Applicant:</b> | Mr Thomas Toumazou |
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| <b>Third-party representations:</b> | None. | <b>Parish:</b> | N/A             |
|                                     |       | <b>Ward:</b>   | Rockingham Ward |

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| <b>Summary:</b>  |
| <p>This lawful development certificate application seeks confirmation that an existing House of Multiple Occupation (HMO) use commenced prior to the Article 4 Direction coming into force, and has been used continually for uses falling within Use Class C4 and therefore does not require planning permission.</p> <p>Based on the information submitted by the applicant, the LPA determines that the existing use of 71A Hoyland Road, Hoyland Common, Barnsley S74 0LT as an HMO (Use Class C4) is lawful, and therefore, this lawful development certificate should be granted.</p> <p>Recommendation: <b>GRANT.</b></p> |

## Site Description

This application relates to a two-storey property which forms part of a subdivided semi-detached building, positioned on the corner of Hoyland Road and Princess Street. From the front, the building consists of two retail units at the ground floor level, which includes No.71 and No.69.

No.71 has been extended southwards to form the subject property, which consists of the rear part of the ground floor and the upper floor. A separate building lies further to the south which is used as a fish and chip shop, though is separated from the application building.

The property has a traditional appearance, finished in stone and render, with vertical windows and is accessed via the courtyard at the rear. The surrounding area is predominantly residential in nature amongst small scale commercial uses.



## Planning History

B/01/1187/HN - Installation of security shutters to side window, GRANTED, 19/10/2001

B/83/1262/HN/AD - Erection of illuminated box sign, REFUSE, 13/10/1983

## 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 HMO (Use Class C4) use 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 Use Class C3 (dwellinghouses) of the Schedule to the Use Class Order, to a use falling within Use 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).

Use Class C4 (houses in multiple occupation) are defined as small, shared houses occupied by no more than 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, under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Article 4 Direction 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<sup>rd</sup> May 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 no representations were received.

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| Legal                   | No comments received.   |
| Case Management Officer | Our records indicate that this property was identified as a small HMO on 19th March 2021. At this time the property consisted of 3 x bedrooms with shared kitchen, living/dining room & bathrooms. It did not meet mandatory licence requirements at the time. We have not inspected the property since 2021. |
| BMBC Council Tax        | The applicant has been liable for Council Tax since 2/7/2015. The property is not registered as a HMO but the file does suggest that tenants occupy the property.   |
| South Yorkshire Police  | Comments regarding Secured by Design.   |

While comments have been received from a South Yorkshire Police, and the concerns raised and suggested condition are acknowledged, the concerns and suggested condition cannot be considered during the determination of this lawful development certificate application for the above reasons in that 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 comments have been relayed to the applicant for consideration separately.

## Assessment

This application relates to a 3-bedroom HMO (Use Class C4). The existing floorplan indicates that the property consists of a shared kitchen/living area at the ground floor, with 3 bedrooms and a shared bathroom at the upper floor level.

The applicant has submitted evidence to demonstrate that the change of use to an HMO (Use Class C4) was implemented prior to the Article 4 coming into force on 24th June 2021. The submitted evidence includes:

- Bank Statements dated between 2016 – 2025
- Tenancy agreements dated between March 2016 – May 2024
- Rent payment statements dated between March 2016 – December 2017
- Rent payment spreadsheet
- Furniture invoice
- Inventory
- Planning Statement

The Case Officer initially contacted the applicant to raise concerns with the lack of continuous evidence. However additional evidence has been submitted including monthly bank statements which demonstrate rent payments either directly from tenants or from the estate/management agency.

The rent payment spreadsheet; furniture invoice and inventory are useful documents though do not demonstrate continuous occupation of the property. Similarly, the tenancy agreements alone do not demonstrate a continuous HMO use due to these being dated irregularly. Nevertheless, together with the regular rent payment evidence as set out in the submitted bank statements, the LPA are satisfied that the supporting information sufficiently demonstrates that the property has been used as a 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: Grant.**

**Informative(s):**

1. This application for a certificate of lawfulness for an existing use only relates to a C4 (houses in multiple occupation) use which is a small, shared house occupied by up to six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. If more than six unrelated individuals reside in the property at any point, then a change of use application from C4 (houses in multiple occupation) to Sui Generis would be required.