

2025/0061

Mrs Alison Dunning

41 Victoria Road, Barnsley, S70 2BU

Existing lawful development certificate for HMO (Sui Generis)

Site Description

The application relates to a two-storey, stone fronted terrace property located off Victoria Road, Barnsley. To the front of the property is a shared grassed area with footpath connecting to the highway. To the rear of the property is a parking area accessed off Western Street. The property has rooms in the roof space to accommodate a second floor. The property is located in the Barnsley, Victoria Road Conservation Area.

Planning History

B/76/0899/BA - Change of use from dwelling house to offices (Refused)

B/77/0011/CD/BA - Conversion of house to a residential rehabilitation home for discharged hospital patients (Crown Development)

B/94/1252/BA - Change of use from care home for 8 persons to 8 bedsit student accommodation (Refused)

B/94/1253/BA - Change of use from care home to single dwellinghouse

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 seeks confirmation that the large HMO use has been in operation in excess of 10 years and, as such, is outside of the Councils enforcement powers. There is planning history attached to this property but no evidence of a large HMO (Sui Generis) being approved.

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 *Gabbitts*.

Consultations

The LPA's Case Management Officer was consulted and raised no objections.

Central Ward Councillors were consulted and raised no objections.

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

Planning Enforcement 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

A local planning authority (LPA) 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 LPA 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 applicant has provided HMO licences from 1999, 2004, 2010 and 2016. A tenancy agreement has also been submitted for the letting of a room dated 2020. The applicant has made it known that the previous owner of the building and operator of the HMO has recently passed away therefore making further evidence difficult to obtain. Proof of rent payments in 2025 have been provided.

It is noted that there is a lack of information regarding the use and occupants of the property, however, the evidence that the property has been used as a large HMO dating back to 1999 in principle due to the presence of HMO licenses demonstrates that the property has been a large HMO for a period in excess of 10 years.

The LPA have no evidence which conflicts with this evidence of the use being in place, as such, the balance of probabilities test is applied and in this instance the applicant has supplied enough evidence to conclude this test is met.

Furthermore, the LPA's Case Management Officer

Additionally, an article 4 direction was introduced in the borough to limit smaller C4 HMO's, as such, it is recognised that there is an issue with HMO's within, and around, Barnsley Town Centre. In addition, a number of applications for small and large HMO's have been refused however, as outlined above, this is a Lawful Development Certificate application, not a planning application.

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 LPA 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