
2025/0780

Mr Patryk Stasiak

Lawful development certificate for the existing use of the property as a HMO.

Site Description

The property is an end terrace property located on Hough Lane in Wombwell, directly adjacent to the access for Kings Oak Primary School. The property itself is built three storeys and built in red brick and stone with a tiled pitched roof and white upvc windows and doors. There is a two storey flat roof extension at the rear however there is no planning record of this. To the front are steps leading up to the front door which is raised from the ground level and there is no designated parking.

Planning History

There is no relevant site history.

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.

Local Ward Councillors - object

Case Management Officer – object as the property has only just become a HMO

Relevant Legislation

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 C4 HMO 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 Gabbitas.

Assessment

This application relates to an existing Class C4 HMO occupied by up to six unrelated individuals with shared basic amenities. 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.

Normally, 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 (as amended).

Barnsley Metropolitan Borough Council (BMBC) made an Article 4 Direction on 14th 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 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 23.5.2021. 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.

As such, for the change of use to be lawful, it must have been implemented prior to the Article 4 coming into force on 24th June 2021.

The applicant has not submitted any evidence to demonstrate that the change of use to C4 occurred prior to the Article 4 coming into force on 24th June 2021. The Council's Case Management Officer has also confirmed that they only first became aware of the property proposing to become a HMO in July of this year, July 2025.

The Case Officer has made contact with the planning agent to advise that a full planning application is required for the change of use of the property retrospectively, no response has been received however a full planning application has now been received.

Considering the above, the LPA is not satisfied that the property became a HMO prior to the article 4 direction came into force due to the lack of evidence and is therefore not lawful. Despite this, the agent did not provide any further information and has proceeded to submit a full planning application. Given the clear lack of evidence this certificate of lawfulness should be refused and the merits of the change of use will be considered under the full planning application (2025/0902).

**Recommendation -
REFUSE.**