

<b>Application Reference Number:</b>	2025/0288		
<b>Application Type:</b>	Lawful Development Certificate – Existing.		
<b>Proposal Description:</b>	Lawful Development Certificate for existing House of Multiple Occupation (Use Class C4).		
<b>Location:</b>	109 Dodworth Road, Barnsley, S70 6HL.		
<b>Applicant:</b>	Mr Harman Bajwa (Yorkshire Care Housing Ltd).		
<b>Third-party representations:</b>	None.	<b>Parish:</b>	
		<b>Ward:</b>	Kingstone.

### Site Description

This application relates to a two-storey mid-terrace property which fronts onto Dodworth Road. The property is fronted by a garden and hedge acting as a buffer between the property and the highway. To the rear of the property is a two-storey extension with a mono pitched roof covering approximately half the width of the rear elevation. The property backs onto an open, unsurfaced yard area that is currently used as a shared parking area. Access to the rear garden and yard area is from Springfield Street.

The development site benefits from an edge-of-town centre location that is principally characterised by residential uses with adjoining dwellings to both sides, and to the rear fronting Springfield Street. Directly opposite and to the south of the property is a restaurant and associated car park.

### Planning History

There are several planning applications associated with the development site.

B/89/1834/BA	Erection of private garage.	Approved.
B/92/0198/BA	Use of garage for storage and preparation work in connection with ornamental plaster business and parking 2 vans and trailer (Expired on 31/12/1993).	Approved.
B/93/1306/BA	Use of garage for storage and preparation work in connection with ornamental plaster business and parking two vans and trailer (Renewal of planning permission B/92/0198/BA).	Approved.
B/05/0010/BA	Erection of one block of 4 self-contained flats.	Approved.
2006/0645	Erection of a two-storey block of four apartments.	Approved.
2014/0144	Conversion of one dwelling into two.	Approved.

2022/1201	Erection of three storey building containing 6no studio apartments (Outline seeking approval over layout, scale, appearance and means of access) (Amended Address).	Refused.
2023/0639	Change of use from an 8-bedroom house of multiple occupation (sui generis use) to 6 self-contained flats (use class C3) – Retrospective.	Appeal Dismissed (APP/R4408/W/24/3338858).

## Proposed Development

This application is for a lawful development certificate (LDC) under Section 191 of the Town and Country Planning Act 1990. 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.

In this instance, the applicant has applied for a LDC under Section 191 and seeks confirmation that the existing use of 109 Dodworth Road, Barnsley, S70 6HL as a small HMO (Class C4) is lawful and does not require planning permission.

## Relevant Policies

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, operations or other matter 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*.

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.

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.

Barnsley Metropolitan Borough Council (BMBC) made an Article 4 Direction on 14<sup>th</sup> 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<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 24<sup>th</sup> June 2021.

#### **Consultations**

There is no statutory requirement for LPAs to consult third parties, including neighbouring residents or parish councils on a lawful development certificate application as 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. Nevertheless, this application was advertised on the Council website, and no representations were received.

Legal	<i>No comments received.</i>
Case Management Officer	<i>No comments received.</i>
Local Ward Councillors	<i>No comments received.</i>

#### **Planning Assessment**

The applicant has applied for a LDC under Section 191 and seeks confirmation that the existing use of 109 Dodworth Road, Barnsley, S70 6HL as a small HMO (Class C4) is lawful and does not require planning permission.

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Barnsley Metropolitan Borough Council (BMBC) made an Article 4 Direction on 14<sup>th</sup> May 2020, under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Direction came into force on 24<sup>th</sup> 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 under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 could therefore prove to be lawful if implemented prior to 24<sup>th</sup> June 2021 and demonstrated to comply with the relevant legislation criteria.

However, the LPA has significant doubt as to whether the application property was used as a small HMO (Class C4), especially as there have been numerous references made to the application property being an 8-bedroom HMO (Sui Generis), including within the Officer Report and subsequent Appeal Decision (APP/R4408/W/24/3338858) in relation to application 2023/0639.

The Appeal Decision in relation to application 2023/0639 also references an HMO license and building control certificate for an HMO comprising six units. However, neither have been submitted in support of this current application. Nevertheless, Council Building Control records do show an application (17/10244/IN) in relation to the application property. The Council holds a copy of the completion certificate from Assent Building Control (Approved Inspector) dated 2<sup>nd</sup> May 2018 for 'Refurbishment and alterations to an existing building, forming a House in Multiple Occupation with six units.' However, the LPA does not consider that this alone constitutes convincing evidence as to the lawful use of the application property as a small HMO (Class C4), especially in the absence of any other lawful development certificate or planning decision and where all other information available and submitted to the LPA indicates a large HMO (Sui Generis) use. Moreover, the four submitted signed tenancy agreements dated between 26<sup>th</sup> April 2018 and 9<sup>th</sup> August 2021 and the submitted draft mandatory HMO license dated April 2018 suggest the previous 8-bedroom HMO use did not commence until at least April 2018. The draft license also identifies the application property as being suitable for occupation by ten people, and the plans submitted under this current application and application 2023/0639 showing the existing ground and first floor plans (02-0517-S1.1 and 02-0517-S1.2) dated May 2017 show 8-bedrooms, which further indicates a large HMO (Sui Generis) use and not a small HMO (Class C4) use. As the application property currently comprises six self-contained flats, as evidenced by the retrospective planning application (2023/0639) submitted to and determined by the LPA, the LPA considers that it is no longer possible for the applicant to demonstrate a continuous 10-year-use as required by paragraph 1(a) of Section 171B of the Town and Country Planning Act 1990 (as amended).

This application is also supported by an Energy Performance Certificate for a non-domestic building issued 28<sup>th</sup> December 2016 and a Gas Safety Record issued 13<sup>th</sup> December 2016. However, this information is not considered to be sufficiently precise and unambiguous, and it does not demonstrate a lawful small HMO (Class C4) use.

Another document showing existing and proposed floor plans (Dwg No. 2385/01) dated 4<sup>th</sup> January 2014 has been submitted in support of this current application. The plans show six existing bedsits and seven proposed bedsits. This document appears to relate to approved application 2014/0144 which was for the 'conversion of one dwelling into two'. The Officer Report states that this proposal would split the application property into two units. One unit would be contained within the original property and the second unit would be contained within a two-storey extension to the rear. The report states that the justification for this was because there are far stringent regulations relating to a property within excess of six lettable rooms rather than two separate properties, one with four rooms and one with three rooms. It is stated that if the two properties were not separated the

additional requirements would render the scheme unviable. The LPA does not consider this approved scheme to have been implemented. The resulting scheme that was implemented comprised 8-bedrooms which aligns with the many references made to the application property being used as an 8-bedroom HMO (Sui Generis). The resulting scheme did not have planning permission. The application property has since been reconfigured to provide six self-contained flats. Planning permission was applied for, refused by the LPA and dismissed at appeal by the Planning Inspectorate. The change to six self-contained flats ended the previous 8-bedroom HMO use and consequently, the LPA considers that is no longer possible for the applicant to demonstrate a continuous 10-year-use as required by paragraph 1(a) of Section 171B of the Town and Country Planning Act 1990 (as amended).

Whilst the Officer Report for application 2014/0144 references the application property being used for six lettable rooms at the time of the application, this is somewhat of an ambiguous reference and the presence of six lettable rooms does not necessarily constitute a HMO, and no evidence has been submitted by the applicant to otherwise demonstrate a lawful small HMO (Class C4) use, as applied for.

In considering the above and based upon the information available and submitted to the LPA, it is concluded that the application property was likely previously used as an 8-bedroom HMO (Sui Generis). A change of use from a dwellinghouse (Class C3) to a large HMO (Sui Generis) requires planning permission and could not have been implemented under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) even if this occurred prior to the Council's Article 4 Direction coming into force from 24<sup>th</sup> June 2021.

In this instance, there is no record of planning permission being granted for a change of use from a dwellinghouse (Class C3) to a large HMO (Sui Generis), and the copy of the HMO licence submitted is dated from April 2018, which remains outside of the 10-year enforcement period. Other submitted information appears to corroborate this. Moreover, since the Article 4 Direction took effect, a change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation) cannot be implemented under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Additionally, retrospective planning permission for the use of the application property as six self-contained flats was refused and subsequently dismissed at appeal. Furthermore, as the use of the application property appears to have changed numerous times over the years, the LPA does not consider that a lawful development certificate can be granted for an existing small HMO (Class C4) use when the application property is no longer in use for such purposes and has likely not been for some time. The LPA therefore considers that the lawful use of the application property is a single dwellinghouse (Class C3).

To conclude, and because of the comments above, the LPA is not provided with information satisfying them that the existing use or operations described in the application are lawful and a certificate should not be granted.

**RECOMMENDATION: Lawful development certificate – Refuse**