
2025/0078

Mr Ian Pilling

211 Sheffield Road, Barnsley, S70 4DE

Lawful development certificate for existing large HMO (Sui Generis).

Site Description

The application relates to an existing seven-bedroom house of multiple occupation (HMO) contained within a two-storey detached property located on the west side of Sheffield Road and in an area that is principally residential with interspersed commercial uses. A submitted floor plan indicates that the property has seven bedrooms with access to an en-suite or shared bathroom. Access to a communal kitchen, dining and sitting area is also shared. There are gardens to the front and rear of the property.



Planning History

There are no previous applications associated with the development site and permitted development rights have not been removed.

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 Lawful Development Certificate (LDC) under Section 191 and seeks confirmation that the existing use of the seven-bedroom property with shared facilities as a large HMO (Sui Generis) is lawful and does not require planning permission.

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*.

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 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.

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.

Notwithstanding the above, the LDC application relates to a large HMO (Sui Generis) and therefore could not have been implemented as permitted development under Class L(b) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 prior to the Article 4 direction coming into force on 24th June 2021.

A 10-year use must therefore be demonstrated in accordance with Paragraph 1(a) of Section 171B of the Town and Country Planning Act 1990 (as amended), which sets out the time limit in which enforcement action can be taken in the case of a breach of planning control in England.

Consultations

Legal	<i>No comments.</i>
Case Management Officer	<i>The property has been in use as a seven-bedroom HMO from 24th October 2014 to present. The property did not meet licencing requirements until 2018 when legislation changed to cover two-storey buildings.</i>
Local Ward Councillors	<i>One objection received from Councillor Sumner raising concerns about the number of HMO's pulling the area down and the number of occupants the property is licensed for.</i>

Representations

There is no statutory requirement for LPAs to consult third parties, including neighbouring residents or parish councils on a certificate of lawfulness 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. No representations were received.

Whilst an objection was made by Councillor Sumner, and the concerns raised are acknowledged, the concerns cannot be considered during the determination of this lawful development certificate application for the above reasons.

Assessment

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

As established, the LDC application relates to a large HMO (Sui Generis) and therefore could not have been implemented as permitted development under Class L(b) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 prior to the Article 4 direction coming into force on 24th June 2021. A 10-year use must therefore be demonstrated in accordance with Paragraph 1(a) of Section 171B of the Town and Country Planning Act 1990 (as amended), which sets out the time limit in which enforcement action can be taken in the case of a breach of planning control in England.

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.

Extensive information has been submitted in support of this application for a LDC, including correspondence, Council Tax records, financial statements, tenancy agreements, utility bills, management contracts and copies of HMO licenses. The earliest dated information submitted was email correspondence from December 2015 with Alkham Investments, which did not demonstrate a 10-year use and additional information was therefore requested. An additional letter was submitted by the applicant on 17th March 2025 from CRUCIBLE HOMES which states that the property has been in use as a HMO since 11th September 2014 and that CRUCIBLE HOMES were the letting agents and management company for the property, which was owned by Alkham investments from March 2014 – October 2016, when the building was vacated for sale.

Additional information has been provided by the Council's Case Management Officer which demonstrates that an initial property inspection was undertaken on 24th October 2015. It was also stated that the property had been in use as a HMO since this date and that the property did not meet licencing requirements until 2018 when legislation changed to cover two-storey buildings. The property has been a licensed HMO since.

Considering the above, and in light of the local planning authority having 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 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 because 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 -

Lawful development certificate – granted.