
2024/0559

Mr Brett Benson

31 Tower Street, Worsbrough Common, Barnsley, S70 1QS

Lawful development certificate for an existing C4 use (House of Multiple Occupation).

Site Description

The application relates to a plot located on the west side of Tower Street and in an area that is principally residentially characterised by other two-storey terraced properties of a similar scale and appearance. The application site is located to the east of Locke Park – a grade II-listed registered park and garden.

The property in question is a two-storey mid-terraced, stone-fronted property with an existing two-storey rear projection constructed of brick. The property is fronted by a highway footpath with a long, narrow garden to the rear and an access road beyond.



Planning History

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

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 has applied for a Section 191 Certificate of lawfulness of existing use or development seeking confirmation that the change of use from Class C3 (dwellinghouse) to Class C4 (houses in multiple occupation) is lawful and was introduced prior to the article 4 direction coming into force.

The house in multiple occupation (HMO) in question consists of four bedrooms with shared facilities. However, none are independent units/ bedsits/ studios, with one bedroom with an en-suite and the remaining bedrooms sharing a bathroom.

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.

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 that 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*.

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.

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 Second Schedule.

The Direction came into force on 24th June 2021

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 23rd May 2024 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.

Consultations

- Legal – No response.
- Local Ward Councillors – No response.
- Case Management Officer – This property was identified to our department as a 4-bed HMO in September 2019. At this time the owner requested advice on conversion to a HMO and an inspection was undertaken. An inspection in August 2024 found the property still to be in use as a 4-bed HMO, therefore confirm use as such for almost 5 years.

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. No representations were received.

Assessment

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

Prior to the Article 4 Direction which came into force on 24th 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 was permitted development (therefore not requiring planning permission) under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

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.

The Case Management Officer has confirmed that the property was identified to their department as a 4-bed HMO in September 2019. An inspection was undertaken at this time. A further inspection was made in August 2024 which found the property still to be in use as a 4-bed HMO. The date in which the property was identified as a 4-bed HMO precedes the date in which the Article 4 Direction came into force. The applicant has also provided a total of 9 tenancy agreements for four bedrooms dating from 2019 to present, and Beecroft Estates manage the property. The applicant has stated that the property was first let as a 4-bed HMO in December 2019. The date in which the property was first let as a 4-bed HMO also precedes the date in which the Article 4 Direction came into force.

The 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. 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 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 -
Certificate of lawfulness granted.**