
2024/0856

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127 Park Road, Barnsley, S70 1YJ

Certificate of lawfulness for existing use of dwellinghouse as 5 bedroomed HMO.

Site Description

The application relates to a plot located on the north-east side of Park Road 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 opposite of a petrol station.

The property in question is a two-storey mid-terraced property constructed of stone. The property is fronted by a small, enclosed area of a mix soft landscaping and hardstanding. To the rear is a larger enclosed garden area. Internally, the basement comprises an en-suite bedroom, larger bathroom and boiler room, the ground floor comprises a hall, shared kitchen and dining area and a bedroom, the first floor comprises two en-suite bedrooms and the second floor comprises an en-suite bedroom.



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 Lawful Development Certificate 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 under category (a) and is seeking confirmation that an existing change of use from Class C3 (dwellinghouse) to Class C4 (houses in multiple occupation) is lawful and was introduced prior to an article 4 direction coming into force.

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.

The HMO in question consists of five occupied bedrooms with shared facilities that include a dining and kitchen area and rear garden, and while most rooms are en-suite, none are independent units, bedsits or studios.

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.

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 the 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 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.

Consultations

Legal	No response.
Case Management Officer	I can confirm that our records indicate that the property was first used as 5-bed HMO in 2019. An application for an HMO licence was received on 5th September 2019. An inspection of the property was conducted, and a licence granted for six people on 19th November 2019.
Local Ward Councillors	Questions were raised by Councillor Wright and Councillor Bullcock and responses were issued on 25 th October 2024 and 31 st October 2024 respectively.

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.

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.

A copy of the HMO license granted and issued 19th November 2019, and which is valid for 5 years, has been provided by the applicant. The Case Management Officer has stated that their records confirm this. The applicant has also provided 18 tenancy agreements covering five bedrooms dating from 2020 to present. The earliest tenancy agreement is dated 6th February 2020 and follows the issuing of a Building Control Final Certificate for "Alterations to an existing four storey dwelling to form a House in Multiple Occupation" also dated 6th February 2020. These dates precede the date in which the Article 4 Direction came into force.

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 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.**