

Application Reference Number:	2025/1081
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Application Type:	Lawful Development Certificate – Existing.
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Proposal Description:	Certificate of existing lawful use for a Large House of Multiple Occupation (Use Class Sui Generis).
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Location:	35 Dodworth Road, Barnsley, S70 6DY
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Applicant:	Mr Michael Stringer
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Third-party representations:	None.	Parish:	N/A
		Ward:	Kingstone Ward

Summary:
<p>This lawful development certificate application seeks confirmation that an existing House of Multiple Occupation (HMO) use has occurred for a continuous 10 year period, and therefore has become lawful.</p> <p>Based on the information submitted by the applicant, the LPA determines that the existing use of 35 Dodworth Road, Barnsley as a large HMO (Use Class Sui Generis) is lawful, and therefore, this lawful development certificate should be granted.</p> <p>Recommendation: GRANTED</p>

Site Description

This application relates to the upper floors only of a 2.5 storey terrace property at No.35 Dodworth Road. The ground floor of the property currently operates as a Fish and Chip shop, and has a commercial frontage which projects forward of the principle building line. There are other commercial uses at the ground floors of the adjoining properties. The property is finished in light coloured stone and has 3 dormer windows at roof level, with the HMO arranged over the first and second floor. There is a small courtyard to the rear which provides access onto McLintock Way to the north. The property is surrounded by a mixture of residential and commercial uses, with Barnsley Town Centre to the east.

Planning History

B/93/0410/BA - Installation of new shop front, GRANTED, 10/6/1993

B/92/0947/BA- Extension to fish & chip shop and change of use from storeroom to one bedsit, GRANTED, 26/10/1992

B/90/0576/BA - Erection of 2nd floor extension and alterations to 1st floor of dwelling, GRANTED, 13/9/1990

B/90/0472/BA - Extension to shop for W.C. (No. 33) and store for flat (No. 35), GRANTED, 18/5/1990

B/79/0426/BA - Erection of building for use on shop and offices, HISTORIC, 5/4/1979

Proposed Development

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 large HMO (Use Class Sui Generis) use 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.

Large HMOs (Use Class Sui Generis) are defined as shared houses occupied by 7 or more individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. There is currently no permitted development right to change to a Sui Generis HMO and therefore full planning permission is typically sought. In this case, the Applicant is suggesting that the use has occurred for a 10 year continuous period and therefore has become lawful.

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 Cllrs	No comments received.
Case Management Officer	Our records indicate that the property has operated as a large HMO (Sui Generis) since 2009, with continuous use throughout this period for 9–10 occupants.
BMBC Council Tax	Records indicate that JDBS Properties Ltd have been operating the property as a HMO since 21 April 2017. Prior to this, the records indicate that the property has been operating as a HMO since 18 March 2014, with two other limited companies being charged Council Tax. According to Council Tax records, the property has never been occupied or operated as a single-family residence.

Assessment

This application relates to a 9-bedroom HMO (Use Class Sui Generis). The existing floorplan indicates that the property consists of a shared kitchen and 2x shower rooms at the first floor and a further 2x shared shower rooms and shared lounge at the second floor level. 5 bedrooms are provided at the first floor, with 4 bedrooms at the second floor.

The applicant has submitted evidence to demonstrate that the change of use to a large HMO (Use Class Sui Generis) was implemented over 10 years ago from the date of this application submission (since at least December 2015). The submitted evidence includes:

- HMO Licenses dated: September 2009, April 2015, February 2018, April 2023
- Land Registry Title Plan
- Email Communication with BMBC Council Tax
- Estate Agent Inspection Report (dated: April 2025)
- Design and Access Statement
- Existing Floorplan

The submitted evidence suggests that the building was historically licensed for up to 10 tenants, with the 2009, 2015 and 2018 HMO licences confirming this. However, the most recent license (April 2023) reduced the number of licensed tenants to 9, with each bedroom having a maximum of 1 occupant. The Council's HMO Case Management Officer confirmed that as part of the 2023 licence renewal an additional communal living room was required, meaning this reduced the

number of bedrooms from 10 to 9. Nevertheless, the occupation of 7+ residents satisfies the definition of a large HMO as per the Use Class Order.

Typically, certificate applications of this nature are supported by evidence such as (but not limited to) payments of rent received from tenants and/or signed tenancy agreements, with HMO licences alone not evidencing physical occupation of the property. This application has not been supported by this form of evidence. However, the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, and therefore there is no good reason to refuse the grant of a certificate "on the balance of probability".

In conclusion, the LPA have been provided with information satisfying them that the existing use or operations described in the application are lawful and a lawful development certificate should be granted.

RECOMMENDATION: Grant.

Informative(s):

1. This application for a certificate of lawfulness for an existing use only relating to a Sui Generis HMO (houses in multiple occupation) use which is a large, shared house occupied by 7+ unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. If 6 or less unrelated individuals reside in the property at any point, then a change of use application to Use Class C4 (houses in multiple occupation) would be required.