2022/0771

Mr James Youel

Use of dwelling for use class C4 purposes (small houses of multiple occupation) - Application for a Lawful Development Certificate for an Existing Use

13 Beckett Street, Barnsley, S71 1BN

Site Description

The application relates to a 2 storey, stone fronted mid-terrace dwelling located within predominantly residential area. The entrance of the property opens directly onto the pavement serving Beckett Street. To the rear of the dwelling is a small yard area which opens onto an access alley. The dwelling has recently been renovated and has accommodation over 3 floors including 4no. bedrooms.

There are attached neighbouring dwellings attached to both sides of the application property and more recently constructed 2.5 storey town houses directly opposite the front elevation. Beyond the rear boundary is a yard area with dwellings fronting Eldon Street North beyond.

Proposal

This application is for s191 Certificate of lawfulness of existing use or development which is used for the following;

(1) 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 seeks confirmation that the change of use from use class C3 dwellinghouse to use class C4 House of Multiple Occupation is Permitted Development and the use was introduced prior to the article 4 direction coming into force.

The property consists of 4 bedrooms with shared facilities. None of the rooms are independent units/bedsits/studios.

‘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’.

It should be noted that this application only relates to a C4 use for up to and including 6 residents, if the rooms are double occupation in the future, and exceed 6 residents, a planning application would be required to change the use from C4 to Sui Generis.

Planning Context

S55 of the Town and Country Planning Act 1990 states;

The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
(a)the carrying out for the maintenance, improvement or other alteration of any building of works which—
(i)affect only the interior of the building, or
(ii)do not materially affect the external appearance of the building,

S191 of The Town and Country Planning Act 1990 relates to the following;

(1) 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,

Guidance states

If 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, 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 against an LPA which refuses an LDC in ignorance or defiance of the rule in Gabbitas.

Barnsley Metropolitan Borough Council made an Article 4 Direction on 14 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 23.5. 2021 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 change of use from Class C3 to Class C4 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

Representations

Given the nature of the application as a Lawful Development Certificate i.e. to purely establish whether the existing use/operations would be lawful, neighbouring residents were not consulted.

Consultations

Legal Officer – No evidence submitted to demonstrate occupancy

Assessment

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 LPA are only concerned with the factual background in this case to establish that any existing use of buildings; or any operations that 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, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The applicants have provided photographs and invoices demonstrating that renovation works have taken place within the property circa May 2021 prior to the article 4 direction being introduced. However, to demonstrate that a HMO use had been implemented the applicant would need to have provided tenancy agreements and proof that tenants moved into the property prior to the article 4 direction. The applicant has confirmed that no tenants occupied the property until February 2022, as such, the C3 to C4 use was not implemented prior to the article 4 being implemented and therefore a lawful development certificate cannot be issued in this case.

As a result of the comments above the local planning authority have not been provided with information satisfying them that the use or operations described in the application are lawful and, as such, a certificate should not be granted.

Recommendation

Lawful development certificate refused.