
2025/0102

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190 Sheffield Road, Barnsley, S70 4FD

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

Site Description

The application relates to an existing eight-bedroom house of multiple occupation (HMO) contained within a three-storey terraced property located on the east 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 eight bedrooms with individual kitchens and access to shared bathrooms on each floor. There is a garden to the rear of the property.



Planning History

There are two previous applications associated with the development site:

1. B/83/0346/BA – Change of use from dwelling to guest house. – Approved.
2. B/83/1533/BA – Erection of fire escape and internal alterations to boarding house. – Approved.

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 eight-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 *Gabbitas*.

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 change of use from a former guest house (Class C1) 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>
Planning Enforcement	<i>No comments.</i>
Case Management Officer	<i>A record from August 1993 refers to the property being a HMO but due to timescale unable to access the HMO file. The first record of relevance where documents can be accessed is from 2013. An officer conducted an inspection of the</i>

	<i>HMO after property renovation and issued a temporary exemption notice from HMO licensing on 20.12.13. The owners (BCB) were in the process of registering as a social landlord making them exempt from licensing. A redacted version of this document can be provided if required. The registration as social landlord was confirmed, therefore no licence required during ownership. The property received an inspection on 13.11.23 where it was established the 8 bed HMO was underoccupied with 3 tenants.</i>
Local Ward Councillors	<i>No comments.</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.

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) formed from the change of use of a former guest house (Class C1) 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.

The Council's Case Management Officer states that a record from August 1993 refers to the property being a HMO, but due to the time that has passed, the file cannot be accessed. It is also stated that the first record of relevance where documents can be accessed is from 2013. An Officer conducted an inspection of the HMO after property renovation and issued a temporary exemption notice from HMO licensing on 20th December 2013 as the owners at the time were in the process of registering as a social landlord. An exemption letter dated 20th December 2013 has been submitted by the applicant. The Council's Case Management Officer stated that the registration as a social landlord was completed and confirmed and therefore no licence was required during ownership.

The applicant has also submitted a Tenancy Agreement and Housing Benefit Form dated 7th March 2014 and 21st March 2014 respectively. Further Tenancy Agreements were submitted dated 3rd September 2019 and 14th November 2019. The Council's Case Management Officer states that an inspection was undertaken on 13th November 2023 where it was established that the eight-bedroom HMO was underoccupied with three occupants, which appears to corroborate the submitted evidence, and is further reinforced by the submission of an Article 21 Notice sent to three tenants on 20th November 2023 and requiring them to vacate the premises by 20th January 2024 and 20th November 2024. The names of the tenants appear consistent throughout all documentation and suggests a continuous use of the property as a large HMO for the period between March 2014 – November 2024. Additionally, the fact that there have been no HMO licences issued between the initial exemption notice being issued and the last tenant vacating the property, suggests there has been no change to the use of property.

The applicant confirmed by email on 14th March 2025 that there would be no internal alterations, and eight bedrooms would be maintained, each with their own kitchen, but shared bathrooms, as shown on the submitted plan: PLAN REVISION 'A' dated 29th June 2012. The applicant has stated that the plans relate to the initial re-furnishment of the property to becoming an HMO and appears to be reinforced by the inclusion of HMO requirement notes on the plan. It also appears to align with the timeline of events with the initial HMO licence exemption notice being issued on 20th November 2023.

Considering the above, a complete documentary record for 10 years has not been provided. The licence exemption notice has resulted in a deficiency of documentation but exceptionally in this case, on balance, the LPA is of the opinion that the use of the building as a large HMO for at least 10 years has nevertheless been demonstrated satisfactorily. In addition, 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, and therefore there is no good reason to refuse the grant of a certificate "on the balance of probability" in this instance, especially as the evidence available does appear to demonstrate the required 10-year use.

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.**