2021/0620

Mr Russell

Internal alterations to convert a use class C3 dwellinghouse to a C4 House of Multiple Occupation (Lawful Development Certificate relating to a Proposed Use)

4 Spencer Street, Barnsley, S70 1QX

Site Description

The application relates to a stone fronted, mid-terrace property located within a predominantly residential area. To the front of the property is an enclosed buffer garden with pedestrian access to the front door. To the rear of the property is an enclosed yard/garden area which backs on to a vehicular access serving the rear of the terrace row.

There are attached neighbouring properties to both sides of the dwelling. There are neighbouring dwellings facing the application property on the opposite side of Spencer Street to the South. To the North, beyond the vehicular access, are the rear amenity spaces and rear elevations of properties fronting Park Street.



Proposal

This application is for s192 Certificate of lawfulness of proposed use or development which is used for the following;
(1) If any person wishes to ascertain whether—

(a)any proposed use of buildings or other land; or

(b)any operations proposed to be carried out in, on, over or under land,

would be lawful.

The applicant seeks confirmation for the change of use from C3 to C4 as Permitted Development.

The HMO would consist of 5 bedrooms spread over 3 floors. 3 bedrooms would be en-suite and 2 would share bathroom facilities. The lower ground floor would accommodate communal facilities including a kitchen/dining area and lounge, with access to shared, outdoor amenity space to the rear.

'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 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,

S192 of The Town and Country Planning Act 1990 relates to the following;

(1) If any person wishes to ascertain whether—

(a)any proposed use of buildings or other land; or

(b)any operations proposed to be carried out in, on, over or under land,

would be 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.

Representations

Given the nature of the application as a Lawful Development Certificate i.e. to purely establish whether the proposed use/operations would be lawful, neighbouring residents were not consulted. However, as some work has commenced at the property neighbours were aware and 3no. residents have submitted comments. The main points of concern are;

- Residents should have been consulted
- Information submitted with the application misleading
- Family home sub divided
- Number of HMO's within the area
- Add to historic parking problems within the area
- Increase in anti-social behaviour
- Increase in waste

Consultations

None, but the Legal Officer has confirmed that the application has to be determined on the situation at the time of the decision.

Assessment

A local planning authority can grant a certificate confirming that a proposed use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 192 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 proposed use of buildings; or any operations proposed to be carried out in, on, over or under land, would be 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 would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The applicants have confirmed that the proposal would be for a 5-bedroom property with a maximum of 6 persons, as such a change of use from C3 to C4 would take place. They have also confirmed that internal alterations are required to support the use, but these would not materially affect the appearance of the building.

The applicants have stated that the use has not yet commenced within the building but building works to facilitate the use had already begun at the time the application was submitted. It should be noted that para 4 of S192 states '*The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness'.*

An article 4 direction was introduced in Barnsley in June 2021 which removes the Permitted Development rights set out in Class 3, Part L of the General Permitted Development Order which allows changes between class C3 and C4 and vice versa. The applicant has stated that some building works have taken place at the property but has not provided any evidence that the use was established before the article 4 was introduced. As such, a certificate cannot be granted for a proposed use given that permitted development rights at the time of the decision have been remove for said use, as such, the Lawful development certificate is refused and a planning application would be required for the proposal.

Recommendation

Lawful development certificate refused

Reason for refusal

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 came into force in June 2021.

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.

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.

Given the proposed use was not established prior to the Article 4 Direction coming into force a Lawful Development Certificate relating to a proposed use, under S192 of the Town and Country Planning Act 1990, is not appropriate as permitted development rights for that use have been removed.