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2025/0637

**Mr Michael Michaelson**

**Lawful development certificate for the existing use of the property as a 6-bedroom HMO.**

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### **Site Description**

The host property is an end terrace residential property which is brick built with a tiled pitched roof. It appears the property was formerly two individual units that have been converted into one. To the rear is a small tarmacked area which can be accessed from the existing access that runs down the side of the property. There is also a small grassed area. The property fronts onto Barnsley Road and is in close proximity to local services and public transport.

### **Planning History**

2024/0971 – Certificate of lawfulness for existing use as HMO – Withdrawn

### **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 Councillors - No comments received.

Legal Officer – Insufficient information/evidence to show a continued 10 year use

Case Management Officer – The property is known to have been first used as a HMO on 18/08/2014. The property was issued with a license for 9 people in 6 bedrooms on 12/01/2021 and has since remained empty whilst on the property market.

### **Relevant Legislation**

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 C4 HMO 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.

A full award of costs is liable to be made on appeal under Section 195 of the Town and Country Planning Act 1990 against an LPA which refuses a certificate of lawfulness in ignorance or defiance of the rule in Gabbitts.

## **Assessment**

This application relates to an existing 6 bedroom HMO with shared basic amenities. 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. A large HMO (sui generis) relates to shared houses occupied by more than six unrelated individuals.

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 (as amended).

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.

The Council's Case Management Officer has confirmed they hold records of the property first coming into use as a HMO in August 2014 and that all bedrooms were suitable for double occupancy, thus could house up to twelve occupants.

Furthermore, The Council's Case Management Officer has confirmed that the property was licensed for 9 individuals forming 6 households on 12.01.2021. This exceeds the number of occupants allowed to occupy a HMO under permitted development in any case, and the point the property was occupied by more than 6 individuals planning permission would have been required for the use of the property as a large HMO under the use class Sui Generis.

The information provided with the application suggests that they are applying for a certificate of lawful use for the existing use of the property as a small HMO with 6 bedrooms which would have a

maximum of 6 occupants however there is no evidence provided of the exact number of occupants and whether the property exceeded 6 occupants at any point.

The applicant has submitted evidence to demonstrate the continuous use. This includes a number of short term tenancy agreements between 2015 and 2019 however these do not cover the periods between August 2014 – July 2015, June 2017 – June 2018 and no evidence from June 2018. These gaps raise concerns about the continuity of use and the evidence is therefore considered ambiguous and incomplete.

The Case Officer requested further information and evidence from the planning agent including further tenancy agreements to cover the gaps noted above, signed affidavits, photographs, bank statements, electoral roll data and council tax records however no further evidence has been provided.

In light of the evidence submitted, the Council is not satisfied that the use of the property as a small House in Multiple Occupation (HMO) falling within Class C4 has been continuous prior to the Article 4 direction coming into force. The absence of sufficient documentation to demonstrate uninterrupted use, particularly during the identified gaps, undermines the claim of lawful existing use. Furthermore, the licensing records suggest the potential for occupation exceeding six individuals, which would constitute a large HMO (sui generis) requiring planning permission. As such, the application fails to meet the requirements for a certificate of lawful existing use and is therefore refused.

**Recommendation -  
REFUSE**