

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL
DEVELOPMENT**

Reference no.: 2024/CL/91559/E

Site: 7, Crawshaw Street, Ravensthorpe, Dewsbury, WF13
3ER

Description: Certificate of lawfulness for existing use of dwelling as
HMO

Case Officer: Sharoz Ilyas

Decision Reference: EXISTING USE GRANTED

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date 11-Sep-2024

Reference:	2024/91559
Applicant: -	M Khan
Location: -	7, Crawshaw Street, Ravensthorpe, Dewsbury, WF13 3ER
Proposal: -	Certificate of lawfulness for existing use of dwelling as HMO

Site Description

7 Crawshaw Street is a three-storey terraced house, one of a row of three. It was built using stone with a dual-pitched roof finished in slate tiles. Crawshaw Street is a residential street with a religious place of worship (mosque) directly adjacent to the site.

The houses along Crawshaw Street differ in design and style and there is not a uniform design along the Street. Crawshaw Street is accessed via Huddersfield Road.

Application Proposal

The application is for a certificate of lawfulness for existing use of a dwelling as an HMO (House of multiple occupation). The onus is on the applicant to provide evidence which states why the existing use is lawful. In this case, the applicant has stated on the application form that the existing use has been continuously occurring for over 10 years (since 2012).

Relevant Planning History

2004/62/93774/E2: ERECTION OF 3 NO. DWELLINGS WITH INTERNAL GARAGES

Consultation

This is an application for a Lawful Development Certificate and for this reason, no consultations are necessary.

Legislation

Section 191(1) (a) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 191(2) of the Act provides that uses are lawful if:

- a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason);
- b) They did not constitute the contravention of any of the requirements of any enforcement notice then in force.

For the purposes of the Act a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force. Section 191(2) (b) states that the inability to take enforcement action may come about because the use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired.

The Relevant Test

The burden of proof lies firmly with the Applicant and the relevant test for whether the operations can be deemed lawful is the “balance of probability”. The Applicant’s evidence does not need to be corroborated by “independent” evidence. If the Local Planning Authority has no evidence of their 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Limitations

A LDC must contain precise details of what use or operations are found to be lawful, why and when. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a “material” change of use takes place, a Local Planning Authority may then consider further development has taken place.

Relevant Information

Material Change of Use:

Section 55 (1) of the Act provides: -

“Subject to the following provisions of this section, in this Act except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in use of any buildings or other land.”

Evidence Submitted in Support of the Application

In support of the application the applicant has provided the following documents:-

- Access statement for 7 Crawshaw Street (11/06/2024)
- 7 Crawshaw Street Plans (11/06/2024)
- Agreements with tenants (11/06/2024)
- No.7 Gas Safety (11/06/2024)
- No.7 Fire Alarm (11/06/2024)
- No.7 Council Tax (11/06/2024)

Evidence Submitted Against the application

No written representation was received during the course of this application.

Evidence Obtained from Council Records and Other Sources

HMO licences past and present held on Council records and also Council tax records at the property.

Assessment of evidence

The main considerations in the determination of this application are whether the existing use would constitute development as defined in section 55 of The Town and Country Planning Act 1990. "Development" is defined in this section as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. "Building operations" includes, for the purpose this Act, demolition of buildings, rebuilding, structure alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.

In this case, the property was built being one of three dwellings erected as part of planning permission, 2004/62/93774/E2. The applicant has provided tenancy agreements, Council tax bills and an Access Statement which purportedly shows the dwelling has been used as an HMO occupied by up to 8 persons since 2012.

In considering this matter, I have regard to the tenancy agreements provided by the applicant, Council tax records and HMO (house of multiple occupancy) licences held by Kirklees Council.

The applicant has provided tenancy agreements dating from 21st May 2013 – 23rd December 2019. These agreements, all of which are for either a 3 months or 6 months term demonstrate at any one point that there was up potential for up to 4 tenants residing at the property, however this is not factoring in any statutory periodic tenancy which would arise at the end of an assured shorthold tenancy agreement. Therefore, it is evidenced that there has been a continuing period where the dwelling was used as a house of multiple occupation, shared by non-related tenants.

The applicant has made clear in the Access Statement provided that the dwelling was converted in 2012 to accommodate 8 bedrooms with a shared kitchen/diner and three shower rooms split over the three floors; the dwelling previously had 5 bedrooms, kitchen/diner, w/c and a living room, typical of a family dwellinghouse. The plans provided by the applicant demonstrate the converted layout of the dwelling, which can accommodate up to 8 tenants at any one time therefore, it appears the property has previously been changed to being capable of accommodation for up to 8 persons at any one time. Information held on Council Tax indicates that the property was rated as an HMO at some capacity from 2012 onwards. HMO licences also held by the Council indicate the property has been licenced as an HMO (5-year licence) for no more than 8 persons since 31st October 2017 with the current HMO licence at the dwelling running until 31st October 2027.

While the tenancy agreements in themselves do not demonstrate the property was in fact occupied by 8 persons over the years, the property is clearly capable on accommodating 8 persons. The HMO Licences add to support that claim and without any evidence to the contrary, the evidence provided by the applicant clearly and unambiguously demonstrates the occupation by up to 8 persons probable and the relevant test is met.

Under the provision of Section 55 of the Town and Country Planning Act 1990, the change of use will only constitute development requiring planning permission if that change of use is material in terms of change the character of the land. In this case, it is considered, taking into account the information provided by the applicant, namely the tenancy agreements, access statement and floor plans and information held on the Council's records for both Council Tax and HMO licences, that works have taken place to alter the once family dwellinghouse to a dwelling housing multiple non-related persons. The once 5-bedroom dwelling has been altered to accommodate 8 bedrooms. This included the conversion of the living room, which is typical of a single household dwellinghouse into a bedroom and the addition of 3 separate shower rooms as opposed to a shared bathroom, which was also typical of a single household dwellinghouse.

However, the change of use is not development under section 55 unless the change of use is materially for the purposes of planning control. Materiality in such circumstances can be assessed primarily on the change in the character of the property. In this case, the occupation by up to 8 persons sharing a kitchen and living room would introduce a use unlike a typical family household as defined by Schedule 1, Class C3 of the Use Classes Order 1987 (as amended). The comings and goings and general accommodation of 8 unrelated persons would alter the character of the occupation beyond what would normally be expected at a dwellinghouse. Moreover, and while Class C3 also includes the occupation of up to 6 persons living together as a single household, the occupation by unrelated persons would not be considered to constitute a single household and thus the occupation by 8 persons falls outside Class C3.

Class C4 of the Use Classes Order 1987 (as amended) defines a house of multiple occupation as "the use of a dwellinghouse by not more than six residents as a house of multiple occupation". In this instance the property capable of occupation by up to

8 persons which is considered to be materially more than occupation by 6 persons and thus the property does not fall into Class C4.

By the reasons above, the property underwent a material change of use from Class C3(dwellinghouse) to a house of multiple occupation for up to 8 persons which would have been considered development requiring planning permission. As no planning permission exists for the change of use, the change would have been considered a breach in planning control and thus unlawful at the time. To become lawful a period of 10 years must pass under the provisions of section 171B of the Town and Country Planning Act 1990 before the use can be immune from enforcement action. In this instance the evidence provided and held by the Council suggest on the balance of probability that the property was capable of accommodating up to 8 persons as a change to a HMO from May 2013.

On the basis of the above, I am satisfied that the dwelling has been used as an HMO for up to 8 persons for a period in excess of 10 years prior to the date of this application. Under those circumstances, I conclude on the balance or probability that a material change of use of the dwelling occurred in 2013, in breach of planning control. The dwelling has been used and maintained continuously as an HMO for 8 persons for more than 10 years and is still evidently used as an HMO.

Conclusion

On the balance of probability, the applicant has demonstrated that the application site has been used as an HMO housing up to 8 unrelated persons at 7 Crawshaw Street through the conversion to accommodate 8 bedrooms, in excess of 10 years prior to the date of submission of this application. The material change of use would have constituted development as defined by Section 55 of the Town and Country Planning Act 1990, however the use has been continuously occurring for over 10 years, the use is now considered lawful and as a result planning permission is not required. Acknowledging this, my recommendation is that a Certificate of lawfulness should be granted.

Recommendation: Grant certificate
Decision Authorisation - Delegated Powers
Application Number: 2024/91559

Officer Recommendation: Approve certificate

Reasons for approval

Based on the documentation submitted by the applicant and evidence obtained from Council Records, on the balance of probability, it is demonstrated that all the application site has been used as a house of multiple occupation for up to 8 persons, in excess of 10 years prior to the date this application by making a material change of use without classification as defined by the Use Classes Order 1987 (as amended). The land subject to the grant of this Certificate is not considered to fall within the use as defined within the Use Classes Order 1987.

Plans and specifications schedule:

Plan Type	Reference	Date Received
Location Plan	1044782	13/06/2024
Grouped plans and elevations	1044530	11/06/2024
Design and Access statement	1044531	11/06/2024

Report Dated: 10.09.2024