

Report of the Chief Executive

APPEAL DECISION

APPLICATION NUMBER:	22/00227/CLUP
LOCATION:	25 Broadgate, Beeston
PROPOSAL:	Certificate of lawfulness for proposed change of use from dwelling house (Class C3) to House in Multiple Occupation (HMO) (C4)

APPEAL ALLOWED

RECOMMENDATION BY OFFICER - REFUSE

REASON FOR REFUSAL –

At the time of the application the house is being used as a family home (dwellinghouse) falling within Use Class C3. The evidence provided failed to demonstrate that the property known as 25 Broadgate, Beeston NG9 2HD would be occupied, before 26 March 2022, by persons who do not form a single household and therefore, the use as a HMO has not been instituted at the time Article 4 Direction came into force. The application for proposed use as HMO would therefore breach Section 192 (2) of the Town and Country Planning Act (1990).

LEVEL OF DECISION: DELEGATED

The inspector considered the main issue arising is whether, on 11 March 2022, it would have been lawful to have changed the use of the property from a dwellinghouse in Class C3 of the Schedule to the Use Classes Order to a small house in multiple occupation falling within Class C4 of that same Order.

REASONS

The Planning Inspector notes that permission to change the use of houses from C3 to C4 in this way is conferred by Class L of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Such permitted development rights may be withdrawn, including by what are known as Article 4 Directions made by the Local Planning Authority. Broxtowe Borough Council’s Article 4 Direction was confirmed on 25 March 2021, taking effect on 26 March 2022.

The Inspector noted that the application was made on 11 March 2022 and the Council’s view was that, with the imminent coming into effect of the Direction, the proposed change of use was not lawful at the time of the application because they were not satisfied of any realistic prospect of the change of use actually happening before the Direction came into force. The Inspector states that as, on the date on the application no Article 4 Direction was in force, the change of use proposed by the appellant would have been lawful and as such a certificate will be granted.

However, the Planning Inspector notes that this may not assist the appellant. The appellant has confirmed that no change of use had taken place before the Direction came into force, and the question arising on this appeal does not involve determining whether such a change would, if made now, be lawful. The coming into force of an Article 4

Direction restricting the application of the particular permitted development rights relied upon is a matter potentially relevant to determining such lawfulness.

CONCLUSION

For the reasons given above, the Inspector concluded, on the evidence available, the Council's refusal to grant a certificate of lawful use or development in respect of a change of use from dwellinghouse (Class C3) to a house in multiple occupation (Class C4) at 25 Broadgate, Beeston, was not well-founded and that the appeal should succeed.

The appeal is allowed and attached to the decision is a certificate of lawful use describing the proposed use which is considered to have been lawful at the time of the application.