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HMO Planning Q&A

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Are HMOs permitted development?

A house in multiple occupation (HMO) is a property rented out by at least 3 people who are not from 1 'household' (for example a family) but share facilities like the bathroom and/or kitchen. It's sometimes called a 'house share'.

HMOs benefit from permitted development rights, which is the right to develop residential houses without planning permission. Since 6th April 2010, small houses and flats in multiple occupation (HMOs) now fall within their own "class" for planning purposes, C4 class.

C3 is a Class that refers to those living together as a single household who do not fall within the HMO definition. On 6th April 2010, the Government brought in legislation introducing a new use Class, C4, for small HMOs occupied as their main residence by between 3 and 6 unrelated persons.

It is a permitted development right to move between C3 and C4 classes and back again, so in most cases, a small HMO does not need planning permission. However, you may also need planning permission if your HMO is in the C4 class and your local authority has an Article 4 Directive.

Case law (Gravesham Borough Council v SoS and Michael W O'Brien 1982) has established that the distinctive characteristic of a "dwelling house" is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Whether a building is or is not a dwelling-house, is a question of fact.

What if your HMO goes over 6 occupiers?

As soon as your number of occupiers goes from 6 to 7 or more then you move from C4 to Sui Generis. Sui Generis literally means "in a class of its own" and covers large HMOs of 7 or more people (in addition to other planning uses).

Once you reach 7 occupiers, you will require planning approval and amendment to the HMO Licence to accommodate the addition person(s). Obtaining planning permission for a Sui Generis HMO is not straightforward as the application will be judged on garden space, parking, communal spaces, waste refuge, and management, among other items.

What is the difference between permitted development HMOs vs Sui Generis HMOs?

Permitted development allows a house to be developed to a maximum of 6 occupiers and 6 bedroom HMO. A Sui Generis HMO is one that does not fit into the definition of class of C4 use as it has more than 6 occupiers. Once the property goes over 6 occupiers then planning permission will be required.

It can be better to create, license and operate a 6 person HMO than apply straight away for a Sui Generis HMO. Once you have a 6 person HMO operating, the Local Planning Authority will need to consider the impact of the addition people/rooms on the property.

What are Article 4 areas and the impact on HMOs?

When looking at creating a HMO, we always advise the potential HMO investor to check whether the house is in an Article 4 area on the Local Authority's website.

Councils can adopt an Article 4 Directive that removes permitted development rights to stop houses moving from C3 to C4. Before starting work on converting a property to a HMO, always check if the property falls in an Article 4 area. If the property is an Article 4 area then planning permission will be required.

If a property is in an Article 4 area then it can be difficult to obtain planning permission for change of use from C3 to C4. Councils believe there is an oversupply of HMOs in the area and hence they have implemented an Article 4 Directive.

What are the parking requirements for HMOs?

If the property is being converted under permitted development rights then there is no requirement to provide car parking. However, if required to apply for planning permission as the property is Sui Generis or in Article 4, then it's likely that car parking will be required. Car parking requirements would be listed in the Council's Unitary Development Plan.

What is the difference between licensing vs planning permission?

Planning and licensing are completely different things, but both equally important.

It is mandatory to apply for HMO licences with 5 or more occupants. Even if you are exempt from a mandatory HMO licence, remember to check whether additional or selective licensing still applies.

It is possible to be awarded a HMO licence even in an Article 4 area or if the HMO is Sui Generis. Getting a licence does not make you immune from planning enforcement.

Do I need building control when creating a HMO?

Building control operates separately from the Planning Department. Technically you need building control if your works will be providing services and/or fittings in a building such as washing and sanitary facilities, hot water cylinders, foul water and rainwater drainage, replacement windows, and fuel burning appliances of any type.

When does an HMO have established use?

If you have an HMO in an Article 4 area or is an HMO that is Sui Generis, then you are immune from enforcement action after ten years. This is known as established use.

Is the property an HMO or a collection of self-contained flats?

It can be difficult to determine whether properties are an HMO or self-contained flats.

It is important to remember that licensing and planning permission are completely different. You could have an HMO licence and have Planning Enforcement take action for planning breaches.

We believe the clearest way to establish if the property is a collection of self-contained flats or an HMO comes from the "Standard Test" for HMOs from The Housing Act 2004:

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household;
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Can the council enforce living standards for HMOs?

There is an interesting case that covered this question, Clark v Manchester City Council [2015] UKUT 129 (LC).

This case established that Councils can give landlords guidance over living standards considered reasonable for local HMOs but cannot enforce them if they differ from the minimum set by law, according to the Upper Tribunal (Lands Chamber).

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