

HMOs and Planning



Planning Definition of a HMO

- Small scale HMOs – use class C4 (up to six residents) – Permitted development.
- Large scale HMOs (over six residents) – Planning permission required.

Background

- On 1 October 2010 amendments were made to the General Permitted Development Order (GPDO). These amendments gave permitted development rights for changes of use from C3(a) (dwellinghouses) to C4 (small scale HMOs)).
- Class C4 use is defined in the GPDO as use of a dwellinghouse by not more than six residents as a “house in multiple occupation”. Therefore it is a property occupied by up to six people who do not “live together as a single household”.
- HMOs which fall within Class C4 can benefit from the permitted development rights ordinarily granted to dwellinghouses by the GPDO (e.g. extensions and alterations).

Attempts to Control HMOs

- In order to control the development of HMOs within their jurisdiction, some local planning authorities have made article 4 directions to remove the permitted development rights under the GPDO for changes of use from a dwellinghouse to HMO. City-wide blanket article 4 directions:-
- Wolverhampton:- From September 2017 planning permission has been required to change the use of a house to a small scale HMO accommodating 3-6 people.
- Manchester and Worcester:- 10% threshold. Manchester includes HMO policy in core strategy. A 10% threshold is applied within a 100m radius of a proposed HMO. Both cities have high student populations – Manchester has a student population of 50,000; with over 20% of households in one area being entirely occupied with fulltime students.

Legal Services Advice Note

Article 4 Directions

Local planning authorities should only consider exercising this power where the use of the permitted development rights for a HMO would:-

- i) Harm the local amenity or the proper planning of the area; and,
- ii) Is necessary to protect local amenity or the wellbeing of the area.

Evidence:

Any causes of potential harm must be justified as far as possible by evidence. Therefore it is necessary for the Authority to undertake:-

- i) Up to date mapping with statistics for HMOs.
- ii) Community engagement and consultation.
- ii) Mutli-agency working i.e. Housing, police, neighbourhood groups.

Implementation of Article 4

- One year consultation period.
- Risk of compensation to property owners if article 4 is implemented within this period.
- Justification for implementation must be supported by evidence.
- Refusing an HMO once an application has been submitted would still rely on Local Plan policy.

Weaknesses of Article 4

- Article 4 would only remove the permitted development right – it would not stop applications coming in.
- NPPF: *“The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area...”* .
- Should only be used in those exceptional circumstances where evidence suggests that exercise of permitted development rights would harm local amenity or the proper planning of the area.
- The Secretary of State has the power to modify or cancel an article 4 direction at any point.
- Sandwell’s Local Plan does not currently have a HMO policy (although standards are set out in our Residential Design Guide).

National Policy (the NPPF)

- Highways:- *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*
- Crime and anti-social behaviour : *“... create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”*
- However, be mindful of the Inspectorate decision for Brunswick Terrace:-
“Anti-social behaviour does not seem to me to be an inevitable consequence of HMOs as opposed to the single occupation of dwellings, but rather a question of individual behaviour and appropriate management.”
– Alexander Walker, Planning Inspector.

Housing Act Amendments

- Increased HMO licensing from 1 October 2018.
- Any landlord who lets a property to five or more people – from two or more separate households – must be licensed by their local housing authority.
- Councils can take further action to crack down on the small minority of landlords renting out sub-standard and overcrowded homes.
- New rules will also come into force setting minimum size requirements for bedrooms in HMOs to prevent overcrowding.
- Landlords will also be required to adhere to council refuse schemes, to reduce problems with rubbish.

Summary

- Matters which concern other legislation cannot be taken into account as material planning considerations, or imposed by condition (i.e. Building Regs, Housing Act etc).
- Reasons for refusal should be justifiable and defensible.
- Planning Policy have been asked to work towards a HMO policy as revisions to the BCCS and SADD, to strengthen our consideration and determination of planning applications.
- The submission of Lawful Development Certificates for small scale HMOs – this would also provide a degree of monitoring.
- Be mindful of applications for costs when refusing applications.
- An article 4 could lead to an increase in appeals of refused applications, and possible costs awarded.