

DEMYSTIFYING THE PLANNING RULES AROUND HOUSES IN MULTIPLE OCCUPATION

In a recent article we examined the licensing requirements for Houses in Multiple Occupation (HMOs). However, when investors are looking to maximise yields on residential property by converting an existing residential property into an HMO, then licensing is only one part of the legal due diligence to consider. Another key consideration is what planning permission is required to change that existing residential property into an HMO.

It must be remembered that HMO licensing and planning are not connected. As such, the obtaining of an HMO licence does not mean that the planning system has been complied with.

Planning

The planning system in England and Wales is administered by the Town and Country Planning Act 1990 (TCPA) and associated legislation. The TCPA generally sets out that any development of property requires planning permission unless it is non-material or permitted by General Permitted Development Orders (GPDO).



At a basic level this means that any change of use of a property or physical work requires planning permission. (Do note, however, that there are other types of statutory consents that may be required for changes of use or physical works to a property; prior professional advice should always be obtained.) Therefore, when considering converting a residential property into an HMO, careful planning assessment is required. It must also be remembered that even if a change of use is permitted without planning permission, any physical works may need planning permission in their own right.

Planning law categorises uses of property into what they call 'use' classes and other specialist uses which don't fall into any particular 'use' class (these are called Sui Generis uses).

The GPDO includes the following use classes which are the classes relevant to most new HMO conversions from residential dwellings:

1. **C3 Dwellinghouses** – for the purposes of this article this class includes a normal residential house or flat occupied by a single person, couple or a single family (i.e. relatives).
2. **C4 Houses in multiple occupation** – 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.
3. **Sui Generis HMOs** – essentially this is any other HMO which doesn't fit into use class C3 or C4. Most commonly this will be any shared house occupied by seven or more people, as their only or main residence, who share basic amenities.

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Do I need planning permission to change the use of a C3 residential dwelling to an HMO?

The general answer to this is yes, planning permission is needed unless the GPDO allows 'permitted development'. In the case of HMOs the following are permitted development:

- Change of use from a C3 (dwellinghouse) to a C4 HMO
- Change of use from a C4 (HMO) to a C3 (dwellinghouse)

It's really important to note the following in respect of these permitted development rights:

1. That if the number of occupiers is to be seven or greater, then no such permitted development rights exist as the new use would be considered a Sui Generis HMO as opposed to a C4 HMO
2. Each individual local authority has the ability to remove permitted development rights by what is called an 'Article IV' direction. Many local authorities have already passed such directions including in many popular student areas. Therefore it is essential that you ask your legal advisor to make enquiries of the relevant authority to determine whether such a direction is in place
3. Planning conditions on previously implemented planning consents can have the effect of removing permitted development rights. If so, planning permission would be required.

Sui Generis HMOs

A Sui Generis HMO (usually with seven or more occupants) is not an open use class. In practice this means that if the consented use is for nine occupiers, you cannot change the use (for example, by intensifying to 12 occupiers) without obtaining further planning permission unless the local authority considers the change to be non-material.



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Please note that this document has been simplified for general application. As such, legal advice should be taken by investors relating to individual properties and based on the applicable law at the time.

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