

## **HMO (Houses of Multiple Occupation) Advisory note from Planning**

**November 2008**

### **Planning Permission and Use**

Single dwelling houses are classed as a C3 use under the Town and Country Planning (Use Classes) (Amendment) Order 2005. A C3 use is defined as:

**“Use as a dwelling house whether or not as a sole or main residence; a) by a single person or persons living together as a family; b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).”**

The question of whether a change of use has occurred to a property is a matter of fact and degree and is subject to a number of collective considerations. In a case where multiple persons are sharing a property these considerations can include the origin of the tenancy, the extent to which facilities are shared, whether occupants are responsible for the whole house or just their rooms, the extent to which residents can lock their doors, the responsibility for filling vacancies, the allocation of rooms, the sharing of utility bills, the size of the establishment, the stability / transitory nature of the group and the mode of living.

Planning permission is therefore generally not required for up to 6 persons living together as a single household. It is expected in these situations that the occupants would share all communal facilities and have equal and free access to all internal parts and rooms of the house. As an example internal rooms may have locks on the inside of the doors to facilitate privacy but the rooms would not be expected to have locks on the outside of the bedroom doors as this discourages the use of the property by and as a single household. It has been held in appeal decisions, decided by the Planning Inspectorate, that it is not simply enough to demonstrate that all main facilities are shared but rather that there is a degree of communal living.

As stated the nature of the tenancy, the responsibility for filling vacancies and the transitory nature of the occupants are also other key factors in determining whether a change of use has occurred.

### **Alterations and Extensions**

The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) Order 2008\* gives consent for the owners of single

dwelling houses to make alterations and extensions to their property without the need to apply for planning permission. This legislation includes the provision for extensions and alterations to be made to the roof space (such as dormers and hip to gable extensions) and the ground floor of the property (such as conservatories and other extensions). Specific regulations cover the volume of additions to the roof space and the heights, sizes and form of additions to the ground floor. If an extension or alteration is made in conformance with these requirements then planning permission is not required for the alteration. There is nothing in planning legislation which would control the “use” of a particular room within a property provided that the overall principal use is as a single dwelling house within use class C3. For example in a C3 use the Council would have no control over the use of a conservatory as the properties principal “lounge” for instance.

\*The Town and Country Planning (General Permitted Development) (Amendment) Order 2008 came into force on 1<sup>st</sup> October 2008 and amends the Town and Country Planning (General Permitted Development) Order 1995. These two development orders are similar in what they permit to be added to a property although the regulations used to assess whether the development is “permitted” are different.

### **Investigation and Enforcement**

A material change of use requiring planning permission may be considered to have occurred if the property is occupied by more than 6 persons or if any evidence is presented or found to demonstrate that that the property is no longer in use as a single family dwelling.

Multiple occupation may be alleged to have a damaging impact on the surrounding area, with increased activity in terms of comings and goings and general noise and disturbance being the most common cause for complaint. Inadequate space or inadequate provision for parking, refuse and recycling collection and the collection of other domestic paraphernalia may also be factor contributing to complaints.

If the Council investigates and considers that a material change of use may have occurred then consideration could be given to taking formal enforcement action. Guidance from central government states that formal enforcement proceedings should only be considered where demonstrable harm is being caused and action should not simply be taken against purely “technical” breaches of planning regulations. Planning enforcement action is a discretionary power.

When investigating a particular property if the Council considers that the change of use may be acceptable in principle or that additional controls are simply needed to protect the amenities of the local area, then it is common for a full planning application to be invited for a change of use. In granting an application the Council as Local Planning Authority can impose

any number of planning conditions which can form and function as additional “controls” over a property or situation. This method can resolve issues to a satisfactory degree in some circumstances.

Where a property is being used in an unauthorised capacity as an HMO and the degree of problems being caused to the local area are substantial and harmful to the amenities of local residents then a Planning Enforcement Notice could be served. The notice could require a number of practical actions in order to remedy the breach of planning control (or problems caused) or the notice could require the complete cessation of the unauthorised use of the property and require its reversion back to a single dwelling house (use class C3.) The recipient of a Planning Enforcement Notice may exercise their right of appeal to the Planning Inspectorate. The Inspectorate will judge the situation and view the matter independently and may uphold, vary or quash the notice. If an enforcement notice is not complied with then an offence has been committed and the Council may prosecute in the Court in order to achieve a resolution to the matter.

Policy H08 of the Brighton and Hove Local Plan 2005 seeks to resist the loss of units of self-contained accommodation and development proposals would need to be compliant with this policy in an instance where a family dwelling house was being converted to an HMO.

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