

# **Guidance Note: Planning Rules for Houses in Multiple Occupation**

**(Effective from 11<sup>th</sup> March 2012 within the City of Nottingham)**

**March 2012**

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## 1. Purpose of this Guidance Note

1.1 This Guidance Note aims to:

- Summarise the new planning rules relating to Houses in Multiple Occupation (HMOs) applicable within the City of Nottingham from 11<sup>th</sup> March 2012;
- Explain what is meant by the term ‘House in Multiple Occupation’ (HMO), outline the different categories of HMO covered by planning regulations and clarify how they differ from family/single occupancy housing;
- Outline some of the typical circumstances that will or will not involve a requirement to obtain planning permission for shared occupancy housing from 11<sup>th</sup> March 2012; and
- Provide details of the procedures and policies associated with the application of the planning rules.

1.2 **This Note is intended to provide general guidance only. It does not constitute legal advice, nor does it seek to form a definitive statement of the law. The effect of planning rules will clearly vary according to the detailed and specific circumstances of each individual case and you are recommended to seek your own independent legal advice if you have any doubts over the application of these rules.**

## 2. Summary of HMO Planning Rule Changes

2.1 From 11<sup>th</sup> March 2012, the planning regulations for Houses in Multiple Occupation (HMOs) are changing within the City of Nottingham.

2.2 There has been a long established requirement to obtain planning permission for most large HMO proposals, that is, those residential properties with typically 7 or more unrelated occupiers that share basic amenities including washing, toilet and cooking facilities.

2.3 However, for the most part it has previously not been necessary to obtain planning permission in order to start using a smaller house or flat on a similar shared basis by up to 6 unrelated occupiers. In the absence of planning restrictions, many former family houses within Nottingham have been converted to shared rented accommodation, and parts of the city are now characterised by high concentrations of shared housing.

2.4 **Changes to local planning rules mean that from 11<sup>th</sup> March 2012 it will generally be necessary to obtain planning permission for changes of use from existing family/single occupancy dwellings to small HMOs with between 3 and 6 unrelated persons throughout the City of Nottingham. The rules concerning larger HMOs with 7 or more occupiers will be unaffected by the changes.**

### 3. Changes of Use and the Need for Planning Permission

- 3.1 National legislation groups some uses of land and buildings with similar characteristics into specific categories called 'Use Classes'. These are set out in national legislation called the Use Classes Order (UCO) (1). Changes between different uses within the same Use Class do not require planning permission.
- 3.2 The General Permitted Development Order (GPDO) (2) also permits some changes between different Use Classes without the need to obtain planning permission. However, the Government allows local councils in certain circumstances to decide to remove this automatic right and require planning permission for a specific change between Use Classes. In these cases the council will make an 'Article 4 Direction' that effectively overrides the relevant national provision within the GPDO, and will mean that an application for planning permission is required.
- 3.3 The rule changes which come into effect on 11<sup>th</sup> March 2012 are the result of an Article 4 Direction made by Nottingham City Council that applies to the whole of the Council's administrative area. The Executive Board report relating to the confirmation of this Direction can be viewed at: <http://open.nottinghamcity.gov.uk/comm/agenda.asp?CtteMeetID=4229> The Direction overrides the national provisions within the GPDO concerning conversions from single occupancy/family housing to small HMOs, and means that new planning arrangements will apply in Nottingham from this date.
- 3.4 Not all uses fall within one of the Use Classes set out in the UCO. Those uses which are not classified by the UCO are referred to as being 'sui generis' (of their own kind). No permitted changes are applicable to or from 'sui generis' uses, and so planning permission will therefore always be required when any 'material change of use' occurs to or from a 'sui generis' use.
- 3.5 Planning permission is only required for a change of use of a property where the change is 'material'. Each case is judged on its own merits in order to establish whether a change of use is material or not.

### 4. Types of Housing – 'Dwellinghouses' and 'Houses in Multiple Occupation (HMOs)'

- 4.1 For planning purposes, the term HMO is broadly used to refer to residential properties (which could include houses, flats or bed-sits) occupied by a group of unrelated people that share basic amenities such as washing and cooking facilities. HMOs are generally referred to as either 'small HMOs' or 'large HMOs'. The number of occupiers is not an automatic indicator as to which category an HMO will fall within but generally speaking 'small HMOs' tend to have up to 6 occupiers and 'large HMOs' 7 or above.

(1) The Town and Country Planning (Use Classes) Order 1987 (as amended)

(2) The Town and Country Planning (General Permitted Development) Order 1995 (as amended)  
<http://www.legislation.gov.uk/>

- 4.2 Until April 2010, the UCO did not include any specific classification covering HMOs. Up until that time shared properties with up to 6 occupiers were generally not distinguished from residential properties in family/single occupancy use, and fell within the **C3 Dwellinghouses** classification. However, to recognise the difference in character between these uses, in April 2010, the new **C4 House in Multiple Occupation Use Class** was introduced to the UCO which in broad terms covers HMOs with between 3 and 6 occupiers. HMOs not falling within the C4 Use Class are considered to be **'sui generis' HMOs**.
- 4.3 A simplified summary of these three categories of property is provided below. However, it should be noted that whilst in many cases the characteristics of a property will make classification fairly straightforward, sometimes more finely balanced judgements will be required and detailed exceptions may also apply in specific circumstances.
- 4.4 Further advice about clarifying the authorised use of a specific property can be obtained from the City Council's Development Management Service, via the contact details included at the end of this Guidance Note.

### **Class C3 Dwellinghouses (Family House/Single Household Occupancy)**

- 4.5 Most residential properties within Nottingham fall within the C3 Use Class which in basic terms covers self-contained dwellings (whether houses or flats) lived in by a single person, a couple or a family of any size that form a single household.
- 4.6 The C3 Use Class also includes occupation of a dwelling by up to 6 residents living together as a single household where care is provided for residents. However, in circumstances where occupiers (including staff) do not live together as a single household, it is likely that the use will be classed as a Residential Institution (Use Class C2) even where the property concerned only accommodates up to 6 people.
- 4.7 Other uses that may fall within the C3 Use Class include a small religious community of up to 6 people living together as a single household, and a homeowner living with up to two lodgers.

### **Class C4 Houses in Multiple Occupation (Small HMOs with no more than 6 Unrelated Occupiers)**

- 4.8 This Use Class typically covers properties (whether houses or flats) occupied by between 3 and 6 unrelated people as their only or main residence where basic amenities are shared but the occupiers live independently rather than like a family. Students or migrant workers who may not live in a property all year will still usually be considered as occupying the property as their main residence.
- 4.9 The C4 Use Class can also include a property comprising of bed-sits that previously fell outside the C3 Use Class and would formerly have been categorised as 'sui generis' uses.
- 4.10 There are a number of express exclusions from the C4 Use Class which include properties:
- Controlled or managed by public sector bodies such as local authority housing, registered social housing providers, and certain police, fire and health service authorities / bodies.

- Occupied by students which are managed by the educational establishment, for example, university halls of residence.
- Occupied by the owner(s) and up to two lodgers.
- Occupied by a religious community.

Some of the above will fall within the C3 Use Class and some will be 'sui generis' uses.

### **'Sui Generis' Uses (Large Shared HMOs with 7 or more occupiers)**

- 4.11 Residential properties occupied by more than 7 unrelated people sharing basic amenities have long been considered as separate and distinct uses that are not classified by the UCO. The recent introduction of the C4 Use Class has not affected the status of large 'sui generis' HMOs, which still fall outside any use class grouping or definition within the UCO.
- 4.12 Although shared properties with 7 or more occupiers are often informally grouped together under the heading of 'large HMOs', in practice each will have different characteristics and a classification that is unique to that property.

## **5. New Planning Permission Requirements for Houses in Multiple Occupation**

### **Changes of Use**

- 5.1 From 11<sup>th</sup> March 2012, proposed C4 HMOs, including those involving changes of use from C3 dwellings, will require planning permission. 'Sui generis' HMOs will continue to need planning permission, as has been the case for some time.
- 5.2 The rule changes are not retrospective and so **where authorised HMO use of a property has been established at 11<sup>th</sup> March 2012, planning permission will not ordinarily need to be obtained** to continue **the same use** after that date.
- 5.3 Whilst continuing the use of an authorised HMO will be permitted, a need for planning permission could, however, be triggered in the event of a material change in the character and intensity of a given HMO use over time. In some circumstances, for example, this could result from an increase in the number of occupiers. Having an established HMO use at 11<sup>th</sup> March 2012 therefore does not imply permission for future material changes to that use. However, in the case of a property with an established C4 HMO use at 11<sup>th</sup> March 2012, it is unlikely that an increase in the number of occupiers from 3 persons up to 6 persons will trigger a need for planning permission.
- 5.4 Where a property has been vacant for a brief period prior to 11<sup>th</sup> March 2012, the last authorised use of the property will usually be taken to be the established use of that property.

- 5.5 In circumstances where a property that has previously been occupied as a small HMO is occupied as a C3 dwelling (family house), planning permission will generally be required to revert back to a C4 HMO use after 11<sup>th</sup> March 2012.
- 5.6 Where an HMO use is unauthorised at 11<sup>th</sup> March 2012, it will remain unauthorised after that date and its status will be unaffected by the rule changes. This could, for example, apply in the case of a property that has been converted to a ‘sui generis’ HMO without planning permission before 11<sup>th</sup> March 2012.

### **Physical Alterations/Extensions**

- 5.7 Although most external physical alterations to HMOs will require planning permission, some C4 HMOs that involve shared use of a dwellinghouse (but not flats) may benefit from those permitted development rights relating to dwellinghouses that are set out in the GPDO. However, where extensions lead to an increase in the number of occupiers, then a need for planning permission may still be triggered due to a ‘material change of use’ occurring.

### **Fees for Planning Applications**

- 5.8 Planning applications for change of use from a C3 dwellinghouse to a C4 HMO require a fee of £462.

All other changes of use to HMOs will also attract a fee of £462.

- 5.9 As before, a fee of £206 will be payable for planning applications concerning physical alterations / extensions to C4 HMOs that exceed the permitted development limits set out in the GPDO and therefore require planning permission . Planning applications for physical alterations / extensions to larger HMOs and / or properties comprising bed-sits (which do not benefit from permitted development rights) will continue to be based on the amount of any additional floorspace generated, and will typically attract a fee of £234

(Above fees correct at time of drafting.)

### **Timescales for Deciding Planning Applications**

- 5.10 The Council aims to determine planning applications as quickly as possible, normally within 8 weeks from the receipt of a valid submission following the necessary consultations and assessment procedures, including those for change of use and / or physical alterations relating to HMOs. An extended period may sometimes be required in more complex cases.
- 5.11 Further advice about the need for planning permission, submission requirements and fees in relation to a specific proposal can be obtained from the City Council’s Development Management Service, via the contact details included at the end of this Guidance Note.



## 6. Policy Basis for Determining Planning Applications for Houses in Multiple Occupation (HMOs)

- 6.1 In those circumstances where planning permission for change of use to an HMO of any type is needed, **current planning policies** will be used. These comprise existing ‘saved’ policies within the **Nottingham Local Plan 2005** together with an accompanying **‘Building Balanced Communities’ Supplementary Planning Document 2007**. Applications associated with the alteration or enlargement of HMOs will also be considered with reference to these policies. The policies can be viewed via the links below.

Nottingham Local Plan 2005: <http://www.nottinghamcity.gov.uk/index.aspx?articleid=650>

Building Balanced Communities SPD: <http://www.nottinghamcity.gov.uk/index.aspx?articleid=714>

- 6.2 The City Council is currently preparing a Land and Planning Policies Development Plan Document (replacement Local Plan) that will update and ultimately replace the above policy basis for determining HMO and planning applications for development generally across the City. Details of this emerging document, which at this stage does not include draft policies, can be viewed via the following link below:

Land and Planning Policies (LAPP) DPD: <http://www.nottinghamcity.gov.uk/index.aspx?articleid=721>

## 7. Demonstrating HMO Status and Establishing Lawful Use

- 7.1 A majority of properties within Nottingham which now fall within the C4 HMO classification and many larger HMOs that have become established over time will not have formal planning permissions in place.
- 7.2 Where formal documentation is needed to demonstrate (or ‘establish’) the planning status of a property and what it may lawfully be used for (for example to confirm that the property has been used as a HMO for a substantial period of time, or to provide documentation to support a sale or mortgage process), an application can be submitted to the City Council seeking a ‘Certificate of Lawful Use’. Those submitting such an application are required by law to submit evidence relating to the use of the property which could, for example, include rent books, tenancy agreements, HMO licences, university or other accreditations and other business records.
- 7.3 Applications are determined on the basis of the evidence submitted. In line with Government requirements, an application fee is payable broadly in line with the fees that are charged for planning applications (referred to in section 5 above). Applications for a ‘Certificate of Lawful Use’ will therefore typically attract a fee of £462.

## 8. Planning Enforcement

- 8.1 The Planning Enforcement Section of the City Council’s Development Management Service investigates alleged breaches of planning control, including those involving HMOs. As in all potential enforcement cases, where a planning breach has occurred, the Council will assess the level of harm and make a judgement as to whether or not it is expedient to pursue

enforcement action, which will be dependent upon the circumstances of each individual case. Although the City Council aims to resolve planning breaches without formal proceedings, where this is not achieved, an Enforcement Notice may be served to address unauthorised uses and/or building works.

## 9. HMO Licensing Under The Housing Act 2004

- 9.1 The licensing rules for HMOs are applied separately from the planning regulations outlined in this document. Not all properties that are considered to be HMOs for planning purposes will require an HMO licence. Currently within Nottingham, an HMO licence is mandatory for HMOs that have 3 or more floors and 5 or more tenants, which could include some C4 HMOs or 'sui generis' HMOs. Additional licensing requirements for other HMOs may be introduced in the future.
- 9.2 Further information about licensing requirements for HMOs is available from the City Council's Environmental Health Team whose contact details are provided below.

## 10. Contact Details

### Planning

- 10.1 For further information on the need for planning permission, pre-application advice, application submissions and fees, please contact:

Planning  
 Nottingham City Council  
 LH Box 5 Loxley House  
 Station Street  
 Nottingham  
 NG2 3NG

Tel: 0115 8764447

Email: [planning@nottinghamcity.gov.uk](mailto:planning@nottinghamcity.gov.uk)

### Licensing

- 10.2 For further advice on HMO licensing requirements, please contact the City Council's Environmental Health Team (HMO Licensing):

Tel: 0115 8761166

Email: [environmental.health@nottinghamcity.gov.uk](mailto:environmental.health@nottinghamcity.gov.uk)

Web Link: <http://www.nottinghamcity.gov.uk/index.aspx?articleid=8157>

An electronic version of this Guidance Note can be downloaded via the link below:

<http://www.nottinghamcity.gov.uk/index.aspx?articleid=13867>