

HOUSES IN MULTIPLE OCCUPATION BRIEFING NOTE JANUARY 2011

BACKGROUND

The Use Classes Order¹ puts uses of land and buildings into various categories known as 'Use Classes'. In April 2010 the Use Classes Order was amended and a new use class (C4 Houses in Multiple Occupation (HiMO)) was created. The definition has been based on that used in the Housing Act.

This is the first time that HiMOs have been explicitly covered by planning law. Before this, a decision on whether or not a HiMO was or was not to be treated as “dwelling house” for planning purposes was guided by case law (court decisions) based on factors such as the extent of sharing and lockable rooms.

If it was decided a HiMO was not a “dwelling-house” then it would be treated as “sui generis” (in a class of its own) and so require planning permission. Most of the identified HiMOs in Milton Keynes to date were held not to be “dwelling-houses” but sui generis HiMOs and so required planning permission. Elsewhere, particularly in university towns with lots of student accommodation, shared properties where students tended to live as a single household were treated as “dwelling-houses” and so did not require planning permission. The position now is explained further below.

The General Permitted Development Order² (GPDO) grants automatic planning permission for certain categories of development, without the requirement of submitting a planning application. This is known as ‘permitted development’ and includes cases where a change from one Use Class to another does not require planning permission. In October 2010, the GPDO was amended to include the change of use from a Use Class C3 ‘dwelling house’ to a Use Class C4 ‘HiMO’ in the categories of permitted development, removing the need to apply for planning permission from the Council

At the same time, the Government stated that where an authority wanted to retain planning control by maintaining the requirement to submit a planning application, they could use existing powers to do so. These existing powers are called Article 4 Directions. Article 4 Directions can remove permitted development rights. They are most commonly used in Conservation Areas to require planning permission from the Council for forms of development in order to maintain control over the quality of the built environment.

In the case of HiMOs, an Article 4 Direction can be used to remove the permitted development right to change from Use Class C3 to Use Class C4. The removal of permitted development rights in any area covered by an Article 4 Direction would

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

² Town and Country Planning (General Permitted Development) Order 1995 as amended

mean that, as before October last year, planning permission granted by the Council would be required to change of use from C3 to C4.

Milton Keynes Council has made an application for judicial review (JR) of the Government's decision to make the October changes, seeking a Court Order that they be quashed. An Oral Hearing is set for 20th January where the Court will decide whether to grant leave to apply for JR. However, as a precautionary measure, should the JR not succeed, the Council decided in December 2010 to introduce two Article 4 Directions.

The first was a non-immediate Direction which was made on the 22 December 2010. This provides 12 months notice before it comes into effect on the 23 December 2011 and covers the entire borough of Milton Keynes.

The second Article 4 Direction was made on the 29 December 2010. This direction covers only the urban area of Milton Keynes (so excludes the wards of Hanslope Park, Olney, Sherington and Danesborough) and came into effect on the 30 December 2010.

The second Article 4 Direction only applies to the city. The city is where the greatest concentration of HiMOs are found and so there is a greater justification for introducing an Article 4 Direction with immediate effect as opposed to the rural area where the number of HiMOs is lower. However, the rural area will be covered by the non-immediate Article 4 Direction when it comes into effect in December 2011.

THE CHANGES IN MORE DETAIL

The amendments to the Uses classes Order created a Use Class for HiMOs and altered the definition of Use Class C3 dwellinghouse:

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

WHAT IS A 'HOUSE IN MULTIPLE OCCUPATION'?

The amendments to the Use Classes Order essentially mean that for **planning purposes** a HiMO can now be defined in two ways:

1) Use Class C4 HiMO: a property, which is occupied by 3-6 *unrelated* individuals, who share one or more *basic amenities*.

unrelated - means that the occupants do not have a relationship by blood, marriage or co-habitation.

basic amenities – this includes a kitchens, bathrooms and toilets.

2) Larger HiMOs: Properties occupied by *more* than 6 people would not sit in Use Class C4 and may therefore be **Sui Generis** ('in a class of its own), for which any change of use requires planning permission. It must be noted that a property does not automatically become a Sui Generis use just because it has more than 6 occupants. A change of use has to be "material" and it is possible that individual circumstances may mean that a HiMO with, for example, 7 people could be assessed as **not** being materially different from a 6 person HiMO, in which case a **material change of use** has not occurred and planning permission would not be required.

WHEN IS PLANNING PERMISSION FROM THE COUNCIL REQUIRED?

Planning permission from the Council for the change of use to a HiMO is required when:

- Converting a dwellinghouse (C3) or a HiMO falling under a Use Class C4 to a Sui Generis HiMO (a HiMO with more than 6 people).
- Converting a non-residential building to a C4 HiMO (between 3 and 6 people) or to a Sui Generis HiMO (with more than 6 people).

Because Milton Keynes has introduced the two Article 4 Directions withdrawing the permitted development right for a change of use to a Use Class C4 HiMO, planning permission from the Council is also required when:

- Converting a dwelling house (C3) or non residential property to a Use Class(C4) HiMO in the following areas:
 - The urban area (whole of the Borough excluding the wards of Hanslope Park, Olney, Sherington and Danesborough). This was introduced on the **30 December 2010**.
 - The whole borough (including the wards of Hanslope Park, Olney, Sherington and Danesborough). This will apply from the **23 December 2011**.

Exceptions

There are some exceptions such as where an owner is living with no more than 2 lodgers or if no more than six residents are living together as a single household and receiving care.

It should also be noted that to change the use of a C4 HMO into a single dwellinghouse does not require planning permission from the Council, unless the permitted development rights to do so have been removed. Permission will be required from the Council to change a sui generis HiMO that is authorised in planning terms into a single dwellinghouse.

HOW DO THESE CHANGES AFFECT PLANNING POLICY?

Current policies are unaffected by the recent changes. The relevant local planning policies are:

- Adopted Local Plan Policy H10: This will remain the relevant policy for determining planning applications.
- Emerging Core Strategy Policy CS10: The policy provides a strategic approach to housing and will be supplemented by the new SPD 'Houses in Multiple Occupation' and a future Development Management Development Plan Document.
- New Supplementary Planning Document Houses in Multiple Occupation: This will be used to provide greater detail to Policy H10 of the adopted Local Plan and CS10 of the Core Strategy.

HiMO LICENSING

Planning is not the only legislation that applies to HiMOs. Where applicable, they must also comply with the requirements of the Housing Act. Under the provisions of the Housing Act there is a mandatory licensing scheme for HiMOs. A licence is required if:

- A property is three or more storeys and occupied by three or more people forming two or more households sharing some basic amenities.

It should be noted that the mandatory licensing scheme is separate from planning. A HiMO may need a licence but not planning permission, it may need planning permission but not a licence or it may need both a licence and planning permission. The requirements for a licence have not been altered by the changes to the planning legislation.

Regardless of whether a property is classed as a HiMO or not all properties must meet certain minimum standards to ensure they are safe and habitable. This is defined through the Housing Health and Safety Rating System (HHSRS). This ensures that homes don't have any serious category 1 hazards and enables the Council, if deemed necessary, to take action against landlords whose properties do not comply with legislative requirements.

The Council is currently investigating the possibility of introducing additional licensing for HiMOs in Milton Keynes. This could lead to all HiMOs requiring a

licence. However, there are a number of legal and procedural steps that must be followed before any additional licensing scheme can be introduced and the implications of additional licensing must be fully considered by the Council.

FURTHER INFORMATION

Queries regarding planning permission:

planning.enquiries@milton-keynes.gov.uk

Tel: 01908 252358

Queries regarding the Article 4 Directions:

himo.consultation@milton-keynes.gov.uk

Tel: 01908 254231

Queries regarding HiMO licensing:

privatesectorhousing@milton-keynes.gov.uk

Tel: 01908 253271 or 252664

Further information is also available on the Council website:

www.milton-keynes.gov.uk