

Changes to Planning Legislation

- 6th April - Introduced Use Class C4 (HMO up to 6 occupants) Tightened the definition of a single household within Use Class C3 (dwellinghouse). Occupants must be related to claim C3 use.
- 1st October – Amended the GPDO to allow conversion from C3 to C4 without the need for an application.

In effect - loss of planning control for HMOs (up to 6 occupants)

Legal Challenge.

- Application for Judicial Review Lodged with High Court.
- Claimants – Milton Keynes Council, Oxford and Newcastle City Councils.
- Witness statements from Charnworth, Nottingham, Torbay, Leeds, Bristol and the National Organisation of Residents Associations.
- Initial Oral Hearing Set for 20th January 2011.

Basis of the Legal Claim

The Secretary of State was not in possession of the most basic information, prior to making the decision to proceed.

- 1) He did not know how many HMOs there are, how many new ones are likely to set up and where they would set up. (therefore he didn't know the size of the problem was he is trying to solve)
- 2) He did not know which LPAs would introduce A4Ds.
- 3) He did not consider any amendments which would have made the legislation more effective.

The SoS failed to undertake a fair and lawful consultation. The public consultation undertaken by the Defendant failed to satisfy the established principles set out in Ex parte Coughlan [2001] QB 213, paragraph 108 (Lord Woolf MR).

We are therefore advising landlords

- The GPDO as amended was apparent law on 1st October and this granted planning permission for a property to be used as an HMO up to 6 people.
- However we and other councils believe the amendment is illegal, and a Court ruling will determine this.
- Any expense that property owners incur as a result of acting on this apparent permitted right in relation to a change of use from C3 to C4 in the meantime, is entirely at their own risk.
- We believe the door is still open to the possibility of quashing the legislation completely following a JR hearing hopefully.

Possible Outcomes

- JR succeeds – Planning control is maintained, all HMOs will require planning permission.
- JR fails – The only Planning control of HMOs (up to 6) would be through the introduction of Article 4 Directions to withdraw the Permitted Development right.

Because of the risk of compensation claims, it is likely that Article 4 Directions will only be introduced with 12 months notice.

Article 4 Directions

- With 12 Months notice - LPA is satisfied that it is expedient that this type of development should not be carried out unless planning permission is granted for it.
- With Immediate Effect – LPA considers that the development would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. (Risk of Compensation)

Evidence for an Article 4 Direction

Noise and Anti social behaviour – Env. Health Records

Imbalanced Communities – PPS1 & 3, Housing Surveys,
Council tax records, School Places, Local Shops.

Physical Environment – Waste department, Residents
Assoc., Neighbourhood groups.

Parking – Parking surveys, Emergency Services, SPD.

Crime – Police stats.

Some LPAs looking at the use Article 4 Directions

- Served – Manchester, Newcastle, Portsmouth
- About to Serve – Sheffield, Milton Keynes, Exeter
- Working Towards – Haringey and many others

HMO Planning Forum 15th Dec 2010

Once Planning Power is restored new HMO applications must be assessed against Local Planning Policies.

Existing MK Policies consider the following.

- **Effective measures are proposed to minimise the effects of noise and disturbance**
- **Off street parking and manoeuvring space is provided to meet the Council's standards or, if on-street parking is necessary, it would not result in unacceptable congestion in the surrounding area.**
- **Adequate outdoor space is available for bin storage and a drying area**
- **The proposal would not adversely affect the character of the surrounding area or lead to an unacceptable concentration of flats or houses in multiple occupation within the area. (WHAT IS UNACCEPTABLE)**

The End

Any Questions