

## HMO FAQs

### BACKGROUND

#### 1. Background to Use Classes Order

For planning purposes, various uses of land are classified into groups set out in the Use Classes Order 1987, although some uses are outside any Use Class and are referred to as sui generis (a use of its own).

On 6th April 2010, the Government brought in legislation introducing a new Use Class, C4, for small houses in multiple occupation (HMOs) occupied as their main residence by between 3 and 6 unrelated persons. Where a property is occupied by a single person or a family, and in certain other circumstances, it will generally still fall within Use Class C3.

Use Class	Definition
C3	Dwellinghouse
C3(a)	Use by a single person or family and in limited other circumstances (as defined in Housing Act above and related legislation)
C3 (b)	Up to 6 people living together as single household <b>and</b> receiving care
C3 (c)	Up to 6 people living together as single household that don't fall into C4 (e.g. small religious community, home owner + up to two lodgers)
C4 Small HMO	Shared house occupied by 3 – 6 unrelated individuals sharing basic amenities
<i>Sui generis</i> i.e. a class of its own	Large HMO (more than 6 unrelated people living together)

#### 2. What is the current position with regards to HMOs and Planning?

On the 17 June 2010, the Government announced that they would be handing over more power to councils so they can manage high concentrations of shared housing in their area, without putting off landlords from renting the homes people need.

On 7 September 2010, the Government clarified how this would be achieved stating that,

*'...2. The definition of a small HMO (the C4 use class) will remain and permitted development rights will be extended to allow all changes between the C4 and C3 classes without the need for planning applications. In areas where there is a need to control HMO development, local authorities will be able to use an Article 4 direction to remove these permitted development rights and require planning applications for such changes of use.*

*3. These proposals mean that any change of use between dwelling houses and small HMOs would be able to happen without planning permission unless the local council believes there is problem with such development in a particular area. In these areas they will be able to use article 4 powers to require planning permission.'*

More information on the Minister's announcement can be found at <https://webarchive.nationalarchives.gov.uk/20120919234414/http://www.communities.gov.uk/news/housing/1708224>

These changes came into effect on 1 October 2010.

Subsequently an Article 4 Direction has been confirmed for the whole of Waltham Forest borough which came into force on **16<sup>th</sup> September 2014** removing these permitted development rights for changes of use from C3 to C4. As such, from 16 September 2014, a change of use of a building in any use (including an existing dwellinghouse) to a small HMO within use class C4 will need an express grant of planning permission. A change of use from any use to a large HMO will also require an express grant of permission.

### **GENERAL QUESTIONS AND ANSWERS FOR LANDLORDS**

#### **3. I let out a property. Is it an HMO?**

If you let a property, which is occupied as their main residence by 3-6 unrelated individuals, who share one or more basic amenities, then it is likely to be an HMO under the new Use Class C4: Houses in Multiple Occupation. If there are more than 6, it is likely to be classed as a 'large HMO' (sui generis) which will be outside Use Class C4. Planning permission will be required for change of use of existing dwellinghouses to C4 HMOs and Sui Generis large HMOs.

#### **4. What do you mean by "unrelated"?**

'Unrelated' means that the occupants do not have a relationship by blood, marriage or cohabitation. The position of live-in staff is referred to below.

S258 of the Housing Act 2004 sets out definitions of related:

- (a) "couple" means two persons who are married to, or civil partners of, each other or live together as if they were a married couple or civil partners;
- (b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
- (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
- (d) the stepchild of a person shall be treated as his child.

#### **5. What do you mean by "basic amenities"?**

'Basic amenities' means a toilet, personal washing facilities, or cooking facilities.

#### **6. When do I need planning permission for a HMO in Waltham Forest?**

A change of use from **any** existing use (including dwellinghouses) to either a small scale HMO (Use Class C4) or a large scale HMO (sui generis) will always require planning permission.

#### **7. What if I only let to students and this is not their only residence?**

Students, as well as migrants or asylum seekers, who do not occupy the property all year will notwithstanding be considered as occupying it as their main residence. Therefore, this will fall within Use Class C4 (if there are no more than 6 occupants) or Sui Generis HMO (usually if there are more than 6 occupants).

It is the Council's starting point that 3 to 6 unrelated people sharing a house would constitute a Use Class C4 HMO. However, it may be possible, based on the very specific circumstances of the individual case that 3 to 6 unrelated people living together may not give rise to a C4 use but could be considered as a

giving rise to a use in Use Class C3(c) or a sui generis use. You may wish to seek advice from the Planning Department on the specific circumstances of your HMO.

**8. I have live-in domestic staff that do not pay rent. Is this an HMO?**

The law states that to be an HMO, rent or other consideration is payable by at least one tenant. Therefore, if a person is provided with accommodation as part of their employment, this may give rise to an HMO depending on the nature of their employment.

Certain live-in domestic employees will be considered to be living as part of a single household where they are living with their employer; in this situation the use is likely to fall within Use Class C3(a).

**9. What if I share my property with a lodger?**

If you are a resident owner (freehold or long leaseholder (where the lease was granted for a term of more than 21 years) living with no more than 2 lodgers, the property will not be considered to be an HMO but will be a dwellinghouse within Use Class C3.

**10. What if I provide care to residents?**

If no more than six residents are living together as a single household and receiving care, then the use is likely to be C3(b) rather than C4. However, you may wish to seek further advice from the Planning Department.

**11. What if I want to change an HMO back into a single dwellinghouse?**

To change the use of a small C4 HMO into a single dwellinghouse does not require planning permission. Permission will be required to change a sui generis HMO that is authorised in planning terms into a single dwellinghouse

**GOING FORWARD**

**12. If I own a HMO now, what should I do?**

The legislation is not retrospective. If your property is being used without planning permission as an HMO (either small or large) and is still in the same use, it may be in your interests to apply for a Lawful Development Certificate, in order to regularise the existing situation, particularly given the Council's HMO licensing scheme (see below).

The process for applying for a Lawful Development Certificate is set out in more detail below. For large HMOs you will need to prove it has been in use for 10 years. For small HMOs the time period is different because of the previous permitted development rights and the Council's article 4 Direction.

After 1 October 2010, permitted development rights were extended to allow all changes between the C4 and C3 classes to occur without the need for planning applications, until the Borough wide Article 4 direction removed these permitted development rights on 16<sup>th</sup> September 2014 and then required a planning applications for such changes of use. The whole Borough is covered by the Article 4 direction. Prior to 16<sup>th</sup> September 2014 you did not need planning permission to change the use from single family dwelling to a small-scale HMO (C4). Therefore where a change of use to C4 has occurred before 16 September 2014 and has continued this may be confirmed by an LDC.

**13. What happens if I began to use a single dwellinghouse as a small-scale HMO after 16<sup>th</sup> September 2014 but have not applied for planning permission?**

An Article 4 Direction has been confirmed for the whole of Waltham Forest borough which came into force on 16<sup>th</sup> September 2014 removing these permitted development rights for changes of use from C3 to C4. As such, from 16 September 2014, a change of use of a building (including an existing dwellinghouse) from use class C3 to a small HMO within use class C4 will need an express grant of planning permission. Therefore if you have changed the use of your property from a single family dwellinghouse to a Small Scale C4 Use Class HMO since 16 September 2014 or to a Large Scale HMO (Sui Generis Use Class) within the last 10 years you will not be able to apply for a Lawful Development Certificate and will need to seek retrospective planning consent for such a change and submit an full planning application for the change of use.

#### **14. What were the changes to planning legislation in terms of HMOs?**

##### CLASS C4

- A new planning use class was introduced in 2010 – ‘Use Class C4: Houses in Multiple Occupation’ which includes small shared dwellinghouses occupied as their main residence by between 3 and 6 unrelated individuals who share basic amenities.
- To be classed as an HMO, a property does not need to be physically converted or adapted in any way.

##### CLASS C3

The definition of Use Class C3: Dwellinghouses has also been amended as follows: 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 (as defined in the Housing Act 2005 e.g. formed by a family, defined as a couple whether married or not, persons related to one other with members of the family of one of the couple to be treated as members of the family of the other);
- 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 Use Class C4).

##### PLEASE NOTE

Where a residential use does not fall into either the C3 or C4 Use classes, planning permission may be required.

#### **15. Do existing planning policies cover these changes to legislation?**

Adopted Local Plan Development Management Plan Policy DM6 - Dwelling Conversions, Housing in Multiple Occupation and Buildings in Multiple Residential Occupation and Local Plan Core Strategy Policy C2 (Housing quality and choice) seek to ensure a continuous supply of land and homes to meet a range of housing needs including affordable housing, family housing and accommodation needs of specific groups within the community, whilst offering a range of housing choices which are of high quality in the right places.

In order to achieve this the Council will seek to provide a range of homes in terms of size and tenure in new development and protect the existing housing stock. A key objective of Waltham Forest's Sustainable Community Strategy (2008), is the specific commitment to prevent the loss of larger family-sized homes into smaller-sized homes in order to maintain a distinct housing offer in the borough. The Council will seek to protect the existing housing stock in order to ensure there are opportunities for family living in the borough.

The Council have considered appropriate measures to protect the existing family housing stock, including an Article 4 Direction which removes 'permitted development rights' involving a change of use from a dwelling house (class C3) to a House in Multiple Occupation where between three and six unrelated people share a kitchen and/or a bathroom (class C4).

For the purpose of clarity an HMO is defined in Policy DM6 of the adopted Development Management Policies 2013 as a house or flat occupied as the main residence by between 3 and 6 unrelated individuals who share basic amenities is considered a small HMO (Use Class C4), and dwellinghouses occupied by more than 6 individuals are classified as large HMOs (Sui Generis).

#### **DM6 - Dwelling Conversions, HMOs and Buildings in Multiple Residential Occupation**

In terms of dwelling conversions, the Council will not permit the conversion of a larger home(s) to smaller self-contained homes (C3), Houses in Multiple Occupation (C4) and Buildings in Multiple Residential Occupation (Sui Generis) where the proposed development fails to comply with one of the requirements below:

- i) It has a gross original internal floor space of less than 124sqm (as originally built)
- ii) It is located within a 'Restricted Dwelling Conversion, HMO and Building in Multiple Residential Occupation Ward'. (14 wards in the south of the borough)
- iii) It results in the over concentration of conversions in one street (an overconcentration is generally defined as in excess of 50% of properties, however the particular circumstances of each street will be assessed for proportions close to this figure)
- iv) Appropriate parking spaces cannot be provided off street

Conversions of homes that have a gross original internal floorspace of more than 124 sqm (and which are outside 'Restricted Dwelling Conversions, HMOs and Buildings in Multiple Residential Occupation Wards') to smaller self contained homes (C3), Houses in Multiple Occupation (C4) and Buildings in Multiple Residential Occupation (Sui Generis) will only be permitted where:

- i) They meet the minimum space standards in tables 7.1 and 7.2 and tables 8.1, 8.2 and 8.3 in DM7 where applicable;
- ii) The conversion to smaller homes (C3) provides at least one larger family sized home of 74sqm (3 bed plus) on the ground floor with access to a dedicated rear garden of the converted home;
- iii) It is close to public transport, shops and services;
- iv) It respects and reflects the original architecture;
- v) It provides high quality doors and windows;
- vi) It is well insulated from noise;
- vii) It provides good refuse and storage facilities.

<http://static.walthamforest.gov.uk/sp/Documents/DMPolicies%20Adoption%20Version%20October%202013.pdf>

Policy 32 – “Housing in Multiple Occupation and Conversions” of the emerging Waltham Forest Draft Local Plan (July 2019) takes into account the new legislation. As the draft plan progresses through its various statutory processes it will gain more weight in determining planning applications. The Planning Department is looking to produce an updated FAQs over the next few months to help provide some clarity and guidance for applicants, developers, owners and those living in HMOs.

#### **Policy 32 Housing in Multiple Occupation (HMO) and Conversions**

A. The conversion of a larger home(s) to smaller self contained homes (C3), Houses in Multiple Occupation (C4) and Buildings in Multiple Residential Occupation (Sui Generis) will not be allowed where:

- i) it has a gross original internal floor space of less than 124sqm;

ii) it will result in the over concentration of conversions in one street or in the wider local area;

B. Conversions of homes that have a gross original internal floorspace of more than 124 sqm will only be permitted where:

- i) Provides at least one larger family sized home of 74sqm (3 bed plus)
- ii) It is of high quality design standard
- iii) it is car free iv. adequate cycle parking is provided on site
- v) it is close to public transport (PTAL 3 and above)
- vi) it provides good refuse and storage facilities
- vii) it includes appropriate outdoor or amenity space

C. Conversions of homes that have a gross original internal floorspace of more than 124 sqm into HMOs will only be permitted where:

- i) it is car free
- ii) adequate cycle parking is provided on site
- iii) it is close to public transport (PTAL 3 and above)
- iv) it provides good refuse and storage facilities
- v) it includes appropriate outdoor or amenity space.

[https://walthamforest.gov.uk/sites/default/files/Final%20Draft%20Local%20Plan\\_July2019\\_Web%20optimised\\_Part1.pdf](https://walthamforest.gov.uk/sites/default/files/Final%20Draft%20Local%20Plan_July2019_Web%20optimised_Part1.pdf)

#### **16. What if I am unsure whether my property is authorised in planning terms or not as an HMO?**

In order to provide a definitive legal answer as to whether an existing use as an HMO is authorised or not, an application for a Certificate of Lawful Existing Use would need to be submitted. The fee for this would be the same as if it were a planning application being submitted (currently £462).

The Council's adopted local validation requirements list is a technical document that explains what information you need to include with your planning application. For Certificate of Lawfulness applications, the checklist sets out that the following information is required in order for your application to be considered as valid:

Completed Application Form

The Appropriate Fee (currently £462)

Location Plan

Existing and Proposed Elevations (at a 1:50 or 1:100 scale) - Required for applications involving alterations to the external appearance of the building.

Existing and Proposed Floor Plans including roof plan (at a 1:50 or 1:100 scale)

Existing and Proposed Sections (at a 1:50 or 1:100 scale) - Required for applications involving alterations to the external appearance of the building.

Photographs/CGIs

Supporting Information for existing uses/developments – this information could include:

- Dated utility bills per unit
- Confirmation from utility service provider indicating the installation dates for meters per unit
- Receipts for the building works, materials or labour in association with the conversion.
- Receipts for facilities, kitchens, white goods and bathrooms
- Tenancy agreements
- Managing agents' agreements
- Council Tax bills per unit
- Building Regulation certificates
- Electoral Register details per unit
- Land registry
- Tax return details, bank statements
- Landlords Insurance

#### **17. How is an application for a lawful development certificate determined?**

As set out in the National Planning Practice Guidance <https://www.gov.uk/guidance/lawful-development-certificates> a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

It is up to the person applying for the Lawful Development Certificate for an existing use to show the proper evidence. If the local planning authority has evidence, or reasonable grounds to believe that the applicants claim is not sufficiently demonstrated, it may refuse the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

#### **18. Do I need planning permission and a license for my C4 / Sui Generis HMO?**

There is a difference between the law concerning HMO licensing and planning law as it applies to HMOs. Both set out to achieve different aims.

Whilst licensing law is there primarily to protect the health, safety and welfare of the occupants of an HMO, planning legislation is intended to control the use of property in the wider public interest.

Having an HMO licence does not mean that planning permission is not required or that it would automatically be granted. Likewise having planning permission to use a property as an HMO does not mean that an HMO licence is not required or that it would automatically be granted.

In determining a property licence application, the Council will normally take into account the planning status of the building. In situations where an HMO does not have planning permission for that use, and it is not possible to demonstrate an established HMO use, the Council will usually grant a reduced term licence or refuse a licence outright.

Most HMOs in Waltham Forest will require a property licence under one of its licensing schemes

For more information on licencing, please contact property licencing:

**Private Sector Housing and Licensing**

**Email:** [propertylicensing@walthamforest.gov.uk](mailto:propertylicensing@walthamforest.gov.uk)

**Telephone:** 020 8496 4949

Or visit <https://www.walthamforest.gov.uk/content/houses-multiple-occupation-0>