

**Houses in Multiple Occupation in Bath:  
Frequently Asked Questions**

**July 2013**

# 1 General FAQs

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## **What is an HMO?**

A House in Multiple Occupation or HMO is defined by the 2004 Housing Act as a house or flat that is occupied by 3 or more people from 2 or more households, who share basic amenities such as a bathroom, toilet or cooking facilities.

There is a basic flow diagram setting out the key exclusions and definitions on page 6 of the draft SPD.

## **Is a house accommodating lodgers considered to be a HMO?**

Properties that contain the owner occupier (and his / her family, including unmarried couples) and up to two lodgers, are NOT described as an HMO. However, if you are sub-letting rooms in a rented house, this will count as an HMO. An owner occupier, their family and 3 or more lodgers will be a HMO.

## **What about co-habiting couples?**

Co-habiting couples are considered to be family, regardless of gender.

In addition, half-blood relatives and step-relatives are considered family for the purposes of defining an HMO.

## **Do halls of residence count as an HMO?**

No, properties occupied by students which are managed by an educational establishment (listed in the regulations) are excluded from C4 classification and are not considered to be HMOs. Private providers of accommodation are exempt if they comply with an approved code of practice. Providers and properties in Bath covered by these exemptions include:

- University of Bath
- Bath Spa University
- Unite (Charlton Court and Waterside Court)
- Bath Academy (Oxford Hotel and Walcot Hostel)

However, independent housing associated with educational establishments, but not managed by them may be considered to be HMOs (e.g. private sector 1<sup>st</sup> year accommodation with Bath Spa University).

## **Why introduce both additional licensing and planning controls?**

The two have different aims; licensing deals with quality of existing properties, whilst planning can control the number and location of future HMOs.

Additional licensing aims to improve the condition and management of properties, which should provide benefit both for existing HMO residents and more widely, inhabitants of an area.

The proposed planning controls will help to prevent any negative effects of an unbalanced housing provision across the city; creating a more mixed housing provision across different neighbourhoods.

## **How much will the creation and implementation of the Article 4 Direction, HMO SPD and the Additional Licensing cost B&NES?**

It is difficult to predict exact costs, as this relates to changes in the wider housing market as well. Work done early in 2012 estimated that set up costs for planning and housing teams within the Council would amount to approximately £58,000.

Costs for the Housing team will be met through charging landlords for licenses. It is expected that ongoing costs for the Planning team will be around £31,000 recurring p.a. (not recoupable).

## **What are the equalities impacts of these proposed changes?**

Equalities Impact Assessments have been carried out for the proposals, and it has been found that most impacts can be mitigated. Particular potential negative impacts and proposed mitigations are set out in the table below.

<b>Potential impact</b>	<b>Proposed mitigation</b>
Equalities groups who live in HMOs forced to move, due to rising prices in central locations.	Ensure good levels of amenity and public transport in the alternative areas where people may end up living
Potential feelings of isolation for equalities groups who live in HMOs living in less accessible areas	Information provision, e.g. on transport access, local amenities, safety measures, and support helplines
Potential for feeling that HMOs are unwelcome within the city and for greater numbers of HMOs to appear in new parts of the city or surrounding area.	Monitoring of impacts of SPD and Article 4 Direction
Licensing may push up rental prices if landlords see the opportunity to pass on costs to tenants, (will affect those with lower salaries and students).	Further consultation on the costs to consider how this potential impact can be minimised.
May make those outside the areas where additional licensing is proposed more vulnerable to lower standards in shared housing (this may impact adversely on a number of equality groups).	On-going monitoring and consideration as to whether the scheme should be extended.

## **What approach have other Councils taken?**

Numerous other Councils across the UK have taken measures to address both the quantity and distribution of HMOs.

For example, Oxford City Council has introduced additional licensing for all HMOs across the city. In addition, they have an Article 4 Direction in place, and a policy setting a threshold of 20% along a street.

Oxford probably has the most comprehensive additional licensing scheme in the country; but other cities, such as Cardiff, have introduced an additional licensing scheme for some types of HMO, or in some geographical areas.

Regarding Article 4 Directions, the threshold policy is fast becoming the most prevalent approach, with Councils looking at the context of their local area to determine a threshold of 10, 20, 25 or 30%.

There are different methods used, at different scales to apply the threshold approach. Exeter, for example, set a 20% threshold in order to determine its Article 4 Direction area, and most applications within this area will be turned down. York takes a similar two staged approach to that proposed in Bath.

In determining the most appropriate methodology for Bath, consideration was given to a number of factors, including;

- Providing some level of certainty and clarity for applicants
- Ensuring the approach would be easy to implement alongside the Council's existing processes and procedures.

## 2 Planning and SPD FAQs

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### **Why has an Article 4 Direction being “made” and a Supplementary Planning Document (SPD) introduced?**

Houses in Multiple Occupation (HMOs) are a much needed element of the housing market. However, large concentrations of HMOs in a small area can impact on the character of a residential area and give rise to an inappropriate mix of residents. It is hoped that the Article 4 Direction will help to achieve an appropriately balanced housing mix across the city of Bath.

The Article 4 Direction will trigger a requirement for planning application when someone wants to convert a family home to an HMO, but the real impacts will be determined in the policy introduced via the Supplementary Planning Document. This will determine the basis for decisions on the planning applications triggered and the streets that will be affected.

### **Why hasn't B&NES done this before? What's changed?**

It has not always been possible. In 2010 an amendment to the Use Class Order introduced a definition of a small-scale house in multiple occupation into the planning system dividing the old Use Class C3 into two separate Use Classes; C3 (dwellinghouses) and C4 (houses in multiple occupation). A change of use from a residential property falling under C3 of the use class order to a C4 use constitutes permitted development under national legislation, meaning no planning permission is normally required. However, an Article 4 Direction can be put in place by a Local Planning Authority to remove permitted development rights in particular areas, triggering planning applications.

### **What are Use Classes?**

A Use Class defines a building type in planning terms. Use Class C3 is a family dwelling.

HMOs are classified by the Use Class Order as;

- Class C4 – accommodating between 3 and 6 residents
- Sui Generis – accommodating more than 6 residents

### **Why is a threshold approach proposed to determine HMO applications?**

Evidence shows that HMOs are currently more concentrated in certain areas of the city. A threshold approach has been selected in order to achieve an appropriately balanced housing mix across the city of Bath.

A threshold approach identifies specific concentrations of HMOs and applies a restrictive tipping point beyond which the character of a community can be perceived to shift from balanced to unbalanced.

### **Why was the threshold set at 25%?**

The baseline data suggests that there are already some parts of Bath where the concentration of HMOs is above this level. However, this proposed threshold reflects the fact that not all of the housing stock in Bath is suitable for conversion

to HMOs, and there is a need to support the sections of the population reliant on this form of housing.

### **When did this come into force?**

Planning applications were only be required after the Article 4 Direction came into force on 1<sup>st</sup> July 2013.

### **Will this apply retrospectively?**

The Article 4 Direction will not apply retrospectively. Therefore HMOs in Bath that were in place before 1<sup>st</sup> July 2013 are not affected. However, the licencing changes will be retrospective and cover all new and existing HMOs.

### **Will this affect larger HMOs (with more than 6 people)?**

Planning permission is already required for larger HMOs (6+ or more unrelated people). However, the introduction of the Supplementary Planning Document provides the basis for making the decision as to whether or not a change of use should be permitted.

### **Why have the Article 4 Direction and the SPD been applied across the whole of Bath?**

Bath is a relatively small, walkable city, and it was felt that a smaller area could lead to a simple displacement of HMOs to an immediately adjacent area, rather than producing more of a balance across the whole city, as this approach allows.

### **Why has a two stage approach been proposed in the SPD?**

A two stage approach has been decided upon following consultation with various stakeholders in order to ensure an efficient and fair application process. The two stages have different purposes; stage 1 helps to provide clarity for applicants; whilst stage 2 ensures that there is equity across applications:

- The Stage 1 test ensures that potential applicants are given an indication of whether their application is likely to be successful, without the need for detailed and costly analysis.
- The Stage 2 test ensures a fair policy across the city, ensuring that the application site forms the centre point. A 100m radius has been set, which represents approximately a two minute walk, or your immediate neighbourhood.

### **Are there any exemptions to the assessment approach detailed in the SPD?**

There are no exemptions. The proposals apply to any HMO conversion within Bath.

### **What is involved in the application process when the A4D and SPD are in force?**

Applicants will be expected to submit the following details with their planning application:

- Application Form
- Block plan of the site
- Design and Access Statement

Applications will first be assessed against the stage 1 criteria; a 25% HMO threshold at the Census Output Area Level (COA). This is assessed against a map available at [www.bathnes.gov.uk/hmo](http://www.bathnes.gov.uk/hmo), which will be updated on a six monthly basis. If the application location falls outside the 25% threshold area, then officers will be minded to approve the application (assuming there are no other material considerations); if it is within the area, then a Stage 2 assessment will be carried out; considering the threshold in a 100m Radius area around the application property.

The applicant will not have to pay to submit an application, assuming planning permission would not have been required anyway. Further detail can be found on the planning portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk)), but a fee may be required for larger HMOs (over 6 people) or where significant extensions are required in order to facilitate the change to an HMO.

### **Do new permitted development rights to build extensions apply to HMOs?**

No. From May 2013, the government introduced a three year trial period for permitted development rules relating to extensions. These new rules apply to family homes only (C3 dwelling house).

### **How will this new policy be enforced and what should local residents do if they suspect a home is being converted to an HMO now that the Policy is in effect?**

On receipt of an enforcement complaint alleging an unauthorised HMO, the planning enforcement team will need to visit and collect information from the owner, such as tenancy agreements Council tax bills, utility bills with named tenants an HMO license, register from a voluntary accreditation scheme for HMOs operated by B&NES to establish whether or not there has been a material change of use to a C4 HMO. Officers may have to serve a planning contravention notice to obtain this information if the owner is reluctant to provide it voluntarily i.e. because they are operating an HMO but think that they won't achieve permission.

If Officers determine from their evidence that a material change of use has occurred, they may ask for a planning application as is normal practice with enforcement. Any application would be publicised in the normal way and all views taken into account. In any event they would be obliged to discuss the situation with the owner and no formal action would be taken whilst an application and possible appeal was being considered.

Officers would have to determine any planning application based upon the SPD and other development management policies/material considerations and decide if there are any sustainable grounds upon which permission could be refused having regard to the fact that the National Planning Policy Framework directs Local Planning Authorities to approve planning permission for development unless there is substantial harm. Some proposals may be acceptable and gain permission.

If no application is forthcoming Officers would have to consider the expediency of taking enforcement action, also based on the SPD and policy/material considerations and in respect of the level of harm.

If local residents suspect that a home is being converted to an HMO they can submit an enforcement complaint form on the Council's web site at <http://www.bathnes.gov.uk/services/planning-and-building-control/planning-enforcement> and email to [planning\\_enforcement@bathnes.gov.uk](mailto:planning_enforcement@bathnes.gov.uk)

**How can I find out more?**

All of the information is on our specific webpage [www.bathnes.gov.uk/hmo](http://www.bathnes.gov.uk/hmo)

## 3 Housing and Licensing FAQs

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### **What is the area to be covered?**

The additional licensing designation will cover the entire Wards of Oldfield and Westmoreland, a large part of Widcombe and small sections of the adjoining Wards of Bathwick, Lyncombe, Southdown and Twerton. A map and list of roads included in the scheme are available at [www.bathnes.gov.uk/hmos](http://www.bathnes.gov.uk/hmos). It is anticipated that this will cover up to 1,400 properties.

### **When does this come into effect?**

The designation comes into effect on 1<sup>st</sup> January 2014. The Council will be accepting applications from 1<sup>st</sup> October 2013.

### **How does licensing work?**

Housing Services are unable to monitor the living conditions or management of the majority of HMOs in the area without the power of additional licensing.

Additional licensing will give Housing Services the power to require all landlords of HMOs to be included in the scheme as described above to apply for a licence and provide details of the management arrangements and the property. This will enable officers to know where these properties are and place conditions on the licence holder to ensure minimum standards of safety, welfare and management are maintained.

Landlords will have to pay a fee for each application to cover the Council's costs of running the scheme. Housing Services will be able to proactively inspect these properties to deal with any significant health and safety hazards and ensure they meet minimum management requirements.

### **Wasn't there already a licensing scheme in place?**

Yes, *mandatory* licensing is in place for HMOs which have 5 or more people living in a property of three or more stories (including loft room or basement) and sharing a basic amenity such as a toilet, bathroom or cooking facilities. This is a requirement set by central government.

The new scheme is *additional* licensing for HMOs, within a designated area. Where there is appropriate evidence in place that this could be successfully used to address an issue within a specific area or covering a certain type of HMO, additional licensing can be introduced by local councils to supplement the mandatory licensing scheme.

### **What types of properties are covered by the additional licensing?**

The proposed scheme includes all HMOs in the designated area that are not already subject to mandatory licensing, subject to the exception below.

#### **Exception**

- Buildings converted entirely into self-contained flats (s257 HMOs), although the individual flats maybe licensable in their own right.

- Purpose built student accommodation where the organisation has signed up to the ANUK/Unipol Code of Standards for Larger Residential Developments or The National Code of Standards for larger Developments.

### **How will this be enforced and what should a local resident do if they suspect that an HMO is operating without a licence?**

Where landlords are unable to meet the licensing requirements, Housing Services will be able to follow their Enforcement and Licensing Policy (see [www.bathnes.gov.uk/](http://www.bathnes.gov.uk/) and pursue the necessary sanctions against the landlord which could include prosecution and forcing a change of management of the property.

A register of HMOs will be available to the public so they can find out who manages HMOs near them and are able to more quickly and easily report problems.

If the property you have concerns about does not appear on the public register, please email us on [hmo\\_licensing@bathnes.gov.uk](mailto:hmo_licensing@bathnes.gov.uk) and entitle your email with UNLICENSED HMO.

### **How do I apply for a licence?**

Applications must be made to Housing Services as soon as the property becomes licensable. To apply for an HMO licence you will need to use the application form, associated guidance and submit a fee. For more information see [www.bathnes.gov.uk/hmos](http://www.bathnes.gov.uk/hmos)

### **What is the fee associated with additional licensing?**

There is a sliding scale, dependent on the size of the property. Discounts are available for accredited landlords who make a valid application before the 1<sup>st</sup> January 2014. Fees range from £500 to £780 for a five year licence (as of June 2013). See [www.bathnes.gov.uk/hmos/](http://www.bathnes.gov.uk/hmos/) for the full fee schedule.

### **What happens if I do not meet all the standards when making an application?**

The first thing to do is submit a valid application to us. This will ensure you have met your legal obligation and we can then work with you to ensure the standards are met. Although many properties will already meet most of the standards, we understand that many will not.

An aim of licensing is to bring properties up to a safe and consistent standard. Where work is needed to meet the licensing standards, we will put a condition on your licence. You will then have a timescale to meet the requirement, for example, fire precautions will normally need to be completed in 6 months; kitchen facilities in 12 months.

### **What are the conditions that will be applied to licenses?**

A standard set of conditions has been developed through consultation with stakeholders. There are standard conditions for all HMO licences, and extra conditions for *additional licensing*. They relate to management as well as safety, and seek to address issues identified through research of the designated area.

**Will the additional licensing be applied retrospectively?**

Yes. Any HMO, either existing or future, within the designated area, will be required to apply for a licence.

**How can I find out more?**

All of the information is on our specific webpage [www.bathnes.gov.uk/hmos](http://www.bathnes.gov.uk/hmos)

## 4 Glossary

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**SPD – Supplementary Planning Document;** this is a document that sets out planning policy on a certain subject, supporting the main development plan in an area.

**A4D – Article 4 Direction;** this is a legal notice applied to a specific geographical area, and means that planning permission is required for types of development or changes of use, which would normally fall under permitted development (i.e. would not require express planning permission).

**HMO – House in Multiple Occupation;** a house or flat that is occupied by more than one household, who share basic amenities. A fuller definition can be found in the Housing Act 2004.

**s.257 – section 257 of 2004 Housing Act;** the definition of a s.257 HMO is ‘a building converted into and consisting entirely of self-contained flats’ that does not meet at least the required 1991 building regulations and where less than two thirds of the flats are owner occupied.

**COA – Census Output Area;** a geographical area used to analysis data from the census, it normally consists of approximately 125 households.

**LSOA – Lower Super Output Area** a geographical area used to analysis data from the census, containing a minimum population of 1,000 persons and on average (mean) contain a population of 1,500 persons.

**Use Class Order** – Town and Country Planning Use Class Order puts uses of land and buildings in to categories known as ‘use classes’

**BME** – Black and Minority Ethnic

**C3 (dwellinghouse)** – A Use Class described as a “dwellinghouse”; use of a house 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).

**C4 (house of multiple occupation)** – A Use Class defined as use of a dwellinghouse by not more than six residents as a “house in multiple occupation”. This does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as the Housing Act 2004.