



in
your
corner



SOLICITORS FOR YOU
AND YOUR BUSINESS

HMOs

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WHAT IS AN HMO?

Whose HMO?

- Highly confusing
- Different for different purposes
 - Licensing, Housing Act 2004
 - Planning, Town & Country Planning Act
 - Council Tax liability, Local Government Finance Act
 - Council Tax Valuation, LGFA
- Make sure you know the context in which you are speaking
 - Think about who you are talking to
- HMO for one purpose is not an HMO for another
 - HMO approval for one purpose is not approval for another

HOUSING ACT 2004

Core definitions

- S254 tests
 - Standard test
 - Self-contained flat test
 - Converted building test
- S257- Certain converted blocks of flats
- HMO declaration

Key Elements

- Units of living accommodation- **not very clearly defined**
- Not a single household
- Only or main residence- **note students, asylum seekers, and migrant workers**
- Paying rent or other consideration- **they don't have to be tenants**
- Sharing basic amenities- **cooking and washing facilities**
- Sole use condition
- Residential use
- Schedule 14 exemptions

The Other Tests

- Self contained flats
 - Same as standard test
 - But omits part a
 - Arguably a bit pointless
- Converted buildings test
 - Hybrid test
 - Designed to reduce evasions
 - Covers properties that are a bit of both
 - Also picks up conversions

S257 Test

- Utterly different test
 - Buildings converted from single to multiple dwellings
 - Not in accordance with Building Regs 1991 or appropriate regs
 - Still not in accordance
 - One third or more on leases less than 21 years
- Operates independently of s254 test

Households

Household = Family

Couple + Son + Cousin – 1 Household

Couple + Son + Family Friend – 2
Households

Carers, step and half children, au pairs
and other personal staff are all family

Storeys

- Special rules on these
- Must count all used or adapted floors
- Must count entrances and businesses
- Unite case



PLANNING

Outline

- Material change of use
- Use classes
- Planning permission
- Certificates
- Failure to obtain permission

Permitted Development

- GPDO allows certain types of class change by default
- No need for permission
- Change from C4 to C3 use and vice versa is permitted by GPDO
- Therefore don't need consent to change from small HMO to single family...
- ...and back again
- May need consent to move to/from larger HMO

Article 4 Directions

- GPDO contains an opt-out provision
 - Dis-apply bits for part or all of their area
 - Lots of these around
 - Some specific, some area wide
- Must give notice
 - Compensation may be payable
 - If an app required as a result of a direction and is refused
 - Max of 12 months from making of direction
 - Cut to 3 months if 12 months notice given
- No fee payable on application

But is it a Material Change?

- Change of use class does not mean a material change of use has occurred
- A change to/from an HMO is not necessarily a material change of use
 - Each case must be considered on its merits
 - Impact on local area must be considered
- Consider the specific issues and mitigation of these
 - Parking, rubbish
- Take care with room sizes
 - Planning inspectors have refused permission where they did not think there was enough space

Planning Breaches

- Does not void tenancy
 - No specific right for tenant compensation
- Not an offence to breach planning as such
 - Planning control notices can be served
 - May be an offence to breach them
- Planning contravention notice requests information
- Enforcement notice demands cessation within set period
- Take care here- penalties can be severe

COUNCIL TAX

HMOs & Council Tax

- Council tax uses different definition of HMO
- HMO where:
 - property constructed or adapted for multiple households;
 - occupier does not have rights of access to entire dwelling; or
 - occupier does not pay rent for whole dwelling
- In HMOs liability for Council Tax falls on the owner

What is Covered?

- Differing definitions cause confusion
 - including by Council officers
- Joint and several tenants cannot be an HMO for Council tax
 - may well be for planning/licensing purposes
- Bed-hopping test

HMO Valuation

- Widely misunderstood
- Council tax is payable for each hereditament
 - ie. every living unit
 - Also payable per self-contained unit
- Council tax officers have a discretion to aggregate
 - Increasingly declining to use this
- Heard to deal with this
 - Aggregation is a discretion
 - Consider layout
 - No obligation to inspect other properties

Council Tax Appeals

- All appeals to the Valuation Tribunal
 - Strict time limits
- Note *Goremsandu* case
 - Tenancy agreement is prima facie evidence of position and should not be undermined without good cause
- Council tax is still payable while appeal ongoing
- Appeals are not often worth it

LICENSING

Managing & Having Control

- Liability for licensing is on
 - Person managing; and
 - Person having control
- Not plain English definitions
- Broadly linked to rent collection and receipt
- Can be more than one
- Recent cases also link in other monies too

Mandatory Licensing

- For larger HMOs
 - Definition set by central government
- HMO with:
 - 5+ occupiers
 - extending over 3+ storeys
- New definition from 1 October 2018 in England
 - 5+ occupiers
 - Storeys irrelevant
 - Special treatment for self-contained flats

Additional Licensing

- Licensing of other types of HMO
 - Definition set by local housing authority
- Must consult
- Must be issues associated with HMOs
- Can be area-wide or more localised
- Five year designations
- No need for SoS approval

Selective Licensing

- Licensing of all rental property
 - Area set by local housing authority
- Can be area wide or more localised
 - Trend is toward localised
- Must be an area of ASB or low demand
- Consultation required first
- SoS permission needed
 - Unless you meet the “20/20 rule”
 - SoS permission being given inconsistently but seems to lean against all-area schemes

Applying Effectively

- It is your responsibility to be accurate
 - Mistakes on the form may lead to withdrawal of licence
- It is your obligation to get the form to the local authority
 - Don't rely on the post
 - Keep a copy of the form
 - Send it recorded
- Check the cheque has been cashed
- Once the application is in you are protected

Standards & Conditions

- Standards are considered on grant
 - Statutory and local
- Conditions are added to licence
 - Standard conditions
- Standards cannot be more than guidance
 - Guidance may be strictly applied
 - But failure to meet a standard is not reason to decline licence

Room sizes

- Room size “standards” are also guidance
- Test is reasonable suitability
 - For the number sought or some other number
 - That is not based on a rigid adherence to a room size
- From 1 October there is a set minimum
- 4.54sqm for children under 10, 6.51sqm for 1 adult, 10.22sqm
- Scope for leeway for first time licences or first renewals
- Scope for leeway where landlord unaware
- Possible problem with discrimination

MANAGEMENT

Active not Reactive

This is the important (and hard) bit

- HMOs are not like non-HMO property
- HMO Management Regulations make things offences
 - Which would not be normally
- Cannot rely on a tenant report
 - By then it is already too late
- Evidence and procedures
 - Regular visits
 - And clear follow up

Management Regulations

HMO Management Regulations apply to all HMOs- **even unlicensed**

- Fire safe
 - Use LACORS guidance
 - Smoke detectors
 - Clear fire escape routes
- Clean
 - Don't just rely on the tenants
 - Consider a **professional** cleaner
 - Don't forget the exterior
- Repair
- Signs
- Issues with electrical checks and changes

Risk Assessing

- Risk assessment at an early stage
 - In writing
- Based on assessment how often do you need to visit?
- Quarterly is almost never enough
- Different for joint tenancies and room-lets
 - Room lets need very regular visits
 - Possibly weekly or more
- Consider a written fire risk assessment

Evidence

- Written checklist for visits
 - Proves it was made and what was reviewed
- Clear follow ups
 - Don't just speak to the tenants unless you log it and they sign
 - Letter, text, or email
- Action with workmen for key issues
- Prompt follow up with tenants for key items
 - Re-inspection to show improvements
- The Council could walk in on any single day and prosecute based on what they find

ENFORCEMENT

Don't Hide!

- Lots of landlords avoid LHA officers and notices
 - They don't go away!
- Information gathering notices
 - They can ask for this information
 - It is an offence not to respond within the time limits
 - If you need more time seek an extension early (in writing)
 - Use the form they provide
- Read the licence
 - You must comply with the conditions on it in the time set
- Respond to investigations

Investigation and Prosecution

- Get advice early
 - Preferably before interview
- Cost is worth it if things go no further or charges are cut down
- Interviews
 - Generally better not to attend
 - Better to answer questions in writing
- Some LHAs prosecute inappropriately
 - But many landlords let them and never attend court
- Fines are unlimited and LHAs will refuse licences to those they prosecute
 - Also potential for ban, negative publicity etc

Civil penalties

- Alternative to prosecution
 - For England only
- Allows LHA to issue fine of up to £30,000
 - Not for £30,000, *up to* that number
 - They must consider the appropriate figure
- But the public interest and evidential tests for prosecution must be made out
 - Not an easy option where prosecution is doubtful

Rent Repayment Orders

- Additional penalty
- Allows LHA to recover benefits paid
 - Or tenants to recover rent paid
- Used to be based on failure to license offences
 - Now available for all HA2004 offences and unlawful eviction too
- No longer requires prosecution first
 - So tenants can pursue their own cases
- Sum awarded must be reasonable
 - Unless there is a prosecution or civil penalty in which case it is the maximum
 - If non-licensing prosecution then reasonable sum for tenant application and maximum for LHA

Rogue database and Banning

- All HA2004 offences are banning order offences
- If you are convicted of one the LHA can apply to the FTT to ban you
 - From being a landlord
 - An agent
 - Or both
- Or they can add you to the rogue database
 - Rogue database for 2 civil penalties in 12 months too
- Minimum ban of 12 months
- Minimum addition to database is 2 years
- Banned persons cannot have a license
- Database persons can still have a license but it will impact on fitness

Contact Me

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