Housing and Neighbourhoods O&S Committee - Exempt Accommodation and HMOs

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The City-wide Article 4 introduced on 8th June now means any new change of use from C3 family dwelling to C4 HMO will require planning permission.

The 'exempt accommodation' or RSLs that we are seeing in large numbers in certain parts of the City will not be caught by the Article 4 as these uses cannot be defined as HMOs in accordance with the definition of a HMO provided in Schedule 14 of the Housing Act 2004. In addition, these properties do not require a License.

In practice a lot of these properties function the same as any other HMO with no more than 6 people sharing a living area, kitchen, bathroom etc, receiving minimal support and each having their own bedroom. However, where they can differ is in the turnover of people and the demographic of the individuals being housed. Invariably because these properties provide housing for the homeless, migrants, substance abusers, those recently out of prison or other vulnerable people, this in turn brings about an ongoing concern at some of the properties regarding antisocial/criminal behaviour.

Case law directed us to the application of the 'single household test' and the scope of this examination has now been published on our website. This is the assessment we now undertake for every property of this nature. Intelligence including Council Tax, Benefits, Land Registry and Licensing record are gathered but our investigation is also limited by the fact we can't enter these properties due to current government guidelines around Covid-19, so we are relying on a paper trail to establish the facts. Work is ongoing as part of the Supported Housing Pilot Scheme to form an Operational Delivery Group across service areas to make the process of gathering information, assessing the properties and taking appropriate action as efficient as possible.

From a planning perspective a set of questions has been compiled which attempts to establish the status of each property, however we have been met with considerable barriers from the RSLs who for years have always considered the way they operate to be 'exempt' and not requiring planning permission, so obtaining information has not been easy.

Once all evidence is gathered, the Councils decision on whether the property is occupied as a single household will be a matter of fact and degree and planning permission will only be required for properties where any change of use is 'material' as per s55(1) of the Town and Country Planning Act, compared to the former or lawful use

This will lead to one of three conclusions:

The property is considered to be:

1. Class C3 (b) not more than six people living together where care is provided
2. Class C3 (c) not more than six people living together as a single household where no care is provided.

In both these cases a planning application is not required

Or

3. Sui Generis if the evidence suggests the use fails the single household test and therefore if there is a material change, planning permission is required.

In the main, when a use is Sui Generis, planning permission is required, however as per s55(1) of the Town and Country Planning Act, planning permission can only be required for a **material** change of use of land or buildings. In other words, there must be something materially different regarding the proposed/new use in comparison to the current/former use for it to require planning permission.

As an example an RSL property could be operating for many years with no ASB issues prompting little reason to be concerned, however still potentially considered Sui Generis on the basis of the single household test. Suddenly the occupiers change and the new tenants cause considerable nuisance, resulting in disturbance to neighbours and contact with the Council. From a planning perspective has the situation at the property changed based on the behaviour of the new tenants?

What happens if the occupiers change again and no ASB is then reported and the negative impact of the property subsides? It would be like saying that a house occupied by a really noisy, anti-social, family would be viewed differently in planning terms from a similar house occupied by a nice family.

Having liaised with other Planning Departments at other Core Cities across the country, there is evidence that very few are taking our current position and generally consider these uses to be C3 (c), which in effect means a planning application is not required providing there is no more than 6 occupiers.

The number of complaints we are receiving regarding this type of accommodation is increasing significantly but is still only a small proportion of the total number of properties (c.7500) used for this purpose across the City and generally complaints are focused in areas with a high density of this type of accommodation, which would suggest a proportion of the properties continue to function without impacting on the local area.

We are also finding some of the properties may have been operating for many years without problems and it appears to be only when ASB occurs, which may be a result of the property being badly managed, do we receive enquires and the use comes under scrutiny.

If a property is brought to our attention we are investigating the use from a planning perspective, however for the reasons outlined above this is not a simple assessment and planning enforcement is not the platform to control any immediate concerns regarding ASB and crime.

Web Links

Assessment of Exempt Accommodation

https://www.birmingham.gov.uk/info/20054/local_plan_documents/1933/city-wide_article_4_direction_relating_to_houses_in_multiple_occupation_hmos/2

Planning Enforcement Online Complaints Form

https://www.birmingham.gov.uk/info/20160/planning_applications/23/planning_enforcement