

**Houses in Multiple Occupation (HMO):
Frequently Asked Questions**

January 2022

Contents

1	General HMO FAQs	3
1.1	What is a House in Multiple Occupation (HMO)?	3
1.2	Is a house accommodating lodgers considered to be a HMO?	3
1.3	What about co-habiting couples?	3
2	Planning and HMO SPD FAQs	3
2.1	Why has an Article 4 Direction been confirmed and a Supplementary Planning Document (SPD) adopted?	3
2.2	Does the Article 4 Direction apply retrospectively?	4
2.3	Why have the Article 4 Direction and the SPD been applied across the whole of Bath?	4
2.4	What are Use Classes?	4
2.5	What is in the updated HMO SPD (January 2022)?	4
2.6	What is a 'sandwich' test?	5
2.7	Why is a threshold approach used to determine HMO applications?	5
2.8	Why has the 'Census Output Area Test' been removed from the 2022 HMO SPD?	5
2.9	Will the 10% threshold apply retrospectively?	5
2.10	Will the 10% threshold apply to applications seeking to turn a small HMO (C4 use class) into a large HMO (sui generis use class)?	6
2.11	Are there any exemptions to the approach detailed in the SPD?	6
2.12	What is involved in the application process for a new or intensified HMO?	6
2.13	How will policy be enforced and what should local residents do if they suspect a home is being used as a HMO without permission?	6
2.14	How can I find out more?	7
3	Housing and HMO Licensing FAQs	7
3.1	What is the area covered by HMO licencing in Bath and North East Somerset?	7
3.2	Do any HMO licencing exemptions exist?	8
3.3	How will licencing be enforced and what should a local resident do if they suspect that a HMO is operating without a license?	8
3.4	How do I apply for a HMO license?	8
3.5	Is the requirement for additional licencing applied retrospectively?	8
3.6	Do we still need to apply a planning permission for HMO if I have an appropriate HMO licence?	9
3.7	How can I find out more?	9

1 General HMO FAQs

1.1 What is a House in Multiple Occupation (HMO)?

A House in Multiple Occupation (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 7 of the HMO SPD.

1.2 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 a HMO.

An owner occupier, their family and 3 or more lodgers will be a HMO.

If you are sub-letting rooms in a rented house, this will count as a HMO.

1.3 What about co-habiting couples?

Co-habiting couples are considered to be family.

2 Planning and HMO SPD FAQs

2.1 Why has an Article 4 Direction been confirmed and a Supplementary Planning Document (SPD) adopted?

Houses in Multiple Occupation (HMOs) are an important element of the housing market in B&NES, providing a more affordable type of accommodation for individuals on lower incomes, and students, who might otherwise be unable to afford to live in the City. However, high concentrations of HMOs in a small area can lead to an increase in concentrated issues relating to noise, disturbance, maintenance, and waste management.

The Article 4 Direction helps to achieve an appropriately balanced housing mix across the city of Bath by triggering a requirement for a planning application when someone wants to convert a family home in Bath to a small HMO (C4 use class).

The HMO SPD sets out the assessments undertaken to determine whether an application would lead to an over concentration of HMOs within an area.

The combination of the Article 4 Direction and the SPD will manage the future growth and distribution of HMOs across the City, with the aim of creating more balanced communities.

2.2 Does the Article 4 Direction apply retrospectively?

The Article 4 Direction triggers a requirement for a planning application when someone wants to convert a residential dwelling (use class C3) to a small HMO (use class C4) in the city of Bath.

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

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

Bath is a relatively small, walkable city, and an Article 4 Direction across a smaller area could potentially lead to a simple displacement of HMOs to an immediately adjacent area, rather than producing more of a balance across the whole city.

2.4 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

2.5 What is in the updated HMO SPD (January 2022)?

The original HMO SPD was adopted in July 2013, at the same time as the Article 4 Direction was put in place.

An update was prepared in 2017 which accompanied Placemaking Plan Policy H2 and set out Bath & North East Somerset Council's approach to the distribution, and avoiding over concentration of, Houses in Multiple Occupation (HMOs). The 2017 SPD introduced a 'sandwich' test and a 10% concentration threshold test, carried out to determine planning applications for HMOs.

Following a review of the tests used to assess planning applications for HMOs, the SPD has been updated again (January 2022). The latest SPD updates the way in which the tests are carried out, as well as providing additional guidance to support changes to policy H2 as proposed within the Local Plan Partial Update.

Some of the updates to the guidance will apply as soon as the SPD is adopted, and some will apply following the adoption of the Local Plan Partial Update.

The key updates in the 2022 HMO SPD which will apply as soon as the SPD is adopted comprise:

- Additional guidance provided to confirm that where an application results in a concentration of 10% or more, or where an application results in an area tipping to a concentration of 10% or more, the application will be refused.
- Census Output Area Test removed.
- Guidance added relating to how to assess a flatted development when carrying out the sandwich test.
- Amendment to how the 100m radius test (criterion 2) is carried out.

The key updates in the 2022 HMO SPD which will apply when the Local Plan Partial Update is adopted comprise:

- Increase in type of application assessed using SPD tests.
- Additional guidance on providing a good standard of accommodation to support amended LPPU policy H2. The guidance includes information on Energy Performance Certificate exemptions, bedroom size standards, noise reduction measures and ventilation.

2.6 What is a ‘sandwich’ test?

Planning permission would not be normally granted where the introduction of a new HMO would result in an existing residential property (C3 non-HMO) being sandwiched by any adjoining HMOs on both sides.

This is to avoid the potential impact on neighbouring properties and aims to ensure that there is balance at street level.

Additional guidance has been added to the 2022 HMO SPD in relation to how the sandwich test is applied to flatted developments.

2.7 Why is a threshold approach used to determine HMO applications?

Evidence shows that HMOs are currently more concentrated in certain areas of the city. A threshold approach is used to achieve an appropriately balanced housing mix across the District.

2.8 Why has the ‘Census Output Area Test’ been removed from the 2022 HMO SPD?

The census output area test was included in the 2017 HMO SPD due to HMO mapping that shows the location and frequency of HMOs not being publicly available at that time. The Census Output Area test provided a way to understand whether proposals were likely to be acceptable or not. HMO data and mapping is now available to the public and applicants. Therefore, the Census Output Area test has been removed to simplify the test process and ensure all applications are tested using the same assessments.

2.9 Will the 10% threshold apply retrospectively?

No, it does not apply to existing properties. The threshold only applies to new proposals.

2.10 Will the 10% threshold apply to applications seeking to turn a small HMO (C4 use class) into a large HMO (sui generis use class)?

At the point of adoption of the SPD, the threshold test only relates to applications for a change of use from residential to HMO, as set out in policy H2 in the Placemaking Plan.

However, the Local Plan Partial Update seeks to widen the scope of policy H2, to include other types of application, including new-built HMOs, changes of use from other uses to HMO, and the intensification of existing HMOs.

Once the Local Plan Partial Update is adopted, all of these types of application will be assessed using the tests set out in the SPD.

2.11 Are there any exemptions to the approach detailed in the SPD?

There are no exemptions. All relevant applications shall be assessed using the approach set out in the SPD.

2.12 What is involved in the application process for a new or intensified HMO?

Applicants will be expected to submit the details set out in section 7 of the HMO SPD with their planning application.

An application will be assessed against policy H2 in the Placemaking Plan, and once adopted, policy H2 in the Local Plan Partial Update.

With regards to the assessments set out in the HMO SPD, an application will first be assessed against criterion 1 to see whether it would result in any residential property (C3 use class) being sandwiched between two HMOs (see sections 4.1 and 4.2). If it does, the application will be refused.

The application will then be assessed against criterion 2 to see whether there is a HMO concentration of 10% or more in the immediate 100m surrounding the application property, or whether the application property tips the concentration to 10% or more (see section 4.3). If either of these scenarios occur, the application will be refused.

2.13 How will policy be enforced and what should local residents do if they suspect a home is being used as a HMO without permission?

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 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 <https://beta.bathnes.gov.uk/report-something-planning-enforcement> or send an email to planning_enforcement@bathnes.gov.uk.

2.14 How can I find out more?

All of the information on planning controls for HMOs can be found on our website at www.bathnes.gov.uk/hmo.

3 Housing and HMO Licensing FAQs

3.1 What is the area covered by HMO licencing in Bath and North East Somerset?

HMO Mandatory Licensing covers the whole of Bath and North East Somerset. You will need a mandatory licence if the property:

- is occupied by five or more people;
- those people form two or more households;
- tenants share an amenity like a kitchen, bathroom or toilet.

Bath and North East Somerset Council introduced an Additional Licensing scheme on the 1st January 2014 and extended on the 1st of January 2019 city wide for another five years (expires on 31.12.2023). You will need an Additional Licence if the property is:

- in the boundary of the City of Bath
- and is occupied by three or four people;
- those people form two or more households;
- tenants share an amenity like a kitchen, bathroom or toilet.

3.2 Do any HMO licencing exemptions exist?

An HMO would be exempt from Mandatory licensing, if a flat occupied by 5 or more occupants is situated in a purpose-built block comprising three or more self-contained flats.

However, this HMO, if located in the additional licensing area, would still require a licence under the Additional licensing scheme, unless it complies with the below exemption.

A HMO occupied by students would be exempt from the Additional Licensing scheme, if the company managing it has signed up to one of the 3 approved codes of practice:

- The Universities UK/Guild HE Code of Practice for the Management of Student Housing
- The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation Managed and Controlled by Educational Establishments
- The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation NOT Managed and Controlled by Educational Establishments

3.3 How will licencing be enforced and what should a local resident do if they suspect that a HMO is operating without a license?

Where landlords are unable to meet the licensing requirements, Housing Services will be able to follow their Enforcement and Licensing Policy 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 is available to the public so they can find out the location of licensed HMOs near them and are able to report problems more quickly and easily.

If the property you have concerns about does not appear on the public register, please email us on hmo_licensing@bathnes.gov.uk.

3.4 How do I apply for a HMO license?

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.

3.5 Is the requirement for additional licencing applied retrospectively?

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

3.6 Do I still need to apply for planning permission for a HMO if I have an appropriate HMO licence?

Yes. Planning and licensing are different things governed by different legislations, but are both equally important. You need to have both to operate HMOs in Bath.

3.7 How can I find out more?

All of the information is on our specific webpage www.bathnes.gov.uk/hmos.