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PLANNING & DEVELOPMENT SOLUTIONS

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2 December 2015

ref PDS 1165

Dear Sir / Madam

37 King George Road, Shoreham
Certificate of Lawfulness (Existing) Ref PP-04660145

Further to our submission of the above application on line today - I confirm that there is no fee to pay as change of use from C3 dwelling to C4 HMO is Permitted Development (PD). The only reason for submitting this application is to clarify the current C4 HMO legislation as it applies to this property for both the planning and housing departments.

The following information in support of the application was submitted on line with the application:

- Current layout of the property providing 5 ensuite rooms and shared kitchen
- Location plan

The house was purchased by Star Property Investment and Management Ltd on 17th April 2015. Prior Approval had already been granted prior to purchase for a single storey rear extension 26th March 2015 (ref AWDM/247/15). On purchase the extension was erected. PD rights for such extensions apply equally to C3 and C4 properties. In preparation for conversion to a C4 HMO, 5 ensuite rooms were created and a main house kitchen provided.

There has then been some difference in interpretation of the legislation around the C4 HMO Use Class and the council Housing, HMO Licensing and Planning Officers who have appeared to have varying understandings of the definitions and case law established through the Planning Inspectorate. In particular with reference to the provision of a mixture of sharing and self contained units within a HMO whether C4 or Sui Generis.

Under the current GPDO, movement between C3 dwelling and C4 HMO for 3-6 individuals does not require express consent. There is no Article 4 Direction Order in place to remove this right. As such on 6th November 2015 the third individual moved in. On this date the property became C4 HMO.

Currently as shown on the layout plan there are 5 ensuite rooms:
Room 1 = 12.27sqm,
Room 2 = 14.36sqm,
Room 3 = 13.48sqm,
Room 4 = 13.09sqm,
Room 5 = 13.05sqm.

There are 3 tenants in the property - 2 are over 35 and can apply for the self contained LHA rate and 1 the LHA sharing rate. The 2 tenants over 35 in addition to the communal kitchen also have a microwave, mini fridge and sink. The tenant on the shared rate has an ensuite and uses the cooker, microwave and fridge in the house kitchen. All use the washing machine and the main kitchen for preparation of meals which require more than a microwave.

Only 4 of the rooms fully comply currently with the LHA 'one room unit of accommodation' for over 35s of 13sqm. The 5th room is smaller and will be let on the shared rate.

The current owner intends to let the property to a variety of tenants under and over 35 on shared and self contained rates - dependent upon the tenants available. At any one time there will be no more than 5 tenants in total, 1 room will always be on the shared LHA rate and between O and 4 may be on the self contained rate with additional sink / microwave and mini fridge.

I have now been specialising in advising HMO landlords on planning issues across the country for the last 10 years of a 25 year career and have been an integral part of the process of establishing the case law relating to the Planning Inspectors' interpretation of the new C4 HMO use class introduced in 2010 and how it relates to various room / property layouts through various public inquiries and informal hearings across the country. From my personal experience, Planning Inspectors have confirmed that a C4 HMO can comprise of a mixture of self contained and non self contained units with a variety of shared facilities. In Doncaster a 10 ensuite bedroom sui generis HMO with shared kitchen and a sink and counter top for cooking facilities in each room allowing a range of independence was confirmed to be a HMO. The council had issued an enforcement notice claiming this was 10 flats / dwellings and costs were awarded against the council in that case.

In an earlier case at Public Inquiry in Bootle the Inspector confirmed that 3 properties which comprised a mixture of self contained rooms with ensuite and kitchenette, and others where the communal kitchen was used were all either C4 or Sui Generis HMO depending on number of tenants. Again the council had initially issued enforcement notices claiming separate dwellings which were subsequently withdrawn prior to the inquiry once the barristers representing each side were able to confirm legal matters.

I am sure that your planning department may be aware of many other cases where HMOs provide a range of layouts and standards of accommodation dependent upon individual room sizes within the same property.

In this property there are 5 ensuite bedrooms and a communal kitchen which falls within C4 HMO and is now an established use with 3 tenants. 4 rooms are over the minimum standard for a 'One room unit of accommodation' as described in the HMO licensing standards for your council. Consequently, the owner is able to add kitchenettes in up to 4 of the rooms and let the rooms to a mixture of room rate or self contained rate without a change of use or need for planning permission. There would be no material change of use between up to 5 people in 5 ensuite rooms sharing a kitchen and up to 4 people having a sink and microwave and fridge and at least 1 person using the main shared kitchen.

Please can you confirm the current C4 HMO use of the property extends to the provision of accommodation for tenants on shared and one room unit of accommodation / self contained LHA rates as long as at least 1 room remains dependent upon the main kitchen and is not self contained in line with previous appeal decisions.

I appreciate that the interpretation of the HMO use class legislation has evolved and that it is unlikely that officers not in the planning department will be aware of this. However I have many copies of HMO licensing guides for different cities which clearly state that a HMO can contain a mixture of self contained accommodation (flats / bedsits / studios) and other accommodation that is not self contained. Should you require further information, please contact me.

Kind Regards

Yours sincerely,

Amanda Brown

Amanda Brown
Town Planning Consultant

CC Star Property Investment and Management Ltd