

GROWTH & PROSPERITY OVERVIEW SCRUTINY PANEL

Briefing Note: Government Policy Changes

Oct 2010

Homes of Multiple Occupancy (HMO) Changes

From 1/10/10 any single dwelling can be changed to occupation by up to 6-8 students, or same numbers of other non-related persons, provided they are living together as a single-household (sharing facilities & living 'communally'), without requiring planning permission from the City Council. This reverses the change the previous Government had introduced just before the election.

Unless an Article 4 Direction is made in respect of a particular area meaning planning permission is required (and the information provided suggests that to avoid potentially significant compensation payment issues to owners - the earliest such an Article 4 direction can take effect - if one or more is to be made - will be 12 months after 1/10/10). Preparing Article 4's and enforcing them would have huge potential resource issues.

The Town & Country Planning (General Permitted Development) Order 1995 permits a wide range of developments to be carried out without requiring planning permission from the Council. From 01 October 2010, for example, planning permission will once again not be required from the Council to change the use of a family house or flat into a small HMO (3-6 occupants) by virtue of this Order.

Under Article 4, a Local Planning Authority ie Plymouth City Council, may, subject in most cases to the approval of the Secretary of State, make a Direction or Directions excluding the application of the Order in relation to any particular geographical area, or in relation to any particular type of development.

The effect of the direction is not that development cannot take place at all. It simply means that if it is to do so, the intending developer must make an application to the Council for planning permission, which will be dealt with in the normal manner. Such applications are, however, not subject to payment of an application fee, on the grounds that planning permission is only required by virtue of the existence of the Direction.

An Article 4 Direction cannot apply to any development already carried out under the General Permitted Development Order. Most importantly, Article 4 Directions also give rise to significant compensation issues which have discouraged Council's from making them. Where a property owner/developer is refused planning permission to carry out development which only requires Council planning permission by virtue of an Article 4 Direction, the Council is liable to pay compensation to the developer for loss of income arising from this restriction.

In response to this compensation issue, and the substantial difficulty this poses for Council's that may be contemplating introducing Directions in respect of changes of family houses/flats to small HMOs (3-6 occupants), the Government announced on 07 September 2010 that it will introduce the following legislation by 01 October 2010;

The Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135) will reduce local authorities' liability to pay compensation where they make Article 4 Directions as follows:

** where 12 months' notice is given in advance of a Direction taking effect there will be no liability to pay compensation; and*

** where Directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the Direction and which are subsequently refused or where permission is granted subject to conditions.*

Unfortunately, therefore, despite this change it is clear that significant compensation issues will remain where an Article 4 Direction is introduced in respect of small HMOs either with immediate effect, or where less than 12 months notice has been given in advance of a proposed Direction taking effect.