



# PINS NOTE 40/2013r3

To: All Inspectors (England)

Date of Issue: 13 November 2013

Currency: review at 6 months after issue

Last updated: 24 February 2016 – amended paragraph 1, regarding the current GPDO, and added paragraph 5, regarding the internal size of a unit.

## Houses in Multiple Occupation (HMOs) and Permitted Development Rights

1. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 1, Class A grants certain permitted development rights to dwellinghouses.
2. Houses in Multiple Occupation, including those which fall within Class C4 can benefit from the permitted development rights granted to dwellinghouses by the GPDO. Class C4 use is defined as use of a dwellinghouse by not more than six residents as a "house in multiple occupation".<sup>1</sup>
3. The test for whether a property is eligible to use the permitted development right is whether it can be considered a "dwellinghouse" within the context of the GPDO. This will depend on the facts of the case.
4. Case law<sup>2</sup> has established that the distinctive characteristic of a "dwellinghouse" is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Whether a building is or is not a dwellinghouse is a question of fact.
5. The internal size does not in itself determine whether a unit is a dwellinghouse but rather it has a bearing on whether the facilities required for day-to-day domestic living can be accommodated. Similarly, a failure to satisfy the requirements of the nationally

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<sup>1</sup> Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>2</sup> *Gravesham Borough Council v Secretary of State for the Environment and Michael W. O'Brien* (1984) 47 P&CR 142 [1983] JPL 307 [For the attention of salaried Inspectors: the first hyperlink is to the Westlaw case report and the second hyperlink is to a copy of the JPL Case Note]

described space standard would not be conclusive, as a dwelling could be "sub-standard" from that point of view, but still meet the legal test.

6. The April 2014 amendments to the GPDO changed the definition of a dwellinghouse so that the definition includes flats for the purposes of Part 3 of Schedule 2 (changes of use) only. Therefore, for the purposes of the GPDO a "dwellinghouse" [except in Part 3 of Schedule 2 to the order (changes of use)]<sup>3</sup> does not include a building containing one or more flats, or a flat contained within such a building.

### **Queries:**

7. Please contact XXXX (for s174 casework) or XXXX (for s78 casework) or XXXX (for Development Plans casework), who will decide whether the particular matter should be referred to XXXX.

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<sup>3</sup> This means that a flat which is occupied as a dwellinghouse as defined by Class C3 can change its use to any of the uses specified in Part 3 of Schedule 2 of the GPDO. So, for example, it would be permitted development if a flat used as a dwellinghouse changed its use to a House in Multiple Occupation or if a flat used as an office changed its use to a dwellinghouse.