

The TPX guide



Houses in Multiple Occupation

Welcome to this guide which should give you an understanding of what are Houses in Multiple Occupation and the legislation that applies to them, particularly with regard to planning permission in England

Town Planning Expert is an nationwide planning consultancy headquartered in South-East Hampshire. Our goal is to help clients achieve their aspirations by providing clear, considered and pragmatic advice based on a detailed knowledge of local and national planning policy, and insight into how decisions are made both locally and at appeal.

While we have tried to ensure that this information is as up to date as possible, legislation, particularly that introduced by local authorities, is constantly changing. You should check with us regarding the situation in specific areas.

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What is a House in Multiple Occupation (HMO)?

A property will be an HMO if it is lived in by people who belong to more than one family and who share one or more facilities, such as kitchens and bathrooms. In practice, this includes:

- An entire house or flat which is let to 3 or more tenants who form 2 or more households, and who share a kitchen, bathroom or toilet;
- A house which has been converted entirely into bedsits or other non- self-contained accommodation and which is let to 3 or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities;
- A converted house which contains one or more flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom or toilet) and which is occupied by 3 or more tenants who form two or more households;
- A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies;
- In order to be an HMO the property must be used as the tenants only or main residence, and it should be used solely or mainly to house tenants. Properties let to students and migrant workers will be treated as their only or main residence.



HMOs do not refer specifically to student lets although these have been perceived to cause the most problems in local areas.

The 1985 Housing Act definition of "House in Multiple Occupation" was a "house which is occupied by persons who do not form a single household".

Over the years, a body of case law relating to the HMO definition has developed. Currently, in its broadest meaning, a house is 'a building which is constructed or adapted for use as or for the purpose of a dwelling' (Ashbridge Investments Ltd v Ministry of Housing and Local Government 1965). It is also 'a place fitted and used and adapted for human habitation' (Reed v Hastings Corporation 1964).

There are a variety of other premises included as houses under case law (e.g. lodging-houses, holiday homes, hostels and hotels occupied by homeless families). Houses converted into flats (whether self-contained flats or not) are still houses for the purposes of the Housing Act (Okereke v London Borough of Brent 1967). However, a single flat cannot be a house for the purposes of this part of the Housing Act. Vacant houses cannot be HMOs under the legal definition. The 'not of a single household' is the most complex part of the HMO definition. A 'single household' is not defined. Before 1969, membership of a family group or lettings in lodgings were considered a household, but this is no longer the case. The question of whether a group of people living in a house constitutes one or more household depends on the specific facts of the case in question



There is no single criteria to decide if a single household is present. However, in 1995, the Barnes v Sheffield City Council (1995) case provided nine 'helpful indicators'.

- a. whether the persons living in the house came to it as a single group or whether they were independently recruited;
- b. what facilities were shared;
- c. whether the occupants were responsible for the whole house or just their particular rooms;
- d. whether individual tenants were able to, or did, lock other occupiers out of their rooms;
- e. whose responsibility it was to recruit new occupiers when individuals left;
- f. who allocated rooms;
- g. the size of the property;
- h. how stable the group composition was; and
- i. whether the mode of living was communal.

If residents are recruited individually by the landlord and allocated a room, do not share facilities, have little communal living, and live in a large property with a rapid turnover of residents, then they are likely to be considered separate households. However, each case is decided on its own merits.

The legal definition of HMO is very complex and often revolves around the definition of a household. Within the legal definition, there is no attempt to distinguish between different types of HMO.

Council's may also have their own interpretation so a couple renting a property and taking in an unrelated lodger in some areas is not considered an HMO, but is in others. Please note, a property which is not considered to be an HMO for planning purposes may still fall within the definition of an HMO under housing legislation.

Landlords must satisfy both Planning and Housing Act requirements, which are independent of each other.

Legislation:

- Town and Country Planning Act
- The Town and Country Planning (General Permitted Development) Order (Updated 2019)
- The Town and Country Planning (Use Classes) Order
- Housing Act 2004 (Updated 2019)



When is it an HMO in planning terms and when do I need to apply for planning permission?

National Legislation (England)

Following concern by a number of local authorities the Government in April 2010 sought to harmonise the definition of HMOs under Planning and Housing.

The amendments to the Town and Country Planning (General Permitted Development) Order and the Town and Country Planning (Use Classes Order) resulted in the division of Class C3 (Dwellinghouse) into two distinct classes (C3 and C4). These amendments also provided further clarity on the use of larger HMOs where more than 6 residents occupied the building. Under the revised Use Classes Order an HMO can fall under either Class C4 (Houses in Multiple Occupation) or can be considered 'Sui-Generis', that is a use which does not easily fall within any one use class.

The revised use classes order defines the two types of HMO as:

Class C4: Use of a dwellinghouse by no more than six residents as a 'house in multiple occupation' (HMO)
Sui-Generis: Use of a dwellinghouse by more than six residents as a 'house in multiple occupation' (HMO).
It indicates that for the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which Section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in Section 254 of the Housing Act 2004.

The explanatory notes of SI 2010 No.653 provide further clarity stating "In broad terms, this use occurs where tenanted living accommodation is occupied by persons as their only or main residence, who are not related, and who share one or more basic amenities."

In general, Local Planning Authorities accept that a change of use to an HMO within Class C4 occurs where the house is occupied by between three and six unrelated persons. A change of use to a HMO that is considered Sui-Generis occurs when the building is occupied by more than 6 persons.

Large HMOs (More than 6 residents)

Large HMOs are considered to be a Sui-Generis use of the building. As such there can be no permitted change (a change of use where no formal planning permission is required) to or from a Large HMO. The change of use to or from a Large HMO is always

considered to be development requiring planning permission.

As they are considered to be Sui-Generis uses (a use unto itself) the change of use from another Sui-Generis use (such as a student hostel) is also development requiring planning permission.

Small HMOs (Between 3 and 6 residents)

Following its election in 2010 the coalition Government expressed concern that these regulations would "create unnecessary costs for landlords, which puts the supply of rented homes at risk". In October 2010 an amendment was made to the General Permitted Development Order by which Class L allows for changes of use between dwellinghouses and those HMOs occupied by not more than six persons, without the need to apply to the local council for planning permission.

The ministerial announcement of this change was accompanied by a letter clarifying that "changes of use from family houses to small HMOs will be able to happen freely without the need for planning applications. Where there is a local need to control the spread of HMOs local authorities will be able to use existing powers, in the form of article 4 directions, to require planning applications in their area."

Article 4 Directions and Local Rules

Following this directive several local authorities have sought to introduce Article 4 Directions across all or some of their administrative areas, to control the number of HMOs.

The basis for councils to make local decisions to change planning rules within a defined area is provided by the Town and Country Planning (General Permitted Development) Order 1995 as amended, (commonly known as the GPDO).

The GPDO enables councils to issue a direction under article 4 of that Order, and referred to as an "article 4 direction", setting out development type(s) that will no longer be permitted unless express planning permission is first obtained.

Article 4 directions are introduced where evidence suggests that undertaking certain types of development for which express planning permission is not normally required would harm local amenity or the proper planning of an area, for example, by having an undermining effect on visual amenity and / or local objectives to create or maintain mixed communities.

An article 4 direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the City Council for that development.

Under the current fees regulations planning applications which are required for a change of use from a C3 dwelling house to a C4 HMO within the Article 4 Direction area will require a planning fee (£462). This may change when local authorities are allowed to set their own fees.

Legislation:

Town and Country Planning Act 2008

Town and Country Planning (Use Classes) Order 1987 (as amended)

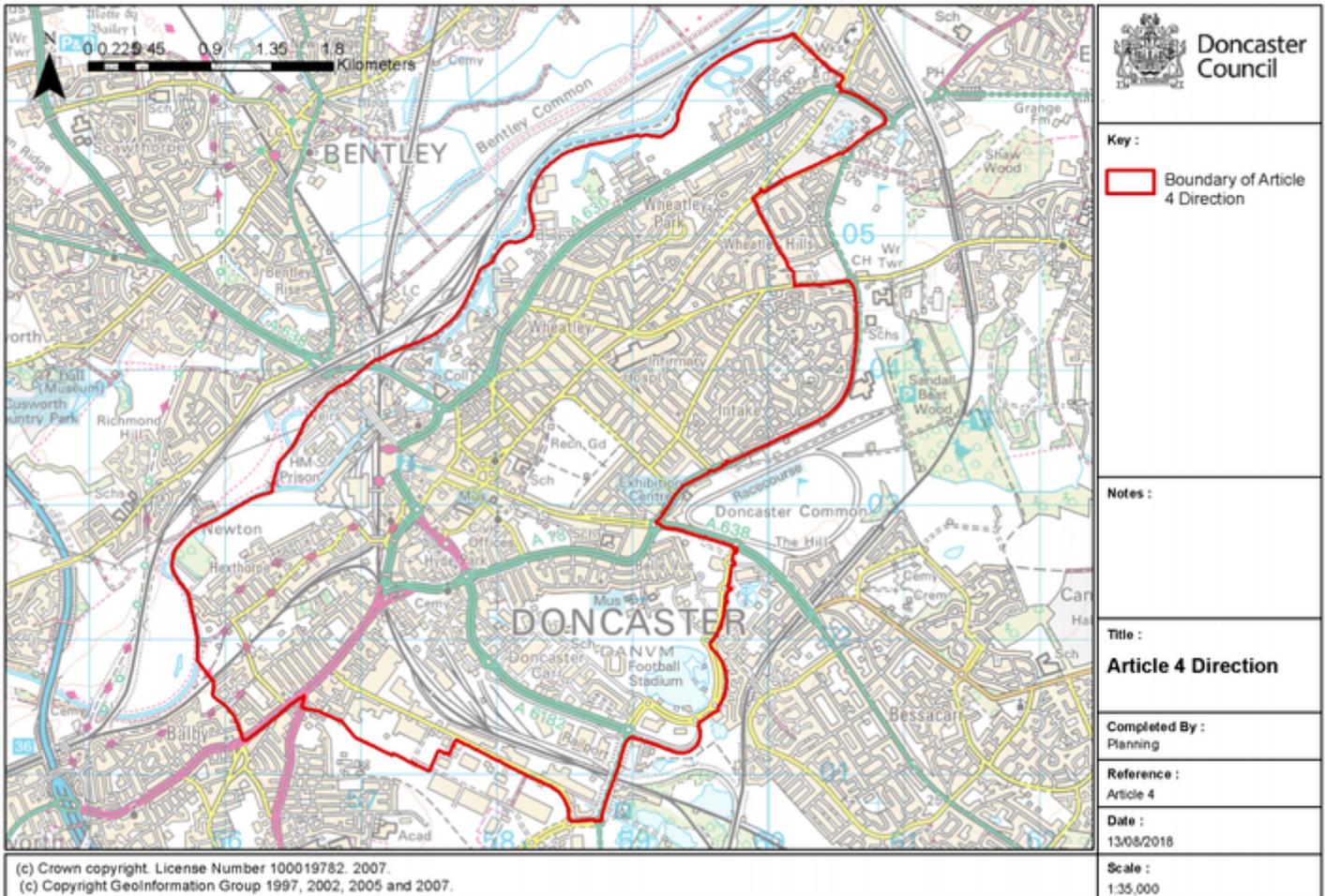
Town and Country Planning (General Permitted Development) Order 1995

Area's with known Article 4 Directions's (subject to change)

Ashford Borough Council
Basingstoke and Deane Borough Council
Bath and North East Somerset Council
Birmingham City Council
Blackburn and Darwen Borough Council
Bournemouth Borough Council
Brighton and Hove City Council
Bristol City Council
Canterbury City Council
Charnwood Borough Council
Cheshire West and Cheshire
City of York
Cornwall Council
Coventry City Council
Crawley Borough Council
Daventry District Council
Doncaster City Council
Durham County Council
Exeter City Council
Great Yarmouth Borough Council
Harlow Council
Hastings Borough Council
Hull City Council
London Borough of Barking and Dagenham
London Borough of Barnet
London Borough of Haringey
London Borough of Havering
London Borough of Hillingdon
London Borough of Hounslow
Leeds City Council
Leicester City Council
Lincoln City Council

Manchester City Council
Milton Keynes Council
Newcastle upon Tyne City Council
Newcastle-under-Lyme Council
Northampton Borough Council
Nottingham City Council
Oxford City Council
Plymouth City Council
Portsmouth City Council
Preston City Council
Rother District Council
Sheffield City Council
South Somerset District Council
South Tyneside Metropolitan Borough Council
Southampton City Council
Stevenage Borough Council
Sunderland City Council
Tendring District Council
Thanet District Council
Tunbridge Wells Borough Council
Walsall Metropolitan Borough Council
Warwick District Council
Waveney District Council
Welwyn Hatfield Council
West Lancashire District Council
Winchester City Council
Worcester City Council
York City Council





When do I need to apply for Building Regulations Approval?

Building Regulation approval is required in respect of conversion works to provide new HMOs, such as the conversion of older properties into self-contained flats.

You should be particularly aware of the following aspects:

- Fire safety Structure (i.e. walls, ceiling, floor) separating one occupancy (i.e. bedroom, flat, etc.) from another, and the structure enclosing the escape route (normally the stairway) must provide at least half an hour fire resistance. This requirement is normally satisfied by any brick or block wall, or a timber stud with 12mm thick plasterboard each side.

- Fire doors

Fire doors should be provided to each room leading onto the escape route, except for bathrooms and WCs which contain no fire risk. They should be half an hour fire resistant, self-closing and fitted with smoke seals and luminescent strips.

- Emergency lighting

Emergency lighting may be required to the escape route, depending on the complexity and layout of the house and the amount of natural light available. Occupants should be able to leave safely should the normal lighting fail.



- Detection system

Two-storey properties require mains operated smoke detectors, at least one situated on each floor of the stairway, linked together so that if one is activated they all sound; three-storey properties require a higher level of automatic fire/smoke detection in accordance with BS5839 Part 6.

- Fire extinguishers/fire blankets

In general, a multi-purpose extinguisher should be provided on each floor with a dry powder extinguisher and fire blanket positioned close to all cooking facilities.

- Furnishings

Materials used for filling, covering or forming furniture can present a fire risk, being highly flammable and, in some cases, can produce large quantities of toxic gases such as cyanide or carbon monoxide when in a fire. The Furniture and Furnishings (Fire) (Safety) Regulations 1988 require that furniture and furnishing hired out in the course of a business, such as the letting of furnished accommodation, must comply with the British Standard tests for combustion and fire spread.

Amenities

Kitchen

Each unit of accommodation should have its own set of kitchen facilities or the use of a shared kitchen containing the following:

1. a gas or electric cooker with oven and grill. In single person units, the cooker to have minimum two rings/hobs. In shared kitchens, the cooker to have four rings/hobs, with a minimum of one cooker for every five persons sharing

2. a sink and drainer on a base unit supplied with constant hot and cold water

3. fixed worktop

4. power points and

5. food storage space and a refrigerator.

Bathroom

There should be at least:

1. one bath or shower for every five persons sharing

2. one WC for every five persons sharing. If there are

more than three people sharing one WC, then that WC should be in a separate compartment, whenever possible and



3. sufficient wash hand basins should be provided.

- General repair

The HMO should be free from serious disrepair and maintained in a reasonable condition by ensuring that, for example:

the roof is not leaking

windows and doors work properly and

electrical supplies are in safe working order

- Space requirements

Minimum space standards are laid down by the Housing Acts to prevent overcrowding. There are also standards adopted by eg Woking Borough Council which specify recommended minimum room sizes for different types of accommodation. In practice, individual consideration is given to the particular circumstances and whether the room functions adequately for its use.

- General management of an HMO

The Landlords responsibilities do not end once all the facilities have been provided. The Regulations are intended to ensure HMOs are managed and maintained in a proper manner on a day-to-day basis.

Houses in Multiple Occupation

Do I need to Licence my Property?

Mandatory licensing of HMOs applies to those HMOs which represent the highest risk to their occupiers. These are HMOs which:

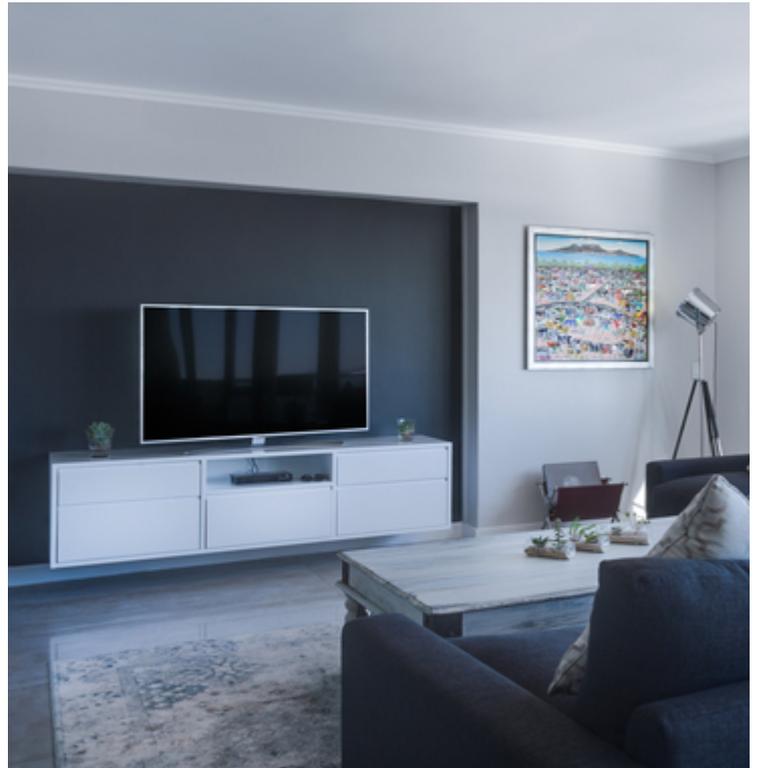
are occupied by five or more people living as two or more households and include shared amenities such as kitchens, bathrooms and toilets.

Why license these HMOs?

HMOs play an important role in helping to meet the demand for affordable housing since they are a valuable source of relatively low cost accommodation. However, HMOs often exhibit the worst living conditions in the private rented sector. HMO licensing is aimed at protecting the vulnerable and disadvantaged groups that typically occupy this type of housing by improving health and safety standards.

Who needs to apply for a licence?

Landlords must apply to the local Council for a licence which will last five years. Failure to do so is an offence, which could result in a fine of up to £20,000. By possessing a licence, landlords will be demonstrating their responsibility to tenants, as only properties found to be satisfactory by the Council's Environmental Health Service will be licensed.



Properties capable of being brought up to a satisfactory standard will be licensed subject to conditions to ensure improvements are made within an agreed timescale.

How much is the licence fee?

The price depends on the Council, the number of occupants, and whether you are in the Landlord Accreditation Scheme. Prices in Portsmouth range from £395 for multiple applications for small (5 occupants) HMOs if a LAS member to £1047 for a single application for 20+ occupants for a non LAS member.

What's the Council's role in licensing?

The Environmental Health Service will ensure the HMO meets the requirements necessary for protecting the health, safety and welfare of tenants.

Are there any penalties?

It is an offence if the landlord or person in control of the property:

- fails to apply for a licence for a licensable property, and/or
- allows a property to be occupied by more people than is permitted under the licence.

A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000.*

Are there any other licences?

In addition to the mandatory licensing above local authorities may also introduce additional licensing requirements. Discretionary 'Additional' Licensing is where a local authority can choose to make an additional licensing scheme that may apply to House in Multiple Occupation (HMO) which do not fall within the mandatory licensing criteria detailed above.

Additional licensing schemes may apply to such categories of Houses in Multiple Occupation (HMO) as the local authority considers appropriate, but before making such a scheme it must identify specific antisocial behaviour or management problems with those HMOs. Such schemes require the consent of the Government and may be in force for a maximum period of five years.

(*Costs are correct at time of writing)

Transitional Licensing Schemes (TLS) are transitional licensing schemes that can be adopted by local authorities that already have House in Multiple Occupation (HMO) Registration Control Schemes in effect. Under a TLS, HMO Registration Schemes will be allowed to continue for a further 3 years.

Discretionary 'Selective' Licensing is where a local authority can choose to licence all privately rented property (whether an HMO or not) in areas where specific problems have been identified, such as areas of low demand and/or antisocial behaviour.

Legislation:

Housing Act 2004

Fit for Human Habitation Act

On 20 March 2019 a new law came into force to make sure that rented houses and flats are 'fit for human habitation', which means that they are safe, healthy and free from things that could cause serious harm. Most landlords make sure that the houses and flats they rent out are safe and secure, warm and dry. But some landlords do not, and this means that some tenants live in dangerous or unhealthy conditions. This new law, the Homes (Fitness for Human Habitation) Act 2018, will help these tenants and make sure irresponsible landlords improve their properties or leave the business. If rented houses and flats are not 'fit for human habitation', tenants can take their landlords to court. The court can make the landlord carry out repairs or put right health and safety problems. The court can also make the landlord pay compensation to the tenant.

What is the Housing Health & Safety Rating System (HHSRS)

HMOs must provide a safe place to live and hazards are assessed under the Housing Health and Safety Rating System (HHSRS).

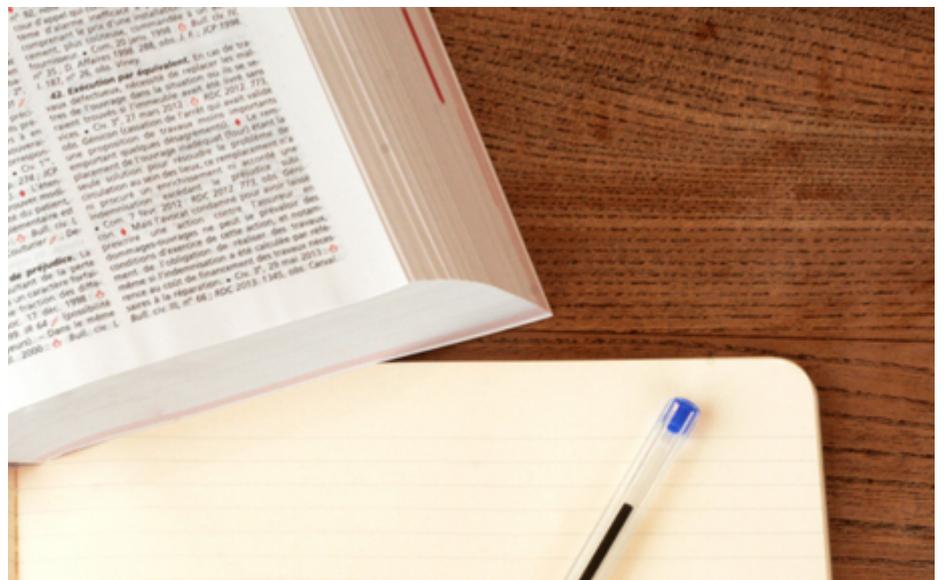
Each council can adopt a different set of standards to those set out under the "Fitness Test" of a property by the means of HHSRS, which has 29 prerequisites that councils should check against, the main ones are addressed in the section on Building Regulations approval above.

Legislation:

The Management of Houses in Multiple Occupation (England)

Regulations 2006

Fit for Human Habitation Act 2019



Bibliography

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About The Town Planning Experts

Town Planning Experts is an independent nationwide planning consultancy based in South-East Hampshire.

We have significant knowledge regarding Houses in Multiple Occupation and have been successful in gaining planning permission for our clients or overturning Councils' decisions on appeal.

Our goal is to help clients achieve their aspirations by providing clear, considered and pragmatic advice based on a detailed knowledge of local and national planning policy, and insight into how decisions are made both locally and at appeal. We believe in making town planning simple!

Getting planning permission should be easy and straightforward so that you can concentrate on what is really important to you in your project. We believe that your journey through the planning process should be free and clear of obstacles. That's why we work hard to keep your risks as low as possible.

Not only are we confident in our abilities. We are also confident that you will love our customer experience. We set ourselves apart from others because we go the extra mile. Your experience is important to us so we make sure that there is nothing to trip you up, nothing hidden and nothing taken away. In short, piece of mind.

Whether you are thinking about a scheme, have difficulties in moving it forward or have run into problems with the local authority why not have a chat with us.

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