

To: City Executive Board

Date: 9 June 2010

Item No: 11

Report of: Head of City Development

Title of Report: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation (HMOs)

Summary and Recommendations

Purpose of report: This report outlines the recent changes to the planning legislation for dwellinghouses and houses in multiple occupation (HMOs). As requested by Members it considers the relevance of existing City Council's planning policies and recommends the approach that the City Council should take in dealing with planning applications for new HMOs in the short term by suggesting the publication of an Interim Policy Statement discouraging the proliferation of HMOs, pending the development of new planning policies.

Key decision No

Executive lead member: Ed Turner & Colin Cook

Report approved by: Ed Turner

Finance: Gillian Chandler

Legal: Emma Griffiths

Environmental Development: John Copley

**Policy Framework: Local Development Framework. Corporate Plan:
More Housing Better Housing for all**

Recommendation(s):

- i) CEB to decide that the criteria of OLP policy HS15 will be applied in assessing planning application proposals for Class C4 and sui generis HMO uses;
- ii) CEB to agree an Interim Policy Statement advising private landlords and developers that "on those planning application proposals for Class C4 and sui

generis HMO uses, which satisfy the criteria of adopted OLP policy HS15, the Council still wishes to discourage the proliferation of new HMOs throughout the city, pending the development and adoption of a new local planning policy to replace OLP policy HS15;

iii) CEB to accept that HS15 compliant applications would be assessed in the light of the agreed Interim Policy Statement, but that each case would have to be assessed on its own merits and that it would be necessary to substantiate the harmful effects with local evidence in order to refuse permission;

iv) CEB to instruct officers to proceed as a matter of priority with the preparation of a planning policy to enable its adoption as part of the Sites and Policies Development Plan Document and the replacement of OLP policy HS15, based on detailed evidence across the city.

Introduction

1. In recent years the expansion of the buy-to-let market has resulted in the growth of privately-rented shared houses, especially in urban areas. High concentrations of shared houses can lead to a reduction in family homes, affect the balance of dwellings and communities and sometimes cause problems, especially if too many properties in one area are let to short-term residents with little stake in the local community. Tenants can also suffer from poor conditions in badly managed properties.
2. In response to lobbying by this Council and others, the Government introduced new local planning and licensing powers, to control the spread of high concentrations of shared rented homes and to tackle pockets of unsafe and substandard privately-rented housing. The changes improved consistency between housing, planning and licensing legislation and came into effect on 6 April 2010.
3. This report outlines the recent changes to the planning legislation for dwellinghouses and houses in multiple occupation (HMOs). As requested by Members it considers the relevance of existing City Council's planning policies and recommends the approach that the City Council should take in dealing with planning applications for new HMOs in the short term by suggesting the publication of an Interim Policy Statement discouraging the proliferation of HMOs, pending the development of new planning policies.

The changes to the planning regulations

4. This section highlights the main changes in relation to dwellinghouses and HMOs. A more detailed account is set out in Appendix I.

5. The old use class C3 dwellinghouses included family homes, small care homes, student and other shared houses, where up to six residents lived as a single household. We had no planning controls over changes of use within C3. All other properties with over six residents or bedsits used to be HMOs, did not fall within any use class (sui generis) and we had controls over changes to their use.
6. The recent changes split the old C3 use class into:-
 - i) a (new) C3 Dwellinghouses use class, which includes all family homes, small care homes, owner/occupier/s with up to two lodgers and all shared houses owned/managed by educational institutions or public bodies with up to six residents (as excluded from class C4);
 - ii) C4 HMOs – this includes all privately-rented shared houses and bedsits with between three and six unrelated persons, eg. students.
7. Planning permission is now needed for any new material change of use from a C3 dwellinghouse to a C4 HMO, while the reverse is permitted development.
8. The legislative changes are not applicable retrospectively, meaning that there will be no need to apply for planning permission if a property was in use as an HMO (as now defined), before 6th of April 2010. Thus all previously C3 properties were reclassified as either C3 dwellinghouses or C4 HMOs on 6th April 2010.

The Changes to the Licensing Regulations

9. Councils now have the powers to apply city-wide additional licensing scheme to control all HMOs, subject to a prior public consultation exercise. The City Council has commenced this process and it is anticipated that the new requirements should come into effect by November 2010. The scheme would last for five years and it is likely to take at least three years to identify and license the entire HMO stock in the City.
10. The licensing requirements will only ensure that landlords and letting agents of HMOs comply with certain facilities, general management and good neighbour standards, such as:- fire precautions, structural matters, basic amenities, refuse storage, condition of external areas, security, disturbance and unsocial behaviour by tenants.
11. Licensing is an entirely separate control regime to planning and the two are not dependant on each other. The grant of an HMO licence does not remove the requirement to obtain any necessary planning permission and vice versa. Notwithstanding both planning and licensing will work closely together and with other services and agencies, to address relevant HMO issues.

Local planning policy on HMOs

12. Policy HS15 is the current adopted planning policy on HMOs in the Oxford Local Plan 2001-2016 (OLP). It states that “planning permission will not be granted for the change of use of any building to an HMO” “within the (East Oxford) HMO Registration Area”. It goes on to say that outside the HMO Registration Area, changes of use to an HMO may be granted, provided they: i) do not result in more than 25% of the properties in the road being HMOs; and ii) a number of other amenity criteria are met (see full text in Appendix II).
13. It is intended to review and update HS15 as part of the forthcoming Sites and Policies Development Plan Document (SAP DPD), which is currently at a very early stage of its preparation in the context of the Local Development framework (LDF). This is a statutory process and an Options document is scheduled to be published for public consultation towards the end of 2010. A new policy will then emerge as part of the Proposed Submission Document, anticipated to be endorsed by the Council in the summer of 2011. At that stage the endorsed HMO policy will be a material consideration for development control purposes. From then on it will be afforded increasing weight, as it progresses through the various stages leading to its anticipated adoption by the end of summer 2012, when the SAP DPD will supersede the OLP.
14. The current changes to the regulations will directly feed into generating the options for a new HMO policy that will eventually replace HS15. There will be opportunities to explore whether different areas or the whole of the city require greater controls (“areas of restraint”) on new HMOs, than those currently afforded by HS15, based on detailed evidence across the city.

Application of policy HS15

15. The OLP predates recent changes to the regulations. The introductory paragraph to the OLP glossary states that “the information in this glossary is an informal, non-technical explanation of some terms and phrases used in the Plan. The glossary should not be used to interpret the policies of this Plan. Where necessary, formal definitions are given elsewhere in the text...”. The OLP glossary reference for HMOs (see Appendix II) reflects more the uses that comprised an HMO prior to the recent changes and also excludes large institutional accommodation.
16. The wording of policy HS15 does not actually define an HMO. It merely sets out the approach for dealing with applications for HMOs.
17. The commentary to HS15 notes that “planning permission is not necessarily required when unrelated people occupy a property”. This situation has now been clarified, as a result of the introduction of Class

C4, which defines those HMOs that require planning permission. It also states that “for the purpose of applying the 25% criterion..., only (HMOs) that require planning permission will be counted”. It also makes reference to “case law and planning appeal decisions”, reflecting the changing nature of the law in relation to HMOs.

18. In view of the above it is Officers’ view that the new definition of the C4 HMO class is relevant and applicable to the adopted OLP policy HS15, in relation to proposals for new C4 HMOs. It provides a strong policy basis and should be afforded the full weight of an adopted and relevant development plan policy in assessing such planning proposals.
19. The new regulations have broadened the controls available to Councils in dealing with HMOs. The scope of HS15 has also broadened and it will continue to provide an absolute reassurance of preventing the formation of new C4 and sui generis HMOs in East Oxford due to the higher HMO concentrations there. It will also limit their numbers elsewhere to prevent high concentrations developing in accordance with the 25% criterion, as the policy acknowledges that there is a limited role for HMOs in providing some cheaper accommodation.

Interim Policy Statement Discouraging Proliferation of HMOs

20. This section looks beyond the scope of HS15, especially for the interim period pending the adoption of a new HMO policy.
21. In terms of housing for students, OLP policies ED6, ED8 and ED10 encourage the provision of purpose-built accommodation by the two universities and other colleges. These policies set out targets to reduce the existing number of students that live in shared private houses, and return some of the shared student houses to family homes. The number of student accommodation schemes in the pipeline should ensure that targets are met within the next 18 months.
22. The Balance of Dwellings Supplementary Planning Document (BoDs), was adopted in January 2008 and seeks in part to safeguard the stock of existing small family size dwellings in the city. It mentions that there are over 2000 HMOs known to the Council, but that this number maybe nearer to 5000. Also in 2005 an HMO licensing study for Oxford City estimated that there were just over 5,000 HMOs in the city and this number may have increased since.
23. Thus we do not know the full extent of the existing stock of HMOs in the City, but clearly there is extensive supply of HMOs in the city, while more recent policy seeks to achieve a greater balance of dwellings. It is therefore necessary to undertake detailed research as part of the emerging SAP DPD, to clarify numbers, identify possible additional areas of restraint and develop a new HMO policy accordingly.

24. In the meantime officers are aware of Members concerns about the potential development pressures for the proliferation of new C4 HMOs in the city and their wish to signal a general discouragement for such proposals, which may otherwise satisfy the requirements of policy HS15, pending the development and adoption of a new HMO policy.
25. Indeed, the Government's intention in "giving local authorities the powers to manage the development of HMOs in their area (was) in turn (to) help... (them) stem the growth of large pockets of shared homes – which can change the balance and nature of communities".
26. In view of this, officers advise Members that they can agree and publish an Interim Policy Statement to discourage HMO proliferation across the city. This would be a material consideration in assessing new planning proposals, which however will only carry limited weight on its own, in view of the fact that it would not have gone through the necessary public consultation and examination stages.
27. We would therefore assess each proposal on a case by case basis and in order to support refusal it would be important to have local evidence of impact and harmful effects to substantiate and support the Council's case on appeal. It is not considered that the recommended policy approach amounts to unreasonable behaviour that would put the Council at risk of an award of costs at appeal.

Level of Risk

28. See attached Risk Register as Appendix III

Climate Change / environmental Impact

29. Partnership working with Licensing and other services would mean a better regulated private landlord HMO stock, resulting in an improved balance to our housing stock and overall a greater degree of sustainability. In particular the effects on neighbouring residents will improve with the requirements for better management, and also the condition and standard of the HMOs stock will improve, both internally and externally. It is anticipated that one of the future licensing criteria will be provision of loft insulation.

Equalities impact

30. The recommendation seeks to confirm continuing to apply the existing policy and to agree an interim statement, which would apply on planning criteria across the board. In developing and adopting a new HMO policy as part of the SAP DPD, full public consultation will take place, to include hard-to-reach groups.

Financial implications

31. The new controls introduced by the changes to the regulations are likely to have a considerable impact on workloads and resources primarily in licensing but also in terms of investigations of alleged breaches of planning control and any possible enforcement action that may ensue, applications for certificates of lawfulness for existing HMOs, as well as planning applications for new HMOs.
32. In terms of licensing there is a significant piece of work over the five year period of the forthcoming citywide additional licensing controls scheme, which will seek to identify and license all relevant HMO premises in the city. A full financial modelling exercise is underway with Finance and Environmental Development to model the impact of the scheme. The full resource implications are still unclear, however all licensing applications are subject fees which relate to the cost of the service.
33. In terms of planning, there has not been an early rush of requests for investigations or for certificate applications to confirm lawfulness of existing HMO uses. There have also been no applications for new HMOs since the changes came into effect. The full impact on workloads and resources is currently unclear. It remains to be seen as to how the situation will develop over the coming months. Officers will continue to monitor the situation in this respect. It should be noted that the cost of enforcement investigations and any action are borne by the Council, while applications for certificates or planning permission are subject to the standard planning fees which enable some cost recovery.
34. Notwithstanding, it is considered that the report's recommendations in clarifying the policy approach to new proposals, is likely to discourage the submission of large numbers of planning applications for new HMOs and thus reduce the potential impact of the recent changes.
35. The normal resource implications would arise in defending any appeal cases arising from enforcement or refusal of planning permission / certificate cases. The Council may wish to review its approach, depending on the outcome of any appeals. Were the Council's approach to be supported on appeal by Inspectors, any further High Court challenge by appellants would be against the Inspectorate's decision and the Council would not have to incur any costs.
36. With regard to the recommendation to progress a new policy, this is anticipated to be undertaken within budget with the resources earmarked for the SAP DPD.

Legal implications

37. Please see Appendix 4.

Recommendation

38. It is therefore recommended that:-

- i) CEB to decide that the criteria of OLP policy HS15 will be applied in assessing planning application proposals for Class C4 and sui generis HMO uses;
- ii) CEB to agree an Interim Policy Statement advising private landlords and developers that “on those planning application proposals for Class C4 and sui generis HMO uses, which satisfy the criteria of adopted OLP policy HS15, the Council still wishes to discourage the proliferation of new HMOs throughout the city, pending the development and adoption of a new local planning policy to replace OLP policy HS15”;
- iii) CEB to accept that HS15 compliant applications would be assessed in the light of the agreed Interim Policy Statement, but that each case would have to be assessed on its own merits and that it would be necessary to substantiate the harmful effects with local evidence in order to refuse permission;
- iv) CEB to instruct officers to proceed as a matter of priority with the preparation of a planning policy to enable its adoption as part of the Sites and Policies Development Plan Document and the replacement of OLP policy HS15, based on detailed evidence across the city.

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List of background papers: all published

Version number: 6

APPENDIX I

Background to the changes to the HMO regulations

1. The Use Classes Order (UCO) sets out classes of uses, eg. class A1 retail. Changes of use within a class do not require planning permission. The UCO also provides that certain uses, due to their unique nature and impact, are not within any class of the Order; they are sui generis (of their own kind) and changes to and from those requires planning permission.
2. The General Permitted Development Order (GPDO) adds further flexibility by classifying certain changes between use classes as permitted development, which therefore do not require an application for planning permission.
3. The old class C3: Dwellinghouses included family homes, small properties where residents received care, as well as student and other shared houses, where up to six residents lived as a single household. Thus up to now there were no controls on changing family houses to privately-rented student houses or houses shared by other groups of people, such as young professionals, and vice-versa.
4. The old uses that comprised HMOs were shared properties with more than six residents or properties used as bedsits.

The changes to the regulations

5. The recent UCO changes effectively split the old C3: Dwellinghouses class into two classes:- C3: Dwellinghouses and C4: Houses in Multiple Occupation (HMOs). On 6th April 2010 all old C3 uses were reclassified as either C3 or C4. The changes do not apply retrospectively and the reclassification of the old uses does not require planning permission.
6. Planning permission is now needed for any new material change of use from a C3 dwellinghouse to a C4 HMO. Each case will require a “fact and degree” judgement of whether a material change of use occurs/ed.
7. However the GPDO changes ensured that the reverse process is permitted development. Thus the change of use from a C4 HMO to a C3 dwellinghouse does not need planning permission.

Class C3: Dwellinghouses

8. Class C3 dwellinghouses includes properties occupied by:-
 - i) C3(a):- any (unrestricted) number of residents forming a single household, basically a ‘family’ and any domestic employees;

ii) C3(b):- up to six residents living together as a single household and receiving care; this includes small scale care homes; and

iii) C3(c):- up to six residents living together as a single household, who share a house in a manner not falling within class C4 HMOs. This would be as a result of exceptions set out in the Housing Act, such as:- homeowner/s with up to two lodgers; students in shared houses owned / managed by their educational institutions; small religious communities; and also social housing managed by public bodies, such as Councils, registered social landlords (RSLs), police, fire and health authorities.

Class C4: Houses in multiple occupation (HMOs)

9. The new C4 HMO class covers shared properties rented by private landlords to between three and six unrelated individuals as their main residence, sharing some basic amenities, or the property lacks some basic amenities. It includes shared houses or flats either:-

- a) occupied by groups of tenants, such as students, young professionals or other individuals, irrespective of whether they are friends, live as a single household or the type of tenancy agreement they have entered into;
- b) converted in whole or in part into non-self-contained bedsits; or
- c) subject to an “HMO declaration notice” by the local authority.

Large HMOs and other cases

- 10. Apart from the unrestricted C3(a) family houses, the scope of the rest of the C3 dwellinghouses and C4 HMOs classes are restricted by an upper limit of six persons. Large HMOs are unclassified by the UCO, known as “sui generis”.
- 11. However, the published CLG Circular 05/10 on HMOs advises that merely exceeding the upper limit of six residents would not imply straight away that it must constitute a breach of planning control. A material change of use will occur only where the increase in the number of residents can be said to either have intensified the use so as to change its character, or, in relation to C3, the residents no longer constitute a single household. In this respect a “fact and degree” planning judgement has to be made on each case.
- 12. Further to the Housing Act exceptions mentioned in para. 8(iii) above, where there are more than six residents, such properties would be class as sui generic HMOs.
- 13. The changes to the regulations have not addressed the case of a property with two bedsitting tenants. Similar to the above, a judgement would have to be made on each such case, as to whether the use has resulted in a material change of use requiring planning permission.

APPENDIX II

Relevant extracts from the adopted Oxford Local Plan (2001-2016)

7.9 Houses in Multiple Occupation

7.9.1 The City Council wishes to see the highest quality residential accommodation in Oxford. However, as discussed earlier, there is a great need for cheaper accommodation. The private sector can sometimes address this need by offering non-self-contained accommodation with the sharing of a bathroom, a toilet, or cooking facilities. This standard of accommodation is often lower than would otherwise be acceptable for new development. A characteristic of this type of accommodation is the often transient nature of the occupants. In Oxford, many houses are let to individual students, and public agencies have used such accommodation to house vulnerable people who might otherwise be homeless. Developments that involve shared facilities for two or more households are unlikely to be suitable for permanent accommodation.

7.9.2 The City Council therefore acknowledges that there may be a limited role for houses in multiple occupation (HMOs). However, the City Council is concerned that too high a concentration of houses in some form of multiple occupancy can contribute to a general loss of amenity to neighbouring properties. This is the situation in East Oxford, so the City Council does not want to see any more HMOs in that area. In other areas of Oxford, planning applications for change of use to HMO will be assessed against the criteria in Policy HS.15.

7.9.3 Planning permission is not necessarily required when unrelated people occupy a property. Whether there is planning control largely depends on how many households occupy the dwelling. In reaching a view on whether a particular dwelling is occupied by more than one household, the City Council will take into account the range of factors (established in case law and planning appeal decisions) that describe the legal position of the occupiers and how they organise their domestic arrangements. Occupation by fewer than six people comprising more than one household may create a HMO subject to planning control. For the purpose of applying the 25% criterion in Policy HS.15, only houses in multiple occupation that require planning permission will be counted.

7.9.4 The City Council considers that purpose-built HMOs have no role in meeting general housing needs in Oxford. These include the needs of families who would otherwise be homeless. However, sometimes purpose-built HMOs can be appropriate for people with special needs. Purpose-built accommodation that is let termly or annually to students does not fall under the control of Policy HS.15.

POLICY HS.15 - HOUSES IN MULTIPLE OCCUPATION

Planning permission will not be granted for purpose-built houses in multiple occupation (HMOs) unless they are designed for, and will be occupied by, people with special housing needs (when the proposals will be considered on their individual merits).

Within the HMO Registration Area, shown on the Proposals Map, planning permission will not be granted for the change of use of any building to an HMO.

Outside the HMO Registration Area, and subject to HS.8, planning permission will be granted for the change of use of a building to an HMO if the proposal:

- a. makes appropriate provision for car / cycle parking;
- b. will create adequate levels of amenity for the occupiers;
- c. includes refuse storage space that is adequate in size and is accessible;
- d. will retain or create good access into, and within, the building; and
- e. will not result in more than 25% of the residential properties in the road being in shared use which has or requires planning permission.

Note: purpose-built accommodation that is let termly to students does not fall into this category.

POLICY ED.6 - OXFORD BROOKES UNIVERSITY - STUDENT ACCOMMODATION

The City Council will assess proposals for teaching/administration accommodation for their impact on student numbers, and will ensure that any increase in student numbers is matched by an increase in purpose-built student accommodation. Planning permission will only be granted for additional teaching/administrative accommodation where the number of Oxford Brookes University full-time students living in Oxford in accommodation not provided by Oxford Brookes University does not exceed 3,500 in the academic years up to 2008, and 3,000 after that date.

The conversion or redevelopment of purpose built student accommodation to market housing will not be permitted. The City Council will seek to restrict students from bringing cars to Oxford by means of a planning obligation or other appropriate means.

POLICY ED.8 - UNIVERSITY OF OXFORD - STUDENT ACCOMMODATION

The City Council will assess proposals for teaching/administrative accommodation for their impact on student numbers and will ensure that any increase in student numbers is matched by an increase in purpose-built student accommodation. Planning permission will only be granted for additional teaching/administrative accommodation where the number of Oxford University full-time students living in Oxford in accommodation not provided by their College does not exceed 3,500 in the academic years up to 2008 and 3,000 after that date.

The conversion or redevelopment of purpose-built student accommodation to market housing will not be permitted. The City Council will seek to restrict students from bringing cars to Oxford by means of a planning obligation or other appropriate means.

POLICY ED.10 - PRIVATE COLLEGES - STUDENT ACCOMMODATION

Planning permission will only be granted for the establishment of new educational establishments or the expansion of existing ones where the applicant agrees to:

- a. a limit on the overall number of students; and
- b. to accommodate the students in other educational premises, purpose built accommodation or family lodgings.

GLOSSARY

The information in this glossary is an informal, non-technical explanation of some terms and phrases used in the Plan. The glossary should not be used to interpret the policies of this Plan. Where necessary, formal definitions are given elsewhere in the text and the appropriate references are provided.

HMO House(s) in Multiple Occupation: A building containing rooms occupied as separate units of accommodation by individual households that share a kitchen or bathroom facilities. Large-scale accommodation designed for, and occupied by, employees of an organisation owning or controlling the property or by students on a similar basis is not included in the definition of HMO for the purpose of applying Policy HS.15 (see Section 7.0 Housing Policies).

Appendix III – Risk Register

No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk	
		I	P			I	P	Action: Action Owner:	Outcome required: Milestone Date:	Q 1	Q 2	Q 3	Q 4	I	P
1	Early appeals allowed overturning refusals and granting planning permission.	3	3	Our assessment of the applicability of policy HS15 is challenged at appeals and the High Court	Appeal statements fully researched and draft statements cleared with Legal	3	2	Action: Action Owner: NG Mitigating Control: Control Owner MCB	Outcome required: Appeals dismissed Milestone Date: The statutory appeal statement timescale on a case by case basis						
2	Additional pressure on existing resources by way of increased number of enforcement complaints and extensive enquiries to the Council	2	5	Public and applicants do not understand Council's approach	Produce public information leaflet and post on the website	1	3	Action: Action Owner: NG Mitigating Control: Control Owner MCB	Outcome required: Leaflets published Milestone Date: 30.06.10						
3	Delay in formally adopting new HMO Planning Policy, that would carry full weight in assessing applications for new HMOs	3	3	Lack of resources to progress the development and adoption of new HMO policy	Currently anticipated to be carried out within existing identified budgets	3	2	Action: Action Owner: MJ Mitigating Control: Control Owner MCB	Outcome required: Adoption of New Policy Milestone Date: 31.08.12						