

To: City Executive Board

Date: 8 December 2010

Item No: 20

Report of: Head of City Development

**Title of Report: Houses in Multiple Occupation (HMOs) and Planning –
The way forward**

Summary and Recommendations

Purpose of report: To provide an update on the planning aspects of HMOs and explore the available options.

Key decision? Yes

Executive lead member: Ed Turner, Colin Cook

Policy Framework: More housing, better housing for all; Improved services and value for money

Recommendation(s): To review the available options and to resolve to accept Option 2 (detailed in paragraph 4.3 below) - Article 4 Direction with 12-month delayed effect.

1.0 Background

- 1.1 Up until 5th April 2010 the C3 “dwellinghouses” planning use class included not only all dwelling units (family houses and self-contained flats and houses where care is provided), but also all privately-rented shared houses, where up to six unrelated occupants (eg. students, young professionals and others) lived as a single household. This meant that there were no planning controls over the type of occupation, resulting in certain areas in high concentrations of shared houses, the erosion of family housing stock with adverse effects on the stability and balance of local communities.
- 1.2 Privately-rented shared houses were taken out of the C3 dwellinghouses use class and were reclassified as C4 Houses in Multiple Occupation (C4 HMOs) on 6th April 2010. This meant that planning permission was required for the formation of any new C4 HMOs from then on. At the same time the conversion of any C4 HMO to a C3 dwellinghouse became permitted development and did not

require planning permission. The changes also ensured consistency between housing, planning and licensing regulations.

1.3 Oxford City Council had lobbied for planning controls on shared houses and fully supported the changes in the regulations. On 9th June 2010 the City Executive Board agreed an interim statement, which:

- i) confirmed that the restrictive local plan policy HS15 on HMOs applied to the new C4 HMOs; and
- ii) discouraged the proliferation of further HMOs in the city pending the adoption of a new HMO policy to replace HS15, which became a matter of priority.

1.4 On 11th June 2010, the housing minister announced the intention to remove the recently introduced controls by making conversions to C4 HMOs permitted development. However Councils would have the opportunity to re-introduce planning controls locally, by withdrawing permitted development rights through the process known as Article 4 Directions.

1.5 Oxford City Council, along with a number of other Councils and relevant organisations objected to these proposals and suggested a workable, practicable and affordable alternative. Most objectors advocated the retention of the controls introduced in April 2010, while encouraging Councils with areas where HMOs are not a problem, to use their existing powers and introduce local permitted development rights through Local Development Orders.

1.6 Nevertheless in September 2010 the government confirmed its intention and the new permitted development rights became law on 1st October 2010.

1.7 Milton Keynes Council along with Oxford City and other councils, sought leave to challenge the new permitted development rights in the High Court, but were unsuccessful in the first instance. The application has been renewed; however, no date has yet been set for the oral hearing. This report has been written by the author on the basis that the Judicial Review challenge is unsuccessful.

2.0 **The current state of the law**

2.1 The new Permitted Development rights effectively mean that, unless reversed by the Courts, there are currently no planning controls for any existing C4 HMOs. Any future conversions from houses to C4 HMOs will be permitted development not requiring planning permission.

2.2 As an aside notwithstanding the lack of planning controls, the Council has the power to introduce additional licensing controls. In this respect it has resolved to introduce two additional HMO registration schemes to

ensure that HMOs in the City are properly managed and provide accommodation that meets certain minimum standards.

3.0 The experience of other Councils and general matters for consideration in relation to Article 4 Directions

- 3.1 **Types of Article 4 Directions** - Councils have the option of removing permitted development rights and introducing planning controls through the Article 4 Direction process. These can be property or area specific, or they can cover the entire city area.
- 3.2 The planning controls introduced by Article 4 Directions could either take effect immediately or could come into effect after a minimum period of 12 months. The main difference between the two types of Article 4 Direction is the issue of compensation liability for the Council.
- 3.3 **Compensation issues** -In the case of Article 4 Directions with immediate effect, Councils are at high risk of substantial compensation claims by applicants, who can claim compensation under section 108 of the Town and Country Planning Act 1990 (as amended). They can do so if their planning applications, submitted within one year of the Article 4 Direction designation, are either refused planning permission or granted planning permission subject to more limiting conditions than permitted development would normally allow. They are entitled to claim compensation for all financial losses incurred, including process costs, loss of land value and loss of future income. It has been estimated that the potential level of each compensation claim could be in the order of £40k-£50K, in the case of average three bedroom house.
- 3.4 There is no provision for compensation claims against Councils in respect of non-immediate Article 4 Directions, that come into effect after a minimum period of 12-months following designation.
- 3.5 **Other Councils' experience** - Officers are in contact with other Councils covering mainly urban areas. A number of those are considering introducing planning controls through Article 4 Directions. Invariably they are opting for city/borough-wide non-immediate Article 4 Directions, with a 12-month delayed effect to avoid compensation costs. In particular, Manchester and Portsmouth City Council have just designated their entire city areas with non-immediate Article 4 Directions. Bournemouth Borough Council have just resolved to do the same. Milton Keynes Council and Newcastle City Council are also considering non-immediate Article 4 Direction designations.
- 3.6 **HMOs in Oxford** - The number of HMOs in Oxford has risen over recent years to an estimated 5,000, signifying a considerable demand and corresponding development pressures for rented shared houses across the city. The problems associated with high HMO concentrations have been in evidence in East Oxford for many years and have also been, increasingly, manifesting in other parts of the city.

As with other urban Councils with HMO issues, it would therefore make sense that the introduction of any Article 4 Direction planning controls in Oxford apply throughout the entire city area.

- 3.7 **Costs associated with Article 4 Directions** - The preparation, designation, consultation and publicity associated with Article 4 Directions would involve officer time and be carried out within existing budgets, but would mean some delays to existing work programmes. There are also legal, publicity and consultation costs, which could be in the region of £7k associated with the preparation of Article 4 Directions.
- 3.8 All planning applications, which are the result of Article 4 Directions A4Ds, are fee exempt. The normal application fee for HMO conversions would have been £335.00. The Council would therefore be unable to recover its process costs. Where there is a strong up-to-date adopted policy of restraint the number of applications for new HMOs are likely to remain low and thus process costs could be met within budget. However in the absence of such an adopted policy the resulting number of applications is unknown. For every 100 planning applications there would be pressure on the service of the order of £30k. Refusal of planning permissions would also entail a considerable appeal workload. The situation would therefore need to be kept under review.
- 3.9 With regard to investigation by planning enforcement of allegations of new C4 HMOs, this would arise either from Licensing or from neighbours. The numbers of cases and effect on the enforcement service are unknown at this stage and would have to be kept under review.
- 3.10 **Unintended consequences** – The non-immediate Article 4 Directions allow a 12-month amnesty period, during which landlords can take advantage of the interim permitted development rights and convert their dwellinghouses into the more lucrative C4 HMOs. Depending on the numbers of new HMO conversions under permitted development rights, this could result in the further erosion of family homes in all areas of the city, but especially so in areas of high demand for HMOs (eg. East Oxford, Headington, Jericho etc.). This could accentuate the adverse effects on the respective neighbourhoods and the social and physical strains on local communities.
- 3.11 **Review of effects of Article 4 Directions** - Once designated all Article 4 Directions are subject to a period of consultation and remain under review leading up to a decision of whether to confirm them after six months. If confirmed, thereafter Councils have also the right to withdraw Article 4 Direction designations and reinstate permitted development rights if circumstances necessitate it.
- 3.12 Some of the issues for review would be: - whether there is an upsurge of HMO conversions under Permitted development rights, where a 12-

month amnesty period applies; the effects on the housing stock of the changes to the housing benefit provisions as a result of the recent Comprehensive Spending Review; the emergence of a new HMO planning policy; the numbers of planning applications (and appeals) for new C4 HMOs; Inspectors' comments and decisions on planning appeals; the number of requests for enforcement investigations of alleged unauthorised C4 HMOs; and the number of resulting enforcement actions.

4.0 The way forward - options

4.1 In planning terms there are three primary options available to the Council in respect of C4 HMOs. Either to:

i) make an immediate city-wide Article 4 Direction, removing PD rights and introducing planning controls over new C4 HMOs (Option 1); or

ii) make a non-immediate city-wide Article 4 Direction, allowing a minimum 12-month delay before any planning controls over new C4 HMOs come into effect (Option 2); or

iii) do nothing and accept the new permitted development rights and lack of planning controls over C4 HMOs (Option 3).

The pros and cons of each of these options are set out in the tables below.

4.2 Option 1 – Immediate Article 4 Direction

Pros	Cons
Introduction of full planning controls on C4 HMOs by end Feb 2011	Very high risk of compensation claims by landlords and home owners on any financial losses they suffer as a result of their planning applications for C4 HMO conversions submitted in the first year and either refused or approved with restrictive conditions.
	Preparation - officer time ~ 20 officer days Plus ~£7k legal publicity costs.
	Delays in existing work programmes
	Possible large number of planning applications in the first year
	Planning applications are fee exempt (normally planning application fee £335) No cost recovery.
	Resource pressures at appeal
	New planning policy not sufficiently advanced - appeals allowed?

4.3 Option 2 – Non—immediate Article 4 Direction

Pros	Cons
No risk of compensation costs as a result of refusal of planning permission or approval with restrictive conditions	Delayed planning controls, following 1 year amnesty period
Introduction of full planning controls on C4 HMOs by end Feb 2012	Preparation - officer time ~ 20 officer days plus ~£7k legal publicity costs.
Opportunity to not confirm the designation in the first 6 months or subsequent withdrawal of Article 4 Direction, if it proves to be harmful to housing stock	Delays in existing work programmes
Emerging planning policy on HMOs at an advanced stage, improved prospect at appeal	Planning applications are fee exempt (normally planning application fee £335)
No resource implications in dealing with applications, appeals and enforcement during the first 12 month amnesty period	Resource implications in dealing with applications, appeals and planning enforcement investigations after the end of the amnesty period, if a new HMO policy has not been progressed
If strong robust new HMO policy at an advanced stage, then resource implications in dealing with applications, appeals and enforcement after the end of the amnesty period could be manageable, subject to review	Potential unintended consequence of landlords being forced to make use of amnesty period and convert to C4 HMOs, affecting the housing stock
Introduction of full planning controls on C4 HMOs by end Feb 2012	

4.4 Option 3 – Do nothing

Pros	Cons
No cost or resource implications for the Council	No planning controls on C4 HMOs. Controls only through additional licensing.
	Potential steady rise in numbers of HMOs throughout the city in response to market forces, affecting housing stock balance

5.0 Climate change / environmental impact

5.1 No material climate change/environmental impacts as a result of this report.

6.0 Equalities impact

6.1 Rented shared houses (C4 HMOs) are the cheapest and thus most affordable form of accommodation provided by the private sector. They are occupied by unrelated individuals, such as students, young professionals and migrant workers. They fulfil a need and demand in the market, however the standard of accommodation provided is often lower than would otherwise be acceptable in new development, while high concentrations of HMOs have an adverse impact on local communities. It is unclear at this stage how the changes to housing benefit as a result of the Comprehensive Spending Review may affect the demand for HMOs. There are no particular equalities impacts relating to this report.

7.0 Financial implications

7.1 Option 1 – Potentially substantial levels of costs (£millions+) arising from compensation claims, in connection with financial loss suffered by applicants as a result of refusal of planning permission. Costs of preparing and introducing planning controls could be met from within existing budgets, subject to some delays in other work programmes. However, a budget bid would be necessary for dealing with the resulting planning applications, appeals, enforcement work and compensation claims. In view of the various time limits, this work and associated process costs and resource implications are anticipated to be significant, especially in the first couple of years following the introduction of the controls. This is estimated to be at a rate of £30k per 100 cases.

7.2 Option 2 – Preparation, designation and consultation costs and resource implications can be absorbed within existing budgets, subject to some delays in other work programmes. Any subsequent resource and cost implications following the introduction of the controls after the 12-month amnesty period could be minimised and remain at manageable levels depending on a number of factors. However were a significant number of casework to arise and the associated costs and pressure on resources to become unsustainable, then the Council can either withdraw the Article 4 Direction controls or a budget bid would be necessary to cover the work at a rate of £30k per 100 cases.

7.3 Option 3 – No material cost or resource implications.

8.0 Legal Implications

- 8.1 There is no legal impediment to the Council taking any of the options set out in the report but the financial and other consequences, which are detailed in the report, are necessarily different for each option.
- 8.2 Milton Keynes, Oxford City Council and others are currently waiting for a date for an oral hearing to establish whether they can have permission to Judicially Review the new PD rights. The application has been renewed following an unsuccessful initial consideration; however, no date has yet been set for the oral hearing. The challenge is on the basis that there was improper consultation before implementing the new PD rights.
- 8.3 Please note that this report has been written by the author on the basis that the Judicial Review challenge is unsuccessful.

9.0 Level of risk

- 9.1 See Appendix 1 for Risk Assessment

10.0 Conclusion

- 10.1 In view of the above officers consider that:-
- i) Option 1 is unsustainable, unrealistic and prohibitive for the Council and it is recommended that Members reject it;
 - ii) Option 2 would allow planning controls of new C4 HMOs in the future. Preparation costs would be met by existing budgets. Any potential unintended consequences or cost/resource implications could be minimised by keeping them under review with the option of either not confirming the Article 4 Direction within six months or effectively withdrawing it at a subsequent stage, while also understanding how other Councils are addressing these issues. This would be a realistic and practicable solution and it is recommended that Members support option 2; and
 - iii) Option 3 has no cost or resource implications. However officers consider the lack of planning control not to be acceptable at this stage and would recommend that Members reject it accordingly.

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List of background papers:

- 2010 Changes to the Town and Country Planning (Use Classes) and (General Permitted Development) Orders
- Replacement Appendix D to CLG Circular 9/95: General development consolidation Order 1995 (November 2010)
- CLG Circular 08/2010 Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation
- HMO report to 9.6.10 CEB
- Consultation response to CLG

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