

Subject:	Houses in Multiple Occupation - Response to Notice of Motion referred from full Council		
Date of Meeting:	9 March 2017		
Report of:	Executive Director for Economy Environment & Culture		
Contact Officer:	Name:	Steve Tremlett	Tel: 29-2108
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Ward(s) affected:	All		

1. PURPOSE OF REPORT AND POLICY CONTEXT

1.1 This report considers the matters raised at full Council on 20 October 2016 following the submission of a petition on behalf of 'Family Homes Not HMOs, namely that:

- i. The City Plan Part One be reviewed to increase the area of restriction from 50 metres to 150 metres where applications for conversion to HMOs will be rejected if more than 5% of current dwellings are already HMOs;
- ii. Consideration be given to the extension of the current Article 4 Direction area and options to further extend the licensing of private rented housing; and;
- iii. Consideration be given as to whether to better align the Planning and Licensing functions in relation to HMOs and learn from other university towns as to more effective management of student HMOs and to request a report on this matter to its next meeting.

1.2 This report sets out the officer response to these issues.

2. RECOMMENDATIONS:

2.1 That the Committee note the contents of this report as a response to the matters previously raised, as set out above.

2.2

3. CONTEXT/ BACKGROUND INFORMATION

3.1 At full Council on 20 October 2016 a petition on behalf of 'Family Homes Not HMOs' regarding the concentrations of HMOs in Bevendean and Moulsecoomb was debated. Council resolved to note the petition and referred it to Economic Development & Culture Committee (EDC) for consideration, with a specific request to consider the three matters set out in paragraph 1.1 above. At EDC on

on 17 November 2016 the Committee resolved to request an Officer report be brought to a future meeting specifically to consider the matters in question. These are now addressed in turn below.

Change to policy criteria for assessing new planning applications for Houses in Multiple Occupation to HMO

- 3.2 As set out in Policy CP21 of the City Plan Part One, the current threshold used in considered planning applications for new build HMO, or a change of use to HMO, is that they will not be permitted where more than 10% of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use.
- 3.3 The policy is being used to determine planning applications and applications that do not meet the criteria are normally refused. A map showing the locations of planning applications refused and approved for a change of use to HMO, or from a small HMO to a large HMO, over the period 1 January 2015 to 2 February 2017 and a map showing the locations is presented in Appendix 1 It can be seen that in the areas of the highest concentrations, for example around the lower ends of Coombe Road and The Avenue, there have been a number of unsuccessful applications in this period. There is also anecdotal evidence that landlords are avoiding introducing new HMOs in areas where it is known that the concentrations are above the threshold. It should also be noted that permission is sometimes refused on the basis of impact on the area, even if the percentage is less than 10%, for example at 63 Park Road and 25 Wheatfield Way.
- 3.4 Where unauthorised changes of use have occurred these are investigated by the planning enforcement team. The team currently has 106 outstanding cases relating to HMOs. Since the Article 4 Direction came into effect on 5 April 2013 the team has opened a total of 270 cases against alleged unauthorised HMOs¹ resulting in the serving of 24 enforcement notices between. Seven out of eight appeals against enforcement action have been dismissed during this period. In these cases the unauthorised use of the building as an HMO must cease.
- 3.5 In order to alter Policy CP21 a formal partial review of the City Plan Part One would need to be undertaken. This could be started at the latter end of the preparation of City Plan Part Two and would need to be subject to full statutory public consultation processes, before being submitted for independent examination by a Planning Inspector.
- 3.6 It should be noted that the City Plan Part One was subject to the same processes during its period of preparation and was subsequently submitted to the Secretary of State for Public Examination by an appointed Planning Inspector. The thresholds for levels of concentration and distance were assessed by the Inspector against the tests of soundness set out in the National Planning Policy Framework (positively prepared, justified, effective and consistent with national policy) and were considered sound.
- 3.7 The threshold for refusing new HMOs in CP21 was intentionally set at what is considered a relatively high level to reflects the sensitivity of a large proportion of

¹ It should be noted that each case of an alleged HMO isn't necessarily an unauthorised HMO. A large number of the 270 cases will have been established HMOs prior to the introduction of the Article 4.

the residential areas in the 5 wards covered by the Article 4 Direction which are characterised by high density terraced housing. A benchmarking exercise of other Local Plans with HMO policies has been undertaken which shows that the percentage threshold used in Brighton & Hove (10% within 50m) is one of the most stringent of the other planning authorities that have brought into effect an Article 4 Direction for HMOs (see appendix 2)

- 3.8 Whilst circumstances will differ in each area, the research undertaken indicates that no other planning authorities have set a threshold below 10%. This would appear to show that a threshold as low as 5% would be hard to justify as a threshold that causes significant harm to residential amenity. It would need to be demonstrated that a 5% concentration is the 'tipping point' where a locality becomes unbalanced and the negative impacts of HMO concentrations become apparent, and that the current 10% level is ineffective in preventing further deteriorations in residential amenity.
- 3.9 The Article 4 Direction and Policy CP21 are not intended to provide a cap on the total number of HMOs, rather the intention is to prevent further over-concentrations in areas that already have a proliferation by encouraging a more even spread. The evidence in Appendix 1 indicates the policy as currently worded is effective in preventing further proliferation of HMOs in areas of high concentrations. However it should be noted that planning policy cannot be applied retrospectively to reduce concentrations in areas with existing high levels of HMOs.
- 3.10 Extending the distance from the application property from 50m to 150m for the purposes of analysing the existing concentration of HMOs may be hard to justify as those properties at a greater distance away are less likely to have a direct impact on amenity.
- 3.11 There may also be unintended consequences of extending the area considered from 50m to 150m. Properties where applications for a change of use would currently be refused due to existing HMOs in the immediate vicinity could fall below the threshold as a consequence of the area being extended to 150m. For example, a larger radius could include a flatted development several streets away which are usually predominantly C3 residential units. This would make the grant of permission more likely even if the HMO concentration within the immediate 50m radius is above the threshold. The opposite effect may also occur however, and the overall effect on the number of applications granted is likely to be neutral. The most recent HMO approval and refusal decisions have been re-examined with the application of a 150m radius and in neither case would the decision have been different (see Appendix 3).
- 3.12 To conclude, any changes to policy CP21 would need to be undertaken through a review of City Plan Part One. Turning to the suggested policy changes - the current concentration threshold set in Policy CP21 (at 10%) is the lowest has been allowed in a development plan (see Appendix 2). Therefore there are concerns that lowering the threshold to 5% would be difficult to justify and unlikely to meet the soundness tests in the National Planning Policy Framework. In terms of an extension of distance, this too would need to be justified and there are concerns that this may have the unintended consequence of allowing more HMOs.

Consideration be given to the extension of the current Article 4 Direction area

- 3.13 Where a local planning authority wishes to remove rights to develop land permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 it can make an “Article 4 Direction” withdrawing those rights. In considering whether an Article 4 Direction should be made the legislation provides that a LPA must be satisfied that it is “expedient” that the development in question should not be carried out unless planning permission has been applied for and granted.
- 3.14 Guidance on the use of Article 4 directions is contained in the National Planning Practice Guidance. This states that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified.
- 3.15 An Article 4 Direction must be justified for both its purpose and extent. In order to consider an extension to the existing Direction therefore, considerable evidence gathering would need to be undertaken in order to demonstrate that ongoing use of the existing permitted development rights would cause demonstrable harm to the area proposed for the extension. Work undertaken by Private Sector Housing to inform decisions on the extension of licensing (see below) could form part of this. The Planning Authority would also need to take into account the important role of HMOs in providing affordable accommodation for those on lower incomes and the ability to adequately resource the management of an expanded area.
- 3.16 Consideration of an extension to the area covered by the Article 4 Direction will form part of the work to take forward City Plan Part Two. There are a number of policy areas that may need to be addressed through the introduction of an Article 4 Direction (e.g. to control change of use from Public House to retail use). These options will be carefully weighed up in the context of limited resources and in consultation with lead councillors.

Better Aligning the Planning and Licensing Functions in Relation to HMOs

- 3.17 The Licensing and Planning functions of the Council are governed by different legislative regimes, notably the Housing Act 2004 and the Town and Country Planning Act 1990 that must be complied with by anyone looking to operate an HMO. It is the responsibility of the owner of the property to ensure that both are complied with: the granting of a licence under the housing legislation does not confer permission under the planning legislation and vice versa.
- 3.18 Planning and Housing officers have a history of close collaborative working in relation to HMOs and their impact on communities. The first Student Housing Study was jointly commissioned and informed the initial Student Housing Strategy that provided the evidence base for the introduction of the additional HMO licensing scheme covering smaller HMOs in the Lewes Road wards and the Article 4 designation in the same area.

- 3.19 Evidence collated by the departments is shared, for example information held by Housing on licensed HMOs is being used to inform owners and agents of potential requirements for planning permission. As part of the collaborative working, which includes regular meetings, data sharing and liaison over individual cases, Housing share information on all 3,000 licensed HMOs with Planning colleagues. In all licensing correspondence it is made clear that:
- Processing an HMO licence application and issuing a licence does not grant any planning consent that might be required for the property to be used as a house in multiple occupation;
 - License holders are advised that any extensions/external alterations may require formal planning permission.
- 3.20 Planning and Housing have also worked in close liaison on commissioning further work which will form the evidence base for the Student Housing Strategy refresh on which consultation will commence during 2017.

Further Extension of the Licensing of Private Rented Housing

- 3.21 In January 2016 the Housing & New Homes (H&NH) Committee asked officers to explore if evidence supported the possible introduction of further discretionary licensing in all or part of the Brighton & Hove urban area. Consultants were engaged to undertake research in this regard.
- 3.22 Independent research on this issue has now concluded and the results were presented to H&NH Committee in November 2016. The research found that there is sufficient evidence to demonstrate a significant proportion of HMOs are being managed sufficiently ineffectively to support the introduction of citywide Additional HMO Licensing to smaller houses in multiple occupation, and of poor property conditions and significant and persistent anti-social behaviour that supports the introduction of Selective Licensing to all other private rented properties in the worst affected area.
- 3.23 Options for extending the licensing of private rented housing are now being considered. A report is being taken to March H&NH Committee with a report on license fee structure prior to commencing consultation.
- 3.24 Consultation with other authorities in other university cities was undertaken as part of the process of implementing the Article 4 Direction, and the various policy approaches taken by other authorities to address the wider student housing and HMO issue are being examined as part of work on the City Plan Part Two. Consideration will also be given to means of establishing regular lines of communication with other similar authorities on this issue.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The report sets out options for future policy approaches to the issue of HMOs

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The report responds to a public petition. The City Plan Part One was subject to comprehensive public consultation and the same processes will be undertaken for City Plan Part Two.

6. CONCLUSION

- 6.1 The report responds to the Notice of Motion referred from full Council to EDC Committee, and sets out the officer response to the issues that was requested at EDC on 17 November 2016

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 There are no direct financial implications arising from the recommendations of this report.
- 7.2 The cost of reviewing the City Plan, any potential extension of the current Article 4 Direction and potentially aligning the Planning and Licensing functions in relation to HMOs would all be funded from the existing revenue budgets. It is anticipated that any financial implications expected to arise from these actions will need to be assessed within relevant reports or business cases; it is anticipated that any associated costs will be funded from within existing revenue budgets.
- 7.3 Costs associated with the delivery of the actions set out in the plan will be subject to available funding further committee reports if council funding is required to take them forward.

Finance Officer Consulted: Name Rob Allen

Date: 10/02/17

Legal Implications:

- 7.4 The relevant statutory provisions and legal implications are referred to in the report.
- 7.5 It is not considered that any adverse human rights implications arise from the report.

Lawyer Consulted:

Name Hilary Woodward

Date: 7/2/17

Equalities Implications:

- 7.6 No equalities issues directly related to this report.

Sustainability Implications:

- 7.7 The planning policy framework related to HMOs is intended to ensure that the balance of residential uses within neighbourhoods remains balanced and sustainable.

Any Other Significant Implications:

- 7.8 None identified.

SUPPORTING DOCUMENTATION

Appendices:

1. Map showing locations and outcomes of planning applications for HMOs (Jan 2015 – Feb 2017).
2. HMO concentration thresholds in other Local Planning Authority Areas.
3. Examples of effect of a 150m radius on the two most recent approval and refusals.

Documents in Members' Rooms

Background Documents.

City Plan Part One