

Subject:	Houses in Multiple Occupation – Response to matters raised at full Council		
Date of Meeting:	21 September 2017		
Report of:	Executive Director - Economy Environment & Culture		
Contact Officer:	Name:	Steve Tremlett	Tel: 01273 29(2108)
	Email:	Steve.tremlett@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

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.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the contents of this report as a response to the matters previously raised, as set out in paragraph 1.1 above, in particular:
- 2.2 That City Plan Part One is not reviewed and that consequently the radius and % threshold relating to assessments of HMO concentration set out in Policy CP21 are not altered.
- 2.3 That the Committee support the inclusion of additional criteria (as described in paragraph 3.14 of this report) in a draft HMO policy in the Draft City Plan Part Two, due to go out to public consultation in summer 2018.
- 2.4 That the process to seek an extension of the Article 4 Direction area is not commenced at the current time, but the situation be closely monitored.

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 17 November 2016 the Committee resolved to request an Officer report be brought to a future meeting specifically to consider the matters in question.
- 3.2 This report was first presented to Economic Development & Culture Committee in March 2017, but was deferred to a future meeting to allow revisions to be made. In particular, members wished to be able to further consider potential future planning policy approaches to the issue of proliferation of Houses in Multiple Occupation (HMOs). All members of the Committee were invited to meet with officers to discuss possible options in this regard. The report has been amended to add a further recommendation and the recommendations are now presented for consideration.

City Plan Part One Policy

- 3.3 As set out in Policy CP21 of the City Plan Part One, the current threshold used in considering planning applications for new build HMOs, 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 HMO use.
- 3.4 The policy is being used to determine planning applications. 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 1 August 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 Way¹.
- 3.5 Where unauthorised changes of use have occurred these are investigated by the planning enforcement team. The team currently has 109 outstanding cases relating to HMOs. Since the Article 4 Direction came into effect on 5 April 2013 the team has opened a total of 337 cases against alleged unauthorised HMOs resulting in the serving of 45 enforcement notices. 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.
- 3.6 In order to alter Policy CP21 a formal partial review of the City Plan Part One would need to be undertaken and this would need to go through the full statutory

¹ A reason for refusal for applications at both these properties was impact on the amenity of neighbouring properties due to the increased activity, noise, disturbance and additional comings and goings resulting from a higher level of occupancy.

plan making processes. Such a review could be started at the latter end of the preparation of City Plan Part Two but would need to be subject to full statutory public consultation processes, before being submitted for independent examination by a Planning Inspector.

- 3.7 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 independent 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.
- 3.8 The threshold for refusing new HMOs in CP21 was intentionally set at what is considered a relatively high level to reflect the sensitivity of a large proportion of 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 (see appendix 2).
- 3.9 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 level 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.
- 3.10 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.
- 3.11 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. Properties at a greater distance away are less likely to be affected by any negative amenity impacts such as noise disturbance that could arise from the potential HMO.
- 3.12 There may also be unintended consequences of extending the radius of the area considered from 50m to 150m. Applications currently refused due to there being over 10% HMOs within 50m could fall below the 10% threshold as a consequence of extra properties being included in the assessment of a wider 150m radius area. 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. To illustrate this a recent HMO approval and refusal decision have been re-examined with the application of a 150m radius and in neither case would the decision have been different (see Appendix 3).

- 3.13 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. It is therefore recommended that City Plan Part One is not reviewed and that consequently the radius and % threshold in Policy CP21 is not changed.
- 3.14 However, consideration could be given to the introduction of additional criteria through a City Plan Part 2 policy. Appendix 2 shows that some other planning authorities restrict the change of use to HMO where this would result in a continuous frontage of three or more HMOs, or a non-HMO property being sandwiched between two HMOs. These measures could further reduce the negative impacts of HMOs at a micro level and could be included in a draft policy in City Plan Part Two which is scheduled to be published for public consultation in mid-2018. As with City Plan Part One and any review thereof, City Plan Part Two will be subject to independent examination by a Planning Inspector.

Extension of Article 4 Direction

- 3.15 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.
- 3.16 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.
- 3.17 An Article 4 Direction must be justified for both its purpose and extent. In order to consider an extension to the existing Direction, 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 a form of affordable accommodation for those on lower

incomes and the ability to adequately resource the management of an expanded area.

- 3.18 There are a number of policy areas that may need to be addressed through the introduction of an Article 4 Direction. These options will need to be carefully weighed up in the context of limited resources and in consultation with lead councillors. Given the need to demonstrate considerable evidence of the need to justify an extension, it is not considered that an extension to the HMO Article 4 area should be progressed at the present time. However, the situation will be closely monitored and work undertaken by Private Sector Housing to inform decisions on the extension of licensing (see below) can form part of this.

Alignment of Planning and Licensing Functions

- 3.19 The HMO 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.
- 3.20 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.
- 3.21 Evidence collated by the departments is shared, for example information held by Housing on licensed HMOs is being used by Planning to inform owners and agents of potential requirements for planning permission. Equally, when Housing receive licence applications they use planning application information to inform cases for referral to Planning for investigation. 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
- 3.22 Planning and Housing have also worked in close liaison on commissioning further work which will form the evidence base for the recently commenced Student Housing Strategy refresh.
- 3.23 In November 2016 the Housing & New Homes (H&NH) Committee agreed to consult on proposals to extend discretionary licensing in Brighton & Hove. The proposals are to introduce additional licensing for smaller HMOs citywide and to

introduce selective licensing for other private rented homes in 12 wards in the city.

3.24 Consultation on the proposals closes on the 10 September 2017. Responses will be considered and a further report will be presented to H&NHC in November 2017 for members to decide whether to proceed with the schemes.

3.25 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 planning 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 HMO's 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 further committee reports in the event that additional funding is required to be identified.

Finance Officer Consulted: Rob Allen

Date: 17/08/17

Legal Implications:

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

Lawyer Consulted: Name Hilary Woodward Date: 28/7/17

Equalities Implications:

- 7.6 No equalities issues directly related to this report.

Sustainability Implications:

- 7.7 The planning policy framework relating 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 – July 2017).
- 2. HMO concentration thresholds in other Local Planning Authority Areas.
- 3. Examples of effect of a 150m radius on two recent approval and refusals.

Background Documents

- 1. City Plan Part One.

