

CABINET - 9TH JULY 2009

Report of the Director of Development

ITEM 9 HOUSES IN MULTIPLE OCCUPATION AND POSSIBLE PLANNING RESPONSES - CLG CONSULTATION

Purpose of Report

To agree a response to a consultation initiated by Communities and Local Government (CLG) seeking views on possible amendments to management practices and planning powers to exercise greater control over Houses in Multiple Occupation (HMOs).

Recommendations

1. That the Secretary of State for Communities and Local Government be advised of this Council's preference for an amendment to the Town and Country (Use Classes) Order 1987 to define a separate Use Class for Houses in Multiple Occupation along with related comments on the impact of the possible changes as set out in Appendix I
2. That the Storer and Ashby Area Residents Group (SARG), Loughborough University and the Students Union are congratulated for their part in the national campaign to promote a review of Houses in Multiple Occupation within the Use Classes Order.

Reasons

1. To confirm this Council's preference for a planning regime which would bring all Houses in Multiple Occupation within the control of the planning system and to clarify this Council's views upon the range of options available and their implications.
2. To acknowledge and recognise the essential contribution of partners in presenting to ministers a cohesive multi-agency commitment to the reform of the Use Classes Order for the benefit of the whole community.

Policy Context

Under the Corporate Plan theme of "Places Matter" we commit to making Charnwood a safe and cohesive Borough in which to live and work. That commitment is to be delivered through helping people from different backgrounds to get on well together in their local area, tackling anti-social behaviour and reducing serious acquisitive crime.

Charnwood, and in particular Loughborough, has experienced considerable uncontrolled growth in the number and concentration of houses in multiple occupation largely in response to the demand for short term accommodation from students attending Loughborough University. In an effort to better manage that process the Council adopted in December 2005 a Supplementary Planning Document entitled Student Housing in Loughborough. That document acknowledged that national planning controls afforded the Borough Council little scope to

intervene in the process as planning law recognised no change of use in the “change of use” of a family home into a house for multiple occupation. Consequently, in the schedule of complementary measures, the Council committed itself to lobby government to secure an amendment to the Town and Country Planning (Use Classes) Order 1987.

Background

CLG published “Houses in Multiple Occupation and Possible Planning Responses” on 13th May 2009. Responses are invited by 7th August 2009. A full copy of the consultation document can be viewed at:

<http://www.communities.gov.uk/publications/planningandbuilding/housesmultipleconsultation>

In summary the consultation recognises the important contribution that HMOs make to the private rented sector, particularly in providing affordable homes. It also acknowledges some of the challenges that arise where high concentrations of HMOs occur and that public concern has focused particularly upon those occupied by students. However, there is some anxiety that solutions designed to address problems associated with one particular form of HMO tenure could impact adversely upon another, such as small children’s homes. It is for that reason that the government commissioned research to determine the extent to which non-planning levers might be utilised to deal with the symptoms of high HMO concentrations, particularly those associated with students. (The Borough Council participated directly with partners in the research commissioned by CLG and undertaken by ECOTEC).

The consultation advises that there are a number of mechanisms already in place to tackle problems associated with high concentrations of HMOs:

HMO Licensing

HMOs are defined by the Housing Act 2004 as buildings where the living accommodation is occupied by three or more persons who do not form a single household and who share a kitchen, bathroom or toilet. Those that are of three or more storeys and are occupied by five or more people forming two or more households are subject to a mandatory licensing regime. Local authorities have a discretionary power to designate areas for “additional licensing” where a significant proportion of properties are managed sufficiently ineffectively as to give rise to particular problems, or for “selective licensing” if the area to which it relates satisfies one or both of the following conditions:

- The area is one experiencing low housing demand (or is likely to become such an area) and the Local Housing Authority (LHA) is satisfied that making a designation will, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, would contribute to an improvement in the social or economic conditions in the area
- The area is experiencing a significant and persistent problem caused by anti-social behaviour and that some or all private sector landlords in the area are not taking appropriate action to combat the problem that it would be appropriate for them to take; and the making of a designation, when combined with other measures taken by the LHA, or by the LHA in

conjunction with others, will lead to a reduction in, or elimination of, the problem.

Applications for discretionary licensing designations have to be submitted to Communities and Local Government and the relevant government office and must clearly demonstrate and evidence the need for the designation.

To date the provisions have only been used by a small number of local authorities and it is considered that these additional control measures are not currently appropriate in Charnwood as the qualifying criteria are unlikely to be satisfied.

While the powers under the Housing Acts give authorities opportunities to secure improvement in the manner in which HMOs are managed and maintained they cannot control directly the scale and distribution of stock in multiple occupation.

Noise, nuisance and anti-social behaviour

Problems associated with noise, nuisance and anti social behaviour can be addressed through powers already available to local authorities.

Good practice guidance

Good practice guidance has been published; the Universities UK guide to “Studentification: a guide to opportunities, challenges and practice,” offers a tool kit to assess and address obstacles to good community relationships between students and the host communities with the help of a checklist of issues to be addressed and the promotion of joint working between all agencies.

The Current Planning Framework

The planning function controls not only building operations but also material changes of use. To reduce the level of bureaucracy the system groups similar patterns of land use into defined “Use Classes” removing the need to seek planning permission for changes involving uses which are recognised as being similar in character.

The Town and Country Planning (Use Classes) Order defines class C3 as a dwelling house to include occupation:

- (a) By a single person or people living together as a family, or
- (b) By not more than 6 residents living together as a single household (including a household where care is provided for residents).

Planning legislation defines neither “multiple occupation” nor HMOs as such but relies on both the concept of a “single household” and “family” in making distinctions for land use purposes. HMOs are unclassified; effectively they are in a class of their own.

Hence at least six individuals may live together as a single household without creating the locus for a material change in use of a C3 dwelling necessitating the approval of the local planning authority.

The Consultation Options

Option I - Non legislative option (local management option)

There is an argument that the scale of the problem does not warrant legislative action. The Rugg report into the Rented Sector concluded that in only 0.7% of wards in England did student households comprise more than 10% of all tenures, and some of those were experiencing no problems.

Changes to the legislation could impact upon authorities wishing to encourage HMOs as part of a strategy to house homeless and vulnerable people.

The problem of high density HMOs may diminish in some areas as migration rates fall along with changes in the demography and make up of the student population (fewer 19-20 year olds, with older age groups and more part time study). The ECOTEC study considered that the market would correct the problem in respect of student HMOs with the delivery of more purpose built accommodation and the levelling off in student numbers.

The ECOTEC research also highlighted a number of non-planning mechanisms:

- Development of housing and community strategies by Higher Education institutions
- Student liaison officers and student unions working with the local community
- Local authority landlord accreditation schemes
- Targeting of local authority resources and services
- Stakeholder partnerships

This option would mean proceeding with the dissemination of good practice allowing local areas to find a solution for local problems and leaving planning legislation unchanged.

Option 2 - Amend the Use Classes Order and allow tighter planning controls over houses in multiple occupation.

Some argue that greater planning control over the location and concentration of HMOs could be delivered through an amendment to the Use Classes Order to define HMOs in planning legislation along the same lines as the Housing Act 2004.

If implemented any such change could not be applied retrospectively.

CLG seek views on two main options for an amendment:

First the threshold employed in Class C3 could be reduced to, “not more than three residents living together as a single household.” The consideration would operate in the same way as presently but the lower threshold would give local planning authorities greater confidence in determining marginal or ambiguous cases

Alternatively, the Use Classes Order could be amended to provide a specific definition of an HMO (either by introducing a new Use Class or taking the use out of the Use Classes Order). This definition would be along similar lines to that in the Housing Act and would focus on properties where three or more unrelated people were occupying a property and sharing a bathroom, kitchen or toilet. This would bring the thresholds used by planning and housing into line. As part of any implementation Class C3 would be amended also to provide for “use as a dwelling by not more than six residents living together as a single household where care is provided for residents.

This would provide greater clarity in the definition of an HMO but would still require local planning authorities to exercise discretion in determining whether a material change of use had occurred.

This option would be likely to increase the number of planning applications for change of use to an HMO, although the number of dwellings being classed as HMOs would depend on whether a material change of use had been determined. This might be seen as an additional burden on landlords.

A change in the Use Classes Order, when combined with the use of planning policies, would enable local authorities to restrain or encourage HMOs.

The change proposed under this option could potentially impact upon other patterns of occupancy falling within Class C3 such as some small scale care homes. It could also restrict the supply of HMOs impacting on housing supply more generally.

Option 3 - The use of an Article 4 Direction to remove powers for properties to convert to HMOs.

This option would require an amendment to the Use Classes Order to define a HMO in a new use class and an amendment to the General Permitted Development Order to allow changes of use between a dwelling and an HMO as “permitted development.” [i.e. development allowed without the need for a specific planning permission]. Where the concentration of HMOs became a problem the local planning authority could remove permitted development rights through the use of existing powers to serve an Article 4 Direction.

Local authorities would require policies in place to support and justify the removal of permitted development rights.

The approach would allow those authorities wishing to control HMOs to do so without imposing a burden on those authorities experiencing no problems. All HMOs (of any size) would benefit from permitted development, including those currently requiring planning permission; that in itself might present unforeseen consequences.

Under present legislation the promoter of a HMO in an area covered by an Article 4 Direction receiving a refusal of planning permission could claim compensation; abortive expenditure, loss or damage attributable to the withdrawal of permitted development rights, resultant depreciation in the value of the land. Compensation cannot be based on any speculation about future loss of profit or income but could cover any loss of anticipated future business profits under a specific contract. The risks attached to making an Article 4 Direction may make local authorities averse to this course of action.

The Planning Act 2008 introduced provisions relating to compensation whereby if permitted development is withdrawn by way of an Article 4 Direction, compensation will only be payable if an application is made within 12 months of the direction taking effect. It also provides that if a planning authority gives at least 12 months notice of its intention to withdraw permitted development rights compensation will not be payable. Given the risks and potential disincentive to the use of Article 4 Directions CLG invite comments as to whether these provisions for compensation should be

applied to any change of use between a dwelling and an HMO, in the event of this option being implemented

Response

Cabinet, on 22nd March 2007 approved the motion that this Council sends a strong all party message to the Government:

- a) stating the difficulties that are being experienced with student accommodation within certain parts of Loughborough for both students and local residents; and,
- b) calling for legislation to amend the Use Classes Order (UCO) to help restore balanced and sustainable communities.

That message has been augmented by a concerted campaign nationally in which the Borough Council has actively engaged in partnership with the Storer and Ashby Area Residents Group (SARG), Loughborough University and the Students Union. That campaign included direct discussions with the Parliamentary Under Secretary of State, Iain Wright MP in May and December 2008 and with his ministerial predecessor Phil Woolas MP in May 2007. Representatives of the partnership also participated in a workshop session and follow up seminar in London at the invitation of the CLGs appointed consultants, ECOTEC, whose report proved highly influential in encouraging the government to consider the prospect of amending the Use Classes Order.

In the light of these activities the publication of the consultation is to be welcomed. The representatives of SARG, Loughborough University and the Students Union are to be congratulated for their part in forcing this matter onto the agenda, paving the way for a national debate and raising the possibility of an amendment to planning policy and practice.

Typically the issue of HMOs recently has been the subject of an Investigation and Review Scrutiny Panel, the report and recommendations from which were considered by Cabinet on 7th April 2009. The Panel reported,

“We recommend support for pressure to change the Use Classes Order so as to bring all HMOs within reach of planning requirements.”

The Cabinet response recorded the efforts made to secure an amendment to the Use Classes Order culminating in a letter to Margaret Beckett MP, the then Minister for Housing and Planning, calling for an early commencement of the consultation which had been promised by Iain Wright MP. By the time the Investigation and Review Scrutiny Committee received the Cabinet response on 27th May the CLG consultation document had been launched affording the Committee the opportunity to express an opinion; option 2 was agreed as the preferred option.

That assessment is consistent with the Borough Council's stated preference which has been promoted since the adoption of the Student Housing SPD in December 2005 and is confirmed in the recommended response attached at Appendix I, adopting the reply pro forma circulated by CLG.

Financial Implications

The response to the consultation incurs no financial obligations.

Risk Management

There are no discernable risks associated with this decision.

Key Decision: No

Background Papers: Houses in Multiple Occupation and Possible Planning Responses - Consultation, CLG, May 2009
Houses in Multiple Occupation and Possible Planning Responses - Final Report (ECOTEC) CLG, September 2008

Officer to contact: David Hankin (01509) 634761
dave.hankin@charnwood.gov.uk

Recommended Response - Charnwood Borough Council

Q1 Do you experience problems/effects which you attribute to high concentrations of HMOs?

Yes - Loughborough is proud of its association with the University but it is a relatively small town with a population of approximately 57,500 of whom about 13,000 are resident students. About 5,000 bed spaces are provided by the University in dedicated halls of residence and a further 1,000 bed spaces have been provided by the private sector through purpose built student apartments. It follows that the remaining students are obliged to find housing within the private rented sector as a consequence of which significant concentrations of student occupied HMOs have occurred within neighbourhoods surrounding the University; in some neighbourhoods as many as 90% of the homes available have been acquired to serve the needs of the student community. Frequently cited concerns associated with the uncontrolled growth in the private rented sector include:

- The erosion of the sense of community and social interaction normally engendered in a stable, balanced community.
- Exclusion of first time and young family buyers to the detriment of the social balance and community facilities contributing to the closure of a local school.
- Loss of local shops and services allied to a proliferation of hot food take away businesses operating during unsociable hours.
- Parking congestion and related disturbance during term time, sharply contrasted with an air of abandonment during vacations.
- Higher incidence of anti-social behaviour, particularly at unsociable hours
- Increased levels of crime and the fear of crime with vulnerable student households becoming victims of crime.
- Poorer standards of property maintenance and repair among some land lords.
- Inappropriate extensions to properties allowed as permitted development resulting in the loss of private space reducing the prospects of their being suitable in the future for return to family housing.
- Accumulations of waste and rubbish, particularly towards the end of the academic year
- Littering and fly-posting
- The proliferation of letting signs, adding to the impression of transience and detracting from the character of the street scene.

Q2 Do you consider the current planning framework to be a barrier to effective management of HMOs by local planning authorities?

Yes - The provisions of class C3 of the Town and Country Planning (Use Classes) Order 1987 render the local planning authority effectively powerless to exercise control over the “change of use” from a family home to a house in multiple occupation with up to six residents. Assembling the evidence to establish whether unrelated occupants are “living together as a single household,” for the purposes of exercising the judgement required in applying the test implied in Class C3, would be hugely demanding of limited

enforcement resources necessitating entry to each property as well as access to tenancy agreements to determine the pattern of occupation. Where sufficient evidence might be assembled to suggest that the tenants are not living together as a single household the necessary adjustments easily might be made so as to remedy any breach before an enforcement case could be brought to a conclusion. In the absence of such controls the local planning authority is powerless to regulate the concentration of small HMOs accommodating six or fewer tenants leading to the problems identified under Q1.

The nature of occupation associated with student housing is such that there is commonly no overall position of authority within the household able to impose accepted norms and social conventions upon the remaining tenants. In some instances, where young people are unconstrained for the first time by such controls, the resultant patterns of behaviour can be disruptive and challenging, particularly so where they occur in high concentrations.

Q3 Could promotion of best practice measures as opposed to changes in the planning framework sufficiently deal with the problems associated with HMOs, in particular those problems often associated with high concentrations of HMOs with student occupants?

No - The Borough Council has responded positively to the Universities UK guide to "Studentification: a guide to opportunities challenges and practice." A working group has been formed engaging members of local residents' groups, the University, Students Union, the Police and service providers. The check list was used to develop the "Loughborough Off Campus Service Delivery Strategy," adopted in September 2007. That initiative was held up as a specific example of good practice in the ECOTEC report commissioned by CLG and published in September 2008 under the title, "Evidence Gathering - Housing in Multiple Occupation and Possible Planning Responses."

While the application of good practice has eased the tensions and is an essential component of the local authority response to the challenges presented by the processes of "studentification" it is the Charnwood experience that it cannot *alone*, "sufficiently deal with the problems associated with HMOs." Good practice can assist in addressing the symptoms; it cannot address the underlying causes of the problems. Particularly good practice cannot address the problem of concentration of student housing which leaves the residual "host community" socially isolated and fragmented to the detriment of community cohesion.

Q4 If planning legislation is seen as a barrier to the effective management of HMOs in an area how should planning legislation be amended - along the lines of option 2 (introduce a definition along the lines of the Housing Act 2004) or option 3?

An amendment along the lines set out under option 2 is preferred.

Q5 Do practitioners have a preference for one approach listed as part of option 2 over the other?

Yes - the creation of a separate use class with a definition of a HMO aligned with that employed for the purposes of housing legislation is preferred.

The first approach set out would retain a degree of fluidity within Class C3 to permit some freedom for movement between a "family home" and a small HMO. In practice very few rented properties in Loughborough would be likely to accommodate less than 4 tenants and furthermore the application of this approach could be frustrated by judgements as to whether a material

change of use had been occasioned by the presence of a fourth tenant.

On balance it is considered that the second approach, the creation of a separate Use Class for HMOs, is to be preferred whereby all changes to HMOs (and vice versa) would require planning consent, with the additional advantage of combining legislative procedures with the Housing Act 2004. Changes captured by the planning system would ensure HMOs are identified for effective management purposes securing improved safety and housing standards for tenants.

Q6 What effect would a change to the Use Classes order as described in option 2 have on those local planning authorities that do not encounter problems with high concentrations of HMOs?

Inevitably, whichever approach was applied, there would be an increase in planning application volumes although since the legislation could not be applied retrospectively it is reasonable to assume that the volume increase would be spread over a longer period of time and processing costs off set against an appropriate planning fee.

Q7 Would a change to the Use Classes Order as described in option 2 or 3 have an impact on the homeless and other vulnerable groups?

Local authorities, in establishing a planning policy framework in which any amendment to the Use Classes Order would function would need to consider the overall need for HMOs within the local housing market generally and set density thresholds accordingly. Where particular problems are encountered policy and/or supplementary planning documents may be amended as necessary while there will always be provision for normal planning policies to be set aside in exceptional circumstances.

Q8 Would a change to the Use Classes Order as described in option 2 or 3 have any unintended consequences, for example an impact on small scale care homes or children's homes, which are currently classed as a C3 dwelling house?

Unintended consequences may be mitigated in so far as care homes where on site care is provided for residents provided such establishments are specifically provided for under Class C3, as indicated in the consultation. Where care is not provided it would be impractical to differentiate the pattern of occupation from any other HMO and the local planning authority would need to take into consideration the need for such housing as part of its overall approach to HMO provision, as under Q7 above.

Q9 Would a change to the use Classes Order as described in option 2 or 3 impact unfairly - directly or indirectly - on any equality strands?

No adverse impact upon any equality strands is immediately apparent.

Q10 Would a change to the Use Classes Order reduce the supply of HMO accommodation in your area?

Other factors, such as the construction of purpose built student housing, may have a greater impact upon the reduction overall in the supply of HMOs in Loughborough, but it is anticipated that concentrations within the most popular neighbourhoods will remain high while other areas located close to the University will remain vulnerable to the process of "studentification" by reason of their accessibility. A change to the Use Classes Order could provide for the effective management of that process by reference to a related threshold policy to avoid the problems of concentration experienced elsewhere within the town.

Q11 If amendments were made to the Use Classes Order, should a property that has obtained planning permission for use as an HMO require planning permission to revert back to a C3 dwelling house?

No - locally a fall in the number of HMOs required to serve local demand is anticipated due to changing demographics and the growth of the purpose built student housing sector, both on and off campus. Freedom to revert back to a C3 dwelling reflects the Council's policy in encouraging greater diversity and the rebuilding of more balanced communities. The need to obtain planning permission for such reversions simply would occasion an unnecessary delay in that process.

Q12 Would a change to the Use Classes Order as described in option 3 place a new burden on local planning authorities?

Yes - The attraction of option 3 to those authorities experiencing no problems in connection with the proliferation of concentration of HMOs is obvious - the freedom to move between the potential separate use classes would effectively leave the status quo intact. Demonstrating the case to justify an Article 4 Direction might be expected to be a burden upon any local planning authority seeking such a Direction as a compelling body of evidence would be required to secure the Secretary of State's approval for such an exception to normal nationally applicable policy.

Q13 Under option 3, would the removal of the current requirement for HMOs to seek planning permission pose a problem for practitioners in managing land use impacts in their area?

Yes - in the case of Loughborough the proliferation and concentration of HMOs could be exacerbated in the absence of an Article 4 Direction and increased problems associated with larger HMOs (car parking, anti social behaviour, noise and disturbance) could also be injurious to neighbouring amenities placing an added burden upon other regulating and enforcement agencies.

Q14 Should the compensation provisions included in Section 189 of the Planning Act 2008 be applied to change of use between C3 dwelling house and HMO if option 3 were to be implemented?

Yes - any measures to reduce exposure to the risk of having to settle compensation payments upon applicants disadvantaged by the provisions of an Article 4 Direction will be critical in influencing a local planning authority's appetite to claim the powers available

Q15 How important would the risk of compensation be in the decision to use Article 4 directions under option 3?

The risk of inviting compensation payments, even if more strictly controlled by the provisions of the 2008 Act, would be likely to discourage local planning authorities from seeking such powers, particularly over a larger area where there would be scope for multiple claims.

Q16 Would the extra certainty of greater control bring benefits that outweigh the burdens placed by the need to process more planning applications?

Yes - the experience of Loughborough would suggest very strongly that the benefits in terms of restoring balanced communities, enhancing community cohesion and reducing the impacts upon both the residual host community and the various enforcement agencies would outweigh significantly the burden of processing more planning applications. There is a clear expectation among the host community that the planning system should subsist to protect their quality of life; in failing to regulate the proliferation and concentration of HMOs it is apparent that the quality of life for some has been eroded seriously and the Borough Council would welcome the powers required to facilitate and promote the restoration of balanced mixed communities.