

REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE -
12 SEPTEMBER 2005

REPORT ON: HOUSES IN MULTIPLE OCCUPATION - SUPPLEMENTARY
PLANNING GUIDANCE

REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION

REPORT NO: 449-2005

1 PURPOSE OF REPORT

- 1.1 To give background to the control of Houses in Multiple Occupation through both planning and licensing regimes and seek approval for draft Supplementary Planning Guidance planning policies for controlling the concentration of HMOs and preventing multiple occupancy of new housing in certain parts of the city.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
- a agrees to the publication of the proposed Supplementary Planning Guidance set out in Appendix 1 of this report for consultation purposes, and;
 - b remits the Director of Planning and Transportation to report back on the results of the exercise within 6 months with any proposed modifications with a view to adopting the Guidance as a material consideration for planning applications.

3 FINANCIAL IMPLICATION

- 3.1 There are no financial implications arising from this report.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The Local Agenda 21 implications of relevance to this report cover a wide range of key themes, in particular issues of sustainable development, the efficient use of resources and minimising of waste, and ensuring access to facilities, services, goods and people is not achieved at the expense of the environment and are accessible to all.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no equal opportunities implications associated with this report.

6 BACKGROUND

- 6.1 Issues relating to Houses in Multiple Occupation (HMOs) have been an increasing cause for concern, particularly in those parts of the city close to higher education institutions where demand for student housing is high.
- 6.2 The Dundee Local Plan Review 2005 gives a commitment that Supplementary Guidance on this matter will be brought forward. A draft of this Guidance for consultation purposes forms Appendix 1 to this report. This guidance clarifies the Council's responsibilities as both planning and licensing authority in relation to

HMOs, details the factors that will be considered in the determination of planning applications for HMOs; and provides a policy basis for controlling multiple occupancy in new residential developments in particular parts of the city.

- 6.3 This Supplementary Guidance has been prepared in the context of documents issued by the Scottish Executive in 2004, which contain the following statements:

"some local authorities have local plan policies which seek to control the proportion of HMOs in particular areas. There are, clearly, some issues affecting residential amenity which arise simply from the increased number of adults living in an area due to the presence of an HMO. Adequate parking and refuse storage are examples of issues which will always be relevant in considering planning applications. However, where the issues relate to the behaviour of the landlord or tenants, such as maintenance or noise, planners should take account of the controls offered by HMO licensing. They should also be clear that all kinds of people may live in HMO accommodation, and it is not necessarily the case that HMO residents would cause more disturbance than other types of household who might occupy the property. Local authorities may wish to review their planning policies on HMOs in light of the full coverage, now, of mandatory HMO licensing, and the importance of HMOs as a supply of housing in some areas and for some groups of people. In light of the controls available and the many different types of HMO, it may not be appropriate to impose a blanket ban or purely numerical restrictions on HMOs in any particular area."

Source: Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities, Scottish Executive 2004.

"it is important for planning authorities to strike an appropriate balance in the level of control in their policies taking on board the importance of HMOs in the housing market and the controls available under HMO licensing. When reviewing such planning policies, authorities should bear in mind that existing policies were probably drawn up when the planning system was seen as the only means of controlling HMOs, and may be more restrictive than is now necessary."

Source: Planning Circular 4/2004: Houses in Multiple Occupation: Guidance on the Interface Between Planning Control and Licensing, Scottish Executive 2004.

- 6.4 This Supplementary Guidance also responds to recommendations made in the PLI Report that there should be a specific limit on the proportion of multiple occupancies that would be acceptable in particular localities. The PLI Report recommended that this proportion should be based on local experience and might vary between different areas.
- 6.5 In response to the PLI Report, it was noted that the guidance from the Scottish Executive outlined above had been published after the close of the Public Local Inquiry and was not therefore available as evidence, nor is it referred to in the Reporter's conclusions on this subject. It was further noted that the approach in Policy 11 seeks to protect the character of local areas by requiring that development does not result in an excessive concentration of HMOs, allowing the individual merits and circumstances in each case to be assessed. This approach is more sensitive

than the establishment of any proportion or distance restriction criteria and is considered to accord with the guidance from the Scottish Executive.

- 6.6 However, in response to concerns raised regarding the high proportion of properties in multiple occupation in certain parts of the city, this issue has been re-examined and "excessive concentration" has been defined in the Supplementary Guidance.
- 6.7 In addition, the Supplementary Guidance responds to concerns that new build housing in proximity to higher education institutions is being purchased for multiple occupancy. The Guidance proposes controls to prevent the occupation of new residential developments in the Central Dundee Housing Investment Focus Area by 3 or more unrelated people.

HMOs in Dundee through the Planning System

- 6.8 Few planning applications are received by the Council for HMOs. The Planning and Transportation Department is notified by the Housing Department of all applications for an HMO licence. This ensures that Building Standards are fully involved in the inspection regime and Building Warrants are obtained as appropriate. Details of the licence application also enable the Planning and Transportation Department to determine whether planning permission is required. Where an HMO licence application is for more than 5 persons in a house or flat, the applicant is notified that planning permission is required or that they should submit evidence to demonstrate that the use of the property as an HMO is historic and is therefore lawful.
- 6.9 For licence applications that are for 5 or fewer persons in a flat, to date the Council has generally not required the submission of a planning application but has responded to any complaints regarding the use of a property as an HMO to determine whether planning permission is required. It should be noted that the number of such complaints has reduced since the introduction of the mandatory licensing regime, and since 2001, only 8 complaints have been made to the Planning and Transportation Department.
- 6.10 The approach taken towards planning permission for the use of a flat as an HMO reflects the lack of clarity that exists, where an assessment is required whether the nature of the use is materially different from that of a family flat. However, following an investigation of the approach taken by other planning authorities towards this issue, the draft Supplementary Guidance seeks to provide greater certainty by requiring planning applications for the occupation of flats by 4 or more unrelated people.
- 6.11 It is not appropriate that this change in approach be applied retrospectively to existing licensed HMOs. Rather it is proposed that where a new licence application is received for an HMO for 4 or more people in a flat, that the applicant be notified that planning permission will also be required. It is considered that this approach, together with the proposed Supplementary Planning Policies, will enable greater account to be taken of the land use issues raised by HMOs and their effect on local areas. Alongside the powers available to the Council as licensing authority, to ensure high standards in the quality and management of HMO accommodation in the city, it is considered that an appropriate balance will be achieved between meeting the needs for HMO provision and addressing the concerns that this raises.

- 6.12 Since 2003, 6 planning applications for change of use to House in Multiple Occupation have been considered by Dundee City Council. Appendix 2 to this Report provides a summary of the decisions on these applications.

HMOs in New Residential Developments

- 6.13 The proposed Supplementary Planning Guidance also includes measures to prevent the occupancy of new build housing in certain parts of the city by 3 or more unrelated people. This is a particular issue in the Central Dundee Housing Investment Focus Area, as identified in the Dundee Local Plan Review, although it may also extend to areas close to higher education institutions in other parts of the city, for example, Ninewells Hospital. New residential development in Central Dundee is encouraged to increase opportunities to live in this accessible location and take advantage of the benefits that this offers. However, there is evidence that many properties in recent developments have been purchased specifically for multiple occupancy. In light of the proximity of higher education institutions, this is a particular issue in relation to students. Whilst such properties require to be licensed as HMOs, they generally do not require planning permission to operate as HMOs.
- 6.14 However, controlling such occupation is not straightforward. Of the options available, it is considered that the best method is an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. However, it should be recognised that it is an "agreement" and the developer cannot be forced to enter into such an arrangement, particularly where it may potentially limit the marketability of the development. Should the developer be unwilling to enter into a Section 75 Agreement
- a no action may be taken by any party and the application remains undetermined; or
 - b the application may be referred back to Committee for an alternative decision; or
 - c an appeal against the non-determination of the planning application may be lodged. It should also be noted that Planning Circular 4/2004 referred to earlier would be a material consideration that the Reporter would have regard to in his determination of the appeal.
- 6.15 Finally, in preparing the draft Supplementary Guidance, the approach of other Scottish local authorities towards the issues of HMOs has been investigated. A summary of the different approaches is contained in Appendix 3 to this report.

7 CONCLUSIONS

- 7.1 The current dual licensing and planning system of dealing with HMOs is confusing and leads to concern that the future amenity of stable residential areas cannot be guaranteed.
- 7.2 The proposed Supplementary Planning Guidance are put forward for consultation in order to clarify the existing framework and to suggest a consistent approach to dealing with these issues in future. It is considered that this Guidance will complement the Council's powers under licensing and ensure that the standard of HMO properties and management in the city is high and that the important

contribution that this type of property makes to the housing stock can be achieved without adverse impact on existing residential areas.

8 CONSULTATIONS

- 8.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Assistant Chief Executive (Community Planning) and Director of Housing have been consulted and are in agreement with the contents of this report.

9 BACKGROUND PAPERS

"Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities" - The Scottish Executive - 2004

Planning Circular 4/2004: Houses in Multiple Occupation - Guidance on the Interface Between Planning and Licensing

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APPENDIX 1

HOUSES IN MULTIPLE OCCUPATION - DRAFT SUPPLEMENTARY PLANNING GUIDANCE

1 Introduction

A house or flat can be termed a House in Multiple Occupation (HMO) if it is the principal residence of a number of unrelated people. HMOs include:

- individual flats and houses occupied by unrelated people, most commonly students and young professionals;
- purposes built student accommodation;
- supported community care accommodation; and
- hostels for homeless people.

Houses in Multiple Occupation provide an important supply of housing, particularly for some groups of people such as students, young professionals and those who require support in a homely setting. HMOs provide affordable housing for those working and studying in the city and for those unable or unwilling to buy their own property.

There exists both a licensing and planning regulatory regime for HMOs. However, it is a cause of some confusion that differences exist between these regimes as to what constitutes an HMO.

2 The Licensing of HMOs

It is mandatory under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (as amended) that a license is obtained to occupy a house as an HMO. In this context, a "house" includes any part of a building occupied as a separate dwelling and therefore covers not only ordinary houses but flats and bedsits. Licensing provides that a house is an HMO if it is the only or principal residence of 3 or more qualifying persons from 3 or more families (definitions of terms are given in the HMO legislation and the HMO guidance). The purpose of HMO licensing is to control standards in 3 main areas:

- the suitability of the property owner to be an HMO landlord;
- his management of the premises; and
- the physical condition and facilities of the accommodation.

A license may be granted for any period up to 3 years. It is a criminal offence to operate an HMO without a license. The licensing of HMOs in the Dundee City Council area is administered by the Housing Department in co-operation with other Council departments, including Support Services, Planning and Transportation and Environmental Health and Trading Standards, as well as Tayside Police and Tayside Fire Brigade.

3 HMOs and the Planning System

The planning system in Scotland does not give such a clear picture of when planning permission for an HMO is required. Indeed, the term HMO does not appear in planning legislation. In land use planning terms, there is a material change to the use of property where a house is occupied by 6 or more unrelated people, including a household where care is provided for the residents, and planning permission is required. In determining the use of a flat as an HMO, it is matter of fact and degree whether the nature of the use is materially different from that of a family flat. It is considered however that 4 or more unrelated people living together is materially different from family use on account of the more independent lifestyles of individual occupants.

4 Dundee Local Plan Review 2005

Policy 11 of the Dundee Local Plan Review sets the context for considering planning applications for multiple occupation of a dwelling. The Policy background highlights that multiple occupancy intensifies pressure on amenity, particularly mutual areas and parking, and can increase the prospect of disturbance and nuisance. Notwithstanding these issues, it is acknowledged that it would be unreasonable to attempt to exclude HMOs from a city where there is demand for a variety of housing convenient for higher education establishments and where some properties are too large for modern family occupation.

The Local Plan highlights that previous policy approaches sought to restrict the granting of planning permission for a new HMO within a specific distance of an existing HMO. However, this approach lacked the flexibility to take account of the range of residential environments that exist in the city and was open to challenge. In essence, non-compliance with a distance restriction alone would not be a reasonable ground for the refusal of planning permission if it could be demonstrated that the proposal would not significantly affect residential amenity.

Policy 11 - Houses in Multiple Occupancy of the Dundee Local Plan Review 2005 states:

"Proposals for multiple occupation of a dwelling that require planning permission will only be supported where:

- a *it does not involve the change of use of a tenement flat or other form of flat with a common stair or a shared entrance, unless within the city centre; and*
- b *it will not be detrimental to traffic or pedestrian safety on account of increased parking pressures; and*
- c *it will not have a detrimental impact on residential amenity. In this regard each proposal must provide adequate refuse storage space, garden ground and car parking. Where dedicated car parking cannot be provided the proposal must not exacerbate existing car parking problems in the local area; and*
- d *it will not result in an excessive concentration of such uses to the detriment of the character of the local area."*

5 The Land Use Issues Associated with Houses in Multiple Occupancy

Whilst many of the concerns relating to HMOs can be more appropriately dealt with through the licensing regime, there are a number of land use issues that HMOs can raise, including:

a Property specific issues:

- increased pressure on parking and traffic movement;
- the more independent lifestyles of occupants can increase demand for refuse facilities, drying areas, gardens etc; and
- increased pedestrian movement and noise.

b Wider community issues:

- the demands for community services and facilities can change should the proportion of HMOs increase. Where this is driven by students, outwith term time the impact on a locality can be significant; and
- established communities can be eroded by the more transient nature of occupants who do not have a long-term commitment to an area.

The Dundee Local Plan Review provides through Policy 11 a basis for assessing the suitability of an individual property as an HMO and this approach is considered to accord with Scottish Executive guidance. The flexibility to assess the adequacy of parking, garden and refuse storage provision in each instance reflects the diversity of residential environments and properties that exist across the city.

However, there is growing concern regarding the impact of an increasing number of HMOs on the wider community. Whilst Policy 11 does not support proposals that would result in an excessive concentration of such uses to the detriment of the character of the local area, the Policy does not quantify what constitutes excessive concentration.

The locations of existing licensed HMOs in Dundee have been studied to provide a basis for assessing concentration. This clearly demonstrates that the geographic concentration of HMOs is focused in the area surrounding the city centre. Expressing this number as a proportion of the total number of residential dwellings that exist in the area enables the concentration of HMOs to be monitored.

It also enables the establishment of a policy approach that does not support the granting of planning permission for an HMO if the proportion of licensed HMOs in that area exceeds an expressed threshold. However, such a policy only applies to HMOs requiring planning permission. It will not prevent an increase in the concentration of licensed HMOs in an area if no planning application is required.

6 Multiple Occupancy of New Build Properties

The Supplementary Guidance responds to concerns regarding multiple occupancy within new build housing in certain parts of the city. This is a particular issue in relation to the occupation of new housing close to the Universities by students. The Supplementary Guidance proposes that the occupation of new build properties by 3 or more unrelated people should be prevented through the use of legal agreements.

SUPPLEMENTARY PLANNING POLICIES ON HOUSES IN MULTIPLE OCCUPANCY

Policy HMO1: Assessing the Need for Planning Permission for an HMO

Planning permission is required for the occupation of a house by more than 5 unrelated people and by 4 or more unrelated people in a flat.

Justification: The Town and Country Planning (Use Classes) (Scotland) Order 1997 includes within the definition of a house that it is the sole or main residence of not more than 5 residents living together, including a household where care is provided for residents. In planning terms therefore, it is only where more than 5 unrelated people are living together in a house that it is considered development and planning permission is required. In determining the use of a flat as an HMO, it is a matter of fact and degree whether the nature of the use is materially different from that of a family flat. It is considered that 4 or more unrelated people living together in a flat is materially different from family use on account of the more independent lifestyles of occupants. Planning permission is therefore required where new HMOs are to be created in flats that will be occupied by 4 or more people. This will not apply retrospectively to existing HMOs in the City where this level of occupation is already licensed.

Policy HMO2: Avoiding Excessive Concentration of HMOs

Within the Central Dundee Housing Investment Focus Area as identified in the Dundee Local Plan Review 2005, planning applications for HMOs that would result in the proportion of licensed HMOs in any Census Output Area exceeding 25% of the total residential stock will not be supported. Purpose built HMO accommodation will be excluded from this assessment. This policy will not apply to the area within the city centre as defined in the Local Plan.

Justification: An excessive concentration of HMOs can have a detrimental impact on a local area by affecting the balance of the population with consequences for the provision of local services and facilities as well as adversely affecting residential amenity and the character of an area. In order to assess excessive concentration, Census Output Areas¹ have been identified as a measurable planning unit. It is appropriate that purpose built student or other HMO accommodation should be excluded from this assessment as such properties are not available for mainstream residential use and are unlikely to give rise to the same problems.

Policy HMO3: Assessing HMO Proposals

Proposals for multiple occupation of a dwelling that requires planning permission will only be supported where:

- a it does not involve the change of use of a tenement flat or other form of flat with a common stair or a shared entrance, unless within the city centre;*

¹ Census Output Areas were specially created for the release of Census results and are built from postcode units. Each output area has around 100 households. Where possible they follow natural boundaries, although the underlying patterns of streets and postcodes may result in convoluted shapes.

- b it will not be detrimental to traffic or pedestrian safety on account of increased parking pressures;*
- c it will not have a detrimental impact on residential amenity. In this regard, each proposal must provide adequate refuse storage space, garden ground and car parking. Where dedicated car parking cannot be provided the proposal must not exacerbate existing parking problems in the local area.*

Justification: Multiple occupancy intensifies pressure on amenity, particularly mutual areas and parking, and can increase the prospect of disturbance and nuisance. It is therefore appropriate that the adequacy of parking, refuse storage space, garden ground etc is demonstrated before planning permission for an HMO is granted. The increased social activity and coming and going associated with HMOs means that the change of use of tenement flats or other form of flat with a common stair or shared entrance is not generally supported. The exception to this is within the city centre, where due to the different residential character and the availability of larger flats, multiple occupancy is considered appropriate.

Policy HMO4: Controlling Multiple Occupancy in New Residential Developments

In order to achieve the objectives of the Central Dundee Housing Investment Focus Area identified in the Dundee Local Plan Review 2005, the occupation of new residential developments by 3 or more unrelated people will be prevented. The Council will secure this objective through agreements under Section 75 of the Town & Country Planning (Scotland) Act 1997. This approach will also be applied to new build housing developments outwith Central Dundee but in close proximity to higher education institutions.

Justification: The Dundee and Angus Structure Plan and Dundee Local Plan Review 2005 promote new residential development in the Central Dundee Housing Investment Focus Area to increase opportunities to live in this accessible location and take advantage of the benefits that this offers. However, many recent developments in this area have been purchased for multiple occupancy ie to be occupied by 3 or more unrelated people. In light of the proximity of higher education institutions, this is a particular issue in relation to students. Whilst such properties require to be licensed as HMOs, they may not fall within the scope where planning permission for multiple occupation is required.

The occupation of new residential development in Central Dundee makes it unavailable to other sectors of the housing market. Furthermore, such occupation can increase pressure in residential areas for facilities such as parking, whilst the relatively "transient" nature of occupants does not contribute to a stable community.

In order to achieve the objectives of the Central Dundee Housing Investment Focus Area and retain residential development for occupation by families, it is appropriate that its occupation by 3 or more unrelated people is prevented. The Council will secure this objective through the use of legal agreements. This control will not apply to purpose built student accommodation, other non-mainstream housing or social rented housing.

These occupancy controls may also be applied to housing developments outwith Central Dundee but in close proximity to higher education institutions where demand may exist for multiple occupancy. This will include for example, housing developments close to Ninewells Hospital.

APPENDIX 2**PLANNING APPLICATIONS FOR HOUSES IN MULTIPLE OCCUPATION IN THE DUNDEE CITY COUNCIL AREA SINCE 2003**

03/00100	- 32 Taits Lane	- c/u house to HMO	- Refused	- Appeal upheld
03/00416	- 2-4 Ellen Street	- c/u Resid Home to HMO	- Refused	- Appeal dismissed
04/00364	- 17 Osborne Place	- c/u house to HMO	- Refused	- No appeal numbers reduced to 5
04/00637	- 46 Thomson Street	- c/u house to HMO	- Refused	- Appeal dismissed
05/00081	- 26 Castle Street	- c/u office to HMO flats	- Live	
05/20279	- 30/30A Meadowside	- c/u office to 3 x HMO flats	- Live	

APPENDIX 3

THE LAND USE POLICY APPROACH TOWARDS HOUSES IN MULTIPLE OCCUPATION TAKEN BY OTHER PLANNING AUTHORITIES

1 Glasgow City Council

The Glasgow City Plan 2003 has two policies relating to HMOs: Policy CC/RES 3 Multiple Occupancy (City Centre only) and Policy RES 13 Multiple Occupancy. The policies concentrate on proposals where more than 5 unrelated people intend to share a house. In terms of flats, within the West End of the city, Glasgow City Council state that planning permission is required where 4 or more unrelated people intend to share accommodation. Elsewhere in the city, planning permission is required for 3 or more unrelated persons. The approach adopted by Glasgow City Council considers the percentage of HMOs within a given street or block. The proportion of multiple occupancies within a given street or block should not exceed 5% of the total number of dwellings comprising that unit. Within the West End of the city, the proportion is 10%.

2 Edinburgh City Council

Concern exists that an increasing number and concentration of HMOs is eroding established communities in certain parts of Edinburgh. The buoyant housing and employment markets in Edinburgh result in significant demand for HMOs to meet the housing needs of city's employees as well as students. However, only a relatively small number of planning applications are received for the change of use of properties to HMOs. Edinburgh City Council focus on those proposals where more than 5 unrelated people intend to share accommodation, although in exceptional circumstances, depending on the size of the property, planning applications are sought for more than 4 people in a flat. The approach adopted by Edinburgh City Council considers the proportion of licensed HMOs within a relatively small census output data area. HMOs requiring planning permission that would result in the number of HMOs exceeding 40% of the total number of households in that defined area will not be allowed.

3 Stirling City Council

HMOs are not considered a significant problem within the Stirling area. The Stirling Council Local Plan, adopted in December 1999, contains the most recent policy on Houses in Multiple Occupation. The policy states that applications for HMOs will be assessed on their individual merits and there is a list of criteria which all applications must satisfy. This includes:

- proposals being located in or close to existing settlements;
- impact on the amenity, character and appearance of the area;
- complying with Council's standards for shared accommodation; and
- compliance with other Local Plan and Council policies.

4 Aberdeen City Council

Houses in Multiple Occupation are not considered to be an issue. There is no specific planning policy covering this type of development.

5 Fife Council

In Fife, concern exists regarding the high number of HMO properties concentrated in St Andrews and its town centre and the social housing impacts that can develop. Fife Council does not have a specific policy on HMOs in any adopted local plan. However, the Draft St Andrews and East Fife Local Plan includes a policy for existing or new build HMO Premises. This policy (Policy H6) sets out a list of criteria which includes:

- access to a lit street;
- direct access to refuse collection and drying areas;
- car parking will be assessed separately; and
- the proportion of multiple occupancies within a given street or block should not exceed 5% of the total number of dwellings comprising that unit.

Fife Council is currently updating its Development Control Guidelines for Houses in Multiple Occupation in response to concerns regarding the loss of mainstream residential dwellings due to the increase in HMOs.