

Title of meeting:	Leader with responsibility for Planning, Regeneration and Economic Development
Date of meeting:	21 November 2017
Subject:	Houses in Multiple Occupation (HMOs) – Draft Supplementary Planning Document
Report by:	Claire Upton-Brown, Assistant Director City Development
Wards affected:	ALL
Key decision:	Yes/No
Full Council decision:	Yes/No

1.0 Purpose of report

- 1.1 The purpose of this report is to report the responses to the recent consultation on proposed amendments to the Supplementary Planning Document (SPD): Houses in multiple occupation (HMOs): ensuring mixed and balanced communities 2017: consider whether further amendment should be consulted on and to seek authority to adopt the amended SPD.

2.0 Recommendations

It is recommended that:

- 1. The SPD: Houses in Multiple Occupation 2017 be approved for adoption from immediate effect including the minor amendments to the wording of Para 1.17,1.22 and 1.24 as set out in the report.**
- 2. The Assistant Director City Development be authorised to make editorial amendments to the wording of the amended SPD prior to publication, in consultation with the Leader with responsibility for Planning, Regeneration and Economic Development. These amendments shall be restricted to correcting errors and formatting text and shall not alter the meaning of the document.**
- 3. The amended SPD is adopted but a public consultation is approved for the suggested addition to cover the issue of sandwiching and three in a row. Authority is sought to carry out a 6 week consultation starting as soon as is practically possible to add the following wording to the Adopted SPD 2017**

HMO planning permission will not be granted where it would result in any residential property (C3 use) being 'sandwiched' between two HMOs or where it would result in three adjacent HMOs, unless the application property is located between two existing HMOs

3.0 Background

- 3.1 Policy PCS20 (HMOs: Ensuring mixed and balanced communities) of the Portsmouth Plan is the key local planning policy against which applications for HMO use in the city are assessed. Where there is to be a material change of use to either a Class C4 HMO (between three and six unrelated people sharing amenities) or to an HMO in *sui generis* use (seven or more people sharing amenities), planning permission will be required.
- 3.2 This includes the need for planning permission where there is a material change of use from a Class C3 (dwellinghouse) to a Class C4 HMO. The reason why planning permission is required is that on 1st November 2011, a city wide Article 4 Direction came into force in the city which removed permitted development rights for such changes.
- 3.3 The SPD, adopted in 2012, set out how Policy PCS20 was to be implemented and explained how the city council applied this policy to planning decisions for HMO use whether falling within Class C4 or amounting to a *sui generis* use. No differentiation was made between Class C4 and *sui generis* HMOs. It is proposed to address this and other issues within the proposed SPD and thereby affect how current and future applications for *sui generis* HMO uses will be determined.
- 3.4 At the PRED meeting of the 6th September 2017 delegated authority was given to the Assistant Director of City Development to carry out a consultation on the amendments proposed to the SPD. Whilst the dates specified in the report to PRED on 6th September specified the period 2nd October to 13th November for the consultation it was agreed that if it was possible to bring these dates forward then this should happen. The consultation period was brought forward to expedite this report. Interested parties were requested to make their views known either in writing or by email, or by completing an online survey.

4.0 Consultation responses

- 4.1 The consultation sought views on the proposed amendments, and views on whether there were any other changes that should be made. 182 individual responses were received including responses from the Portsmouth & District Private Landlords Association, the University of Portsmouth and the East St Thomas Residents Forum that is formed of 120 residents of that area. The responses from the PDPLA, the University and the East St Thomas Residents Forum are attached as Appendix A to this report. The report considers the detailed comments of the PDPLA and the East St Thomas Residents Forum in the first paragraphs and then detailed the responses on each proposed

amendment. The figures and comments included in the following paragraphs and Appendix B relate to the 182 responses.

4.2 The Portsmouth and District Private Landlords Association believes that the changes to the HMO planning regulations are unnecessary and will be counter-productive. The reasons it believes this to be the case are;

- These changes will most impact the poorest in our community and increase homelessness
- Changes are not necessary due to falling demand for student accommodation
- Increasing demand for accommodation for single people will not be met
- There is a risk that these changes will increase rents and make city housing less affordable
- Changes will delay much needed regeneration
- Changes implies that many properties are too small for development yet all developments meet all necessary standards for space and amenities and improve what is often tired and dated housing stock
- Proponents argue that without these changes parking and rubbish issues will increase, but there is no evidence to support this
- These changes will stop the creation of mixed and balanced communities

It is recognised that some of the suggested amendments would mean there would be less opportunity for existing C4 HMOs to change to Sui Generis HMOSs which may result in less bedrooms becoming available for rent in HMO accommodation. Whilst the setting of rent is a matter that sits outside the influence of the planning system it could be argued that demand and supply will be one of the factors that influences rental levels within the city. However it is not considered that the proposed amendments to the SPD will increase the levels of homelessness within the city. As the PDPLA recognises factors such as the change in the tax position on mortgage interest relief will have a more significant impact in influencing landlords decisions on whether to continue to play an active role in the residential rental market of the city.

The PDPLA has made a detailed point relating to the falling demand for student accommodation. It concludes that concerns about students living in the community will diminish as student choice of accommodation increases in the city. The planning system does not control who the end users of HMO are however it is reasonable to assume that some of the HMOs in the city currently occupied by students may in the future be occupied by non-students.

The further points made by the PDPLA relate to its consideration of whether landlords will choose to invest in improving properties and whether with the space standards some properties will not have sufficient space to be capable of being converted to a HMO. I cannot conclude that the proposed changes to the SPD would serve as a disincentive to landlords to invest in their properties. However it is acknowledged that there are dwellings in the city that are of a size which may prevent them being used as HMO accommodation in the future.

4.6 A detailed response has been received from East St Thomas Residents Forum its response is detailed below together with my comments on each response. Whilst it warmly welcomes the amendments to the SPD it has made comments as follows :

Amenity Space standards - it comments that as many *sui generis* applications involve simply converting the living room of a property into an additional bedroom, it would like the draft to include confirmation of the principles stated in PCC's Private Sector Housing 'Standards for Houses in Multiple Occupancy (2014)' on the need for enhanced bedroom space where communal areas are removed, and suggest the following modified text:

"Where properties do not have separate communal space that is not a kitchen-diner-living area, the minimum floor area of all single occupancy bedrooms must be 10 sq. metres.

PCC's Housing Standards document "Standards for Houses in Multiple Occupancy (2014)" provides details of the facilities that must be provided in HMOs, including bathroom and kitchen facilities, based on the number of occupants. The drawings and documentation accompanying HMO planning applications must demonstrate that these requirements will be met.

The wording in the amended SPD states that planning permission will be refused if the applicant fails to provide adequate amenity space, to provide the quality living environment and deliver the Council's vision for the city. It is not considered appropriate to have HMO accommodation where there is no communal living space, the suggested amended wording from the Forum would support proposals to change to HMOs that provide no communal space. The wording suggested by the Residents Forum would lead to a more relaxed position from the amendment consulted on and for this reason I would not recommend that the wording be changed.

Having reviewed the proposed amendment at Para 1.17 I will recommend that the description of the details required in the submission of the application is further detailed to include a full set of plans that *include details of the bathroom sanitary ware and kitchen fittings and white goods*. Given the nature of this amendment I do not consider that there is a need to carry out further consultation on this minor point. To require these changes the Local Validation list will have to be amended, this has to be consulted on.

Amenity of neighbours and local occupiers (1.22)

The Residents Forum is extremely pleased with the proposed amendment but would like to be sure that this principle equally applies to *sui generis* applications and suggests that *sui generis* is added to the wording at Para 1.22. I consider this to be a logical clarification and would recommend that this minor amendment is made without further consultation .

Identifying properties in HMO use (Section 1.23)

The Forum is pleased that when calculating the percentage of HMOs within the 50m radius all HMOs with planning permission are included in the count, whether they are in HMO use at the time of the application or not. However it would also like “section 257” HMOs included to ensure clarity and robustness as they are, to all intents and purposes, HMOs by another name and impact equally on the HMO load on a neighbourhood. It therefore suggests the wording is amended to read:

“1.24 When identifying the number of HMOs in the area surrounding the application property, the city council will include:

- *All properties continuously in HMO use since 1 November 2011*
- *All properties with Class C4 HMO planning permission*
- *All properties with sui generis HMO planning permission*
- *All properties with planning permission for mixed C3/C4 use (regardless of whether they are in C3 or C4 use at the time of the application).*
- *All Section 257 Houses in Multiple Occupation properties”*

The suggested amendment adds the words 'continuously in use' for properties that were HMOs at November 2011, adds with planning permission to C4 use and suggests adding reference to Section 257 of the Housing Act as a further amendment. I could not support the suggestion that continuously uses is added as the only way that 'continuous use' of any property that fell into that category could be confirmed would be through an application for a Certificate of Lawful Development on any HMO that existed at November 2011. In practice this would mean that once the list of HMOs within 50m radius had captured the Council would then need to identify all the ones with had been in use at November 2011. It would then have to approach all the owners of these HMOs and request they submitted applications for Certificates of Lawfulness even if all these owners were willing to submit applications it could take months for these applications to be put together and considered .In the absence of an application the Council could not just accept continuous use as this would prejudice any later consideration of the matter. If such an approach were taken it is highly likely that all applications would end up being the subject of appeals against non-determination with the Inspectorate taking a negative position on the reasonableness and effectiveness of the Council.

With regard to the suggested addition of the reference to Section 257 of the Housing Act, the SPD is a planning document to be used for inform the consideration of planning applications, the definition of a HMO is clearly defined in the Planning Act and there is no planning reason to make reference to the Housing Act at this point. Within paragraph 1.3 and Appendix 1 there is the correct cross reference to the relevant Sections of the Housing Act I am not recommending that there is further amendment as suggested.

Establishing the existing lawful use of a property (1.27)

With reference to “grandfathered” HMOs (HMOs that were registered as existing at November 2011) the Forum would like more robust language and suggest the

addition of the word *unambiguous evidence* rather than just evidence. The planning and legal test for an application for a Certificate of Lawfulness is whether the evidence suggests on the 'balance of probability' and therefore the suggested word goes beyond the Planning Act and could not be supported.

Additional concepts that the East St Thomas Residents Forum have suggested

The Residents Forum would also like restrictions included with regard to the concepts of “sandwiching” and “3 in a row” HMOs with an additional section in the SPD to read:

*“HMO planning permission will not be granted where it would result in any residential property (C3 use) being ‘sandwiched’ between two HMOs or where it would result in three adjacent HMOs, unless the application property is located between two existing HMOs **”.*

This suggested additional control would address the balance of a community within a smaller area within the 50m radius. Consideration was given to introducing this further measure when the SPD was originally drafted, the decision was made not to add this further layer of definition. However there are occasions where properties may end up being sandwiched.

This is not an amendment that should be made without consultation to do so would run the risk that if relied upon as a reason for refusal at appeal an Inspector may conclude that this element of the SPD is given little weight because it had not been the result of a consultation rather than the subject of a consultation.

The Forum has commented that the dual requirement to apply for planning permission and a licence before a new HMO can be occupied, is confusing and lacks clarity. It comments that both the Council’s and landlords’ resources are wasted under the current arrangement and suggests the following additional wording:

“In addition to the need for planning permission, those wishing to establish an HMO need to obtain a HMO licence in accordance with the Housing Act (2004). An HMO licence will not be granted until planning permission for the HMO / sui generis development has been granted by Portsmouth City Planning Department. Landlords are also encouraged to join the city council’s Landlord Accreditation Scheme (LAS)”.

The wording of the SPD can not be altered in this way as the Council has to deal with the Licence and the planning separately.

Rebalancing Communities

The Forum comments that the draft SPD refers to the Portsmouth Plan's projection of an increase in the number of people who will require larger, family sized properties in the future (Section 1.9) and PCC's stated aim 'to avoid high concentrations of HMOs in the city, and to ensure the future provision of mixed and balanced communities' (Section 1.10).

It comments that the East St Thomas area already several times above the HMO threshold recognised as being sustainable, and feels that some mechanisms (within or outside the revised SPD20) to encourage rebalancing of the local community is essential.

It states that it understands that Portsmouth City Council is the only UK council that permits dual C3/C4 planning applications for properties. The revised SPD drafting indicated that at the 10 year anniversary of the C3/C4 planning approval, the property's status would revert to either C3 or C4, depending on its use at that time.

It is the view of the Forum that this effectively provides maximum flexibility for landlords in allowing them to flip between uses with little protection for tenants, the crucially point coming at 10 years from the date of planning permission, allowing them to preserve their potentially more lucrative C4 status. The Forum believe that if market conditions had encouraged the landlord to use the property as a family home in year 9, the current system would financially encourage them to evict the family tenants and return the property to HMO use in year 10.

The Forum would like PCC to return to the standard national framework of assigning planning approval for C3 or C4 rather than dual C3/C4 use. This would then eliminate the current practise which acts as a barrier preventing the return of housing stock back towards family use.

The Council has taken the position that the grant of planning permissions enable landlords to change from C4 to C3 without the need for a further permission which helps ensure that properties are being fully occupied and simplifying the situation should a landlord choose to rent a HMO for a temporary period to a family (for example over the summer months) without having to apply for permission and then apply again to change is back to a C4 use.

The grant of flexible permission is seen to be a way of discouraging the under use of properties and potentially avoiding situations where there are empty properties for extended periods of time, this is meeting a number of planning objectives. The Council can not prevent the submission of applications for a flexible C3/C4 use, it is then a planning judgement whether permission should be granted. Whilst the comments of the Forum around the uniqueness of Portsmouth's receiving and determining such applications are noted such applications are valid and the Council could not through an SPD stop applicants submitting applications in this form.

Summary of other responses to the consultation

In relation to the section on 'Living conditions/quality of living environment' there were 59 responses of which 39% were in agreement to the proposed amendment and 8% disagreed. Of the remainder some misconstrued the purpose of the section with considerable variation in comments ranging from the desire of respondents wishing to see a reduction in the number of existing HMOs and retention of family homes, thereby addressing overcrowding and parking issues, to having less over-powering high-rise buildings and making landlords responsible for removing rubbish and controlling noise. A few suggest the standards should be more strict or demanding, particularly in relation to fire and health and safety, or be realigned with Licensing while other issues refer to ensuring tenants themselves, who have no personal attachment to the area, are made responsible and the desire to prevent "student ghettos" and make HMO accommodation more attractive to young professionals.

- 4.3 The second question referred to the application of bedroom standards in line with the Nationally Described Space Standards. Of the 57 responses 44% were in agreement and 17% disagreed. Of those who disagreed or made comment it was considered the standards should be increased. Others commented that the standards used across planning and licensing regimes should be identical, while landlords should not be allowed to use every room [except the kitchen and bathroom] within a house as a bedroom. It is also suggested that full permission should be required for the upgrading of any Class C4 use by increasing the number of bedrooms. Furthermore, kitchens should not be allowed next to bedrooms in the adjoining property.
- 4.4 There were 39 responses to the next section on 'Amenity of neighbours and local occupiers' which also includes sub-sections on how HMO's are identified and the proportion of HMOs within a particular area are calculated. Only 28% expressed agreement with the provisions of this section and 5% disagreed. The remainder raised wide ranging issues from the need to prevent landlords extending properties, solely to increase the number of lettable rooms, to a desire to see the existing number of HMOs reduced, and increasing the 50m radius, reducing the 10% threshold to 5% or imposing a cap on the number of HMOs in a road. Some respondents comment that demand for parking is less within HMOs while others take a contrary view. Some raise issues around mental health, drug dealing, the storage of refuse and behaviour indicating a lack of social responsibility by tenants, while the issue of students being exempt from Council Tax was also raised.
- 4.5 The fourth question related to the section 'Other issues to be considered' and generated 39 comments. This section covered the licensing regime and the Landlord Accreditation Scheme. Only 13% of respondents agreed with that part of the document. However, the common themes of concern relate to the control of parking, noise and disturbance, and refuse storage. Some respondents expressed the view that licensing should apply to all HMOs across the city and contradictions between two separate departments should be resolved. It is also suggested that the 50m radius and 10% threshold is reviewed.

4.6 Having sought responses on the various sections within the draft SPD the final question asked respondents 'are there any other changes you would like to see in the final amendments?'. There were 38 replies and whilst only 4 believed no other changes were necessary, the common themes amongst the remainder included; (i) the need to exercise greater control or completely overhaul the system of control, (ii) restriction of parking permits, (iii) reduce the proportion of HMO's to undo concentrations, (iv) the introduction of stringent financial penalties, (v) there should be one contactable person to deal with problems as they arise rather than multiple agencies, (vi) properties accepted for a HMO licence should automatically have a C4 planning use, (vii) consideration should be given to 'trapped' family houses in areas of high concentration of HMOs, and (viii) impact on the loss of family homes.

5.0 Reasons for recommendations

5.1 The reasons for the recommendation in relation to the comments received from the Portsmouth and District Property Landlords Association and the East St Thomas Residents Forum have been set out in the above sections. The response to the public consultation exercise is evidence of the broad scope of interested parties. On the one hand those involved in letting HMOs would prefer to see either no changes to the current system of control or a re-alignment between the planning and licensing regimes ensuring a consistent approach to the application of standards. In contrast local residents who have been affected by the proliferation of HMOs seek greater levels of control, including where landlords enlarge properties to increase the level of occupation, and a reduction in their number where concentrations are greatest.

5.2 It is recognised that HMOs can affect the character of an area, potentially adversely where significant concentrations occur. Unlike the Council's Licensing regime the Local Planning Authority is able to exercise control over land use in the public interest. The latter must acknowledge the need for this type of accommodation and the Council through its planning powers is able to balance competing interests. It is considered that the current method of controlling the concentration of HMOs remains reasonable and there is no justification, anecdotal or otherwise, to alter the application of the current 10% threshold of properties within a 50m radius as proposed to be retained within the revised document.

5.3 However, there has been a trend for landlords to extend their properties (normally by large box dormer roof enlargements) under the provisions of the General Permitted Development Order in order to increase the level of occupation beyond six persons. That increase in the level of occupation would involve a material change of use from a Class C4 HMO to a sui generis HMO by virtue of a greater level of activity. Cumulatively such a trend would be considered to adversely affect the living conditions of existing residents, particularly where the proportion of HMOs already exceeds the 10% threshold. The introduction of the criteria in para 1.14 of the revised document seeks to address this issue and introduce a degree of further control in the interests of amenity and delivering a mixed and balanced community. It would not prevent

the establishment of sui generis HMOs in areas where the 10% threshold is not exceeded.

5.4 The use of minimum floor space standards for bedrooms is generally supported. The NDSS for a single bedroom is 7.5sqm compared with 6.5sqm under the HMO Licencing Standards, and 11.5sqm for a double bedroom compared with 11sqm under the HMO Licencing Standards. Whereas the latter require larger rooms where no dedicated shared living space is to be provided, the standards to be adopted make no differentiation. Nonetheless, the NDSS standards will seek to ensure that the accommodation to be provided meets the needs of its occupiers and delivers the council's vision for the city.

5.5 It is acknowledged that the issue of car parking and refuse storage is a common theme in the responses to the survey. However, the issue of parking permits lies outside of the control of the local planning authority and the consideration of planning applications is limited to the provisions of the SPD on car parking standards. As part of applications the landlord will be expected to demonstrate that adequate storage for refuse and recyclables will be provided. Behavioural issues concerning the use of those facilities lay outside the remit of the planning authority

6.0 Equality impact assessment

6.1 A full Equality Impact Assessment (EIA) has been carried out on the Portsmouth Plan (Core Strategy), including Policy PCS20: Houses in multiple occupation: ensuring mixed and balanced communities. This exercise did not highlight any specific issues relating to equalities groups in the city. As this supplementary planning document amplifies existing policy, no further EIA is considered necessary.

7.0 Legal implications

7.1 Preparation of the Council's supplementary planning documents, including the process of public consultation, is regulated in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012. Publication, consultation with appropriate stakeholders, and receiving and considering relevant representations are necessary steps towards adoption, and the report and recommendation support compliance with the Council's statutory obligations as Local Planning Authority.

8.0 Director of Finance's comments

8.1 The purpose of this report is to seek approval to adopt the Supplementary Planning Document (SPD). No additional resources will be required to carry out this adoption and therefore there are no financial implications as a result of the approval of the recommendations of this report.

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Signed by:

Appendices:

A - Consultation responses from the Portsmouth & District Private Landlords Association; the University of Portsmouth and the East St Thomas Residents Forum

B - Online consultation responses

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Report to Cabinet Member for Planning, Regeneration and Economic Development: Houses in multiple occupation (HMOs) – 6th September 2017	http://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=158&MId=3873&Ver=4
Report to Cabinet Member for Planning, Regeneration and Economic Development: Houses in multiple occupation (HMOs) – 22 nd September 2010	www.portsmouth.gov.uk/yourcouncil/18922.html
Shared housing in Portsmouth: an assessment of demand, supply and	Planning Services section of Portsmouth City Council website

community impacts. Portsmouth City Council.	
Article 4 Direction (Art 4/HMO/01)	www.portsmouth.gov.uk/living/20617.html
Survey responses	tbc

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: