

Agenda item: **Decision maker:** Planning Committee**Subject:** Appeal decisions relating to change of use applications from C4 HMO to Sui Generis HMO**Report by:** Claire Upton-Brown
Assistant Director City Development**Ward affected:****Key decision (over £250k):** No

1. Purpose of report

The purpose of this report is to update the Planning Committee on recent appeal decisions relating to the change of use from C4 to Sui Generis HMO's and the resulting implications for the weight that must be given to these decisions in determining similar applications. There was a blanket call in before the amended SPD was adopted. The Planning Committee is asked to confirm whether it wishes to reinstate the blanket call in on applications for change of use to Sui Genius HMO. The matter of how the SDP is amended going forward will be considered through PRED and will be informed by the Housing Needs evidence that is being prepared as an evidence base to support the Plan Making process.

2. Recommendation

The Planning Committee is asked to confirm whether it wishes to reinstate the blanket call in for applications that propose a change of use from C4 HMO to SuiGenius HMO applications.

3. Background

As members will be aware following an increase in the number of planning applications for change of use from C4 to Sui Generis HMO's officers revisited the HMO SPD. Consideration was given to whether the change of use from a C4 HMO to a Sui Generis HMO where there was over 10% concentration would result in a more intensive use of these properties impacting on the mix and balance of the community.

A report was considered by PRED in September 2017 which sought authority to consult on amendments to the HMO SPD including amendments to the space standards for HMO's and that planning permission should be refused for change of use from C4 to Sui Generis HMO's where there was already over a 10% concentration.

Following a consultation period of 6 weeks these amendments to the HMO SPD were adopted and planning application began to be assessed in light of the amended SPD.

There have now been a number of planning applications for change of use from a C4 HMO to a Sui Generis HMO that have been refused since the amended SPD was adopted on the grounds that the change of use would result in an imbalance in the community. Unfortunately a number of the appeals have been allowed as the Inspector was not persuaded that there was harm to the balance of the community. For reference the appeals that have been determined include

17/01215/FUL 1 Edmund Road appeal allowed - reason that the proposed change of use to a larger HMO would not result in a change to the balance of uses in the context of the surrounding area.

17/01240/FUL 63 Jessie Road appeal allowed - reason that the addition of one additional bedroom would be unlikely to increase the community imbalance.

17/00178/FUL 13 Manners Road appeal allowed- reason that they would not result in an imbalance in the housing stock and harm to the local community for.

17/01936/FUL 18 Bramble Road appeal allowed - reason that the increase of one bedroom to the existing lawful HMO is unlikely to materially increase the community imbalance and the inspector considered that there was inconclusive substantive evidence to the contrary.

17/00265/FUL 50 Hudson Road appeal allowed - reason that the increase of one bedroom is likely to have a small effect on the community.

There are a couple of appeals that have been dismissed but this has been on technical issues relating to SPA payments.

Appeal decisions are material considerations in decision making on planning applications and must be given due weight in making decisions on planning applications. The HMO SPD was consulted on in accordance with the Council's Statement of Community Involvement with response considered by PRED. However the test of the robustness is through the appeal process. The amendment has now been considered by a number of Inspectors who have concluded that in the cases they have considered which have all been at a scale of one/two additional bedroom, the proposed change of use would not imbalance the community and therefore there was not sufficient evidence of harm to justify withholding permission.

In making decisions on similar applications due weight must be given to these appeal decisions and planning permission would now be recommended on similar applications(change of use from C4 to Sui Genus with one or two additional bedrooms) . Conscious that there had been a blanket call in to Planning Committee on all Sui Genus HMO's application it is for the Planning Committee to advise whether they wish to reinstate the blanket call in or whether they would leave it to others to exercise their ability to call applications to Planning Committee .

4. Reason for recommendation

To establish the Planning Committee's position as to whether it wishes to reinstate the blanket call in that previously was in place prior to the Amended SPD being adopted.

5. Equality impact assessment (EIA)

None.

6. Head of legal services' comments

This report identifies a tension between different material considerations, namely the HMO SPD and relevant Planning Inspectorate decisions, which must be considered by the Local Planning Authority when reaching a decision on the impact that a sui generis HMO application would have on the mix and balance of communities under PCS20. The weight to be given to a material consideration is a question for the decision-maker approaching each application on its own unique basis.

The Committee is aware that in the event of a refusal of planning permission an applicant is entitled to appeal to the Planning Inspectorate where an independent Inspector will assess the application, review the Council's decision to refuse planning permission and then reach their own conclusion. Planning Inspectors are entitled to disagree with the Council's decision regarding the weight to be afforded to material planning considerations and substitute their own decision.

The Committee will also be aware that Planning Inspectors are empowered to hear applications for the award of costs against a party where:

- a) A party has behaved unreasonably, and
- b) the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

A poorly reasoned refusal of planning permission by the LPA might be deemed unreasonable behaviour necessitating the expense of an appeal by the applicant. On the other hand, a clearly flawed appeal by an applicant against a

refusal of the Council could also be susceptible to a costs award in the same way.

If the Committee decides to hear all sui generis HMO applications it would be advised to particularly engage with the reasoning of any relevant Inspector's decision (i.e. why the Inspector found the particular planning balance that they did). Engaging with that reasoning will help to ensure that a decision to grant or refuse planning permission is as robust as possible.

7. Head of finance's comments

No comments required.

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 Signed by:

Appendices:

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
17/00265/FUL	Planning Services
'Houses in multiple occupation' Supplementary Planning Document - revised November 2017	Planning Services
17/01413/FUL	Planning Services
17/01936/FUL	Planning Services
17/00178/FUL	Planning Services
17/01240/FUL	Planning Services
17/01240/FUL	Planning Services
17/01240/FUL	Planning Services
17/01215/FUL	Planning Services