

**Title of meeting:** Cabinet

**Date of meeting:** 24 July 2019

**Subject:** Houses in Multiple Occupation Supplementary Planning Document

**Report by:** Planning Policy Manager

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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## **1. Purpose of report**

- 1.1 Houses in Multiple Occupation (HMO) are an important planning and housing issue for the city. The Council uses its planning powers to ensure that communities are not imbalanced by too many HMOs, and that the amenity of neighbours is maintained. The measure to prevent communities being unbalanced (the 10% rule) has been successful, but there is a need to review other elements of the SPD, to better set out how the Council will consider proposals to enlarge existing HMOs.
- 1.2 The purpose of this report is to seek permission to proceed with publishing, for public consultation, proposed changes to the Council's adopted Houses in Multiple Occupation (HMO) Supplementary Planning Document (SPD).

## **2. Recommendations**

- (1) That the proposed changes to the HMO SPD are published for a period of 6 weeks of public consultation.**
- (2) The Assistant Director of Planning and Economic Development be authorised to make editorial amendments to the wording of the amended SPD prior to publication, in consultation with the Cabinet Member for Culture and City Development. These amendments shall not alter the meaning of the document.**

## **3. Background**

- 3.1 Houses in Multiple Occupation are a key planning and housing issue for Portsmouth. They provide accommodation for a significant proportion of the City's inhabitants and form an important part of Portsmouth's housing market. The benefits brought by HMOs include the delivery of relatively low cost, flexible accommodation to meet certain housing needs.

- 3.2 However, HMOs do present a range of challenges for the Council in managing the issues that they can bring. The Council, through its licensing and planning function has sought to maintain decent standards of accommodation for occupiers; managing the impacts of new HMOs on the amenity of nearby residential properties; and ensuring balanced and mixed communities.
- 3.3 Planning permission is required for both large HMO in *sui generis* use (seven or more people sharing amenities), and smaller *Class C4* properties (between three and six unrelated people sharing amenities). The smaller C4 properties require permission because on 1st November 2011, a city wide Article 4 Direction came into force in the city which removed permitted development rights for such changes.
- 3.4 When considering planning applications for new HMOs, two policies in the adopted Portsmouth Plan are particularly relevant. Policy PCS20 (*HMOs: Ensuring mixed and balanced communities*) seeks to ensure that applications for changes of use to a House in Multiple Occupation (HMO) will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance. This has led to the "10% rule" as explained further in the SPD. Policy PCS23 (*Design and Conservation*) seeks to ensure, amongst other aims, the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers as well as future residents and users of the development. This has led to other considerations being included in the SPD, including the "sandwiching" rule which seeks to prevent new proposals resulting in a non-HMO properties becoming sandwiched between two. Other adopted planning policies are also relevant, but the focus of the SPD is the two listed here.
- 3.5 The Council receives a steady stream of planning applications for new HMOs, both larger and smaller ones. Through the planning applications process, including appeal decisions by Planning Inspectors, both the adopted policies and the SPD are tested for robustness and appropriateness in operation.

#### **4.0 Applications for Larger HMOs**

- 4.1 Larger (*sui generis*) HMOs are occupied by seven or more people sharing amenities. The size and use of these properties has led to concerns regarding their potential to impact on neighbourhoods. A report was considered by PRED in September 2017 which sought authority to consult on amendments to the HMO SPD including a new position that planning permission should be refused for change of use from C4 to Sui Generis HMOs where there was already over a 10% concentration. Following consultation the changes were adopted in November 2017.
- 4.2 In February 2019 a report was considered by Planning Committee which set out a number of recent planning appeal decisions which indicated that a review of the SPD should be considered. The report stated -

*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.*

- 4.3 The committee report listed five appeals which were allowed by Inspectors. It should be noted that each planning application should be determined on its own merits. Nonetheless, these appeal decisions displayed a common theme, namely the difficulty of ruling out the expansion of smaller HMO properties, as a *matter of course*, in areas which were over the 10% threshold for balanced and mixed communities.
- 4.4 Therefore it is proposed that the SPD is amended to address this point and improve the SPD to give clarity for all parties who the council will address these applications. The blanket restriction on proposals for expanding existing HMOs in areas which are already over the 10% threshold, which is not receiving support in appeal decisions, should be replaced with a clearer, stronger articulation of concerns and matters the council is seeking to address when considering larger HMOs. In this matter the amendment is more related to policy PCS23 (which seeks to preserve amenity of neighbourhoods) rather than PCS20 (which seeks balanced communities), although the overall proportion of HMOs in the neighbourhood is clearly relevant.
- 4.5 The main amendments proposed to enact this change are as follows -
- a) Deleting paragraph 1.15 of the adopted SPD which rules out larger HMOs in areas above the 10% threshold.
  - b) A clearer articulation of matters which should be considered when addressing HMO applications and impact on amenity (paragraph 1.22a).
  - c) New paragraph 1.22b setting out factors considered relevant for considering expansion of existing HMOs where the 10% threshold is exceeded.
- 4.6 While some parties may be dismayed that the blanket ban on larger HMOs in areas which exceed the threshold is proposed to be removed, this change is considered necessary given Planning Inspectors decisions. Overall it is considered these amendments will give clarity for all parties on how the council will determine planning applications, and to provide a more robust basis for decision making.

## **5. Other amendments**

- 5.1 In addition to the main points raised in this report, there are a number of further amendments suggested to the HMO SPD. They are considered factual updates, such as -
- Updating to reflect that planning applications for C4 or mixed C3/C4 uses require a fee;
  - Updating the SPD to reflect advice from the Council's Private Sector Housing Team regarding the circumstances in which licensing is required, and space standard sought;

- Clarifying the evidence sought from those seeking to confirm existing lawful use of a property; and
- Highlighting the role of the Parking Standards SPD.

5.2 The "sandwiching" of properties between existing HMOs has been reported as an issue by residents. Similarly, the potential for a further restriction of permitted development rights for built works has been suggested. Later in the year a report will come to the Member for culture and city development to look at those issues further and set out options.

## **6. Consultation Arrangements**

6.1 The intention is for the proposed revisions to be published for a formal consultation period from 29 July. As a Supplementary Planning Document, the statutory requirement is for a consultation period of no less than four weeks. However, since the consultation period runs over the summer holiday period it is proposed that it is extended by two weeks for a six week period, to ensure people have the opportunity to respond.

6.2 It is proposed that the changes to the HMO SPD are advertised in the usual way for planning documents and in accordance with the Council's Statement of Community Involvement, with hard copies in libraries, community centres and housing offices; formal notice in the Portsmouth News; full details on the council's website; notice on social media; and direct notification to all respondents to previous planning policy consultations.

## **7. Reasons for recommendations**

7.1 Permission is sought to publish the proposed changes to the HMO SPD set out in Appendix 1 of this report, subject to any further minor presentational update. This will enable the proposed amendments to be tested through public consultation before a final decision on the amendments is made. The results of the consultation will be presented back to Members in due course along with a recommendation how to proceed.

## **8. Equality impact assessment**

8.1 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 and Policy PCS23: Design and Conservation. 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.

## **9. Legal implications**

9.1 The interpretation of planning policy is a complex legal exercise. An emphasis on a more qualitative assessment of HMO impacts while maintaining the 10% density as a reference point is to be welcomed in light of Planning Inspectorate decisions. It is

proposed that Counsel's view is sought on the SPD prior to consultation to ensure that the aims described in this report are articulated in the best possible fashion.

**10. Director of Finance's comments**

10.1 The recommendations within this report to publish the consultation document do not directly have an adverse impact on Council resources. It is anticipated that the cost as presented within this report will be met from the existing cash limited budget.

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Signed by:  
**Assistant Director Planning and Economic Development**

**Appendices:**

1. Proposed revisions to HMO SPD document

**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