

Agenda item:

Title of Meeting: Cabinet Member for Planning, Regeneration and Economic Development

Date of meeting: 27 January 2015

Subject: Measuring the concentration of houses in multiple occupation (HMOs)

Report by: City Development Manager

Wards affected: All

Key decision (over £250k): No

Full Council Decision: No

1. Purpose of report

- 1.1 This report is written in response to a suggested amendment to the city council's approach to measuring the concentration of HMOs in the area surrounding a property that is the subject of a planning application for use as a Class C4 HMO, mixed C3 / C4 or an HMO in *sui generis* use. This approach is currently detailed in the city council's adopted "Houses in Multiple Occupation (HMOs)" Supplementary Planning Document (SPD).
- 1.2 The report sets out the potential implications of the suggested amendment.

2. Recommendations

It is recommended that:

- 1. the method of measuring the concentration of HMOs should remain unchanged to ensure that the council retains a robust and replicable approach.**

3. Background

- 3.1 On 1st October 2010, the Government amended the Town and Country Planning (General Permitted Development) Order (1995) so that changes of use from a C3 dwellinghouse to a C4 HMO would not require planning permission.
- 3.2 On 1st November 2011, Portsmouth City Council introduced an Article 4 Direction which has the effect that, as an exception to the national development control, throughout the city permission is required for all changes of use from

Class C3 to Class C4. In addition, a new policy was introduced to explain the basis on which applications for such permission would be considered by the council.

- 3.3 The basis of the council's policy was a need to support 'mixed and balanced communities': to ensure that a range of households continue to be accommodated throughout the city and that the future supply of family housing is not jeopardised by unchecked conversion to shared accommodation (HMOs).
- 3.4 This new policy was the subject of public consultation and now forms policy PCS20 (Houses in Multiple Occupation (HMOs)) of the Portsmouth Plan, the city's adopted Core Strategy.
- 3.5 The Supplementary Planning Document (SPD) was also produced setting out in detail how the policy would be applied. This is via a "threshold approach" whereby if the concentration of HMOs within a 50 metre radius of the 'application property' already exceeds 10%, or if granting the planning application would tip the concentration over 10%, the council will seek to refuse planning permission for the new HMO use.

4. Proposed policy amendment

- 4.1 It has been suggested that the method of measuring the concentration of HMOs be amended to a street-by-street basis instead of the existing 50 metre radius measurement around the application property. The 10% threshold value would be maintained.
- 4.2 It is our understanding that some residents consider that the city council does not currently capture enough properties in the HMO count to be representative of 'their community'.

5. Development of existing policy

- 5.1 Prior to the public examination of the Portsmouth Plan, the city council defined the relevant assessment area surrounding the application property as street frontage lying within 100 metres either side of the application property. Properties within 100 metres were identified and the percentage of those in HMO use was calculated. This method however proved complex and involved significant 'judgements' as to which properties to include, particularly in the case of non-uniform street patterns. It was also problematic for applicants who wanted to assess the existing concentration of HMOs surrounding a property prior to submitting an application for a new HMO use.
- 5.2 To ensure that the method for calculating the existing percentage of HMOs was clear and straightforward for applicants to understand and replicate, a simple 'fixed' radius approach was proposed.

- 5.3 Different options relating to the 'length' of this radius were explored in terms of the number of properties captured using each measurement. For example, based on a traditional terraced street layout in the city, an area with a radius of 25 metres captured approximately 33 properties, a 50 metre radius captured 93 properties and a 100 metre radius captured 301. Clearly the number of properties captured would vary depending on the density of the existing development surrounding the application site.
- 5.4 It was considered that a 50 metre radius provided an appropriate spatial level at which the existing percentage of HMOs could be assessed and that it would capture a 'manageable' number of properties in the surrounding area for applicants, local residents and the local planning authority to consider in terms of their existing use. Assessing the number of properties captured by the 100 metre radius (301) would clearly be a more time consuming / resource intensive exercise and while the 25 metres radius captured 33 properties in a terraced street layout, lower density development may significantly reduce this number to a point where the balance of uses in the area cannot be properly gauged.

6. Other councils' policy approaches

- 6.1 Portsmouth was one of the first authorities to introduce an Article 4 Direction in relation to HMOs as well as being a forerunner in developing HMO planning policy. The success of our approach has seen many authorities replicating our policy rationale, however, the way in which a 'community' has been defined does vary across authorities with some approaches appearing to be overly complex.
- 6.2 For example, Bath & North East Somerset Council apply their HMO policy in two stages. Firstly, if an application for a change of use to an HMO is in or within 50 metres of a Census Output Area that has 25% or more of properties in HMO use, the application will be subjected to a second test. At this stage if 25% or more of the households within 100 metres of the application property are already HMOs, then the council will seek to refuse the application. In all other circumstances the application would be approved, subject to other material considerations¹.
- 6.3 York City Council take a similar approach to Bath & North East Somerset where applications for a change of use to an HMO are only supported where the 'neighbourhood area' concentration of HMOs is under 20% of properties, and where less than 10% of properties within 100 metres of the street length on either side of the application property are HMOs. A neighbourhood area is defined as a 'cluster' of between 5 and 7 Census Output Areas, capturing between 625 and 875 households².

¹ Houses in Multiple Occupation in Bath SPD (Bath & North East Somerset Council 2013)

² Controlling the Concentration of HMOs SPD (City of York 2014)

- 6.4 Oxford City Council seeks to refuse permission for changes of use to a HMO where the threshold of properties in use as HMOs within 100 metres of the street length on either side of the application property exceeds 20%³.
- 6.5 Southampton City Council maintain a similar policy approach to Portsmouth in that they seeks to refuse permission for new HMOs where there is already in excess of 20% of households in HMO use within a 40 metre radius of the application property⁴.

7. Potential impacts of amendments:

- 7.1 It is considered that seeking to respond to concerns that have been expressed by introducing a street-based calculation would be difficult to justify. As discussed in the research report that supports the city council's HMO SPD⁵, it is extremely difficult to capture a 'community' in spatial terms. The existing 50 metre radius approach is intended to be *indicative* of the balance of residential uses in the local community. This fixed measure offers a consistent approach and is readily replicable. In contrast, given the variety of street layouts / lengths in the city (for example London Road contains over 600 properties while Bush Street West has only one property), a street based measurement would capture significantly different numbers of properties in the case of individual planning applications. In addition, while it may be the case that some residents may identify their entire street as a 'community', others may not. Some residents may consider the occupants of houses in a number of streets grouped in a locality surrounding their property as their 'community'. It is therefore considered that the proposed street-based measure may not provide a consistent approach to implementing the policy, which can be readily justified. The current measure has been supported in a number of appeal decisions.
- 7.2 By not maintaining a consistent spatial catchment, the introduction of the suggested amendment could lead to 'clustering' of HMOs on one section of a street. This could become particularly prevalent on longer streets and lead to an imbalanced and disproportionate impact upon one section of a street over another.
- 7.3 The proposed street measure would also mean more case-by-case judgements on the part of planning officers as to which properties to include, for example at junctures where roads merge (such as between Kings Road / Elm Grove and Victoria Road South / Victoria Road North) or in the case of corner plots. Such subjectivity would make the street-based approach difficult for applicants and residents to replicate as well as potentially 'weakening' the council's decisions in respect of planning applications for HMO use.
- 7.4 The existing SPD has proven to be highly robust with regards to planning appeals. It is considered that the proposal to amend the existing SPD, without a

³ Sites and Housing Plan DPD 2011-2026 (Oxford City Council 2013)

⁴ Houses in Multiple Occupation SPD (Southampton City Council 2012)

⁵ Shared housing in Portsmouth: An assessment of demand, supply and community impacts (PCC 2012)

substantial evidence base, would undermine the established position and jeopardise success in future appeals. In doing so, it would increase the likelihood of the city council losing more planning appeals for applications for change of use to an HMO.

8. Conclusion:

- 8.1 In comparison with other authorities who apply thresholds of 20-25% of properties as HMOs, the city council seeks to attain the lowest concentration of HMOs (10%). The approach has proven to be highly robust in the face of planning appeals. It is considered that amending the SPD measurements without sufficient rationale would jeopardise the city council's strong policy position, making it more difficult to control new HMOs.
- 8.2 As the proposal would constitute an amendment to the city council's adopted HMO SPD, public consultation would be required. It is considered likely that the proposed street-based measure would be subject to challenge from landlords / agents who, while initially finding the existing approach difficult to understand, have become familiar with its requirements. While this is not a reason not to seek an amendment, it is difficult to justify why the council would seek to amend the HMO SPD in this way given that the document has been proven to be robust.

9. Equality impact assessment (EIA)

- 9.1 An EIA is not required.

10. Legal comments

- 10.1 The policy and the SPD have been adopted, and are robust, because they are established on a sound evidence base; that the policy and the SPD are robust is reflected in comments by Planning Inspectors who have refused relevant appeals. Changing to street-based approach is not an amendment that properly could be recommended without further investigation of an evidence base to justify such a change. To make a substantial amendment to the measures in the SPD without establishing an appropriate evidence basis for supporting such a change, would expose council decisions to refuse specific applications to an increased risk of successful challenge on appeal.

11. Head of Finance comments

- 11.1 There are no cost implications resulting from the approval of the recommendation contained in this report. There will, however, be increased costs associated with the alternative proposals discussed.

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Signed by: Claire Upton-Brown, City Development Manager

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

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Signed by:

Date