



PORTFOLIO HOLDER DECISION NOTICE

INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR PLANNING AND ACCESS

TOPIC – HOUSES IN MULTIPLE OCCUPATION – POSSIBLE PLANNING RESPONSES

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of the Principal Scrutiny Committee and all Members of the relevant Scrutiny Panel (individual Ward Members are consulted separately where appropriate). In addition, all Members are notified.

Five or more of these consulted Members can require that the matter be referred to Cabinet for determination.

Contact Officers:

Case Officer: Simon Finch. Head of Planning Management. Tel: 01962 848271
Email: sfinch@winchester.gov.uk

Committee Administrator: Ellie Hogston. Democratic and Member Services Officer. Tel: 01962 848155. Email: ehogston@winchester.gov.uk

SUMMARY

The Department for Communities and Local Government has issued a consultation paper setting out three possible options to deal with problems such as litter, nuisance, anti-social behaviour, parking, reduced availability of low cost home ownership and under/over use of community facilities which in some areas of the country are perceived to be as a result of a high concentration of Houses in Multiple Occupation (HMOs) particularly where such accommodation is occupied by students. These are generally defined to be buildings where the living accommodation is occupied by three or more persons who do not form a single household and who share a kitchen, bathroom or toilet.

The full consultation paper is available at:-

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/housesmultipleconsultation.pdf>

Certain areas of Winchester (such as Stanmore) have a high concentration of student accommodation in dwelling houses which were previously single family houses, but which have been bought up and rented to small groups of students who live together as a single household.

Because of the different definitions used in the planning and housing contexts, this type of accommodation is classed as a HMO for Housing Act purposes, which gives rise to some controls, although it does not control changes of use and planning matters associated with such changes (e.g. parking problems, etc) or the distribution of HMOs.

In the planning context, the typical student houses would fall outside planning controls. Consequently, the changes of use which have taken place in the past in Winchester have not constituted “development” and therefore have not been controllable from a planning viewpoint.

The consultation paper seeks views on three options:-

Option 1 – build on good practice such as strategies developed by education institutions, appointment of student liaison officers, etc.

Option 2 – Amend the Use Classes Order to either bring under planning control changes of family houses to occupation by a single household of more than 3 (rather than 6 as at present) people, OR the creation of a single new Use Class of a HMO to tie in with the existing Housing Act definition. To deal with potential issues involving small-scale care homes, there would be corresponding changes to Use Class C3 of the Order so as to permit changes of use where up to 6 people live together as a single household *and* care is provided.

Option 3 – Amend planning regulations to allow a change from a family house to a HMO, but allowing local planning authorities to restrict such changes provided they pay compensation where planning permission is refused.

DECISION

That the Head of Planning Management be authorised to submit the proposed response as set out in the Appendix to this Decision Notice.

Note – the Portfolio Holder agreed to additional wording to the response to question 8 to address the issue of small-scale care homes where support, rather than care, is given.

REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Given the nature of the issues in Winchester, Option 3 in the consultation paper would not address these at all. Option 2 would bring some changes into planning control, although there are still likely to be difficulties in enforcement (e.g. proving that there are more than 3 people in the household, and the date any change of use took place). There could also be unattended consequences as accommodation

occupied by groups other than students for example would also need planning permission in certain circumstances. Option 1 should be encouraged as it would seem to be another useful way of addressing the issues, although it would probably not deal completely with them.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

None

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

N/A

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

N/A

Approved by: (signature)

Date of Decision

Signed 25/08/09

Councillor Keith Wood – Portfolio Holder for Planning and Access

Department for Communities and Local Government Consultation Paper - Houses in Multiple Occupation and Possible Planning Responses.

Response from Winchester City Council.

General

There is a clear conflict in terminology between HMO legislation (which defines in detail what an HMO is, by reference to households (which are also strictly defined)) and planning legislation, which uses the term “single household” without expressly defining it.

Paragraph 25 of the Consultation Paper is confusing, in that it refers to HMOs as sui generic from the planning viewpoint. However, a HMO (within the Housing Act 2004 definition) could include both a) student accommodation comprising a group of 5 students living together as a single group, in a similar way to a family group AND b) a building comprised of several rooms whose occupiers share some facilities but otherwise live independently. In the planning context, however, only the second example would be a “HMO” and sui generis.

Adopting a rigid definition of HMO in the Use Classes Order would make enforcement potentially easier, and harmonisation of the definitions would remove an anomaly between the two regimes. It is important however to ensure that in doing so, unwanted consequences are avoided.

In this response, the Council assumes that in the consultation paper, the term “HMO” is being used in the Housing Act sense, as a generic term throughout.

Q1. Do you experience problems/effects which you attribute to high concentrations of HMOs ?

Response - We do receive complaints from residents regarding student accommodation within parts of Winchester. These complaints relate to matters like parking, noise, litter and anti-social behaviour. This is from a proliferation of dwelling houses (e.g. former council houses sold under the right to buy scheme) being bought up by landlords specialising in student accommodation, and renting these houses to group of up to 6 students living together as a single household. This type of accommodation is generally let to collectively to a group of students, rather than being let to individuals in e.g. the form of individual bedsits with locks on internal doors and with shared facilities being provided. It is considered that these houses, being occupied by not more than 6 residents living together as a single household, fall within Use Class C3 (b), and therefore such properties can change from family housing to student accommodation without the need for planning consent. It has been this lack of control in the past which has led to the concentrations of this type of student accommodation in certain areas, which the resulting problems set out above.

Although Housing Act controls can deal with some issues arising from such occupation (e.g. litter and untidiness, noise nuisance from the properties, etc) only planning controls can address issues such as parking and general nuisance arising

from the different type of lifestyle which such changes of occupiers can bring to an area.

Q2. Do you consider the current planning framework to be a barrier to effective management of HMOs by local planning authorities?

Response - Yes. As indicated above most HMOs in Winchester (i.e. where up to 6 students occupy a dwelling house as a single household) lie outside the current scope of planning control. This lack of control has meant that the local planning authority cannot effectively manage the issues raised by single household student accommodation.

Q3. Could promotion of best practice measures as opposed to changes in the planning framework sufficiently deal with the problems associated with HMOs, in particular those problems often associated with high concentrations of HMOs with student occupants?

Response - Such measures may have some effect but are unlikely to resolve all of the issues raised by residents. However they could be used to complement any changes to the planning system.

Q4. If planning legislation is seen as a barrier to the effective management of HMOs in an area how should planning legislation be amended – along the lines of option 2 (introduce a definition along the lines of the Housing Act 2004) or option 3?

Response - The Council considers that existing planning controls (which require planning applications for changes of use to “bedsit” HMOs) should not be diluted by taking option three and making changes of use to any form of HMO permitted development. For these reasons, Option 2 is the preferred course of action. However, monitoring and enforcing the new regime would be likely to be problematic as it could be difficult to determine how many people are resident in a property.

Q5. Do practitioners have a preference for one approach listed as part of option 2 over the other?

Response - Introducing a formal definition of HMO on the same definition as in the Housing Act would be a significant change in approach for planning practitioners, as in planning terms many “HMOs” (under the Housing Act) are still single households. However, for landlords and the public, a common definition would make it easier to understand when the two different controls would apply, and it might also make enforcement easier (in that if established for one regime, it would then be clear that the other regime equally applied). However, in changing the Use Classes Order, it is important to ensure that the amendments would not call into question whether 2 unrelated people could buy or rent a house together without a grant of planning permission.

Q6. What effect would a change to the Use Classes Order as described in option 2 have on those local planning authorities that do not encounter problems with high concentrations of HMOs?

Response - It may bring into the planning control regime premises which are occupied by people other than students and who do not generate problems. This could increase bureaucracy, may deter owners from offering houses for rent and increase the workload of local planning authorities.

Q7. Would a change to the Use Class Order as described in option 2 or 3 have an impact on the homeless and other vulnerable groups?

Response - The vast majority of people who would be affected by this (namely the single person household) are unlikely to be in priority need (Housing Act 1996 Part VII) and therefore wouldn't be owed a duty to be housed or accommodated by a local authority. The potential effect on supply might result in a small increase in the overall number of rough sleepers, which may in turn affect some of the organisations we work with.

Q8. Would a change to the Use Classes Order as described in option 2 or 3 have any unintended consequences, for example an impact on small scale care homes or children's homes, which are currently classed a C3 dwelling houses?

Response - Yes – Option 3 may actually make it easier for dwelling houses to be changed to HMOs without planning permission which is not considered desirable. The Council does have concerns about the possible impact on small scale homes where “care” in a broad sense is provided. Examples include the Supporting People initiative, which may not have care in the traditional sense included in the package, but where other support is given to the residents, such as payment of rent or mortgage or utility bills; compliance with tenancy agreement or lease; maintaining the fabric of the home; obtaining alternative, often move-on, accommodation. It would be preferable to expand the definition of “care” in any amended Use Classes Order to allow dwellings which would accommodate occupiers to whom support is being given by or on behalf of a local authority.

See also response to Q6.

Q9. Would a change to the Use Classes Order as described in option 2 or 3 impact unfairly – directly or indirectly – on any equality strands?

Response - It is not considered that there are any issues as the proposals are not looking to specifically target a portion or a sector of HMOs and seem to apply generally rather than anything else untowards.

Q10. Would a change to the Use Classes order reduce the supply of HMO accommodation in your area?

Response - There might be some reduction if landlords need to obtain planning permission before letting a property which was previously a family home, but the level of demand would suggest that this should not affect supply significantly.

Q11. If amendments are made to the Use Classes Order, should a property that has obtained planning permission for use as an HMO require planning permission to revert back to a C3dwelling house?

Response - No as it is difficult to see why such a change would be unacceptable in planning terms other than where the local planning authority had a policy relating to the protection of this type of accommodation.

Q12. Would a change to the Use Classes Order as described in option 3 place a new burden on local planning authorities?

Response - Yes because making Article 4 directions would have resource implications as would monitoring the situation after the event.

Q13. Under option 3, would the removal of the current requirement for HMOs to seek planning permission pose a problem for practitioners in managing land use impacts in their area?

Response - Yes – see 8 above.

Q14. Should the compensation provisions included in Section 189 of the Planning Act 2008 be applied to change of use between C3 dwelling house and an HMO if option 3 were to be implemented?

Response - The provisions of Section 189 are clearly better than the otherwise unlimited compensation claims which local planning authorities would be exposed to. If Option 3 were to be pursued, therefore, Section 189 should be activated in tandem.

Q15. How important would the risk of compensation be in the decision to use Article 4 directions under option 3?

Response - A significant factor.

Q16. Would the extra certainty of greater control bring benefits that outweigh the burdens placed by the need to process more planning applications?

Response - Yes so long as the new arrangements do not bring into the control regime a wide range of un-problematic uses which currently do not require permission (see 5 and 6 above).