

Bath & North East Somerset Council		
MEETING:	Development Control Committee	
MEETING DATE:	14 March 2012	AGENDA ITEM NUMBER
TITLE:	Control and Regulation of Houses of Multiple Occupation in Bath: Implementation Options	
WARD:	Bath	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix A - Article 4 Direction for Houses in Multiple Occupation: Feasibility Study (February 2012)		
Appendix B - HMO Study Options : Equality Impact Assessment (December 2011)		
Appendix C - HMO Study Options : Implementation Cost Assessment Summary February 2012)		
Appendix D – HMO Licensing: Private Sector Licencing (February 2012)		

## **1 INTRODUCTION**

- 1.1 Later today (14<sup>th</sup> March) Cabinet are asked to consider four potential options for intervention in managing existing and future growth of Houses in Multiple Occupation (HMO) in Bath, and to identify their preferred strategy to address the issue.
- 1.2 The options include business as usual, the use of additional mandatory licencing for HMOs and also the use of planning tools such as the use of an “Article 4 Direction” to remove permitted development rights to change use between a dwelling house (i.e. family house) and a small HMO with between 3 and 5 unrelated people living together, together with enhanced planning policy.

## **2 RECOMMENDATION FOR DEVELOPMENT CONTROL COMMITTEE**

- 2.1 The Development Control Committee is asked to provide a statement of their views to inform the consideration by Cabinet on this issue.

### **3 THE ISSUE**

3.1 In response to concerns about the impact of high levels of Houses in Multiple Occupation (HMOs) in Bath, Planning Services and Housing Services have investigated the options for policy intervention for consideration. Planning controls (an Article 4 Direction) could be used to limit future growth in HMOs, while housing-led solutions (eg licensing) could tackle issues relating to housing conditions and HMO management issues. A study prepared on behalf of the Council by Arup identified four options.

3.2 These options are;

- (1) implement an Article 4 Direction in 2013 to remove permitted development rights to change use from a dwelling house (i.e. family house) to a small HMO (between 3 and 5 unrelated people living together) and introduce a supplementary HMO threshold planning policy to enable implementation.
- (2) designate all or part of the district to be subject to additional licencing for classes of HMOs specified by the Council.
- (3) a combination of the above
- (4) take no additional action beyond that already in place.

### **4 RECOMMENDATION TO CABINET**

4.1 That Cabinet agrees that;

- a) Notice is given of the Council's "intention to implement" an Article 4 Direction over Houses in Multiple Occupation in the City of Bath,
- b) A 6 week public consultation being undertaken, with results being considered before any implementation of the Article 4 Direction,
- c) authority is delegated to the Divisional Director for Planning & Transport, in conjunction with the Cabinet Member for Planning and Housing, to prepare and publish the Article 4 Direction Schedule,
- d) a Supplementary Planning Policy is prepared as part of the local Development Framework to enable implementation of the Article 4 Direction,
- e) the results of the public consultation are considered by Cabinet in no less than 12 months from the notice of the Article 4 Direction to enable consideration as to whether the Article 4 Direction should be confirmed, abandoned or amended;

and

- f) Evidence is gathered to ascertain whether the legislative conditions for introducing additional licensing can be met, and if so, undertake a 10 week public consultation exercise which will inform the design of any such designation. The outcome of this process will be subject to a further report to Cabinet where a decision will be made to whether to implement additional licensing and if so, whether all or part of the District to be subject to additional licencing for classes of HMOs specified by the Council.

## 5 FINANCIAL IMPLICATIONS

- 5.1 There are direct cost implications of this decision for Planning and Housing services. The cost of implementing each of the options has been assessed in detail, and a scenario testing cost exercise has been undertaken. A summary of this cost assessment is available in **Appendix C**.
- 5.2 Any on-going costs forming part of an agreed way forward, will represent a commitment for growth against the 2013/2014 Budget.

### *Headline cost impact summary*

Option	Costs
<b>Option 1: Article 4 Direction Plus Threshold Policy</b>	
Implementing an Article 4 Direction	£15,000 set up – including public consultation (not recoupable)
Preparing a threshold Policy in Supplementary Planning Document	£11, 000 set up (not recoupable)
On-going Development Management operations cost	£31,000 recurring p.a. (not recoupable)
<b>Option 2: Additional Licensing</b>	£32k set up costs – including public consultation (not recoupable)  On-going costs recouped through charging
<b>Option 3: Combined Approach</b>	Same costs as 1& 2 above combined
<b>Option 4: Current Approach</b>	No direct additional financial costs

- 5.3 These costs can be broken down as follows:

### **Planning**

- Ongoing costs will be incurred by Development Management to deal with additional planning applications, enforcement, appeals and general queries which cannot be recouped via planning fees (applications triggered by an Article 4 are exempt from fees). Mid-range scenario cost-estimate is £31,000 per annum, but these costs could be higher (as shown in in worst case scenario). This will begin to be incurred ongoing each year from 2013/4 if an Article 4 Direction is pursued and

hence would need to be considered in the preparation of the Service Plan for 2013/4.

- Non-recurring cost of introducing a HMO Supplementary Planning Document containing a threshold policy (fast tracking option) - £11,000. This will need to be funded from re-prioritisation within the existing LDF budget.
- A non-recurring £15,000 set up cost for Article 4 Direction incurred in 2013/4 if an Article 4 Direction is pursued. This will need to be funded through the Local Development Framework Budget and will require a re-prioritisation of existing commitments.
- Consultations on both Article 4 Direction and a HMO Supplementary Planning Document will need to be funded from Local Development Framework Budget and a joint consultation will be the most efficient use of resources.

## **Housing**

- Additional licensing is administratively complex and resource intensive. From experience, and looking at other schemes, it is estimated that for every 1,000 HMOs brought into licensing four permanent staff, or the equivalent resource, is required. In addition Housing Services would need to look at how the existing Mandatory licensing process can be re-designed to be used more effectively for Additional licensing, possibly through e-work flows, as pioneered on the Homesearch scheme. This work, establishing the evidence base, consultation, introducing and publishing the designations, appointment of additional staff will all be upfront costs. The research commissioned, by ARUP, estimated these costs to be £32,000.
- These costs are not part of Housing Services financial plans and would need to be met through a re-prioritisation of existing work streams, such as the suspension of the existing voluntary accreditation scheme.
- Fees can be levied to cover the administrative costs of licensing including publicity, back-office functions & inspections. Current HMO licensing fees start at £750 for a 5 year license. It is therefore reasonable to assume that the cost to the sector will be around £150,000 p.a. for every 1,000 HMOs brought into licensing.
- It is important to remember that whilst the scheme should be cost neutral to the Council there are some significant risks associated with: calculating the fee, particularly given that the lack of certainty around HMO numbers; the potential for the scheme to generate additional non-fee generating work, such as enforcement action; and the costs of defending a potential judicial challenge to the designation.
- public consultation on introducing additional licensing measures can be combined with the Article 4 Direction consultation to ensure most efficient use of resources.

## **5 CORPORATE PRIORITIES**

- 6.1 This item contributes mainly to priority 2 “creating neighbourhoods where people are proud to live”. There is also a need to consider the economic priority in considering this decision and equalities issues in promoting positive lives for everyone.

- *Promoting independence and positive lives for everyone*
- *Creating neighbourhoods where people are proud to live*
- *Building a stronger economy*

## 7 THE REPORT

### LEGISLATIVE BACKGROUND

- 7.1 On 1<sup>st</sup> October 2010 changes to planning legislation relating to the control of HMOs came into force. The changes were made to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and extended permitted development rights to allow a change of use between Use Class C3 (Dwelling house) and Use Class C4 (Houses in Multiple Occupation) without the need for a planning application. This change means that any change of use between a dwellinghouse and a small HMO can occur without the need for planning permission unless the local authority has specifically identified an area in which planning applications will be required. Local authorities are able to do this through the use of an article 4 direction which removes the permitted development right that allows the change of use to occur.
- 7.2 Local planning authorities should only consider Article 4 Directions where they feel that there are exceptional circumstances and where evidence suggests that the exercise of permitted development rights would harm the local amenity or proper planning of the area.

### RESEARCH

- 7.3 In June 2011 the Cabinet requested that investigations should be undertaken into how planning controls (including an Article 4 Direction) could be used to control the future spread and increase in Houses in Multiple Occupation (HMOs) in Bath. A feasibility study was undertaken which collated the relevant local evidence and formulated options for action - see **Appendix A - Article 4 Direction for Houses in Multiple Occupation: Feasibility Study (February 2012)**.
- 7.4 The study shows that concentrations of student HMOs are particularly high in the wards of Widcombe, Oldfield Park and Westmoreland although there are other wards in the City with high numbers. It should be noted that HMOs play a wider role in providing housing for a wide range of groups including students, young professionals and graduates, lower paid workers and under 35 year old singles on housing benefit. It is clear that while there is good data on student HMOs, the data on other HMOs is patchy as there is no requirement for the majority to be registered with the local authority and as planning permission is not currently required.
- 7.5 Issues of concern expressed by residents are: inflating impact on cost of family housing, noise, litter, parking, environmental degradation and poor property maintenance, impact on perception of areas, and other impacts on the community related to high levels of transient population. However the report identifies both the positive and negative impact of HMOs. It found that in relation to indicators of environmental degradation and social impacts (e.g. crime, noise, anti-social behaviour) there is not a strong link with student HMOs. However, the data gathered shows very high concentrations of HMOs in parts of the City, it is this that is the considered to be the primarily cause of harm, impacting on community balance. It is

this impact that is seen to be the justification for potentially implementing an Article 4 Direction.

- 7.6 A stakeholder workshop was held in October 2011 with local residents, HMO landlords, Business representatives, the Universities, Councillors and cross-service officer representation. The Bath Chamber of Commerce, HMO landlords and estate agents, both Universities and student groups have expressed that they would oppose a proposal by the Council to adopt an approach to restricting HMO growth in the city using planning controls.
- 7.7 Other mechanisms that contribute to alleviating any potential problems with HMOs, and consideration of approaches taken in other cities in the UK has also been included in the study. A number of those at the stakeholder workshop expressed a strong interest in introducing Additional licencing schemes because it could help to address housing condition issues and enable greater regulation of all existing and future HMOs.

## *PLANNING CONTROLS*

- 7.8 An Article 4 Direction would mean that express planning permission would be required for a change of use from a dwelling house (i.e. family house) to a small HMO (3-5 unrelated people living together) although B&NES will not be able to collect fees for processing the processing of these applications. Reasons for refusal of planning permission will still be required on a case by case basis.
- 7.9 The feasibility study also identified that the Council's existing Planning Policy (Local Plan Policy HG.12) would need to be supplemented or amended to make the Article 4 Direction effective. A supplementary policy would need to set out a threshold, for instance, where 20% of dwellings within a 100m radius of the property are already an HMO permission would not be granted for change of use from a family dwelling to an HMO. Such a policy could also prohibit extensions to existing HMOs where these require planning permission. Monitoring data would include the use information such as Council tax exemptions and any other licencing records held by Housing Services.
- 7.10 It should be emphasised, that an Article 4 Direction cannot be applied retrospectively and would only control future changes of use from the date when it came into effect. It would therefore not tackle any existing issues in areas with high densities of HMOs.
- 7.11 An Article 4 Direction needs to be justified, based on evidence and have a defined geographical coverage. A 12 month notice period of intention to adopt should be given to avoid legal liability risks.
- 7.12 The study concludes that a City-wide rather than a partial Article 4 Direction is appropriate due to the likelihood of displacement effects because of the compact nature of the city.
- 7.13 There is already a strong correlation between concentrations of student HMOs and University bus routes and public transport corridors. Transport Services has expressed concern about the impact of dispersing student HMOs away from the key bus routes to

the Universities will lead to less sustainable travel patterns and may have an adverse impact on the Universities' travel plans.

## HOUSING CONTROLS

- 7.14 The Housing Act 2004 increased Local Housing Authority's (LHA) abilities to regulate the private rented sector by introducing three forms of licensing, these being: Mandatory licensing of HMOs; Additional licensing of HMOs; and Selective licensing of the private rented sector. **Appendix D** provides a summary of the three forms of licensing and the conditions that must be achieved. Operating a property covered by the designation without a license is an offence punishable by a fine up to £20,000.
- 7.15 Following the introduction of a General Approval Order in March 2010 an LHA can now introduce additional or selective licensing without the need for Secretary of State approval. However, introducing additional or selective licensing is not a decision to be taken lightly by the Council. The conditions that must be satisfied are contained in Part 2 of the Housing Act 2004 and are further detailed in guidance issued by the Department of Communities & Local Government (CLG) issued in December 2007.
- 7.16 The guidance makes it clear that additional licensing is not just another tool in the toolbox and that it should only be seen as an option to use when there are real problems with HMOs that have not been solved by using other available powers and a variety of approaches. This is reflected in the low numbers of additional licensing schemes that exist at present. We understand that at present there are 11 additional licensing schemes in existence. **Appendix D** provides some further details on these schemes including LHA & scope of scheme.
- 7.17 The primary purpose of HMO licensing is to improve housing standards. It allows the LHA to ensure that conditions, amenity & fire safety standards comply with current legislative standards. As such the principle beneficiaries of licensing are tenants. However, some LHAs use the licence as a vehicle to improve the management of the property and to respond to complaints by local residents about the condition of houses and behaviour of tenants. Hence licences often contain conditions relating to the number of waste receptacles required and management conditions, such as, that the landlord takes reasonable steps to minimise any nuisance, alarm or harassment by tenants etc.
- 7.18 To withstand the challenge of a judicial review the Council would need to be able to produce evidence to meet the overarching condition contained in the Housing Act 2004 which states that the LHA should:
- “consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public”*
- 7.19 An analysis of the evidence would be required to confirm that the above requirements are met. At this stage this is not clear.

- 7.20 The designation can cover a single ward or the entire district. It can cover a specific type of HMO or all types. However, the CLG guidance states that...

*it is not the intention of the legislation that additional licensing should apply to all types of HMO across entire LHA areas. It should be used to tackle specific problems in specific areas*

- 7.21 **Appendix D** confirms that the existing schemes range from a single ward (Cardiff) to a whole City (Newport, Oxford). From 3 storey HMOs (Hastings) to all HMOs (Oxford, Cardiff, Hastings, Newport & Slough).

## CONCLUSIONS

- 7.22 Section 1 of this report outlines the policy intervention options based on the recommendations of the Arup Report (**Appendix A**).

## 8 RISK MANAGEMENT

- 8.1 The report author and Lead Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

- 8.2 An Article 4 Direction can be legally challenged in relation to whether there is a sound basis for its implementation. Government guidance advocates that local planning authorities should consider making article 4 directions only in:

*exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.*

- 8.3 A limited number of Local Authorities have implemented Article 4 Directions in relation to HMOs so there is little precedent.

- 8.4 Likewise Additional licensing can be legally challenged in relation to whether there is a sound basis for its implementation.

## 9 EQUALITIES

- 9.1 An equalities impact assessment has been undertaken (see Appendix B). The conclusions of the assessment can be summarised as follows:

### **Option 1: City Wide Article 4 Direction and threshold policy**

- Could lead to a more dispersed distribution of HMOs, which could lead to poorer access to public transport for HMO residents and feeling of isolation from greater dispersion.
- Rental prices in most popular student areas likely to rise (Oldfield Park, Westmoreland, Widcombe) which will affect people with lower salaries and students (both most likely to be young people).



- Wards with highest BME populations (Bathwick/Abbey) also have high proportion of HMOs, so these groups may be affected.

#### **Option 2: Additional Mandatory HMO Licencing and Purpose Built Student Accommodation Policy**

- Additional Licencing is likely to have a positive effect on all equality groups by raising the standard of all HMOs in Bath.
- Adequate provision should be made to help some equality groups fill in any necessary paperwork to comply with Licencing process.
- Licencing may push up rental prices if landlords see an opportunity to pass on costs to tenants which will affect people with lower salaries and students (both most likely to be young people).
- Wards with highest BME populations (Bathwick/Abbey) also have high proportion of HMOs, so these groups may be affected.

#### **Option 3: Combination of options 1 and 2**

In addition to the above:

- May lead to the perception that HMOs are not welcome in the city and therefore make it harder for employers to attract lower paid workers or graduate employees.
- May result in loss of trade in some areas if current tenants are replaced by people with lower disposable income (e.g. young families or non-student HMO residents e.g. migrant workers)

#### **Option 4: Do nothing additional**

- If left unchecked HMO and neighbourhood quality could worsen over time, this could disproportionately affect some equalities groups e.g. disabled people, students and lower paid (typically young people),
- House prices in areas with high level of HMOs could continue to be inflated making home ownership more unaffordable for lower income groups.

- 9.2 In addition to this EqIA, concern has also been raised about the potential disclosure of HMOs in use as bail houses or domestic violence refuges. However, the details of any HMO used in this way would not need to be disclosed in a planning application.

## **10 RATIONALE**

- 10.1 A response is required to deal with the high levels of HMOs in parts of Bath. The recommended option 3, in combination approach, is considered the most effective as it seeks to tackle housing quality and management issues retrospectively through Additional Licencing, while also seeking further control on the expansion of HMOs through Planning Controls.

## **11 OTHER OPTIONS CONSIDERED**

- 11.1 Four possible options have been identified as summarised in part 1 of this report. Option 3 is the officer recommendation as it is considered to be the most effective; however, it is also the most resource intensive. Further detail on each of the options is outlined in **Appendix A**.

## 12 CONSULTATION

- 12.1 *Ward Councillor; Cabinet members; Overview & Scrutiny Panel; Other B&NES Services;; Local Residents; Stakeholders/Partners; Other Public Sector Bodies; Section 151 Finance Officer; Chief Executive; Monitoring Officer*
- 12.2 To determine the options available to the Council, work has been undertaken with Ward Councillors including walkabouts of Oldfield Park and Westmoreland wards, discussions have taken place with the Universities and other key stakeholders including local residents, HMO landlords and estate agents. In addition a Stakeholder Workshop was held in October 2011, a report of this workshop is included within **Appendix A** (as Appendix 1 to the study report).
- 12.3 The options were considered by the Planning, Transport & Environment Policy Development Scrutiny Panel on 6<sup>th</sup> December 2011. Following deliberation, the panel chair concluded they were unable to support option 3 due to concerns about the cost of implementation and the impact on current home owners who may wish to sell their properties.
- 12.4 The Council's Development Control Committee at their meeting on 14<sup>th</sup> March 2012 has been asked to submit a statement of their views for consideration by the Cabinet.
- 12.5 Public consultation is required should the Council wish to proceed with either Article 4 Direction and supplementary policy or additional housing licensing. The results of the consultation on the Article 4 Direction will be considered by cabinet following the lapse 12 month notice period. Any amendments to the Article 4 Direction would need to be re-consulted on for a six-week period

## 13 ISSUES TO CONSIDER IN REACHING THE DECISION

- 13.1 *Social Inclusion; Other Legal Considerations*

## 14 ADVICE SOUGHT

- 14.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

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<b>Sponsoring Cabinet Member</b>	<i>Councillor Tim Ball</i>
<b>Background papers</b>	<i>n/a</i>

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