

Managing / regulating (over-)concentrations of HMO: Post-2009?

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Event: HMOs and Article 4 Directions
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Aims of the event

- Identify 'new thinking' on A4Ds and regulation of HMO
- To share experiences and thoughts on best routes forward.
- What are current approaches that are being adopted by some local authorities?
 - What are the key issues that are arising?
- What are the considerations needed to introduce blanket local authority A4D controls
 - What is needed to achieve this?
 - What are the immediate/ interim issues of concern?
- Help participants to review their local authority policy on this topic.
- Anything else?

Why the need for regulation of HMO?

Concentrations of HMO in **London, university, coastal** and **market towns** can be lead to:

1. Higher levels of (seasonal) population transience
 - Less attachment and sense of belonging
 - Breakdown of community cohesion
 - Lower levels of social capital / electoral voting (Big Society?)
 - Fragmentation of sense of community
2. Increased (excessive) density of population
 - Associated environmental challenges (e.g. refuse, litter, flytipping, car parking / congestion, noise nuisance)
 - **Increased resources required for day-to-day management**
3. Reduction of affordable housing
4. Dilapidation of housing stock and environs
5. Higher levels of crime / anti-social behaviour
6. Contradiction of balanced communities
 - Rise of homogenous population structures
 - Loss of social mixing / interaction
7. Contradiction of sustainability of communities
 - Closure of schools, nurseries, etc

General consensus in national politics:
regulation of HMO is needed

- New Labour government
- Coalition government: 'A high concentration of shared homes can **sometimes** cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community' (Grant Shapps, 20/06/10).
- But disagreement about WHERE and WHEN regulation of HMO is required – '**sometimes**'

Alan Whitehead MP (18/11/10)

- "the debate is not about students or studentification. It is about balanced and sustainable communities in those parts of the country where students-but not exclusively students-occupy HMOs."

HMOH index

- Quartiles (4=highest, 1=lowest)
- 95.1% of university towns in quartiles 3 and 4
- 100% of coastal university towns in quartiles 3 and 4
- 73.1% of coastal towns in quartiles 3 and 4
- 66.8% of other LAs in quartiles 1 and 2
- 33.2% of other LAs in quartiles 3 and 4

A lack of evidence?

- How many HMOs?
- *When* is a 'concentration of HMO' an 'over-concentration of HMO'?
- What is the threshold / tipping-point?
- How should the threshold / tipping-point be measured?
- Population or housing?
- What are the boundaries of the HMO-dominated area?

Starting point (1)

- CLG Consultation on UCO/HMO (2009):
 - Option 1 (do nothing) - supported by 6%
 - Option 2 (the Use Class Order amendment) - supported by 92%
 - Option 3 (Article 4 Directions) - supported by 1%

Starting point (2)

- 6 April 2010
- New Labour Government introduced an amendment to the Use Classes Order which separated family houses (class C3) from HMOs (class C4)
- Change from C3 to C4 became a change-of-use - and therefore required planning permission.

House of Commons (10/06/10)

- Grant Shapps: 'In my experience, in my constituency and across the country, people also want a good supply of private rented sector property. Of course, getting that balance right is important. I share the hon. Lady's concern about the extent to which homes in multiple occupation sometimes become a blight on an area. **I confirm that *we do not plan to overturn the rules [on HMOs] that the previous Government introduced, but we will look at them in more detail.***'

Grant Shapps (17/06/2010)

- **Rationale for Article 4 Directions:**
- **'allow for local solutions rather than continue with the present "one size fits all" approach.**
- **Government should reduce the number of planning applications for minor development.**
- **runs the risk of losing low cost housing in areas where it is needed most.**
- **move away from this kind of centralised, regulatory approach**
- **allow the free development of smaller shared housing, which is a vital component of our private rented sector.'**

CLG announcement (20/06/10)

Rationale for the change - Grant Shapps:

- **'councils will have greater flexibility** to manage concentrations of shared housing in their area, **without tying landlords in red tape.**
- So changes to **legislation will give councils the freedom to choose areas where landlords must submit a planning application** to rent their properties to unrelated tenants - known as Houses in Multiple Occupation (HMOs).
- This will **enable high concentrations of HMOs to be controlled** where local authorities decide there is a problem, but **will prevent landlords across the country being driven from the rental market by high costs and red tape.**
- It is estimated that as many as **8,500 planning applications could be submitted each year** if every landlord looking to turn their property into a HMO is first required to seek permission - instead, councils will be able to focus their efforts in particular neighbourhoods where HMOs present a problem, while landlords of HMOs in other areas will not be tied up in red tape.'

Liz Peace, chief executive of the British Property Federation

- "Grant Shapps has taken quick and decisive action after this law was rushed through in April without sufficient clarification. At a time when **council resource is scarce** and **housing is needed** it makes no sense to be forcing thousands of local landlords and planning officers to be engaged in **unnecessary bureaucracy**. The Minister said last week that deregulation would characterise his approach to the private rented sector and as with other moves to cut red tape, these are further welcome steps."

CLG - proposal

- The definition of a small HMO (the C4 use class) will remain and permitted development rights will be extended to allow all changes between the C4 and C3 classes without the need for planning applications. In areas where there is a need to control HMO development, local authorities will be able to **use an Article 4 direction to remove these permitted development rights and require planning applications for such changes of use.**

Opposition to the proposals

Examples....

Andrew Smith (MP for Oxford East)

- ‘To ask the Secretary of State for Communities and Local Government if he will consider the merits of local development orders in place of alternative Article 4 directions to provide flexibility in the regulation of houses of multiple occupation.’

Manchester City Council (22/06/10)

- "The new system will make it more difficult to address the situation in areas like Fallowfield and Withington, and **we are very disappointed the new powers have been scrapped with no consultation.** We will be writing to the coalition government letting them know how badly this move will affect us and urging them to reconsider."

Nottingham City Council

- ‘If the Government proceeds with its proposals, in future the council would not be able to determine applications similar to four of these without **the need for lengthy, costly and potentially challengeable Article 4 Direction work.** And **the 12 month notice period would effectively be a perverse incentive which would encourage the owners of the properties to take advantage of their permitted development rights** to implement the development before the Direction became applicable.’

Planning Officers Society

- "The Planning Officers Society has some concerns with the Government's intention to amend legislation so that a change of use from a C3 dwellinghouse to a C4 HMO will become permitted development, requiring local authorities to introduce Article 4 Directions to control the spread of small HMOs within their area. We have provided a response to the specific questions which you have asked below, but as a general point **the Society feels that there should be formal consultation with local authorities and other organisations before making this change.** The amendment to the Planning Use Classes Order in April this year was the result of a thorough evidence gathering and consultation process which showed an overwhelming preference for managing problems associated with high concentrations of HMOs through planning controls, in the way which was introduced in April. This contrasts to the current proposals which are only undergoing a very limited 'informal consultation', which the Planning Officers Society does not feel gives the opportunity for all parties to give their views."

RTPI

- "We wish to make clear at the outset that the Institute completely supports the principles behind the current proposals: to reduce unnecessary bureaucracy for councils and landlords, and ensure that local communities have the powers to appropriately manage development in their areas according to their own aspirations. We are however **concerned that the proposals – effectively the blanket removal of councils' ability to manage controversial developments in their own areas – will in practice have the opposite effect.** Local communities have been campaigning for years for councils to be given more powers to manage HMOs as a result of the harmful impacts, real and perceived, that can arise, and the April 2010 reforms achieved this and appeared to be broadly and enthusiastically welcomed by communities."

Coastal Communities Alliance

- ‘Many of us urged the RTPI to table a strong response on the basis that **the proposals are ill conceived, illogical, have many unintended and negative consequences**, are being rushed through without proper consideration. Many felt that the RTPI should ask for the process to be halted /delayed while the compensation issues are examined in detail, the guidance is reviewed for the new purpose appropriately clarification.....or, ideally, for a greater review and debate on the role and issues and controls needed for the whole HMO sector’ (11/08/10).

Judicial Review

- Milton Keynes, Newcastle, Oxford
- See Robbie Caddock's following presentation

National HMO Lobby

- **Response to the Consultation on HOUSES IN MULTIPLE OCCUPATION: CHANGES TO PLANNING LEGISLATION**

Support for proposals

- Examples...

Residential Landlords Association

- ‘We remain convinced that a non planning solution i.e. Option 1 is the appropriate way of dealing with any problems which may be associated with concentrations of small houses in multiple occupation (“HMOs”). This is for all the reasons set out in our reply to that consultation. We do not believe that it is the function of the planning system to determine occupancy of properties other than in very special situations and this is not one of them. Use Class C4 discriminates against the private rented sector (“PRS”). What is the difference between a student living in the property in the PRS as against one living in a property which is owned or controlled either by a registered social landlord or a university/college? The RLA’s view is that **this is a form of social engineering which was brought in to appease a vociferous and articulate campaign and was gesture politics of the worst sort by the last Government.**’

The ongoing debate?

- Or has the debate halted?

Nicky Morgan MP (18/11/10)

- "The change that I have mentioned was to introduce the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2010, which came into effect on 1 October and drove a coach and horses through the earlier order by allowing as permitted development the change of use from a dwelling house to a small-scale house in multiple occupation ... **the October change has been greeted with such disappointment by affected communities.**"

19/11/10

- Early Day Motions 729 and 730 'prayed against' the Statutory Instruments which introduced the new legislation on HMOs in October
- SIs were referred to the Delegated Legislation Committee of the House of Commons
- SIs opposed by the five Labour members of the Committee / supported by seven of the Conservatives, and by both LibDems

- The new legislation...
- The introduction of Article 4 Directions to regulate / manage over-concentrations of HMO

CLG (07/09/10)

- **The Town & Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2010 (2010 No. 2134)** will make changes of use from Class C3 (dwellinghouses) to Class C4 (houses in multiple occupation) permitted development.
- **The Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135)** will reduce local authorities' liability to pay compensation where they make article 4 directions as follows:
 - where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation; and
 - where directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.

New guidance on HMO regulation and A4Ds

- A4Ds should be issued where HMOs:
 - "Undermine local objectives to create or maintain mixed communities."
 - Circular (08/10)

The steps for A4Ds (Circular 9/95)

- Stage 1 is making the decision to introduce an A4D.
- Stage 2 is drafting it.
- Stage 3 is serving notice locally.
- Stage 4 is consulting, to confirm the A4D.
- Stage 5 is actually bringing it into effect.
- Stage 6 is serving notice that this has been done.

- Developments in the new legislative context?

Manchester

- ‘In respect of Councils using Article 4 Directions to limit further HMO development in designated areas, the Minister has advised that the consent of the Secretary of State will not be required. Also any notice period given, to avoid potential liability for compensation, is for 12 months not 24 months. Most importantly **the Minister is also advising that Councils like Manchester, with policies already limiting HMO development in parts of the city, can bring in Article 4 Directions straightaway, without notice, to coincide with the national policy change.** Although the notice period would not be given, it is the Minister's view that for Councils like our own, that already have policies in place which clearly state where we stand on further HMO development in parts of the city, landlords already know our position - so an October 1st Manchester Article 4 Direction would not constitute a new policy unknown to potential applicants and would carry little risk of successful challenge’ (17/09/10).

Grant Schapps (16/11/10)

- Delegated Legislation Committee:
 - "Hon. Members will be interested to hear that the consultation in the case of Manchester has involved, I understand, posting the document on the authority's website and making it available in its customer services unit. **That was it; there has not been any great complicated, lengthy process.**"
 - Is this an adequate basis for a Stage 4 consultation?
 - Will it withstand a legal challenge by landlords?

CLG (28/09/10)

- "It does not matter whether a local authority has an existing policy restricting HMO development or not for the purposes of compensation liability ... **Local authorities will be liable to pay compensation in all instances where Article 4 directions are made with less than 12 months' notice.**"

A4D proposals: watch this space

- Manchester
- Newcastle
- Sheffield
- Milton Keynes
- Portsmouth
- Haringey
- Exeter
- Leeds

Other ongoing developments?

- Other London Boroughs?
- Coastal towns? E.g. Brighton, Bournemouth, etc?
- Market towns? E.g. Peterborough, etc?
- University towns? E.g. Loughborough, Canterbury, etc
- Recognition of over-concentrations of HMO: Oxford, Southampton, Nottingham, Birmingham, Norwich, Reading, etc

Compensation?

- ‘Article 4 Directions are not issued without careful consideration, because the Council may be required to pay compensation in circumstances where you cannot obtain planning permission for development which otherwise would be treated as permitted development’ (Planning Applications, at <http://www.planning-applications.co.uk/article4.htm>).

Other issues for debate:

- **Planning fees** - introduction of fees for planning applications required by Article 4 Directions?
- **Definition of HMO**
 - limited to the standard use class C4 as the definition of an HMO?
 - powers to vary the number of occupants as the threshold for requiring planning permission?
- **Flipping** between C4/C3/C4?
- Establishing **evidence** for the issuing of A4D?

Themes for discussion

- Compensation / notice period?
- Definition of HMO - number of occupants?
- The spatial area of the A4D?
 - Where are the boundaries?
 - Multiple A4Ds?
 - Cascading effects - displacement of HMO?
- Tipping points / thresholds?
- Using Local Development Orders?
- Using Local Development Frameworks / Core Strategies / SPDs?
- Problems of recording / identifying HMO?
- Constructing a robust evidence base?
- Resource implications?
 - Planning Application Fees?
- Policy guidance?
- Changing economic conditions?
 - Housing Benefit
 - A8 migrants
 - HE funding
 - Housing market dynamics
 - Empty homes