



RTPI

mediation of space · making of place

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9 July 2010

Susan Turner
Department for Communities and Local Government
Planning - Development Management
1/J2, Eland House
Bressenden Place
London SW1E 5DU

Email response sent to: susan.turner@communities.gsi.gov.uk

Dear Susan,

Houses in multiple occupation: consultation on changes to planning rules

Thank you for the opportunity to respond to the informal consultation on proposals to amend the way in which HMOs are dealt with by legislation. This letter follows our constructive meeting on 6 July, and I would like to reiterate our offer to continue to assist in any way that we can.

The RTPI is a membership organisation representing over 22,000 spatial planners. It exists to advance the science and art of town planning for the benefit of the public.

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.

We believe that the correct approach now is to use the current system to enable councils to effectively manage HMOs in their area without placing an unnecessary burden on them or on landlords. Our offer to government is to assist with promoting best practice, and with advising on appropriate local policies and local development orders.

If government chooses to adopt the alternative approach recently outlined by Ministers, our offer to assist with making regulations, policy and advice as workable and effective as possible stands.

Please find the RTPI's responses to the formal consultation questions pertinent to planning enclosed below.

If you require any further assistance, please contact me.

Yours sincerely,

Matt Thomson

Head of Policy & Practice

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Enc.

Royal Town Planning Institute response to “Houses in multiple occupation: consultation on changes to planning rules”

The RTPI is a membership organisation representing over 22,000 spatial planners. It exists to advance the science and art of town planning for the benefit of the public. This response has been informed by the involvement of members of our networks, including the RTPI/CIH Planning for Housing Network and the National Association of Planning Enforcement.

We wish to make it clear at the outset that the Institute completely supports the principles behind what the Minister is proposing: to reduce unnecessary bureaucracy for councils and landlords, and ensure that local communities have the powers to appropriately manage development in their areas.

We are however concerned that the current proposals – effectively the blanket removal of councils’ ability to manage controversial developments in their own areas – will in practice have the opposite effect.

Our starting position is that local communities have been campaigning for years for councils to be given more powers to manage HMOs as a result of the real and perceived harmful impacts that can arise. The April 2010 reforms achieved this and appeared to be broadly and enthusiastically welcomed by communities.

However, councils’ abilities to manage development will be disadvantaged by the current proposals because:

1. While it is recognised that, in terms of quantity and the erosion of character of broad areas, the impact of HMOs is particularly problematic in certain areas (university cities, coastal towns, etc), there are more subtle and localised impacts in areas where HMOs are less common or dispersed, particularly:
 - the potentially harmful impacts of a single HMO on neighbouring properties; allowing conversion under permitted development prevents councils from mitigating impacts on neighbours through conditions or planning obligations – it is not possible to use Article 4 directions to regain control over sporadic HMO development;
 - the removal of councils’ ability to protect the piecemeal loss of (often relatively affordable) family houses from their local housing stock; with permitted development taking place, councils would not have any data on the loss of family housing unless by resource-intensive specific survey.
2. Community pressure to ensure that appropriate management of HMOs is achieved will only be addressed with substantial delay – if an Article 4 direction with notice is pursued – or substantial cost – if an Article 4 direction without notice is pursued, because of the risk of compensation.
3. Whichever route is pursued, councils could reasonably be faced with criticism for unnecessary bureaucracy – in the lengthy process applying for the Article 4 direction – or unnecessary expenditure – on compensation merely to re-establish existing controls.
4. This latter issue will be particularly pertinent where councils have opened a dialogue in good faith with communities about HMO issues and are now faced both with planning permission being conferred on all existing unauthorised HMOs (if there is a gap between granting new PD rights and their removal by Article 4, an unintended consequence would be to

grant a permission to all HMOs already developed or started) and also being told that further development cannot be resisted because of the potential compensation costs entailed.

And yet it should be noted that local planning authorities (LPA) already have a route to freeing landlords from unnecessary bureaucracy whilst being entirely open to local community influence and comment; that route is the Local Development Order (LDO).

Indeed LDOs were recommended in the Budget “as part of the shift to a more locally driven planning regime” (HM Treasury, Budget 2010, para 1.89).

Where HMO development is not a concern, or where a community has identified an area in which HMOs would be welcomed in order to meet a particular housing need, the council can introduce an LDO, giving permitted development rights for change of use from C3 to C4 in all or parts of their area. This would be straightforward, since no application, only notification to the Secretary of State is required, the Council would be under no liability for compensation claims, and unnecessary bureaucracy would be removed. LDOs also have the advantage that they can specify criteria and impose conditions on the development thereby permitted.

The Minister may be able to devise an incentives arrangement – beyond the facilitation already offered by PAS – for the use and adoption of LDOs, such as incorporating this into the Audit Commission assessment processes. The planning profession, through the RTPI, offers to assist with LDO use by working on best practice guidance and, if appropriate, developing model orders and provisions, if this would be of assistance.

Adopting a position that the obverse of this – i.e. that local authorities can only regain a control on behalf of communities via Article 4 directions granted by central government – may inevitably lead to local authorities:

- chasing HMO issues around their area as controlled areas displace HMOs to adjacent areas and new Article 4 directions may not be capable of being applied quickly enough to effect control – an outcome of this could be a temptation for councils to apply Article 4 controls across their whole area;
- having no control over dispersed HMOs;
- having to address HMO issues arising against which the local authority would have no effective enforcement routes;
- lacking clarity in their guidance to potential development investors whilst their policy positions within the amended legislation are reviewed and pending clarification and making effective;
- losing income because within the controlled area planning applications would have to be considered without any commensurate income to the LPA;
- having ineffective Core Strategies and LDDs; some councils have committed themselves to introducing Supplementary Planning Documents on HMOs - these commitments and/or their usability will now be called into question.

The imposition of an Article 4 direction does not in itself prevent unwelcome developments taking place. Landlords and developers who consider they have a case to provide HMO accommodation within an Article 4 area, and can turn a profit from their business, will apply for planning permission, just as they have to do now. Councils will need to support their Article 4 directions with area-specific policies on how applications for HMOs will be dealt with.

The RTPI recognises that a weakness of the system put in place in April 2010 was its reliance on Local Development Orders, which have been used less by councils than was anticipated on their introduction in 2004, and so their effectiveness is not considered to be proven by some observers. We note however that many councils do not have experience with Article 4 directions either, and confidence in their effectiveness outside the area of heritage conservation is also in doubt, particularly with the threat of compensation that does not apply to LDOs.

We emphasise that the use of LDOs has been promoted by government in its recent Budget, and the Institute offers to work with its partners in the industry to prepare model LDOs to assist councils in implementing the current system.

Addressing the specific consultation questions in turn:

Q1. Do you consider that the proposals will allow local areas to take action without imposing unnecessary burdens on unaffected areas?

Q2. If not, why not? What do you think could be done, within the constraints of the current planning framework, instead?

We do not consider the proposals will enable action without unnecessary burdens, because on balance the proposal will reduce the ability of local areas to manage an issue that can be very contentious in local planning terms and on which many councils have been devising local solutions with the help of the existing legislation.

The use of Article 4 Directions is time-consuming, difficult now to change over to and impractical. The likely result is that there would be an unmanaged rush of HMO-related development contrary to community wishes ahead of Article 4 directions being made, and that once they are in place, HMOs would simply move to the nearest non Article 4 area.

We also take issue with the concept of “unaffected areas”. Where areas are completely unaffected by HMOs then there is not a burden, of course, but some areas are affected by individual or dispersed HMOs without the quantity or cumulative impacts that affect, for example, the areas of university cities and seaside towns that the current proposals intend to be managed through Article 4 directions. Nonetheless, residents of these areas will suffer from the impacts of unmanaged sporadic HMO development that will result from the proposed permitted development regime.

In these so-called “unaffected areas” the limited number of planning applications arising from HMOs under the current system is not considered to be a burden either for councils or for landlords/developers, and is certainly not a burden that is unnecessary or disproportionate to the comfort that the current controls give to individuals and families residing in those areas.

Councils already have a route to freeing landlords from “unnecessary” bureaucracy whilst being entirely open to local community influence and comment; that route is the Local Development Order (LDO), as recommended in the Budget “as part of the shift to a more locally driven planning regime” (HM Treasury, Budget 2010, para 1.89).

Where HMO development is not a concern, the local planning authority can introduce a Local Development Order (LDO) (as provided by S40-41 of the Planning & Compulsory Purchase Act

2004; see also, CLG Circular 01/2006, Guidance on Changes to the Development Control System, paras 4-45), giving permitted development rights for change of use from C3 to C4 in all or parts of their area. This would be straightforward, since no application to the Secretary of State is required, the Council would be under no liability for compensation claims, and unnecessary bureaucracy would be removed. The Minister may be able to devise an incentives arrangement – beyond the facilitation already offered by PAS – for the use and adoption of LDOs, such as incorporating this into the Audit Commission assessment processes.

Q3. Do you think there will be unintended consequences as a result of the proposed changes? If so, what will they be and how do you think they could be mitigated?

Yes, in towns which are not a university or coastal town, councils will lose all control over HMOs in their areas. The substantial work already undertaken in many councils to limit the effects of HMOs in terms of density, parking, character, noise and litter as well as improving the living conditions for the HMO occupants could be undermined and would certainly be derailed.

Case law (see *Cole v Somerset County Council* [1957] 1 QB 23) provides that Article 4s cannot be used where development has already been carried out.

Since there will inevitably be a gap between granting new PD rights (if introduced in October) and removal by Article 4, a permission could be granted for existing unauthorised HMOs (since development will have already been commenced and completed by the time the Article 4 is made).

Possible Mitigation:

Amend the legislation and/or guidance to ensure that the amendment to PD rights will not grant planning permission to existing unauthorised HMOs and/or that an Article 4 direction can be brought in immediately which will have the effect that existing unauthorised HMOs will still require planning permission.

We are also concerned that the Council may be exposed to a difficult-to-predict and certainly unbudgeted number of claims for compensation under Section 108 of the Town and Country Planning Act 1990 if they make Article 4 Directions with less than 12 months notice. Councils will inevitably be wary of using such Article 4 directions where it feels the need to do so, in view of the risk of compensation claims but Councils should not be prevented from exercising their powers through risk of claims for compensation.

Possible Mitigation

Measures are needed to ensure both that Article 4 directions can be made with immediate effect at the same time as the new PD rights are granted and that authorities will face no claims for compensation under Section 108 where this is done. This should in particular be the case where LDP and/or other SPD already make clear the intention of the Council to exercise control in particular localities or, exceptionally, across their area. In any event, clarity is required that compensation should only be payable where the LPA have acted unreasonably and not by simply exercising control functions in a responsible and reasonable manner.

Q4. Do you think there are any other changes which need to be made to make this approach work more effectively, e.g. to HMO definition?

Yes. To avoid confusion and to assist landlords that operate across England, guidance and HMO definitions do need further clarity and this should be achieved by relating definitions to that included in the Housing Acts.

Q5. Do you have any information on costs/benefits which would be relevant to impact assessment?

We do not have any cost/benefit data. However, it is important that costs should take account of the increase in neighbour complaints to be investigated and the loss of the application fees, particularly those in the Article 4 areas designed to regain a control.

Q6. Do you think LPAs will choose to issue Article 4 directions with immediate effect or less than 12 months notice?

It seems inevitable that some LPAs will be forced to issue directions without the normal notice as this would be the only option remaining, rather than lose control entirely. However, most LPAs will be very wary of adopting such a step because of its lack of transparency, largely unquantifiable but evident risk of claims for compensation and the risk to their reputation with local communities who would expect to be consulted.

Q7. How should we monitor the impact of these proposals and assess their success? What is the best review approach?

In the first instance, the Institute considers that the existing system should be given more time to demonstrate its effectiveness, and that, if the government remains convinced that the blanket removal of council's general ability to manage changes of use to HMOs is a better way forward, it should consider piloting this approach in a small number of representative and willing local authorities.

But as things stand, the impact of the current proposal is largely un-monitorable because information on the number of "unnecessary" planning applications, both before and after the changes, can only be estimated with all the attendant unreliability of estimates. In the Institute's view, the best position would be to work better within the LDO framework and in parallel review whether the extent of de-regulation now suggested is justifiable and if it is show to be so, then plan ahead with more than 12 month's notice to avoid a complex and avoidable compensation bill arising.

In the Institute's view it was an error not to allow a formal period of consultation on these proposals which would have drawn on the practical experience and judgement of local authorities and communities, in particular those that expressed views on the last set of proposals which were recently and widely discussed. It is these sources of feedback that will be reporting back publically on the impact of the amended arrangements and they will inevitably start from a jaundiced and sceptical position, doubting that their views and experiences are valued and open to being weighed carefully alongside the interests of the property industry.

Q8. Do you have any comments on the legislation as drafted?

Yes, the comments on the gaps in the legislative position are set out above.