

THE HIGHLAND COUNCIL
PLANNING, ENVIRONMENT AND DEVELOPMENT
COMMITTEE – 19th November 2008

Agenda Item	
Report No	

Supplementary Guidance on Houses in Multiple Occupation

Report by Director of Planning and Development

SUMMARY

This report summarises the responses to the consultation on the Draft Supplementary Planning Guidance on Houses of Multiple Occupation. Members are asked to agree the proposed changes to the document and approve as Supplementary Guidance pending approval of the Highland Wide Local Development Plan. A full list of those individuals/groups consulted is available in the Members Library.

1. Introduction

1.1 At the Planning, Environment and Development Committee on August 13th 2008 it was agreed that that the draft SPG go out for public comment; and that the outcomes of the consultation be brought back to Committee with a view to adopting the guidance as SG, pending approval of the Highland Wide Local Development Plan. This report looks at the response to the consultation and proposes changes made in line with some of the responses to the consultation.

2. Consultation

2.1 The consultation began on the 29th August 2008 and lasted for a 10 week period until the 24th October 2008. The document was available online and in all service points across the Highland Council area as well as at Council Headquarters.

2.2 The Consultation was publicised on the Council website and through the local press. Over 300 people/groups were contacted directly including all Community Councils, ward managers, current HMO Licence holders, and a number of other groups. In addition the consultation was added to the Council's Consultation Year Planner. There were 14 responses to the consultation.

2.4 A report of consultation has been produced and is attached to this report as Appendix 1, this gives full details of the responses and the level of support for each of the policies contained within the supplementary guidance. Where specific comments have been made these have been included verbatim and a response to the comment has been given.

3.0 Proposed Changes

3.1 The document will incorporate the changes outlined below and which are set out in more detail in appendix 2 of this report.

3.2 The main changes to the guidance are;

- In line with the forthcoming Development Plan Regulations under the Planning etc. (Scotland) Act 2006 the document will be classed as Supplementary Guidance, and its title will therefore be *Supplementary Guidance: Houses in Multiple Occupation*.
- A section on the relationship between building standards and HMO is to be included.
- Policy HMO1 will include a lower threshold in line with licensing and best practice for the possible requirement of planning permission for change of use to a HMO, when a flat is occupied by 3 or more unrelated people. The threshold for a house will remain at six or more unrelated people. This is following advice from the Scottish Government.
- The threshold deemed to be an excessive concentration of HMO will be reduced to 10%. This has been done following advice from the Scottish Government and from other respondents to the consultation. Further analysis work has also been carried out on both best practice across Scotland and the situation in Highland and 10% has been found to be a more appropriate figure better reflecting the situation in Highland.
- Policy HMO3 will now include the need to assess provision for cycle parking as well as car parking.

3.3 It was proposed in the draft guidance that Inverness City Centre should be exempt from the proposed excessive concentration threshold. While a number of respondents did not support this exclusion, it is recommended to members that exclusion of Inverness City Centre should be retained in order to continue to promote the wider regeneration of Inverness City Centre. The effects of this exclusion will be continually monitored.

4.0 Strategic Environmental Assessment

4.1 The Consultation Authorities have returned their responses to the SEA Screening report submitted to the SEA gateway in late July. SEPA, SNH and Historic Scotland were in agreement with the Highland Council that the Supplementary Guidance on Houses in Multiple Occupation **would not** have a significant environmental impact and would therefore not require a Strategic Environmental Assessment.

4.2 The Highland Council determined that an SEA would not be required. The determination notice as required by the Environmental

Assessment (Scotland) Act 2005 was published in the Inverness Courier and the Press and Journal on the 29/08/08. A statement of reasons for not producing a SEA was also produced and was sent to the SEA Gateway and published on the Highland Council Website.

5.0 Equalities Impact Assessment

5.1 As reported at the previous committee a screening of policies to assess relevance to equality has been carried out and it was found that a full Equalities Impact Assessment (EqIA) would not be required. The EqIA screening report has been passed onto the Highland Council Equalities Group.

6.0 Community Engagement

6.1 The Council has exceeded the national standards for community engagement with this consultation. A document which can be viewed online is a checklist produced by the Planning and Development Service which sets out how this has been done.

7.0 Gaelic

7.1 The use of Gaelic at this draft stage was not implemented. However in the production of the final document there will be work carried out as to meet the Council's standards for use of Gaelic in printed media.

8.0 Financial Implications

8.1 There will be no direct financial implications resulting from this report.

9.0 Conclusion

9.1 The document has been produced using best practice from a number of different local authorities throughout Scotland and adapted to suit the situation within Highland. The public consultation raised a number of issues which needed to be considered further in order for the policy to work effectively. Responses from Community Councils and the Scottish Government were particularly useful.

9.2 Once adopted this document will set out clear guidance on the issue of HMO and the planning system pending approval of the Highland Wide Local Development Plan.

10.0 RECOMMENDATION

10.1 Members are asked to;

- (i) Agree the changes proposed in Appendix 2.
- (ii) Approve the supplementary guidance for use as a material planning consideration in Development Management.

Signature:

Designation: Director of Planning and Development

Date: 4th November 2008

Author: Simon Hindson, Graduate Planner (ext: 2261)

Background Papers:

Scottish Planning Policy 3: Planning for Homes, Scottish Government (2008)

Circular 4/2004: Houses in Multiple Occupation – Guidance on the Interface between Planning Control and Licensing, Scottish Executive (2004)

Appendix 1 - Report of Consultation on Draft Supplementary Planning Guidance: Houses in Multiple Occupation

Introduction

Following approval by the Planning, Environment and Development Committee, a consultation draft of the Supplementary Planning Guidance (SPG): Houses in Multiple Occupation (HMO) was issued. A consultation ran for a total of ten weeks from 22nd August 2008 and closed on 24th October 2008. Comments were invited by questionnaire, letter, and e-mail. A dedicated web form was created to allow for responses to be sent to planning and development staff for more efficient processing.

The following details the responses to the consultation and their influence on the final draft of the document. Where specific comments have been made, a response to that comment is given.

A Specific Policy on HMO

The response to this question was positive with all respondents supporting the principle of having a specific planning policy on Houses in Multiple Occupation.

A number of comments were received on this matter these are outlined below with the Council's response in the right hand column.

Contact ID	Comment	Response
HMO/01	It should be realistic and be a true representation of need versus opposition.	It is believed that the draft guidance is a representation of need versus opposition with an emphasis placed on providing affordable housing for all sections of the community to help address the housing need.
HMO/02	I think that smaller HMO's should be subject to less regulation since otherwise it makes it difficult for single people to find accommodation other than in one or two bedroom properties.	Following the introduction of the The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 The Highland Council is required to operate a licensing system for HMO. They must do this within guidelines set out at a national level and cannot regulate smaller HMO differently to larger ones.
HMO/05	Get it nice and simple and curtail the unnecessary admin costs which are presently over stretched. Make it commercial in its application, not public sector bureaucracy.	The way in which the policies would operate promote a more efficient way of dealing with the relationship between Planning and Licensing on the matter of HMO.
HMO/09	I agree but your policy is inadequate, there's no thought to it all your doing is pandering to the public, I don't want it here, people need this type of accommodation.	The document recognises that there is need for this type of affordable accommodation and is promoting its use. The document aims to prevent excessive concentration of HMO in order to maintain residential amenity throughout Highland.

Assessing the need for planning permission for a HMO

The responses to this was again positive with the majority of respondents agreeing with policy HMO1 which states, 'Planning permission may be required for the occupation of a house or flat by six or more unrelated people, if it is deemed to be a material change of use.' Respondents which disagreed with this policy believed that planning should not be required as it is not a change to the exterior of the building or it was questioned why planning permission is not required for a family of six people but would be for a HMO.

The comments received on this matter are outlined below with the Council's response in the right hand column.

Contact ID	Comment	Response
HMO/01	Provided there is no change to the exterior of the building - Planning should not be required.	While there is not normally changes to the exterior of the building it is recognised that there may be a material change of use when a house or flat is occupied by 6 or more unrelated people. This may constitute development and then would require planning permission.
HMO/05	What happens when a couple take lease/rent of property and have friends staying? Possible short periods possibly long.	This would not require a HMO License unless the property becomes the primary residence of the friends who are staying with the couple which take the lease/rent of the property.
HMO/09	Why do you need planning permission when you don't need it for a family of six people.	It is not considered that a family of six or more people would be a material change of use as they are a family. It is different if there were to be six unrelated people living in the property as they would each lead a separate life and may need additional facilities or may affect levels of residential amenity and this may be deemed to be a material change of use and would therefore require planning permission.
HMO/14	Agree with need to avoid excessive concentration of HMO's - but not that Inverness City Centre should be excluded from this policy. City Centre and all city areas should have an equal spread of this type of accommodation.	This comment is noted and will be addressed later in the consultation report.

Avoiding excessive concentration of HMO and how to assess it

There was a mixed response to question three which asked respondents, 'Do you agree that the Council should be aiming to avoid excessive concentrations of Houses in Multiple Occupation and the method of assessing it?' While there was a mix of agreement with the aim and assessment when reading the comments made by respondents which chose to qualify their comments it can be seen that there is majority support for the avoidance of excessive concentration of HMO. Following further analysis and responses to this consultation the Council will reduce the level of concentration which would be considered to be excessive to 10% of residential properties in any one census out put area.

The comments included below have been made by respondents with regard to this question and included verbatim.

Contact ID	Comment	Response
HMO/01	The council should not prevent anything that provides accommodation which the council has failed to provide	The Council works closely with its partners in the private and public sector to provide affordable housing across Highland. By preventing excessive HMO in an area it is aiming to make this type of affordable housing available to a wider area.
HMO/05	With an element of elasticity that is common to "Ground Troops" making assessment in many cases individuals interpret rules differently. This is human frailty but nevertheless unacceptable.	Noted. The method for assessing concentration of HMO is done using a measurable planning unit in the form of census output areas and setting an appropriate threshold for what would be deemed an excessive concentration would limit subjectivity in the decision making process.
HMO/09	HMOs are needed in the city centre that's where people work, this type of accommodation is relatively cheap and that's why they choose it.	It is the intention that HMO would be made available in the city centre of Inverness.
HMO/14	Agree the need to avoid excessive concentration - unsure whether method of assessing is adequate.	As previously mentioned the method chosen limits the subjectivity in the assessment of what would be an excessive concentration.

Excluding Inverness City Centre

There was a high level of disagreement over the proposed exclusion of Inverness City Centre for the policy. Out of those who responded there was only one respondent that agreed that Inverness City Centre should be excluded from the policy.

The Council chose to exclude Inverness City Centre from the policy as this would help to strengthen and enhance Inverness City Centre. The following is written in the Inverness Local Plan (Adopted 2006) to support exclusion of Inverness City Centre from the policy, "The Council will seek to strengthen and enhance Inverness City Centre as the focus for retail, commercial and business activity in Highland and will encourage redevelopment and upgrading/modernisation of property for these purposes. The City Centre will be regarded as the town centre in terms of NPPG8 and the sequential approach, and the Council will seek to direct all new general comparison retail floor space there in the first instance. Priority will be given to the uses defined by Classes 1-3, 7, 10 and 11 of the Use Classes Order 1997 at ground and floor level in the quadrant of core shopping streets formed by High Street, Church Street, Union Street, Academy Street along with Eastgate with residential office and other compatible activities above."

This justifies the reason for exclusion of Inverness City Centre, while the public consultation has been taken into consideration it is believed the benefits of having residential accommodation in the City Centre outweighs the negatives.

The comments included below have been made by respondents with regard to this proposal and are included verbatim.

Contact ID	Comment	Response
HMO/01	Inverness 'City' is a village with delusions of grandeur.	Noted.
HMO/02	An excessive concentration of HMO properties in the centre of Inverness where these are likely to be large properties could have a negative effect on amenity in the area. Where they are two to four bedroom properties there is unlikely to be any problem	It is agreed that an excessive concentration may be detrimental to the character of the city centre but as it has been shown in other cities across Scotland having a significant element of residential development within the City Centre can be advantageous in reducing crime and creating a more pleasant atmosphere.
HMO/05	What's so different about Inverness centre. The retailers there struggle and an element of controlled H.M.O could be advantageous to the traders. Also this is the weekend centre and would avoid any disruption travelling home to outskirts.	Inverness is the main regional centre in Highland. It serves as a centre for business, commercial and leisure facilities for the entire population of Highland. It is the intention that an element of HMO would be encouraged in the City Centre of Inverness which may strengthen and enhance the city centre.
HMO/14	Definitely not. I understand that the present concentration in City Centre is just in excess of 3%. To contemplate even having 12.5% is ludicrous. There should be encouragement to spread HMOs city wide before increasing city centre figures.	While the current HMO concentration in the City Centre is low, it is envisaged that any increase would not be detrimental to the town centre. The aim of the policy as a whole is to encourage a spread of HMO

		across Highland and not to have an excessive concentration of HMO in any one area.
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Issues of Residential Amenity

This question asked respondents to bring to the Council's attention any other issues of residential amenity which they believe should be considered when assessing proposals for HMO. Parking, and other forms of transport were raised as things which should be looked at as part of assessing a HMO proposal.

The following comments were made and are included verbatim.

Contact ID	Comment	Response
HMO/01	Parking is not usually an issue for H.M.O tenants. They cannot afford cars student accommodation requires a minimum for 1 or 1/2 per student to accommodate visitors.	While this may be the case in some HMO properties, it is not in all. A HMO has a higher occupancy level than a house or flat which is not a HMO therefore, it is believed that an assessment of the parking need should be carried out when assessing a planning application for change of use to a house in multiple occupation.
HMO/05	Simply an impartial assessment of any negative effects.	The assessment of any negative affects would be carried out in an impartial manner by the case officer dealing with the planning application.
HMO/06	Local transport must be adequate and reasonably required by residents. Plus landlords should be encouraged as part of the agreement to provide adequate storage space for cycles.	While access to local transport is desirable it is a Highland wide issue which would be addressed through the local transport strategy. Cycle parking can be encouraged through the use of conditions on a planning consent and an indication of provision can be sought by a development management officer when the application is being considered.
HMO/08	Don't understand the question!	Noted.
HMO/09	Disturbance and noise, you get this from pubs, clubs and all over Inverness in all streets, you can't just blame it on the big bad HMO. You only have to look at police reports.	Disturbance, noise and nuisance is considered during the planning process and would be considered when an application for a HMO licence is made.
HMO/12	Issues relating to H.M.O should be co-ordinated with other existing and relevant legislation	It is the intention of this document to better co-ordinate our approach to dealing with HMO applications and form an effective partnership between Planning and Licensing. This enables co-ordination between other existing and relevant legislation.
HMO/14	In thinking of population numbers, 12.5% of residential properties is too high a percentage for one area (e.g. city	As mentioned earlier in the report following further analysis and responses

	<p>centre). Likely age range of tenants has to be considered. A good age range is better than an overweight of the twenties/early thirties.</p>	<p>to this consultation the level of concentration will be 10% of residential addresses in any one census output area. The ages of tenants of a property can not be restricted and therefore it is not would not be possible to create a range of ages in an area as suggested by the respondent.</p>
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Further Comments

In addition to the direct questions respondents were given the opportunity to give additional comments these are included verbatim below with the Council's response in the right hand column. A number of other responses were received and can be made available to members on request.

Contact ID	Comment	Response
HMO/03	<p>Thanks for letting me see Highland Council's draft SPG on HMO. It's useful that you are doing this just now, because the focus on HMOs so far in other places has been on student HMOs, and I guess the situation in Inverness will be more non-student accommodation.</p> <p>Generally, I don't see any particular difficulties with this. It's very much in line with what we proposed local authorities should do on HMOs in the SPP3 consultation paper. The consultation suggested that SPP3 wasn't the best place for HMO guidance, so we are revising Circular 4/2004, and hope to publish that before the end of the year. You will wish to reflect this revision in your SPG.</p> <p>I have a couple of minor points. The definition of an HMO should perhaps set a lower occupancy threshold for flats - which would be more in line with other places, particularly Glasgow, which requires planning permission in a flat where three or more unrelated people live. More than five people seems quite high for a flat. This would also bring your planning policy into line with the requirements for licensing.</p> <p>My only other point is that the 12.5% figure for the level of concentration threshold seems quite high. I recognise, though, that this may reflect the particular demographics and settlement pattern of Inverness</p>	<p>We will include in the final supplementary guidance that the guidance would be subject to review following publication of the revised Circular 4/2004.</p> <p>This has been considered in the formulation of the policy. For clarity it was decided to have one overall standard for houses in multiple occupation for both houses and flats due to the absence of a definition of a flat in the The Town and Country Planning (Use Classes) (Scotland) Order 1997. However, on consideration of best practice throughout Scotland it may be practical to include a lower occupancy rate for flats.</p> <p>Following responses to this consultation and further analysis of the situation across Highland, it has been decided to reduce the level considered to be an excessive concentration to 10% of residential properties per census output area.</p>
HMO/11	<p>The Crown Community Council wishes to make observations following consideration of the Draft Supplementary Document.</p> <p>There should be consistency in the correct spelling of the noun "Licence".</p> <p>BACKGROUND</p> <p>The assertion that "It is also recognised that this form of housing is helping to support the economic growth of the area" would appear misguided for the following reasons:</p> <ul style="list-style-type: none"> • The source of this consideration with justification and factual substantiation should be provided. • Does "growth" refer to the profitability accruing to the building owner/developer or in terms of greater 	<p>This was a typing error and the spelling has been amended.</p> <p>It is considered that HMO provide affordable housing for residents in Highland. By providing affordable housing it will help to grow the economy of the area by providing a home for people wanting to live and work in the area.</p>

good to the community?

THE LAND USE ISSUES ASSOCIATED WITH HMO; Supplementary Planning Policies on HMO

Some suggested additions with regard to issues of Density of Development could be expanded under the above heading.

THE LICENSING OF HMO

The assessment conditions regarding the suitability of property owner to be a HMO landlord should be reviewed, perhaps along the lines of a SCRO (Scottish Criminal Records Office) check.

Property Specific Issues/ HMO and the Planning System

There is no mention of spatial standards required for HMO accommodation. From recent evidence developments have displayed a disregard for adequacy of room areas. These should be included in the conditions for granting a HMO Licence to the effect that the spatial conditions should comply with Housing Association Spatial Standards.

POLICY HMO1

Justification -

There is a strong case for each HMO to be time limited to say, three years. This would ensure greater control and enhance powers of enforcement by the Authority.

POLICY HMO2: Avoiding Excessive Concentration of HMO

The quoted proportion of 12.5% is ill-conceived. This figure applied to "any census output area is wide open to exploitation and manipulation by unscrupulous landlord. This aspect requires further review to avoid the emergence of potential ghettos. Some more strict percentage should be focused on a street basis and in the context of the immediate neighbourhood rather than in more general terms.

Policy HMO3 - Assessing HMO Proposals

We suggest an addition entitled "Security Issues" which could address the following:

- Conditions of the Property should comply with Police "Security by Design" conditions.
- Security Risk Assessment to the immediate Community

Overall density of development is dealt with when planning consent is sought for a development. The supplementary guidance is primarily concerned with planning applications for change of use to HMO and not new development.

This may be carried out when a landlord applies to be an accredited landlord. This is outwith the scope of planning.

Spatial standards for houses in multiple occupation would be an issue for building standards. This is not currently addressed by the document, in the final document there will be a brief section on the relationship between Building Standards and HMO.

Planning consent is not time limited once the work has been carried out. A HMO licence generally lasts 3 years however it can be granted for shorter periods in certain circumstances. After 3 years a HMO licence should be reapplied for.

Following responses to this consultation and further analysis of the situation across Highland, it has been decided to reduce the level considered to be an excessive concentration to 10% of residential properties per census output area. A census output area has been chosen as the area to measure as they are measurable planning units, are not subject to boundary changes and are small enough to reflect local issues. Having a percentage based upon a street would not be practical in terms of monitoring and enforcement of the policy.

While the Council wish to reduce crime levels across Highland it is not practical to do it through this guidance. Secure by design principles are used in many new developments but it is difficult to apply them retrospectively.

It is up to the landlord to assess the suitability of his/her tenants for occupation of a property it would not be

	<p>- Where appropriate security checking residents.</p> <p>These comments are made without prejudice to CCC consultation should there be future proposals to amend the defined 'Town Centre' area.</p> <p>We appreciate the opportunity to have contributed to the Draft Consultation process.</p>	<p>practical or possible for the Council to assess this.</p> <p>Noted.</p>
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Conclusion

It can be seen that while some issues such as the level of concentration and exclusion of Inverness City Centre have been contentious, there is majority support for the policy itself. When dealing with the aforementioned issues the Council have taken into consideration the responses to the consultation and have made suitable amendments. This report will be an appendix to a committee report which will go before Planning, Environment and Development Committee on 19th November 2008. In addition proposed changes to the document will be attached to the aforementioned report.

Appendix 2 - Proposed Changes to Supplementary Planning Guidance: Houses in Multiple Occupation

- In line with the forthcoming Development Plan Regulations under the Planning etc. (Scotland) Act 2006 the document will be Supplementary Guidance, and its title will therefore be *Supplementary Guidance: Houses in Multiple Occupation*.
- A Glossary of terms will be included at the front of the document.
- A paragraph explaining the status of the Supplementary Guidance will be included.
- A section on Building Standards and HMO will be included and will read, *“If you need to carry out any building work to make a property suitable for use as a HMO, you may require a building warrant. Even if a warrant is not required, the work may still have to meet building regulations. Advice should be sought from the Highland Council Building Standards Officers on this matter.”*
- Policy HMO1 will now read, *“Planning permission may be required for the occupation of a house by six or more unrelated people, and occupation of a flat by three or more unrelated people, if it is deemed to be a material change of use.”*
- The justification for Policy HMO1 will be adjusted to read, *“The Town and Country Planning (Use Classes) (Scotland) Order 1997 includes with the definition of a house that it is the sole or main residence of not more than five residents living together, including a household where care is provided for residents. Therefore, in planning terms, it is only where six or more unrelated people are living together in a house that it is considered development and due to which planning permission is required. In line with best practice across Scotland it is considered that three or more unrelated people are living together in a house that it is considered development and due to which planning permission is required. This will not apply retrospectively to existing HMOs in the Highland Council area where this level of occupation is already licensed. In addition this requirement will not apply where an existing license is being renewed for the same level of occupation. However a property owner may wish to seek that a use is established by applying for a Certificate of Lawful Use.”*
- Policy HMO2 will now read, *“Planning applications for HMOs, outwith Inverness City Centre (as indicated on Map 1: Inverness City Centre as Defined in the Inverness Local Plan 2006), that would result in the proportion of licensed HMOs in any census output area exceeding 10% of the total residential stock will not be supported unless there are clear material considerations which would justify permission being granted.”*
- Paragraph two of the Justification for Policy HMO2 will now read, *“The figure of 10% has been chosen as it is in line with best practice in Scotland and has been adjusted to reflect the situation with regard to HMO in Highland.”*
- Policy HMO3 will now read, *“Proposals for multiple occupation of a dwelling that requires planning permission will only be supported where: It will avoid negative impact to traffic or pedestrian safety on account of increased parking pressures; and*

It will avoid negative impact on residential amenity. In this regard, each proposal must provide adequate refuse storage space, garden ground and car/cycle parking.

Where dedicated parking cannot be provided the proposal must not exacerbate existing parking problems in the local area.”