

HOUSES IN MULTIPLE OCCUPATION (HMO)

GUIDANCE ON RELEVANT GROUNDS OF OBJECTION TO APPLICATIONS FOR HMO LICENCES¹

The aim of this guidance is to clarify the types of ground of objection which the Council is entitled to take into account when determining applications for HMO licences.

The Council may only refuse an application for an HMO licence on one or more of the particular grounds specified in the Housing (Scotland) Act 2006 (the “Act”). Consequently, grounds of objection to HMO licence applications will only be relevant if they relate to one or more of these statutory grounds for refusal.

However, the grounds of objection to HMO licence applications commonly put forward are grounds which might be relevant to planning applications for HMO but which are not relevant to HMO licence applications. Although all timeous representations must be considered before an HMO licence application is determined, those which do not contain relevant licensing grounds of objection and instead contain planning grounds require to be disregarded.

The following guidance therefore seeks to explain the distinction between what the Council can take into account in determining applications for planning permission for HMO and what it can take into account in determining HMO licence applications.

Applications for planning permission for HMO

Planning permission may be required where a proposed HMO is to accommodate 6 or more unrelated persons (in the case of a house) or 3 or more unrelated persons (in the case of a flat). Where these thresholds will not be reached, no planning permission is required for a new HMO or for change of use of existing buildings to HMO. This is because, under the planning system, such small-scale HMO are not considered to give rise to significant land use amenity issues and, for existing properties, it would be unlikely that multiple occupation would involve a material change from their current use.

Where planning permission is required for HMO, the first stage of the planning assessment (outwith Inverness City Centre) looks at the concentration of HMO in the particular area. If it is considered that there will be an over concentration of HMO in a single Census Output Area due to consent being given to a new HMO then planning permission may be refused. In terms of the Council’s Supplementary Guidance on HMO¹ (Guideline HMO1) the threshold at which an over concentration will be deemed to exist is where a further HMO would result in the proportion of licensed HMO in the census output area exceeding 10% of the total residential stock.

1

<http://www.highland.gov.uk/yourenvironment/planning/developmentplans/developmentplanpolicyguidance/hmo.htm>

Where applications pass the concentration test, the second stage in the planning assessment looks at the land use amenity issues which may arise from the proposed HMO. The Supplementary Guidance contains the following development guideline as to how these impacts will be assessed.

Assessing the land use amenity issues related to HMO accommodation

4.9 This development guideline sets out what planning officers will use to assess the land use amenity issues related to proposals for the erection of new HMO accommodation and/or change of use of existing buildings to a HMO.

HMO3: Assessing HMO Proposals

Proposals for multiple occupation of a dwelling that requires planning permission will only be supported where:

- It will avoid negative impact both individually and cumulatively to traffic or pedestrian safety on account of increased parking pressures;
- It is within close proximity to public transport connections, social and community facilities; and
- It will avoid negative impact on residential and/or business amenity both individually and cumulatively. In this regard, each proposal must not lead to excessive noise and disturbance and provide adequate refuse storage space, garden ground and car/cycle parking.
- It will avoid materially altering the character of the area.

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

Key Considerations

- Is adequate car parking provided for residents and visitors?
- Is sufficient cycle parking provided for residents and visitors?
- Is the proposal within walking/cycling distance of social and community facilities?
- Is sufficient off-street waste and recycling storage space available?
- Is adequate communal outdoor amenity space provided within the site or available near by?
- Will the proposal exacerbate existing parking problems in the local area?
- Will the proposal lead to the unacceptable intensification of land use?
- Will the proposal have an adverse cumulative effect on any of the above considerations?

It will be seen from this guideline that the second stage of the planning assessment focuses largely on the impact which the proposed HMO may have on the surrounding neighbourhood and on the amenity of others living or operating businesses there. Objections to planning applications for HMO will be treated as relevant, therefore, where they raise such amenity issues.

Applications for HMO licences

A licence is required for all HMO, defined for licensing purposes as any living accommodation occupied by 3 or more persons as their only or main residence, who are not all members of the same family or of one or other of two families and who share one or more of the basic amenities which are a toilet, personal washing facilities and facilities for the preparation or provision of cooked food. Consequently, although in the case of houses, planning permission is not required for an HMO intended to be occupied by fewer than 6 people, a licence will still be required if the number of occupants is to be between 3 and 5. This reflects the fact that the key aims of the licensing and planning systems are different. The licensing regime aims to ensure that the standards of physical accommodation and management at all HMO, regardless of size, are acceptable. The planning regime aims to avoid negative impact on land use amenity in the area but recognises that HMO accommodating fewer than 6 people are unlikely to give rise to such negative impact.

The Council may refuse an application for an HMO licence only on one or more of the statutory grounds explained below.

1. Suitability of applicants and agents

Section 130 of the Act dictates that the Council must refuse to grant an HMO licence where the applicant or his/her agent is considered unsuitable because they have been disqualified by a court from holding an HMO licence or where the authority considers that the applicant or agent is not a fit and proper person to be authorised to permit persons to occupy any living accommodation as an HMO.

In deciding whether the applicant or agent is not a fit and proper person, the Council must have regard to whether the person has:

- Committed certain types of offence, involving fraud or other acts of dishonesty, firearms, violence, drugs or sexual offences
- Practised unlawful discrimination in connection with carrying on any business
- Contravened housing law or landlord and tenant law
- Engaged in, or failed to act in relation to, antisocial behaviour affecting a house let by the applicant
- Any other material which the Council considers relevant to the applicant's or his/her agent's fitness to hold the licence. (This might include, for example, evidence that the applicant has a poor record of maintaining expected standards at other HMO owned by him or a poor record of responding when concerns are raised.)

Objections to HMO applications will be relevant therefore where they raise issues which call into question whether the applicant or his/her agent is a fit and proper person.

2. Suitability of living accommodation

Section 131 of the Act dictates that if the Council considers the accommodation is not suitable for occupation as an HMO and cannot be made so suitable, it must refuse to grant an HMO licence. Objections will therefore be relevant where they raise issues which call into question the suitability of the accommodation for occupation as an HMO. However, the suitability of the accommodation for such occupation must be assessed having regard to a number of particular factors listed in section 131 and the Statutory Guidance to Local Authorities on licensing of HMO² provides further clarification of what the Council should be taking into account in relation to each of these factors. In each case, with the exception of the factor relating to the possibility of undue public nuisance (discussed below), it is the suitability of the accommodation for the occupants of the HMO which the Council must look at and not the impact which the HMO may have on others in the neighbourhood. Objections on the ground that the accommodation is unsuitable for occupation as an HMO should therefore contain reasons which relate to these factors and the matters which can legitimately be considered in relation to each factor. These are explained below.

- The location of the accommodation The Council has to consider whether there is anything about the location of the property which would make it unsuitable for the occupants of the HMO, such as lack of safe access or other factors which might endanger them.
- The condition of the accommodation The Council has to consider whether there is anything about the property, such as dampness, lack of heating or inadequate dividing walls between rooms, which makes it unfit for occupation as an HMO.
- Any amenities the accommodation contains This should be considered in conjunction with the number and type of people likely to occupy the accommodation to assess whether facilities such as cooking and sanitary facilities are adequate.
- The type and number of persons likely to occupy the accommodation The **number** of occupiers is principally relevant to ascertain whether there are sufficient bedrooms and amenities and to avoid overcrowding. The **type** of occupier is relevant to ascertain whether there are any special facilities that may be required and whether the accommodation is appropriate to the proposed occupiers' needs. This may overlap to an extent with the Council's

² <http://www.scotland.gov.uk/Resource/0038/00387514.pdf>

duty to consider the amenities contained in the accommodation and/or the safety and security of persons likely to occupy the accommodation (see below). For example, if the accommodation is intended for persons requiring additional support for elderly or disabled people, particular adaptations may be necessary. Similarly, if the accommodation is intended to provide womens' refuge accommodation, it is likely that a higher degree of security is required.

- Whether any rooms have been subdivided If rooms have been subdivided for use as sleeping accommodation, the adequacy of the dividing walls, the dimensions of the rooms created and facilities such as heating and electrical sockets within the rooms must be considered.
- Whether any rooms have been adapted resulting in alteration to the situation of the water and drainage pipes within it The Council would require to consider whether the new location of water and drainage pipes might result in noise issues or the possibility of flooding.
- The safety and security of persons likely to occupy the accommodation This covers matters such as gas and electrical safety, secure locks on access doors and on accessible windows, etc.
- The possibility of undue public nuisance This is the only factor which looks at the impact on others in the vicinity of the HMO rather than the safety and amenity of the occupants of the HMO themselves. The principal issue which the Council would require to look at under this factor would be potential noise nuisance arising as a result of some physical aspect of the property (eg inadequate sound proofing). The potential for occupants themselves to cause noise nuisance (such as by playing excessively loud music) would not be a relevant consideration. This is because it is the suitability of the accommodation for occupation as an HMO which falls to be assessed under section 131 and not the potential behaviour of the occupants. However, it is a condition of all HMO licences that the licence holder must ensure as far as reasonably practicable that no disturbance or nuisance arises within or from the premises and that, if such nuisance occurs, it is dealt with effectively. Any antisocial/nuisance behaviour which occupants did engage in and which was not effectively dealt with by the licence holder would therefore become an enforcement issue and could ultimately lead to revocation of the licence under section 139 of the Act or to other action under the separate antisocial behaviour legislation.

3. Overprovision

Finally, section 131A of the Act entitles the Council to refuse a licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMO in the locality in which the living accommodation concerned is situated. In considering whether there is, or would be,

overprovision, the Council must have regard to the number and capacity of licensed HMO in the locality and to the need for housing accommodation and the extent to which HMO accommodation is required to meet that need.

In 2012, the Council's Housing and Property Service undertook an assessment of housing need and HMO need in Highland. This identified a growing need for HMO accommodation across Highland. On the basis of this assessment the Highland Licensing Committee concluded that there was currently no evidence of overprovision of HMO in any locality in Highland and therefore no evidential basis on which to refuse applications on grounds of overprovision.

This assessment will be reviewed in 2017. In the interim, although before determining any application for an HMO licence the Council must consider all written representations timeously received, including those objecting on grounds of alleged overprovision, the Council will not refuse an application on this ground as such a refusal would have no evidential basis.

It should be noted, however, that where planning permission is required for a new HMO or a change of use of an existing building to HMO use, the Council has power to refuse to consider an HMO licence application until such time as planning permission has been obtained and the Highland Licensing Committee has agreed that this power will be used. Applications for HMO licences for proposed HMO which are refused planning permission as a result of Guideline HMO1 (the over concentration test explained above) will therefore not be considered.

ⁱ The legal opinions expressed in this guidance are those of the Council's in-house solicitors responsible for advising the Council on licensing matters. It is hoped that the guidance will assist members of the public wishing to object to HMO licence applications to understand the legislative constraints within which such applications must be determined. However, the guidance is not provided as legal advice to applicants or objectors, nor should it be construed as preventing members of the public from raising, when submitting representation on particular HMO licence applications, any matter which they themselves consider relevant. In addition, it is open to members of the public to take independent legal advice before submitting their representations.