

	<p style="text-align: center;">Cabinet 18 July 2022</p>
	<p style="text-align: center;">Report from the Strategic Director of Regeneration and Environment</p>
<p style="text-align: center;">Draft Houses in Multiple Occupation Supplementary Planning Document</p>	

Wards Affected:	All, but will not apply to parts of Alperton, Harlesden and Kensal Green, Stonebridge and Tokyngton wards where Old Oak and Park Royal Development Corporation is the Local Planning Authority.
Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One: Appendix 1: Draft HMO SPD
Background Papers:	Decision - Article 4 Direction Removing Permitted Development Rights for Change of Use From Class C3 dwelling houses to Class C4 House in Multiple Occupation - Confirmation (brent.gov.uk)
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1.0 Purpose of the Report

- 1.1 The purpose of the report is to seek Cabinet approval for consultation on a draft Houses in Multiple Occupation Supplementary Planning Document. Subject to the document being approved for consultation it also seeks delegated authority to the Strategic Director for Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning to consider consultation responses, along with any necessary changes, and the decision on whether to adopt the HMO SPD.

2.0 Recommendations

- 2.1 Cabinet approves the Draft Houses in Multiple Occupation (HMO) Supplementary Planning Document (SPD) as set out in Appendix A to be issued for consultation.
- 2.2 Cabinet delegate authority to the Strategic Director for Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning to consider consultation responses, along with any necessary changes, and the decision on whether to adopt the HMO SPD.

3.0 Detail

Article 4 Direction

- 3.1 The Council confirmed an Article 4 Direction on 3rd February 2022 removing permitted development rights for small HMOs. These are defined as use class C4; dwellings occupied by between three to six people comprising two or more households. This followed a delegated decision by the [Strategic Director for Regeneration & Environment on 21st January 2022](#) From 1st November 2022 planning permission will be required to change a dwelling into a use class C4. This applies to most of the borough where the Council remains the Local Planning Authority. A map of the area is included within the draft SPD that comprises Appendix A of this report.

Meeting Planning Policy

- 3.2 Requiring planning permission can ensure control over the internal and external attributes of HMOs. This can go beyond those granted by the 'mandatory' and 'additional' housing licensing schemes. In recognition of the likely confirmation of the Article 4, Policy BH7 'Accommodation with Shared Facilities or Additional Support' was incorporated within the recently adopted Local Plan. This sets out criteria which have to be met for HMO development to be acceptable, including:
 - a) location in an area with good access to public transport and other amenities, including shops (normally within 400m);
 - b) is of an acceptable quality meeting appropriate standards for the needs of its occupants, including external amenity space, appropriate communal facilities, levels of support/ care and mobility;
 - c) includes management arrangements agreed with the council suitable to its proposed use and size to not unacceptably impact on neighbour amenity;
 - d) demonstrates that there is a specific Brent need, or in the case of purpose built student accommodation a London need, for the particular use; and
 - e) will not lead to an over-concentration of the type of accommodation in the area defined as where three or more of the ten nearest properties are Houses in Multiple Occupation.
- 3.3 Overall, this is likely to ensure that the:

- a) quality of the accommodation is better for occupants,
- b) potential for adverse impacts on neighbours is reduced;
- c) balance between meeting the significant needs of larger families for three or more bedroom dwellings, and those of smaller households who cannot afford to rent self-contained dwellings is better managed; and
- d) there is a clearer basis for decision making on planning applications and planning enforcement.

Draft HMO Supplementary Planning Document

- 3.4 Due to the Article 4, the Council will start to receive applications for Class C4 HMOs after 1st November 2022. A HMO SPD would assist applicants, local communities and planning officers in better understanding what HMOs need to achieve in order to be granted planning permission. This does not create new policy, but will provide more clarity on how the criteria within Policy BH7 will be interpreted. It also sets out expectations in relation to other London Plan and Local Plan policies that will be commonly used in relation to HMOs. This is likely to speed up the determination period. It will also result in the longer term in less refusals. This is as applicants will be clear before submission if their scheme is consistent with planning policy and therefore likely to be determined favourably. The SPD's contents apply to both small scale HMOs (Class C4) and larger HMOs, identified as a Sui Generis use in planning legislation.
- 3.5 The draft SPD is set out in Appendix A. In overview, the structure of the draft SPD is:
1. Consultation: setting out the consultation process;
 2. Purpose of the document and its structure;
 3. Introduction: setting out what is a HMO; HMOs and town planning; HMOs and housing licensing; HMOs in Brent; Article 4 Direction for Class C4 HMOs;
 4. Relevant development plan policy: London Plan 2019-2041; and Brent Local Plan 2019-2041;
 5. Expectations of the standards of HMOs from this SPD:
 - Policy BH7 matters:
 - a) Location: accessibility; and parking;
 - b) Acceptable quality and standards: room sizes and layout; bedrooms, water closets, personal washing, kitchen space, shared indoor amenity space, laundry facilities; building accessibility; and private outdoor amenity
 - c) Management agreements;
 - d) Demonstrates a Brent need; and
 - e) Spatial distribution;
 - External Waste Storage;
 - Urban Greening Factor;
 - External Alterations;
- Table summarising HMO requirements; and
Appendix 1: Map of HMO Article 4 Area

Relationship to other regulatory regimes

- 3.6 As indicated in paragraph 3.2, the need for planning permission addresses matters that from a planning perspective might not be suitably picked up through housing licensing. This could therefore be seen as complementary to the existing regime of licensing control. Landlords will need to satisfy both sets of requirements in order to proceed. This is also true of other statutory processes, e.g. building control. In that sense, HMOs are not unlike many forms of development that are subject to differing statutory regimes to gain consent or operate.
- 3.7 Key points to note regarding the relationship between planning and housing licensing regimes are:
- a) Location: This is not addressed by housing licensing. Planning policy requires HMOs to be located in areas with good public transport and a range of facilities close by. The draft SPD identifies a minimum Public Transport Accessibility Level (PTAL) of 3. This is consistent with priority areas for denser development within the London and Local Plan. As occupants are likely to have lower incomes and lack of access to private vehicles, they will be more dependent on public transport and for example have to carry their food shopping. Where occupants could afford a car, it also prevents excessive car parking demands from HMOs located in areas with poorer levels of transport/ facilities. In addition, car and cycle parking standards apply.
 - b) Room sizes: Whilst housing licensing sets out minimum standards for bedrooms, these are smaller than London Plan and national minimum standards for self-contained homes. The limited alternative private space in the HMO, means occupants are likely to spend more time at home in their bedrooms than those living in a self-contained dwelling and it is difficult to justify smaller sized bedrooms for HMOs. Therefore from a planning perspective, it is considered that the minimum London Plan housing standards are more appropriate.
 - c) Cooking facilities in bedrooms: Kitchenettes/ cooking facilities in rooms are acceptable from a licensing perspective. From a planning perspective they are not. Allowing them blurs the distinction between what is a HMO and a self-contained dwelling and places further demands on the use of small bedrooms. Historically, this has been subject to abuse by landlords incrementally introducing such facilities and then seeking and attaining self-contained dwelling status after 10 years (the period of continuous use required in statute for a use to become lawful). This results in sub-standard bedsits, substantially below London Plan minimum dwelling sizes.
 - d) Communal amenity space: Housing licensing does set out minimum sizes where this space is provided (either as dining or living room space). It does not however, require such space to be provided. In licensing, a kitchen can serve as the only communal space with a social role. From a planning perspective the minimum kitchen space is not of sufficient size if it serves as the only communal space. The draft SPD sets out a minimum amount of communal space of 5sqm per occupant, with a

dining and lounge space required. Many HMOs typically use what were previously separate dining and living rooms in family homes as bedrooms.

- e) Building accessibility: This is not addressed in housing licensing. The draft SPD addresses the suitability of homes for those with a disability to a similar London Plan standard for dwellings.
- f) Private outdoor amenity space: This is not addressed in housing licensing. The draft SPD addresses provision of such space, with minimum size standards.
- g) Spatial distribution: Policy BH7's identification of what is regarded as an over-concentration of HMOs in an area is an issue not addressed in housing licensing.
- h) External waste storage standards are used, which are not required in housing licensing.
- i) Matters such as impact on the natural environment are addressed. For example, the urban greening requirement of 40% equivalent of the site being soft-landscaping, is included in the draft SPD. This is not required in housing licensing.

3.8 Some of the above requirements are defined in policy, some are an interpretation of policy and therefore arguably more discretionary. The principle of requiring planning permission for C4 HMOs has been dealt with through the Council's confirmation of the Article 4. Nevertheless, it also is expected that landlords will raise this issue again in response to the draft SPD's consultation. From a planning perspective, the SPD continues to support and encourage good quality HMO accommodation which meets a need within the borough and does not cause unacceptable harm to neighbours. Much HMO stock uses existing family sized homes (3+ bedrooms). Policies such as BH7 and the SPD's interpretation of it will provide for a better balance between meeting the need for family homes and HMOs.

3.9 Engagement has occurred internally with Private Sector Housing and Housing Need, Planning Enforcement, Development Management, Transportation and Building Control officers, shaping the final contents. All are positive about the document and recognise its intention to improve quality for the needs of its occupants.

3.10 As Old Oak Development Corporation is the Local Planning Authority for parts of the borough, the SPD will not apply to that area. The number of dwellings within the borough in the OPDC area is small. It has and will continue to deliver new build dwellings. These meet higher standards than much of the existing older accommodation in the borough that is subject to change of use from dwellings to HMOs. As such, it is similar to Brent's Growth Areas which were purposely omitted from the Article 4 direction removing permitted development rights for change of use from residential to C4 HMO. OPDC has no plans to introduce a HMO Article 4 and associated SPD.

Options

3.11 There are essentially two options open to Cabinet:

- a) Do not take forward a HMO SPD
- b) Take forward a HMO SPD

Do not take forward a HMO SPD

- 3.12 In this scenario, the Council is likely to receive a number of planning applications for HMOs that ultimately are unacceptable, and refused. This is because there will be no detailed advice to applicants on the Council's interpretation of its Local Plan policies. This may result in delay and confusion for the applicant. Lack of clarity over interpretation of policy could also lead to more appeals as applicants might challenge the Council's interpretation of policies used as reasons for refusal. It also may mean that we cannot take enforcement action effectively in the absence of a clear reference point for judging the acceptability of proposals of this nature.

Take forward a HMO SPD

- 3.13 In this scenario, it is likely that the Council receive a higher proportion of planning applications for a better standard of HMOs that ultimately it can approve. This is because there will be detailed advice to applicants on the Council's interpretation of its Local Plan policies. The SPD will identify all issues that applicants need to consider and address. Applicants therefore will be able to better understand the potential risk in submitting an application. This will reduce wasted resource from the applicant and Council as it is likely to result in fewer refusals and then re-submission to address refusal reasons. It will also reduce appeals, as Council's interpretation of policies used as reasons for refusal will be clear.
- 3.14 Taking account of the negative and positive impacts of the options, Option B is recommended, with the draft SPD as set out in Appendix A issued for consultation. Ultimately if adopted, the SPD will improve planning outcomes and reduce wasted resource. A consultation on the draft will allow suitable engagement which will encourage feedback on the document. This is likely to improve its quality in achieving its outcomes.

Consultation Process

- 3.15 Consultation on the document will be for eight weeks, consistent with regulations and the Council's Statement of Community Involvement. This represents an additional two weeks on the consultation timescales to take account of the holiday period. It will be advertised on the Council's website and notifications sent to statutory consultees and those on the Local Plan consultation list. In addition, all private sector landlords registered who received a monthly landlord news bulletin from the Council will be notified of the consultation. The document will be made available in Brent Council libraries.

Post Consultation Process

- 3.16 Consistent with regulations the Council is required to consider all of the responses to the draft SPD received. These will be summarised, responded to and where appropriate recommended changes to the SPD will be made. This work will be contained within a Consultation Statement that will be made publically available.
- 3.17 To reduce Cabinet business, it is recommended Cabinet delegate authority to the Strategic Director for Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning to consider consultation responses, along with any necessary changes, and the decision on whether to adopt the HMO SPD. This delegation is consistent with the approach taken for most of the Council's SPDs since 2015.

4.0 Financial Implications

- 4.1 The consultation and adoption of the HMO SPD is likely to be limited in its resource requirements, covering matters such as printing of consultation material and officer time. This expenditure has been accounted for in the existing planning policy budgets.

5.0 Legal Implications

- 5.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 set out the processes that need to be followed by the Council in taking forward a SPD. The Council will follow these processes. Once adopted, the SPD will be a significant material consideration in the determination of planning applications.

6.0 Equality Implications

- 6.1 The Equality Act 2010 introduced a new public sector equality duty under section 149. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council must, in exercising its functions, have "due regard" to the need to:
1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 2. Advance equality of opportunity between people who share a protected characteristic and those who do not.
 3. Foster good relations between people who share a protected characteristic and those who do not.
- 6.2 For the HMO SPD, on balance the implications are likely to overall be positive. Due to their lower cost, HMOs are more likely to be occupied by the economically disadvantaged which proportionately are more likely to comprise the young and black and minority ethnic groups. A rise in the quality of HMOs

through implementation of the SPD will improve outcomes for these groups. On the other hand, there may be a small reduction in the number of HMOs that come forward, due to the likely reduction in rooms that can be let in some HMOs to meet internal bedroom and amenity space requirements. In the context of the existing supply of HMOs (approximately 15,000), the impacts of the SPD overall are likely to be marginal.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 The initial consultation will be publicised in the members' bulletin.
- 7.2 Details of internal consultation to date is set out in paragraph 3.9 of the report. The external consultation that will be undertaken is set out in paragraph 3.15.

Report sign off:

Alan Lunt
Strategic Director of Regeneration
and Environment.