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HOUSES IN MULTIPLE OCCUPATION: GUIDANCE ON PLANNING CONTROL AND LICENSING

■ circular

Scottish Planning Series

PLANNING CIRCULAR 2/2012

Houses in Multiple Occupation: Guidance on Planning Control and Licensing

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PLANNING SERIES:

Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

Circulars contain Scottish Government policy on the implementation of legislation or procedures.

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Designing Places and the West Edinburgh Planning Framework have the same status in decision making as the SPP and NPF.

Planning Advice Notes provide advice and information on technical planning matters.

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INTRODUCTION

1. The purpose of this Circular is to give guidance on the provision and management of houses in multiple occupation (HMO) through the planning system, as well as advice on the interface between the HMO licensing scheme and the planning system. This circular replaces Circular 8/2009.

BACKGROUND

2. There is a steady demand for HMOs in many parts of Scotland. HMOs have tended to be used mainly by students, and there are well-established concentrations of HMOs close to many higher and further education institutions. Rising student numbers have intensified demand in these areas, and are creating demand in other areas. More recently, other groups have started seeking HMO accommodation, particularly migrant workers and young professionals. These trends have resulted in an overall increase in the number of HMOs, as well as the formation of HMOs in areas and towns where there have previously been very few.
3. High concentrations of HMOs can lead to a range of cultural, social, physical and economic changes in a community. Such changes may be positive or negative, and may be perceived differently from community to community. Some of these changes, particularly regarding the behaviour of HMO tenants, are not matters for planning authorities. However, planning authorities may wish to adopt policies to limit HMO concentrations where the residential amenity of a community is already adversely affected by high concentrations of HMOs, or in areas where it is likely that this may happen in the future.
4. The range of potential problems associated with high concentrations of HMOs can include:
 - changes in demand for services, altering the availability and nature of services provided;
 - increased competition for private houses, consequential rises in house prices, and reduced availability for non-HMO residents;
 - areas of high HMO concentrations can become unpopular with non-HMO residents, altering the community;
 - potential physical deterioration caused by lack of investment by absentee landlords;
 - increased population density, resulting in increased demand on services, infrastructure and on-street parking provision;
 - a high number of transient residents leading to less community cohesion¹.

¹ Department for Communities and Local Government, Evidence Gathering – Housing in Multiple Occupation and possible planning responses: Final Report (2008); Universities UK, 'Studentification': A Guide to Opportunities, Challenges and Practices (2006).

HOUSES IN MULTIPLE OCCUPATION AND THE PLANNING SYSTEM

5. HMOs provide a vital source of accommodation, and planning authorities should seek to ensure that an adequate supply is available to meet demand. Demand for HMOs should be met where it arises, and local authorities should consider HMOs when developing local housing strategies and development plans.
6. There is no definition of a HMO in planning legislation; for the purposes of licensing, Part 5 of the Housing (Scotland) Act 2006, as amended, defines that living accommodation is a HMO within the meaning of the Act if it is:
 - occupied by three or more persons from three or more families, **and**
 - occupied by them as their only or main residence **or** in some other manner specified by the Scottish Ministers by order, **and**
 - **either** a house, premises or a group of premises owned by the same person with shared basic amenities, or some other type of accommodation specified by the Scottish Ministers by order.

The formation of a HMO will not always require planning permission. Planning permission for a HMO is generally required only where use as a HMO is considered to be a material change of use².

PLANNING AUTHORITY MANAGEMENT OF HMO CONCENTRATIONS

7. Where concentrations of HMOs are considered to have a negative effect on the amenity of a community, or where it is considered likely that such a situation may arise, planning authorities may adopt policies to manage HMO concentrations, while ensuring that a sufficient supply of HMOs is maintained. Policies must be designed to safeguard community amenity, and must not be in response to perceived concerns about the behaviour of tenants. Any planning policy to manage HMO concentrations will apply only to properties being proposed for use as a HMO for the first time after the date on which the policy takes effect.
8. Policies may establish HMO concentrations for a given building, street, neighbourhood, or other defined area, as considered necessary. Planning authorities may wish to set different concentration levels and occupancy levels for different areas, depending on factors such as demography and the type of accommodation available generally. Any concentration levels set should take account of the demand for HMOs in each area, as well as the need to protect residential amenity. Planning authorities should bear in mind

² Planning controls “development”, which includes, with certain exceptions, material changes in the use of land or buildings.

the issues that are relevant in different areas and to the different characteristics of HMO occupiers when setting policies on HMO concentrations.

9. Planning authorities may provide guidance as to occupancy level(s) for individual HMOs that would be considered to be a material change of use, and above which they would normally seek a planning application. Setting occupancy rates too low may result in too few HMOs being granted planning permission or disproportionate numbers of applications; setting occupancy rates too high may undermine the effectiveness of the policy.
10. Purpose-built student accommodation should not be counted towards HMO concentration levels because these do not have the same effect on community amenity as do high concentrations of HMOs within existing housing stock.
11. Policies should be included in the development plan, preferably in the form of supplementary guidance. Planning authorities should justify the need for policies designed to manage HMO concentrations and policies should be subject to public consultation before being adopted. Planning authorities should explain why they have granted planning permission for a HMO where this is contrary to the adopted policy. This is to ensure that decisions are explained to the people they affect, are transparent and fair.

ENFORCEMENT

12. Section 129A of the Housing (Scotland) Act 2006 (as added by the Private Rented Housing (Scotland) Act 2011) gives a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be carrying out development without the required planning permission or a failure to comply with a condition or limitation of an existing planning permission.
13. The ability to refuse to consider a HMO licence application is separate from any planning enforcement powers, and is not intended to be an alternative to use of those powers. Both regimes should operate together. Prior to local authorities having the ability to refuse to consider a HMO licence application, local authorities could have been faced with having to consider granting a HMO licence solely in terms of applicant and premises suitability. That had the potential to suggest that those determining the application were not concerned about breach of planning control, especially where the licensing authority was not the planning authority. A refusal to consider an application allows the licensing system to complement planning enforcement.
14. The 2011 Act also adds section 131A into the 2006 Act which gives the local authority the discretionary power under HMO licensing to refuse to grant a HMO licence if it considers that there is, or that the grant of a licence would

result in, overprovision of HMOs in the locality. It is for the local authority to determine the locality.

15. Where a planning authority establishes a planning policy to manage HMO concentrations, it should ensure that it is enforced. Joint working between local authorities' planning, licensing and housing departments should allow for effective enforcement and avoid circumstances where further legal measures are required.

HMO STANDARDS AND LICENSING CONDITIONS

16. The purpose of HMO licensing is to achieve and maintain high standards of service in this part of the private rented sector by ensuring that the HMO owner and any agent is a fit and proper person, and ensuring the suitability of accommodation. An authority may also consider whether granting an HMO licence will result in an overprovision of HMOs in a locality. Scottish Government guidance on the licensing system is given in Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities³. This guidance focuses on the procedures and activities involved in operating the HMO licensing scheme, and includes advice on the interface with planning controls.
17. The licensing of HMOs seeks to ensure high standards in terms of; the suitability of a property owner (and their agent) to be a HMO owner (or to act for the owner); the suitability of the living accommodation itself; and allows the local authority to consider overprovision. A licensing authority has discretion to set any reasonable conditions it thinks fit. These issues are matters properly dealt with through the HMO licensing regime and are therefore not matters for planning authorities to take into account in the granting of planning permission. A decision on the granting of planning permission must take account only of relevant planning issues, and should make no assumptions about the potential behaviour of tenants.

CO-ORDINATED ADMINISTRATION OF PLANNING AND LICENSING

18. The planning system and HMO licensing are two separate regimes, with distinct functions and objectives. Local authorities are encouraged to take a co-ordinated approach to the planning and licensing of HMOs, with joint working between planning and licensing teams and other relevant departments. Information-sharing between planning and HMO licensing, in line with data protection legislation, may be useful, and local authorities should endeavour to co-ordinate HMO licensing and planning procedures.

³ Available at <http://www.scotland.gov.uk/Resource/0038/00387514.pdf>

19. Local authorities should provide information about the procedures relating to HMOs, which may help applicants avoid unnecessary delay and cost, particularly where both planning permission and HMO licensing are required. At an early stage, applicants should be provided with information about the features and requirements of both systems. As well as providing full information to applicants, planning and licensing departments should share information about applicants with each other, where appropriate. Both planning and licensing applications include an opportunity for objections to be put to the authority. Neighbours of proposed HMOs also need clear information, similar to that provided to applicants, to explain both systems and the matters relevant to each. This may help to avoid the situation where the same issues are raised in objections made in respect of both applications, and to reduce the frustration felt by objectors when their arguments are rejected as not relating to relevant considerations under the system in question.

ENQUIRIES

20. Enquiries about this Circular should be addressed to Scottish Government, Directorate for Local Government and Communities, Planning and Architecture Division, Area 2-H (South), Victoria Quay, Edinburgh EH6 6QQ (tel: 0131 244 7888). Copies can be downloaded from the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning>

21. Enquiries about the HMO licensing scheme should be addressed to Scottish Government, Private Rented Sector Policy, Area 1-H (South), Victoria Quay, Edinburgh EH6 6QQ.



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