

Part I

Item No:

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WELWYN HATFIELD BOROUGH COUNCIL
OVERVIEW AND SCRUTINY COMMITTEE – 25 SEPTEMBER 2024
REPORT OF THE EXECUTIVE DIRECTOR (RESIDENT SERVICES AND CLIMATE
CHANGE)

HOUSES IN MULTIPLE OCCUPATION – PLANNING, LICENSING AND
ENFORCEMENT

1 Executive Summary

- 1.1 At the meeting of the Overview and Scrutiny Committee in July 2024 it was agreed that a single report discussing the impact of houses in multiple occupation (HMOs) would be prepared.
- 1.2 The topic relates principally to the service areas of planning and private sector housing enforcement and licensing, and there are different regulations which apply to each. It is recognised that many HMOs are created without the need for planning permission, through the exercising of permitted development rights.

2 Recommendation

- 2.1 That the Overview and Scrutiny Committee notes the content of the report.

3 Explanation

- 3.1 This report is structured to provide an explanation of the following factors:
- The planning framework and subsequent level of influence that the council has over the development/conversion of properties to HMOs;
 - The planning enforcement powers that the council has for HMOs;
 - An overview of the partnership accredited landlord scheme (PALS) and licensing and enforcement powers of the private sector housing service; and,
 - The procedures in place for identifying HMOs, and numbers of registered landlords.
- 3.2 The objectives that are expected through this scrutiny are:
- To consider if the council's current supplementary planning document on HMOs is fit for purpose;
 - To consider if there are any recommendations around the identification, monitoring and enforcement of HMOs; and,
 - To consider whether a more detailed examination of the topic should be recommended for the 2025/26 OSC work programme.

The Planning Framework

- 3.3 Houses in Multiple Occupation, for planning purposes, may fall into one of two types. A small HMO is defined as the use of a dwellinghouse by not more than six residents as an HMO (use class C4). A large HMO is when a property is being shared by more than six people. A large HMO is considered a 'sui generis' use, i.e. a class of its own.
- 3.4 The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class L sets out a permitted development right allowing the conversion of dwellinghouses (use class C3) to small HMOs (use class C4), and vice versa, without the need for planning permission. This means that, in most parts of the borough, a small HMO can be created in an existing dwellinghouse, without reference to the council as Local Planning Authority.
- 3.5 However, on 12 January 2012, the council brought into effect an Article 4 Direction which covers the town of Hatfield. The purpose of this Article 4 Direction was to remove the permitted development right which is set out above, in paragraph 3.3. This means that, within the area identified in the Article 4 Direction, planning permission is required for a change of use from a dwelling house (use class C3) to a small HMO (use class C4).
- 3.6 It should be noted that a large HMO is considered to be a Sui Generis use in planning terms. This means that planning permission is always required, in all locations within the borough, for the creation of a large HMO.
- 3.7 Shortly after the introduction of the Article 4 Direction, the council adopted the Houses in Multiple Occupation Supplementary Planning Document (SPD) 2012. The objective of the SPD is to set out the criteria against which planning applications for HMOs are considered and the document includes a number of policy criteria which should be taken into account when determining relevant planning applications. The objectives of the SPD are:
- To achieve mixed, balanced, sustainable and inclusive communities which support a wide variety of households in all areas.
 - To ensure the long-term sustainability of local communities.
 - To maintain and improve the character and quality of residential areas.
 - To ensure that houses in multiple occupation are well-designed and built to a high standard.
 - To maintain the residential amenities of existing and future residents.
 - Not increase the number of people at risk of flooding.
- 3.8 It is acknowledged that a significant concentration of HMOs exists within the development of the former Hatfield Aerodrome site. The reason for this appears to be that these properties were first occupied as HMOs, rather than as dwellinghouses under use class C3 and, therefore, no change of use ever took place which would trigger the need for planning consent.
- 3.9 To summarise this section of the report, outside of the town of Hatfield, planning permission will not normally be required for the change of use of a dwellinghouse to small HMO. Planning permission will be required for the creation of a large HMO. Within Hatfield, planning permission will be required for any change of use to an HMO.

Planning Enforcement Powers

- 3.10 The planning enforcement powers available to the Council to deal with HMOs are the same as those that would apply to any potential breach of planning control.
- 3.11 Section 172 (1) of the Town and Country Planning Act 1990 sets out that a Local Planning Authority may issue an enforcement notice where it appears to them:
- That there has been a breach of planning control; and
 - That it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- 3.12 The government's Planning Practice Guidance states that *"Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan"*. The National Planning Policy Framework, paragraph 59 advises that *"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control"*.
- 3.13 The Council has a Planning Enforcement Plan which was adopted by Cabinet in 2015. Whilst this document is in the process of being updated, it sets out the principles of the Council's approach to planning enforcement, including that *"When a breach of planning control has occurred, the next stage is to determine whether it is in the public interest to take formal enforcement action. If it is not, then no further action will be taken and the file will be closed. When an officer considers that a breach of planning control may be acceptable or lawful, a planning application or an application for a certificate of lawful use or development may be invited. Such applications provide the Council with sufficient details to fully consider and determine the matter, leading to the formal decision of the local planning authority. If the 'breach' is acceptable in planning terms an application will be invited but if it is not forthcoming, no further action will be taken as local planning authorities cannot use enforcement powers merely to regularise development which is acceptable in planning terms. However, the owner or occupier of the land may be told that without a specific planning permission they may be at a disadvantage if they subsequently wish to dispose of their interest in the land and have no evidence of any permission having been granted for any development comprising an important part of the valuation"*
- 3.14 Advice contained in the Royal Town Planning Institute Planning Enforcement Handbook discusses the concept of expediency in planning enforcement and comments that "Care must be taken in such cases to ensure that expediency remains a planning decision and is not influenced by public opinion".
- 3.15 As can be seen from the advice set out above, the overriding principle of planning enforcement is one of proportionality, depending on the circumstances of the case.

The Partnership Accredited Landlord Scheme (PALS) and Private Sector Housing Enforcement

- 3.16 The Partnership Accreditation for Landlords (PAL) scheme was set up in 2012 by Welwyn Hatfield Borough Council in partnership with the University of Hertfordshire.
- 3.17 The scheme's aim was to help students and other private tenants find good quality homes in our borough. By the end of 2014, we had accredited 54 landlords and four letting agents. In 2015 following feedback from Landlords and tenants alike, the scheme was relaunched with a wider scope.

3.18 In 2024, the PAL service now has 90 Accredited landlords and 14 accredited agents, and we believe that 70% of all rented properties in the borough have PAL membership.

HMOs – Licensing and Enforcement

3.19 HMOs for the purposes of Mandatory licensing under the Housing Act 2004 are those properties that have 5 or more people forming 2 or more households. For Additional Licensing an HMO is a property that has 3 or more people forming 2 or more households, but this is a discretionary scheme and requires certain legal tests to be met before additional (HMO) licensing can be adopted by local authorities. This also includes section 257 Flats in Multiple Occupation. Currently Welwyn Hatfield enforces Mandatory HMO Licensing only. A report was commissioned regarding the condition of private rented properties in the borough, and this is being reviewed to establish if there is scope to consider exploring additional (HMO) Licensing.

3.20 There are currently 366 Mandatory HMOs licensed under the Housing Act by the Council.

3.21 There are a number of enforcement options available to the private sector housing team, conferred by the Housing Act 2004 and The Housing and Planning Act 2016, plus a suite of Regulations. The enforcement options consist of:

- Improvement Notices
- Prohibition Orders
- Hazard Awareness Notices
- Emergency Remedial Action
- Demolition Orders
- Slum Clearance Declarations
- Compulsory Purchase Orders
- Interim and Final Management Orders
- Empty Dwelling Management Orders
- Civil Penalties
- Banning Orders
- Works in Default of Notice.

3.22 Aside from Civil Penalties and Banning Orders, all the above options require an assessment of the property to be carried out under the Housing Health and Safety Rating System (HHSRS). This determines if the property contains any Category 1 or 2 Hazards. Local Authorities have a duty to take enforcement action to remedy Category 1 hazards, and the power to take action to remedy category 2 hazards.

3.23 Improvement Notices, Hazard Awareness Notices and Civil Penalties are the most utilised enforcement options by the team.

3.24 The licensing of an HMO has no bearing on whether or not that HMO has planning permission. The planning legislation and housing legislation regimes run separately and cannot be taken into account when making decisions on HMOs under each of the regimes. The Private Sector Housing Team can take the lack of permission into account but cannot refuse a licence on a lack of planning permission alone.

3.25 The Management of Houses in Multiple Occupation (England) Regulations 2006 set out requirements for the management of HMOs to meet to ensure the safety and proper management of HMOs. It includes matters such as maintaining and repairing common parts, fire safety measures, gas and electrical safety and the storage of waste.

Identifying HMOs, Numbers and Registered Landlords

- 3.26 The private sector housing team identifies HMOs through a number of means, the majority are reactive rather than proactive.
- 3.27 The majority of cases come via residents: tenants or neighbours of HMO properties. Occasionally other services both within the council and partner agencies will receive details of a property and if concerned, will pass these over to the team.
- 3.28 The team would like to use data the council collects, such as Council Tax information and the Electoral Roll to extrapolate from those sources possible suspected Houses in Multiple Occupancy. The new database, Assure, will allow us to do this, subject to compliance with relevant legislative requirements.

The Council's Current HMO Supplementary Planning Document

- 3.29 The HMO SPD was published in February 2012. At that time, the planning policy context was quite different to the present day, albeit the overarching principles remain largely unaltered. At the time of publication, the planning system nationally was still guided by a series of Planning Policy Statements and these, along with the Welwyn Hatfield District Plan 2005, provided the policy basis for the production of the HMO SPD.
- 3.30 In March 2012, the government published the first iteration of the National Planning Policy Framework (NPPF) and there have been multiple updates and amendments to this Framework since then. Similarly, albeit a considerable time later, the Council adopted the Welwyn Hatfield Local Plan in October 2023.
- 3.31 The adopted Local Plan acknowledges the important contribution that HMOs make to a diverse housing stock in the borough which meets the needs of a variety of residents. The plan also acknowledges that the HMO SPD has, up to now, worked largely successfully in securing high quality HMO accommodation.
- 3.32 As with all planning policy documents, the HMO SPD is a material planning consideration in the determination of planning applications which propose the creation of an HMO.
- 3.33 However, there may be cases where less than full compliance with all requirements of the SPD may still result in planning permission being granted. An example might be that an HMO is proposed but with one fewer car parking space than the SPD requires. In such a scenario, the Local Planning Authority would have to consider whether the harm arising from such a situation requires the refusal of planning permission, or whether this harm is mitigated and outweighed by other factors.

Parking

- 3.34 The Mandatory HMO licensing regime does not take account of or have any enforcement powers in relation to parking.
- 3.35 Parking in relation to HMOs is a material consideration, and a ratio of parking is set out in the SPD. However, this is not black and white, as the example in 3.33 above.

Recommendations for Identifying HMOs

- 3.36 Potential desktop investigation including.
- Assessing the data held by all departments and cross checking this to identify potential HMO's. For example, Council Tax, Waste services, planning etc.
 - Work with partner agencies to identify potential HMO's.

- Research local rental websites to identify potential HMO's.

4 Legal Implications

- 4.1 The Housing Act 2004 requires local authorities to licence HMOs that meet the definition of a mandatory HMO. The Act and the Management of Houses in Multiple Occupation (England) Regulations 2006 also conveys powers to local authorities to undertake enforcement to ensure the safety and proper management of HMOs.
- 4.2 The Article 4 Direction requires planning permission to be applied for small HMOs in the Hatfield area.
- 4.3 Section 172 (1) of the Town and Country Planning Act 1990 sets out considerations for a Local Planning Authority for issuing enforcement notices.

5 Financial Implications

- 5.1 A detailed review of the effectiveness of the HMO SPD is likely to have an implication for both officer and financial resources and will require changes to the current work programme of relevant teams.

6 Risk Management Implications

- 6.1 There are risks that if HMOs are not managed properly that they can cause detriment to occupied or neighbouring properties and the locality.
- 4 In addition, if HMOs that require permission do not apply for it there is a risk that they can become immune from enforcement under the planning regime if they have been in established use/operation for 10 years for large HMOs and for small HMOs either 4 years (if substantially complete before 25 April 2024 or 10 years if substantially complete since 24 April 2024. The Levelling Up and Regeneration Act changed the period of time for enforcement and unified everything at 10 years from 25 April 2024.
- 6.2 It is therefore imperative that HMOs are identified in a timely fashion and enforcement action taken if they are not licensed under the Housing Act, or do not have planning permission and should have, or are operating unsafely or poorly managed.

7 Security & Terrorism Implications

- 7.1 There are no security and terrorism implications arising from this report.

8 Procurement Implications

- 8.1 There are no procurement implications arising from this report.

9 Climate Change Implications

- 9.1 There are no climate implications arising from this report

10 Human Resources Implications

- 10.1 There are no Human Resources Implications arising from this report.

11 Link to Corporate Priorities

- 11.1 The subject of this report is linked to the Council's agreed Corporate Priorities including running an effective council and Homes to be Proud of.

Equalities and Diversity

- 11.2 The report does not propose changes to existing Welwyn Hatfield Borough Council service-related policies or the development of new service-related policies. Accordingly, an Equalities Impact Assessment has not been completed.

Appendix A: The Welwyn Hatfield Borough Council Houses in Multiple Occupation Supplementary Planning Document February 2012 [Layout 1 \(welhat.gov.uk\)](http://welhat.gov.uk)