



Chartered
Institute of
Environmental
Health

Houses in multiple occupation and possible planning responses

Response to Department of Communities and Local Government consultation

August 2009

The Chartered Institute of Environmental Health

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As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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1. Introduction

- 1.1. It is clear that multiple occupation is proliferating in a variety of areas (i.e. not just those with a high proportion of student accommodation) and that this can change the character of an area.
- 1.2. The research undertaken by ECOTEC examined HMOs occupied by students and migrants and did not consider HMOs more widely, which is a shortcoming. The CIEH is not convinced that planning control is the answer. Notwithstanding that doubt, a pragmatic solution is to more closely match the HMO definitions in housing and planning legislation (despite the fact that the definition of an HMO in the Housing Act 2004 is not an example of clarity).
- 1.3. The CIEH believes that the root of the problem lies in the fact that, although the Housing Act definition of HMO applies when a property is occupied by as few as 3 occupants, it provides no means of preventing multiple occupation unless the house meets the additional threshold for a licence (and not even then, if no amenities are shared).
- 1.4. It is noted that *“where six people have lived together as a single household, there will subsequently be a material change of use only where the total number of residents increases to the point where it can be said that the use has intensified so as to become of a different character or the residents no longer live together as a single household.”* However, if car parking is one of the problems, the house with six as above, rather than the stereotypical HMO, is where parking will be an issue.
- 1.5. This is to be expected as HMO controls in housing legislation are aimed at internal conditions, not external amenity, which is a planning issue. Contrary to the suggestion in the consultation paper, however, the way planning authorities usually interpret C3 is as a dwelling-house occupied by not more than six residents unless they are living together as a single household. In such a situation, provided the property is not physically sub-divided, the interpretation is that there is no change of use.
- 1.6. Substituting the HMO definition would mean that houses in which amenities are not shared would still not be subject to any planning control (with the exception of a new conversion to self contained flats). However such houses would still present a potential nuisance to neighbours in particular through noise penetrating party walls at every level; car parking problems; litter; over-grown gardens and general damage to amenity which usually accompanies such forms of letting.
- 1.7. The CIEH proposes that the most effective solution is to require planning consent not for what a house may become but for what it ceases to be i.e. not to become an HMO but to cease being used for single family occupation. It is necessary, therefore that a clear definition of single family occupation is established.
- 1.8. Notwithstanding these caveats, out of the limited three options set out in the consultation paper the CIEH believes option two represents the only one of the three which would have a practical effect in addressing the issues and problems presented by inadequate legislative development control measures in respect of houses in multiple occupation.

- 1.9. The CIEH believes there needs to be much improved communication between planning and housing services at local levels. Planning services should as a matter of course liaise with their colleagues in housing services when considering applications. Local authorities should include corporate statements in their local development plans on the development of HMOs (so as to ensure that formal communication does in fact take place). This would help to ensure that issues such as nuisance etc are properly considered.
- 1.10. For any improvements in legislative requirements to be fully effective, account will need to be taken of the impact of building control legislation.

2. The consultation options

Option 1 - Non legislative option (local management option)

- 2.1. The CIEH does not believe this option would be effective as non-legislative measures are by definition unenforceable. It is also considered that in the all too likely event of parties being unwilling to engage in partnerships, the issues are unlikely to be adequately addressed. In any event, the establishment of such partnerships takes considerable time which delays the manifestation of benefits.
- 2.2. This option would not address the fundamental inconsistencies between the definitions in housing and planning law. Many local authorities consider that they manage the local situation as best they can yet the problems identified in the consultation paper remain. Moreover, local markets vary to such an extent that models of good practice can only occasionally be relevant elsewhere.
- 2.3. For this option to be effective, it is essential that (local) planning policies are aligned with housing policies and strategies.

Option 2 - Amend the Use Classes Order to allow tighter planning controls over houses in multiple occupation

- 2.4. A change in the Use Classes Order could enable local planning authorities to have more control over the location and concentration of HMOs. A lower threshold could give local planning authorities greater confidence in determining marginal or ambiguous cases. This option could ensure more consistency between different local authority services or departments, through a clarification of legislation.
- 2.5. The benefit of this change will be only become apparent in the long term as it would not apply retrospectively. It will be important to ensure that small households taking in a lodger will not be subject to undue discrimination if this change is introduced.

Option 3 - The use of an article 4 direction to remove powers for properties to convert to HMOs

- 2.6. The key disadvantage of this option that all existing HMOs would become permitted development; only future HMOs would be covered. Any issues are likely to only become apparent retrospectively, i.e. after a change to an HMO has actually taken place. It would then be too late to use an Article 4 Direction to control the use. Gathering adequate evidence to justify the request for an Article 4 declaration would represent a significant challenge for many local authorities. The process is in any

event lengthy and time consuming and would be unlikely to be effective in respect of students who change accommodation frequently.

- 2.7. The risk of compensation claims would undoubtedly deter many local authorities from requesting a declaration which would inherently negate the desired benefits of the proposal. This option could have a significant impact on the provision of affordable housing, if the conversion of dwellings into multiple occupation were deemed to be permitted development.