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**WOKINGHAM
BOROUGH COUNCIL**

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To:- All Committee Members

COMMUNITY AND CORPORATE OVERVIEW AND SCRUTINY COMMITTEE - MONDAY, 23RD NOVEMBER, 2015

I enclose, for consideration at the next Monday, 23rd November, 2015 meeting of the Community and Corporate Overview and Scrutiny Committee, the following reports that have been updated since the agenda was sent out.

Agenda No Item

15. **Council Policy on Houses of Multiple Occupation (Pages 3 - 12)**

Updated Report of Clare Lawrence

To receive and consider an update from the Executive Member for Highways and Planning on Council Policy on Houses of Multiple Occupation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andy Couldrick'.

Andy Couldrick
Chief Executive

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Wokingham Borough Council – Summary Policies and Procedures relating to HMOs

Legislative Controls

There are a number of legislative controls that address issues caused by Houses in Multiple Occupations (HMOs) through Licencing, Environmental Protection (statutory nuisance) and the Planning System. Below is an explanation of these legislative controls and the Council's policy and procedure to address HMOs.

Licencing Operational Policy and Procedures

Wokingham Borough Council joined with West Berkshire District Council in 2012 to form a Shared Environmental Health and Licensing Service. This is hosted by West Berkshire District Council but Wokingham Borough Council remains the responsible authority. The legislation and policies relating to the shared service are the same as they would be if the service was administered by WBC

It is the policy of this shared service to follow the legislation and guidance set out by Central Government and statute in respect of procedures for the licensing of HMOs. Details of this policy are available on the Wokingham Borough Council website (linked to West Berkshire Council Website) with further information available on the Government website.

(www.westberks.gov.uk/index. ([Rented Housing Regulation](#)).

In accordance with the legislation, a licence for a HMO is needed only when there are more than 5 residents where the building is 3 stories plus in height. Under the licencing system, issues that can be addressed focus on safety to ensure that the standard of accommodation is acceptable for the residents of the HMOs. In accordance with the licencing legislation, the only criteria that can be addressed are:-

- That the proposed licence holder and any manager of the property is a fit and proper person;
- That the proposed licence holder is the most appropriate person to hold the licence;
- That proper management standards are being applied at the property;
- That the HMO is reasonably suitable, or can be made suitable, for occupation by the number of tenants allowed under the licence with at least the minimum prescribed standards of amenities and facilities. These include the number, type and quality of shared bathrooms, toilets and cooking facilities.

The licensing regime cannot address other issues that are not set out above. If a license was refused or revoked on any other basis then the Council would be unable to support this when challenged. For this reason, it is the Council's policy through the Shared Service to restrict licencing considerations to only those matters set out in the legislation.

Environmental Protection (statutory nuisance) Policies and Procedures

Noise and disturbance issues can be addressed by environmental protection legislation (statutory nuisance). In respect of HMOs, noise can result from the building operations to convert the property or ongoing noise from occupants of the HMOs. There is no legislative control over noise and disturbance unless it is excessive.

Policy for HMOs not causing a statutory nuisance - In these cases, the Council's policy is to get the parties to talk to each other to try to resolve the issues amicably. The Council's policy is to facilitate mediation and to engage neighbourhood officers to help to resolve issues.

Policy for HMOs that are resulting in a statutory nuisance- It is the Council's first course of action to try to resolve cases causing a statutory nuisance through negotiation and to achieve voluntary cessation of the nuisance without the need for formal action. Where this fails, there is a standard procedure to investigate and serve an abatement (stop) notice with criminal offences created if the notice is not adhered to.

Planning Policies and Procedures

Under national legislation, the change of use of a dwelling to a HMO with 7 occupiers or more needs planning permission. A HMO of 6 or fewer people who are living together as a family unit is permitted development and does not need planning permission. In these cases, there is no planning control. As such, the impact of a HMO can be taken into account as there is no control over this.

Policies for assessing planning applications - If a planning application is submitted then the issues that can be addressed include the impact on parking, highway safety and neighbour amenity. Relevant planning policies relating to HMOs are found within the Council's Local Plan. These can only be applied when the HMO needs planning permission and include those outlined in the:-

- Wokingham Borough Core Strategy 2010 (including Policy CP1, CP 2, CP3, CP4)
- Managing Development Delivery (MDD) Local Plan 2014 (including Policy CC01, CC06, CC07, TB05, TB07)

(www.wokingham.gov.uk/planning-and-building-control/planning-policy/key-planning-documents/)

Other material planning considerations include the National Planning Policy Framework (www.gov.uk/government/publications/national-planning-policy-framework)

Operational planning policy and procedures associated with HMOs follow the statutory procedures and policies set out by central Government.

(www.planningportal.gov.uk/planning/planningsystem/localplans)

Policy to address HMO planning complaints – Where there are complaints received in respect of HMOs, the Council's policy is to investigate the position. This will involve a planning history search, a site visit to the property in question, and discussions with occupier/owner. Other evidence will also be considered if available. The Council will then assess the position against the legislation to determine if planning permission is required. If planning permission is not required, no action can be taken against the HMO under the planning legislation.

Sometimes, it is not clear from the evidence if planning permission is required. In these cases, the Council may contact local residents about the alleged breach to ask that they record information about the activities at the site to determine the number of people living at the property. The Council must have clear and unequivocal evidence to take action in respect of any alleged breach of planning control.

If the Council comes to the view that planning permission is required, it is Council policy to try and resolve the situation through negotiation (see the WBC Local Planning Enforcement Plan) (www.wokingham.gov.uk/planning-and-building-control/development/tell-us-about-unauthorised-development). This could be through the voluntary removal of the HMO or through regularising the breach through the submission of a planning application. The Council must accept all valid planning applications submitted and while an application is being considered, it is Council policy that formal enforcement action will not be taken in the first instance. Only after a negotiated solution has failed will the Council take formal planning enforcement and legal action.

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Briefing Paper - HMO Position in Wokingham Borough 2015

The Council understands that HMO accommodation can lead to problems for local residents who live in the vicinity. Many of the problems arise from the intensification of the use of a HMO property and if there is a concentration of these, the cumulative impact can have significant consequences on the amenity of nearby occupiers. Many of the problems are associated with increased pressure on parking and other facilities. However, there have also been complaints from local residents about the behaviour of the occupiers of the HMOs.

In the past, the Council has received complaints about HMOs in an area known as Shinfield Park. This site is also known as the Former Met Office Site which received planning permission in 2005 for approximately 300 residential units. The development is comprised of 3 storey apartments and terraced town houses, and some detached properties and two storey properties.

Recently, in respect of HMOs, complaints have been received from 3 individuals who have raised concerns about HMO use of 15 properties at Shinfield Park. It has been requested by these residents that the HMO licences are revoked on the basis of anti-social behaviour. However, many do not require a licence for the reasons explained above, and as the licence can only address the quality of the residential accommodation, the Council is unable to revoke the licence on the basis of anti-social behaviour. Further, if the Council refused to grant any further licences on the basis of these problems being experienced by local residents, this could be challenged through the courts and this would constitute mal-administration by the Council as only the quality and safety of the accommodation can be addressed under the licence.

The Council's Community Wardens have been in contact with residents, landlords and tenants at Shinfield Park to try and resolve the issues associated with the HMO properties. The management company responsible for a number of the HMO properties has been discussing these matters with the residents association to try and resolve the problems being experienced. The Council's Environmental Health team have been to the site on a number of occasions but there is no statutory nuisance occurring and therefore they have no power to address this issue under the Environmental Protection legislation.

There have been reports of problems associated with car parking at Shinfield Park and some of the residents of the HMOs have been parking in other residents allocated car parking spaces. The Shinfield Park estate was granted planning permission when the Council's car parking standards required a reduced level of parking relative to the current position as was required by Government at the time. As some of the roads have not been adopted by the Council it is the responsibility of the residents through the residents association to enforce issues relating to parking on these roads and in the private car parking areas. On the roads that have been adopted, to date the police has been the agency responsible to take any action in respect of inconsiderate parking. However, as the Council has now agreed to adopt Civil Parking Enforcement, this matter can be addressed by the Council in the future (see below).

Outside of Shinfield Park, complaints about HMOs across the rest of the borough are sporadic and isolated. There is no evidence that there is any other geographical concentration of HMOs in Wokingham Borough that result in any major issues. Some

members have mentioned that the ward of Whitenights experiences issues associated with HMOs. However, the Licencing, Environmental Health and Planning teams are not aware of any significant complaints or cases in this area.

Options for further Control

As addressed above, there is no option available to the Council to address existing regulated HMOs under the licencing regulations unless this is on the grounds of quality or safety of the accommodation. However, the Council has sympathy and understands that HMOs uses can lead to noise and disturbance experienced to local residents. As such, the Council will continue to work with residents, resident associations and management companies/ landlords to try and address such problems informally. If the problems are excessive, it can take action under the Environmental Health legislation.

Under the planning System there is no power to be able to take any action against HMOs that have been granted planning permission, have become lawful through passage of time, or that have been implemented under permitted development rights. The only formal planning action that can be taken at present is to address unauthorised HMOs and to consider how HMOs will be addressed in the future.

There is a provision within the legislation to remove rights for permitted development through an Article 4 Direction to prevent further smaller HMOs without the need for planning permission. These would then need to be assessed in the same way as a planning application for larger HMO schemes. Any Article 4 Direction must be justified on planning grounds and must be referred to the National Planning Policy Casework Unit. The SoS has the right to intervene in this process if he feels that the Article 4 Direction is not justified.

Article 4 Direction

Central Government is deregulating and removing much of the “red tape” around planning and extending the right for people to undertake certain types of development without the need for planning permission. Any restriction through increased planning control by an Article 4 Direction would be considered in this context and would be contrary to this general approach.

There are number of examples of local authorities having served Article 4 Directions to prevent the current permitted change of use of properties to smaller HMOs without the need for planning permission. These include Worcester City Council, Torbay Borough Council, Reading Borough Council, and Basingstoke and Dean Borough Council.

In the Worcester Article 4 example, the reason that this was made was mainly due to the impact of the concentration of student houses in the city that has very tightly defined boundaries. In the Torbay case, this was due to the impact of tourism that reduced the amount of accommodation available for local residents. In both these cases, the temporary occupation by certain groups of people had an impact on the area and then on the flip side, so did vacancy during certain times of the year which effected the vibrancy of these areas and the viability of services.

In the case of Reading, again this was as a result of student housing but this did differ from the two examples above as it related only to specific areas rather than the whole borough.

The most similar authority to us experiencing the HMO issue is Basingstoke. This is because Basingstoke serves the Greater Reading area and experiences the same pressures as Shinfield for HMOs, to accommodate young professional people.

The officer who dealt with this issue at Basingstoke has provided some advice to WBC Officers. He felt that the main reason that the Article 4 was not overruled by SoS when referred to him in accordance with the regulations because the authority limited the Article 4 Direction to a small number of very contained areas where it could be demonstrated that HMOs were more common. He indicated that the smaller the area, the less scrutiny that the Article 4 would come under by the case work unit and the greater likelihood that it would not be challenged by the Secretary of State. Furthermore, because the areas were specific and small in scale, the impact could be more clearly identified. Thus, more justification could be provided.

In light of the above, it is recommended that if the Council resolves in the future to prepare an Article 4 Direction, this should focus on those areas where HMOs are concentrated. In order to justify an Article 4 Direction the Council would need to collect evidence that HMOs are causing issues and it is considered that it would be able to provide a more robust argument about the need for the direction in a concentrated area experiencing these issues. Generally, it is considered that a wider approach across the whole borough could not be justified as it could not be demonstrated that there is a need for the restriction. This is especially in light of the central government approach to deregulation.

It appears that issues being experienced as a result of HMOs are focussed in one area of the borough namely Shinfield Park. The impact of these issues in this area is greater given the concentration of HMOs and as a result of a limited parking ratio per property as planning permission was granted at a time when central government parking requirements were low. It could be argued that it is appropriate to focus on this development to identify if an Article 4 Direction and justified primarily on parking grounds but also in respect of the impact of further HMOs on the character of the area. However, undertaking this work would take considerable time and resource and in reality, only affect the few remaining properties that are not already HMOs in this area. Furthermore, as one year's notice of the Article 4 Direction must be given to avoid the Council having to pay compensation, the effect of the Article 4 Direction could be to encourage the owners of the remaining family properties in the area to convert these to HMOs ahead of the implementation of the Article 4 Direction thus exacerbating the problems being experienced.

In light of the above, it is considered that an Article 4 Direction may not be the most effective way of addressing the problems associated with HMOs in Shinfield Park. The resource involved to implement the Article 4 would be considerable and as this cannot address existing HMOs, the impact is likely to be minimal. However, the Council understands the issues and problems being experienced by Shinfield Park residents and will continue to work with residents and landlords to address the problems being experienced. There are other options available to the council that are likely to be more effective to address the issues and these include Civil Parking Enforcement (see below) in addition to a continued community safety focus to seek to resolve the issues through a negotiated solution.

Civil Parking Enforcement

From complaints received, the biggest issue associated with HMOs appears to be problems associated with the inconsiderate and indiscriminate parking of motor vehicles by the occupiers. In the area where HMOs cause the most problems, this is compounded by limited parking provision. In September 2015, the Council's Executive resolved to take responsibility for Civil Parking Enforcement (CPE). It is anticipated that this will be implemented as soon as possible and as a result, the Council will have the ability to challenge and take action against indiscriminate and dangerous parking, and to work with the communities to focus resources upon areas where the parking problems are the greatest. The Council will be able to work with local residents and Parish Council focus resource on areas such as Shinfield Park to address the problems on a regular basis.

Another opportunity that the Council could help local residents and Town/Parish Council's to explore is in looking at opportunities for areas within estates to be converted to provide additional parking in areas that are clearly experiencing parking problems and that have below current standard parking provision.

Civil Parking enforcement and working with the community to address additional parking opportunities are considered to be a far more effective and immediate solution to address car parking issues that HMOs are causing for local residents in the borough.

Summary

The Council understands that HMOs can lead to significant problems within communities as a result of the intensification of use that they cause placing additional pressures on existing facilities such as parking provision and in giving rise to some antisocial behaviour, noise and disturbance. While some of these issues can be addressed through a number of different regulatory controls, many of the solutions are informal in nature.

In Wokingham Borough, there is a concentration of HMOs in parts of Shinfield and this has given rise to a number of complaints. The complaints primarily focus on parking problems and antisocial behaviour. The most effective way to address the parking issues is through the implementation of Civil Parking Enforcement, in concentrating resources on those areas that experience problems associated HMOs and inconsiderate parking by the occupiers. If the parking provision on these estates is substandard, the Council can explore opportunities for additional parking provision if the local residents and Town and Parish Council's support this.

For issues associated with noise and disturbance and antisocial behaviour, the Council's Community Services Teams will continue to addresses resident's concerns working with landlords and management companies to try and resolve these issues amicably. In cases where there are significant issues of anti- social behaviour, the Council will use its powers under statutory nuisance legislation to address this.

There are limited controls against HMOs at present in the borough through the planning system. While some authorities have sought Article 4 Direction to restrict HMOs, these are

usually in areas experiencing significant pressure for HMO accommodation which is only experienced in very small pockets in Wokingham Borough. It is unlikely that the Council would be successful in securing a borough-wide Article 4 Direction and there would need to be significant work undertaken to support this at significant cost. Even for a smaller area, there would be significant resource required to collect the evidence to justify this. Furthermore, any Article 4 would require a 12 month notice period to be applied before it could be implemented that would be likely to encourage early conversion of properties to HMOs in high pressure areas thus exacerbating the issues and problems experienced. As many of the HMOs in Shinfield Park are existing and cannot be controlled by any future Article 4, the effectiveness of this would be likely to be insignificant.

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