

ABERDEEN CITY COUNCIL

COMMITTEE	Communities, Housing & Infrastructure
DATE	27 th August 2015
DIRECTOR	Pete Leonard
TITLE OF REPORT	Houses in Multiple Occupation Overprovision Policy
REPORT NUMBER:	CHI/15/208
CHECKLIST RECEIVED	Yes

1. PURPOSE OF REPORT

The Communities, Housing & Infrastructure Committee on the 19th May 2015 instructed officers to “investigate an over provision scheme for Aberdeen based on the Dundee model of a cut-off percentage per locality (other than the exempt city centre), and using a traffic light system of differentiation” and “report back on the feasibility of such a scheme and on the process of consultation required to enable such a scheme to be operational as quickly as possible”

This report provides details on the “Dundee model” and the actions which need to be taken to consult on an HMO overprovision policy.

2. RECOMMENDATIONS

It is recommended that Committee:

Note the content of this report and instruct the Director of Communities, Housing & Infrastructure to carry out a full public consultation on the proposed introduction of a HMO Overprovision Policy for Aberdeen as detailed in Appendix 3 with consultation on a 15% threshold as proposed by the Head of Communities & Housing and that a further report be submitted to Committee in January 2016.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report. However if a policy were to be introduced this would require significant improvement in our administration and IT systems with consequential costs. As the cost of HMO Licensing is paid for by the licence fee there could be an impact on the future fee levels.

4. OTHER IMPLICATIONS

If a HMO Overprovision policy were to be introduced clear information would need to be provided to any enquiry by a potential applicant on the position of HMO licences in the locality to allow them to decide whether to pursue an application or property purchase for this purpose. Dundee City Council have an extremely well developed ICT system to respond to such enquiries. Our systems are not currently designed to deal with such enquiries and would need major improvements to be able to deal with this effectively.

Potentially all new HMO applications and some renewals will require to be submitted to the Licensing Committee if a policy is introduced. Currently only applications that have attracted objections are reported to Committee. This will have implications for staff time and resources and for Committee itself.

5. BACKGROUND/MAIN ISSUES

At its meeting on the 27th August 2013 the Housing & Environment Committee agreed that no policy on HMO overprovision be introduced following analysis of the current HMO provision in the City and the responses to a public consultation.

The Director of Housing and Environment was instructed to continue to monitor the policy and legal developments in HMO overprovision across Scotland and report back to Committee, as appropriate, if there were developments which required the Council's position on HMO overprovision to be reviewed.

Committee agreed that a review of the position of overprovision should be formally undertaken in 2016 (if this has not been required earlier) and to request that officers monitor the HMO provision in Old Aberdeen and report back in 12 months.

On 28th October 2014 Committee received the report on the provision of HMO accommodation in the Old Aberdeen Community Council area. Committee then agreed that a meeting be set up between the Chief Executive, the Council Leader and all interested parties to identify the main problems and to try to find common ground in relation to the issues set out in the report.

This meeting with interested parties was held on 31st March 2015 and the outcome was reported to Committee on 19th May 2015.

Committee noted this report and instructed officers to investigate an over provision scheme for Aberdeen based on the Dundee model of a cut-off percentage per locality (other than the exempt city centre), and using a traffic light system of differentiation and to report back on the feasibility of such a scheme and on the process of consultation

required to enable such a scheme to be operational as quickly as possible

Dundee City Council Policy Position

Officers from the Housing, Legal and Planning services have discussed with Dundee City Council officers their approach to understand the process they used to introduce their policy and how they apply it in practice.

Dundee first introduced a policy on HMO Overprovision in 2006 through their Local Development Plan.

“Policy HMO2: Avoiding Excessive Concentration of HMOs Within the Central Dundee Housing Investment Focus Area as identified in the Dundee Local Plan Review in 2005, planning applications for HMOs that would result in the proportion of licensed HMOs in any Census Output Area exceeding 12.5% of the total residential stock will not be supported, unless there are clear material considerations which would justify permission being granted. The policy will not apply to the area within the city centre or defined in the Local Plan”

In 2006 consultation was undertaken with interested parties on whether a licensing policy on HMO Overprovision should be adopted. A majority of respondents favoured a policy approach based on the same criteria as the planning policy. The approach was taken in part to ensure consistency between the licensing and planning approaches.

In June 2007 Dundee City Council adopted an HMO Overprovision licensing policy which complemented the existing planning policy approach.

They adopted a policy that the grant of any licences for HMOs that would result in the proportion of licensed HMOs in the Census Output Area exceeding 12.5% of residential properties in that area as amounting to an overprovision of HMOs for that area for the purposes of Paragraph 5(3)(d) of Schedule I to the Civic Government (Scotland) Act 1982;

The policy was adopted city wide with the exception of the city centre. Purpose-built HMO accommodation and non-mainstream housing are excluded from the policy.

Competent validated renewals and existing licensed HMO change of ownership where a competent application has been submitted within 1 month are exempt as are developments covered by a Section 75 agreement restricting use to HMOs.

When the 12.5% is calculated for a Census Output Area the number of HMOs is rounded down to the nearest whole number.

Every new HMO application is referred to their Licensing Committee, officers hold delegated powers to deal with renewal applications. In

considering an application for a property contained within a CENSUS OUTPUT AREA where the provision levels exceed 12.5% the committee have the power to refuse the application on grounds of overprovision. The exception to this is where the property was previously licensed, has changed ownership and has been lodged as a new application, by the new owner, within one month of obtaining title. In the case of a first time application, it is for the applicant to make a case to the committee for exemption from the policy and for the committee to determine the application.

The West End is the main area where there are issues around overprovision with 12 of the 79 Census Output Areas currently showing overprovision. This represents both historical HMOs and the flexible application of the overprovision policy since its introduction in 2007 with some applications being approved even where they breach the overprovision policy.

Dundee's policy was based on the Civic Government (Scotland) Act 1982 as it predated the overprovision provisions introduced in Private Rented (Scotland) Act 2011.

The exclusion from the policy of the city centre reflects the geography in Dundee with the universities close to the city centre. There has also been a desire to see the continued use of residential accommodation in the city centre to house students as this was seen as a good use of residential property above shops etc.

Dundee City Council planning policy requires flats for use by 4 or more and houses for use by 6 or more persons as an HMO to seek planning consent. Planning consent becomes a requirement in Aberdeen when a property is used by 6 unrelated persons as an HMO regardless of the type of property.

Dundee City Council advised that they do not have a traffic light system in operation for the public which is referred to in the instruction from Committee. However when an individual is interested in applying for a HMO licence they can ask Dundee City Council about the current provision of licenses for that Census Output Area. They then receive a customised report that details

Property Address and Census Output Area

Maximum number of HMO licences (rounded down to nearest whole number)	9
Legally operating qualifying HMO licences	2 (2.56%)
Pending qualifying HMO licences	0
All qualifying HMO licences	2
The maximum level of HMO provision has not been reached. There are 7 licences available in this Census Output Area.	

Dundee City Council were very clear when they introduced the policy that its intentions were to limit the increase in HMO numbers in areas which were at the threshold or higher. The policy was not intended to 'cull' existing licensed HMOs.

Introducing a HMO Overprovision Policy in Aberdeen City

If Aberdeen City Council are to introduce an overprovision policy this needs to be founded on Section 131A Overprovision of the Private Rented Housing (Scotland) Act 2011 (Appendix 1), which amended the Housing (Scotland) Act 2006, and the associated Statutory Guidance for Scottish Local Authorities (Updated January 2012) from the Scottish Government.

The City Council has previously undertaken a public consultation on the potential introduction of a HMO Overprovision policy in March 2013, the results of which were reported to Committee in August 2013.

The guidance states “It will be for local authorities to decide whether and how to apply this power. Scottish Ministers would however expect local authorities who wished to use this power to develop, and consult on, an explicit overprovision policy. Local authorities may wish to jointly develop best practice guidance to facilitate this process.”

Committee’s instruction to enable such a scheme as quickly as possible would be best delivered by a public consultation on a specific proposal. Using the Dundee experience and the lack of any clear consensus from the previous public consultation it is proposed that a consultation be held on using census output areas as the locality. The Census Output Area is a fixed geography which currently has an average of 57.7 residential units located within each one in Aberdeen. This position however changes as new residential properties are provided and any existing properties are removed from residential use.

The instruction from Committee refers to the exempt city centre in Dundee. The rationale Dundee City Council used to exempt the city centre was that this reflects the geography in Dundee with the universities close to the city centre together with a desire to see the continued use of residential accommodation in the city centre to house students this was seen as a good use of residential property above shops etc.

If the same rationale is applied to Aberdeen this suggest that areas in Old Aberdeen and Garthdee should also be considered for exemption from any HMO Overprovision policy. There does not appear to be an obvious reason to exempt Aberdeen City Centre given the two university campuses are not located close to the city centre. If there are proposed exempt areas these need to be clearly defined and mapped. There would need to be a specific question in the consultation in order to seek responses on specific proposals and the reasons why areas would be exempted from a policy.

The threshold at which overprovision would become a consideration is set at 12.5% in Dundee. Officers had promoted 15%, a councillor

suggested 10% so Committee set 12.5% as a compromise. The Head of Service Communities & Housing has proposed that consultation be undertaken on a 15% threshold. Committees agreement to consult on this threshold is sought.

If it is proposed to follow the policy position adopted by Dundee in relation to exclusions then the consultation should also state what is proposed to be included or excluded from any calculation. E.g. Dundee's exclusion of purpose-built HMO accommodation and non-mainstream housing. It would appear appropriate that a similar approach be proposed in the consultation.

The consultation should also state the proposed position for existing HMOs and any HMOs which change hands and are subject to a valid application. It would be appropriate to promote the same approach taken by Dundee.

Legal Advice

The Council's legal service advise that public consultation is only part of the process. Assessment of need in the locality is an essential requirement of Section 131A in considering whether there is overprovision. They stressed that members should be aware that once the consultation is completed even if 100% responses seek an overprovision policy there still requires to be a proper assessment of need in the city and the extent to which HMO accommodation is required to meet that need in a specific locality.

If Census Output Areas are agreed as the locality to use then overprovision and need would have to be considered in each Census Output Area. It is not obvious how the assessment of need could be undertaken at the level of a Census Output Area.

They advised

- that the consultation should ask if Census Output Areas is an appropriate locality to be used for a potential HMO Overprovision Policy. If the Committee agree to consult on a 15% threshold for overprovision there needs to be a specific question on this percentage with the ability for to suggest and the reason for proposing an alternative.
- that there is a need to establish what geographic areas if any should be exempt from the policy and the reasons for this.
- that the consultation should be used to help assess the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.

- that there is also a need to consider how need in respect of each application will be considered and how need in localities can be kept under review.
- that the need to seek input as to types of accommodation which could be exempt from the policy and again reasons why.

It is essential that information and feedback on all these issues are sought before Committee progress to a final policy decision.

Current HMO provision by Census Output Area

Aberdeen City currently has 1,108 licensed HMOs with a further 195 applications pending. The City has 1990 Census Output Areas of which 408 contain at least 1 HMO.

Details of the Census Output Areas with the highest percentage of HMOs contained within them are shown in Appendix 4

Need for HMO Accommodation

The legislation and guidance refers to “the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need”.

There is no recognised way of measuring need for HMOs. Normally the need for HMOs is identified by market forces with the need not necessarily being delivered at a census output area but at a larger geographic area.

6. IMPACT

Corporate – None arising from this report.

Public – This report will be of interest to the public given their interest in HMOs as a form of accommodation.
An EHRIA has not been completed.

Aberdeen- Smarter City Vision – This report provides factual information requested by a previous Committee. This report however could be linked to the Smarter City Priority below:

Smarter Economy: High Level Priority

“We will improve access to affordable housing in both the social rented and private sectors, by supporting first-time buyers, regenerating areas

within the city and by working with developers to maximize the effective use of developer contributions.”

7. MANAGEMENT OF RISK

The report provides factual information on HMOs and the OACC area with a recommendation to note the report.

The Council in determining an application for an HMO licence is ultimately open to legal challenge by either an applicant or objector. Any such challenge could lead to a decision by the Licensing Committee being reviewed by a Sheriff. The HMO licensing legislation provides for appeals to the Sheriff Court against the Council’s decision to grant or refuse an HMO licence so it is necessary to assess any overprovision policy correctly.

8. BACKGROUND PAPERS

None

9. REPORT AUTHOR DETAILS

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Private Rented Housing (Scotland) Act 2011

131A Overprovision

- (1) The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.
- (2) In considering whether to refuse to grant an HMO licence under subsection (1), the local authority must have regard to—
 - a) whether there is an existing HMO licence in effect in respect of the living accommodation,
 - b) the views (if known) of—
 - i. the applicant, and
 - ii. if applicable, any occupant of the living accommodation,
 - c) such other matters as the Scottish Ministers may by order specify.
- (3) It is for the local authority to determine the localities within its area for the purpose of this section.
- (4) In considering whether there is or would be overprovision for the purposes of subsection (1) in any locality, the local authority must have regard to—
 - a) the number and capacity of licensed HMOs in the locality,
 - b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need,
 - c) such other matters as the Scottish Ministers may by order specify.
- (5) Before making an order under subsection (2)(c) or (4)(c), the Scottish Ministers must consult—
 - a) local authorities,
 - b) such persons or bodies as appear to them to be representative of the interests of—
 - i. landlords,
 - ii. occupiers of houses, and
 - c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses)”.

Extract from Statutory Guidance for Scottish Local Authorities Updated January 2012

4.11A SECTION 131A – OVERPROVISION

4.11A.1 The local authority has the discretionary power to refuse to grant an 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. In considering whether to refuse to grant a licence on this ground the local authority must have regard to whether there is an existing HMO licence in effect in respect of the living accommodation and, where known, the views of the applicant and any occupants. In considering whether there is overprovision, the authority must have regard to the number and capacity of licensed HMOs in the locality, as well as the need for HMO accommodation in the locality.

4.11A.2 Generally an HMO licence is granted for three years. Where there are large numbers of HMOs it will be open to a local authority as to how it treats applications from existing owners. If it refuses an application from an existing owner it will reduce HMO numbers, but this will have an adverse impact on existing landlords and possibly tenants.

4.11A.3 It will be for local authorities to decide whether and how to apply this power. Scottish Ministers would however expect local authorities who wished to use this power to develop, and consult on, an explicit overprovision policy. Local authorities may wish to jointly develop best practice guidance to facilitate this process.

Proposed Houses in Multiple Occupation – Overprovision Policy

1. With a view to preventing excessive concentrations of Houses in Multiple Occupation (HMOs) in any area of the city, the Council are considering adopting a policy on the overprovision of HMOs.
2. This policy is to the effect that if there is a concentration of HMOs in any one particular Census Output Area (COA) in excess of 15% of qualifying residential properties in that COA, then the Licensing Committee will consider this to amount to overprovision of HMOs in that COA and may refuse a licence. The provision level will be verified the day prior to the Licensing Committee meeting at which your application will be considered and it is on the basis of this information that the Committee will make their determination. Applicants should be aware that the Council will not refuse to accept an application for a licence on the basis of overprovision. It will be for the applicant to determine whether they wish to submit an application and where necessary to seek to convince the Licensing Committee that there are exceptional circumstances in their case which would justify the policy not being applied.

Exemptions from the Policy

3. This policy applies city wide with the exception of ?.
4. New-build, purpose built HMO accommodation such as student residences and developments covered by Section 75 agreements under the Town & Country Planning (Scotland) Act 1997 which restricts their use to HMO accommodation are exempt from this policy.
5. Non mainstream accommodation.
6. Competent renewals of existing licenses will be exempt.
7. Existing licensed properties which change ownership and have a competent application lodged within one month of the change in ownership will be exempt.

Census Output Areas

8. COAs are boundaries defined by the General Register Office for Scotland and are one of the basic geographic areas used in producing statistics from the national census. The current boundaries were derived from December 2000 postcodes and 2001 wards.

Licensing Committee

9. Where more than one application for a licence in the same COA is being considered at the same meeting of the Licensing Committee, they will be considered in the order in which the applications were lodged. Applications will be submitted to Committee for determination once the subject premises are compliant with the required standards for HMOs.

Appendix 4

	Census Output Area	Number of HMOs	Total properties	HMOs as % of total properties
Orchard St	S00089655	12	29	41.4
Elmbank Terrace	S00089626	24	68	35.3
Orchard Rd King St	S00089652	16	60	26.7
Willowbank Road	S00090568	11	42	26.2
University Road	S00089654	11	43	25.6
Craigievar Crescent	S00090649	8	36	22.2
Lillybank Place / Great Northern Road	S00089699	7	33	21.2
Spital Walk / College Bounds	S00089650	11	58	19.0
Garthdee Drive	S00090645	7	37	18.9
Bannermill Place	S00089446	6	32	18.8
Orchard Place	S00089648	6	33	18.2
Erskine Street	S00090713	9	55	16.4
Spital / Boa Vista Place	S00089647	11	70	15.7
King Street / School Road	S00089500	7	47	14.9
Sunnyside Road / Avenue	S00089634	7	48	14.6
Seamount Road /Gallowgate	S00088996	6	42	14.3
Dunbar St / St Machar Dr / King St	S00089497	13	92	14.1
King Street / School Road	S00090718	9	64	14.1
Holburn Street	S00089366	8	57	14.0
Morrison Drive	S00090642	10	73	13.7
Froghall road / Spital	S00089660	10	75	13.3
Elmfield Avenue	S00089624	5	38	13.2
Montrose Drive / Craigievar Crescent	S00089303	9	72	12.5
Leslie Road	S00089576	7	57	12.3
College Bounds / Dunbar St / King St	S00090695	10	85	11.8
Powis Terrace / Calsayseat Rd	S00089681	7	60	11.7
Urquhart Rd / Hunter Pl	S00090438	5	43	11.6
Hermitage Ave / Sunnyside Terr / Gdns	S00089636	6	52	11.5
Hardgate / Union Glen	S00090563	6	52	11.5
Elmfield Terr / Elmbank Terr	S00089625	5	44	11.4
Belmont Rd / Powis Terr	S00089685	8	71	11.3
Great Northern Rd	S00089571	7	63	11.1
Clifton Rd	S00089693	3	28	10.7
Urquhart Rd	S00089478	6	57	10.5
Wingate Rd / Tedder Rd / Portal Terr	S00089604	5	48	10.4
Union St / Bridge St	S00089633	12	116	10.3