

ABERDEEN CITY COUNCIL

COMMITTEE	Communities, Housing & Infrastructure
DATE	15 th March 2016
DIRECTOR	Pete Leonard
TITLE OF REPORT	HMO Overprovision Consultation Report
REPORT NUMBER	CHI/15/335
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

This report provides details of the response received to the public consultation on the implementation of a HMO Overprovision Policy as instructed by the Communities, Housing and Infrastructure Committee on 27th August 2015 and advice from the Council's legal officers on the issues which need to be addressed before Committee should consider the introduction of a HMO overprovision policy.

2. RECOMMENDATION(S)

That the committee:-

- i. Note the responses to the consultation detailed in this report;
- ii. Agree that no policy on HMO overprovision is introduced at this time;
- iii. Instruct officers to write to the Scottish Government to seek guidance on the assessment of housing need with regard to HMOs and how to determine a percentage at which overprovision may exist; if this guidance is not provided the Scottish Government should be asked to review and consider amending the legislation to allow appropriate guidance to be introduced;
- iv. Instruct officers to monitor policy and legal developments in HMO overprovision and report back to Committee as appropriate if there are developments which require the Council's position on HMO overprovision to be reviewed; and
- v. Remit this report and the decision of the Committee to the Licensing Committee for noting

3. FINANCIAL IMPLICATIONS

If an HMO overprovision policy is to be implemented the current IT system used to manage HMO applications would most likely have to be replaced. The costs of any replacement would have to be met from the income generated from HMO licence fee

paid by applicants. The current system to manage HMOs is nearing the end of its lifespan so another IT system will be needed regardless of whether an overprovision policy is introduced.

4. OTHER IMPLICATIONS

As previously mentioned, the current ICT software and applications used by the Private Sector Housing team would have to be replaced with a system similar to Dundee City Council's, which has the capability to assess HMO provision in any designated area in real time. This would be necessary in order to accurately provide potential HMO licence applicants with locality based information to enable them to make a decision as to whether to progress with an application.

The introduction of an HMO overprovision policy would lead to additional work by the HMO unit in providing information regarding the number of HMOs licensed in the designated area and by officers in licensing and committee services in view of the increase in applications that will be placed before the Committee.

5. BACKGROUND/MAIN ISSUES

5.1 Background

In 2011 the Housing (Scotland) Act 2006 ("the 2006 Act") was amended to introduce provision for licensing authorities to refuse applications for HMO licences on the grounds of overprovision. In order to utilise this ground of refusal, a licensing authority must have a policy on overprovision in place following consultation and having regard to the relevant provisions of the 2006 Act.

Section 131A of the Housing (Scotland) Act 2006 states that in considering whether there is overprovision of HMOs the local authority must have regard to the number and capacity of licensed HMOs in any locality and the need for housing accommodation in the locality together with the extent to which HMO accommodation is required to meet that need. Accordingly in addition to public consultation, the local authority must carry out an assessment of housing need in each locality

At the time of this report, no local authority in Scotland has implemented a policy based on the overprovision provisions under section 131A of the 2006 Act. Dundee City Council have had a HMO Overprovision licensing policy in place since 2007 predating the amendment to the 2006 Act introduced on 31st January 2012 by the Private Rented Housing (Scotland) Act 2011. Their policy was introduced to supplement their planning policy and is based on the Civic Government (Scotland) Act 1982. As the policy basis predates the current legislation they have not had to assess the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need which is the current requirement.

Fife Council have an HMO Overprovision Policy with their policy being based on planning legislation.

St Andrews and East Fife Local Plan includes Policy H2 Houses in Multiple Occupation which states:-

"Within the St Andrews Central Conservation Area, proposals for the change of use of a house or a flat for multiple occupation will not be supported."

Outside of the St Andrews Central Conservation Area, while the policy sets limiting criteria on HMO development, it does not set a percentage.

Stirling Council introduced a revised Planning Supplementary Guidance SG05 and Houses in Multiple Occupation Overprovision Policy in October 2015.

The effect of this new policy is to introduce a new concentration threshold of 1% within the Electoral Wards of Castle, Stirling East, Stirling West, Dunblane and Bridge of Allan. The concentration level out with these areas will be limited to 5% for each Census Output Area, for any new first time HMO applications. This policy will apply irrespective of planning permission being required for "change of use". All flats to be used as HMOs require planning change of use and for houses this applies where there are to be more than 5 occupants.

The downturn in the oil and gas industry is having a knock-on effect on the private rented housing market in Aberdeen. For the first time in several years, there is a reduction in demand resulting in a reduction in rents. It is unknown what impact this may have on Landlords investing in the market.

There are at least 25 purpose built student accommodation residences either currently under construction, or in the development pipeline, which may result in an additional 2,500 student bed spaces across the City, should they all proceed. At Causewayed there are 2 developments currently under construction which will provide 595 bed spaces for the next academic year. Although HMO accommodation is not solely occupied by students, they do form a large part of the HMO clientele. Therefore, it is anticipated that the new number of additional spaces will impact on the smaller HMO provider.

5.2 Dundee City Council

On 19 May 2015 the Committee instructed officers to investigate a licensing policy on HMO overprovision based on a model currently operated by Dundee City Council. In June 2007 Dundee City Council introduced its overprovision policy. The policy was however based on the Civic Government (Scotland) Act 1982, legislation which has since been superseded by the provisions of the 2006 Act as amended. If the Committee is to seek to implement a licensing policy on overprovision it can only do so in accordance with the provisions of section 131A of the 2006 Act.

Officers visited Dundee Council to see how the operation of the overprovision policy worked in practice to inform the Committee's decision on an overprovision policy. During the visit officers viewed the IT system utilised by Dundee to ascertain what would be required in terms of IT requirements were the Committee to proceed with a similar policy.

5.3 Consultation

Following instruction from the Communities, Housing and Infrastructure Committee on 27th August 2015, officers carried out a public consultation on the provision of Houses in Multiple Occupation (HMOs) and the possible introduction of an overprovision threshold of 15% per census output area in all areas of the city. The consultation hosted on the Council's website was launched on 15th October with an original closing date of 11th November 2015. However, this was extended to the 25th November at the request of two community councils, who required extra time to speak to their communities.

Details of the consultation were sent to a number of relevant organisations including Community Councils, Student associations, Scottish Association of Landlords (SAL) and Registered HMO landlords.

To try and ensure the general public were aware of the consultation a press release was issued which received good coverage with coverage on local and national BBC Radio Scotland and the Evening Express

At the close of the consultation on the 25th November, 586 online responses and 25 paper copies were received, totalling 611 responses. Eight of these responses were anonymous. The survey was comprised of eight questions of which a number were open ended.

The full survey response can be viewed at

<http://committees.aberdeency.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13338&path=13004,13309>

5.3.1 Summary of Consultation Responses

Question 1 asked the respondent to advise in what capacity they were responding. 610 respondents answered this question. Results showed that the biggest group of respondents were students (48.52%), followed by individuals (21.64%).

Q1	Number of paper responses	Number of online responses	TOTAL	%
Individual	9	123	132	21.64%
HMO Neighbour	9	39	48	7.87%
HMO Licence holder / applicant	1	63	64	10.49%
Letting agent	1	17	18	2.95%
Landlord	1	27	28	4.59%
Student	0	296	296	48.52%
Other	4	20	24	3.93%
TOTAL	25	585	610	100.00%

Question 2 asked respondents whether they agreed that Census Output Areas (COAs) were the appropriate locality to use for the proposed HMO Overprovision Policy. 535 respondents answered this question. Results showed that the majority (58.69%) felt that COAs were not appropriate locality measures with 41.31% believing that they were appropriate..

Q2	Number of paper responses	Number of online responses	TOTAL	%
Yes	12	209	221	41.31%
No	11	303	314	58.69%
TOTAL	23	512	535	100.00%

Question 3 asked respondents to suggest an alternative if they answered “no” to the previous question. Of the respondents who answered no in the previous question, 182 gave a response to this question. The response with the greatest number was “none” at 42. The question was around locality, the number which make alternative locality suggestions are varied and total 64 .

Other suggestions	Number
None	42
Landlord regulation	28
Other suggestions	26
Radius	17
Housing need	15
Proximity to key locations	11
Postcodes	8
Community Council Areas	7
Citywide	5
Don't know	5
Council area	4
Street	4
Council wards	3
Electoral wards	1
Let market decide	1
Modified COAs	1
Neighbourhood council	1
Not applicable	1
Per 10 COAs	1
Survey of residents within distance of application	1

Question 4 asked respondents whether they felt 15% was an appropriate overprovision threshold. 469 respondents answered this question. The majority (87.85%) felt that 15% was not an appropriate overprovision threshold. 12.15% felt that 15% was the appropriate threshold

Q4	Number of paper responses	Number of online responses	TOTAL	%
Yes	2	55	57	12.15%
No	21	391	412	87.85%
TOTAL	23	446	469	100.00%

Question 5 asked respondents to suggest an alternative appropriate overprovision threshold if they answered “no” to the previous question. 425 respondents gave an answer in this section despite only 412 replying “no” in the previous question, This introduced an element of double counting given that a number of respondents who had indicated that 15% was appropriate also answered this question. . The biggest group of respondents indicated “other” (38.35%), which is broken down in the next question.

Q5	Number of paper responses	Number of online responses	TOTAL	%
10%	12	62	74	17.41%
20%	0	14	14	3.29%
30%	1	31	32	7.53%
40%	0	19	19	4.47%
50%	0	35	35	8.24%
60%	0	9	9	2.12%
70%	0	7	7	1.65%
80%	0	6	6	1.41%
90%	0	2	2	0.47%
100%	0	20	20	4.71%
Not applicable	0	42	42	9.88%
<i>Other</i>	8	155	163	38.35%
No limit	2	0	2	0.47%
TOTAL	25	402	425	100.00%

Given the high number of respondents who indicated “other”, this category was then broken into specific answers for further clarification, shown below. The majority of respondents (55.83%) indicated that “no limit” was their preference, followed by “different percentage threshold depending on area” (12.27%).

"Other" broken down	Number of paper responses	Number of online responses	TOTAL	%
5% or less	6	8	14	8.59%
5 to 10%	1	7	8	4.91%
10%	0	3	3	1.84%
12.0%	0	1	1	0.61%
12.5%	0	1	1	0.61%
15%	0	2	2	1.23%
20%	0	1	1	0.61%
25%	0	2	2	1.23%
30%	0	1	1	0.61%
40%	0	1	1	0.61%
No limit	1	90	91	55.83%
Different % depending on area	0	20	20	12.27%
Other/Not sure	0	13	13	7.98%
Unclear	0	5	5	3.07%
TOTAL	8	155	163	100.00%

The responses to questions 4 and 5 are complex, have an element of double counting however those that clearly indicated that a threshold of 15% or less was

appropriate numbered 160 and 242 indicated a higher threshold or no threshold should be applied.

Question 6 explained the proposal to exempt certain property uses from the policy and asked the respondent to indicate whether they agreed to each of these property uses being exempted from the policy. However, the paper version allowed the respondent to indicate whether they definitely disagreed with the proposal, the online version simply asked the respondent to tick the ones they felt were appropriate and did not specifically collect disagrees.

48.93% of all respondents indicated that they agreed with the proposal to exempt new purpose built HMOs from the overprovision policy.

43.21% of respondents indicated that they agreed with the proposal to exempt non-mainstream accommodation e.g. supported housing from the overprovision policy

49.10% of respondents indicated that they agreed with the proposal to exempt competent renewals of existing licences from the overprovision policy.

Finally, 44.68% of respondents indicated that they agreed with the proposal to exempt existing licences which change ownership and lodge a competent application from the overprovision policy.

Q6 - New purpose built HMOs e.g. student residences	Number of paper responses	Number of online responses	% of total respondents
Agree	10	289	48.93%

Q6 - Non mainstream accommodation	Number of paper responses	Number of online responses	TOTAL
Agree	16	248	43.21%

Q6 - Competent renewals of existing licences	Number of paper responses	Number of online responses	TOTAL
Agree	14	286	49.10%

Q6 - Existing licences which change ownership	Number of paper responses	Number of online responses	TOTAL
Agree	12	261	44.68%

Q7 – Respondents were asked whether they had any comments in regards to the draft policy as a whole, paper responses are outlined below while online responses can be found on the appendix.

Q7 - Comments on draft policy as a whole by theme	Number of paper responses	%
Not answered	11	40%
HMOs in bad condition	2	8%
No policy needed/ HMO should be based on demand and need	2	8%
Exemptions should not apply	4	16%
Family housing / permanent residents needed	2	8%
Too many HMOs	2	8%
HMOs not solution, student blocks should be built	2	8%

Q8 – Respondents were finally asked to comment on how Aberdeen City Council might appropriately measure the need for HMOs, given that the legislation and guidance around HMOs states that regard must be given to the extent to which HMOs help to meet housing need in specified localities. Officers investigated any workable ideas that came forward but unfortunately none proved to be useable and able to address the legal requirements. Answers can be seen in the full return on the appendix.

5.3.2 - Conclusions

The consultation clearly demonstrates that there are very different views on the draft policy with no consensus around locality to be used, percentage threshold and exemptions proposed. This implies that the majority of respondents do not agree with the terms of the proposed policy and in doing so proposed a wide range of alternatives. .

Legal officers have highlighted that in terms of the draft policy document there is no calculated basis for the figure of 15%. There is therefore no calculation as to how this figure has been arrived at. The majority of respondents to the consultation did not agree with the 15% figure but there was no clear consensus as to an alternative. Similarly the majority of respondents did not agree with the use of census output areas as localities but again there was no consensus on how localities should be calculated were an overprovision policy to be put in place. There is therefore no overall support expressed for the policy in its draft terms with the exception of the exempted premises.

However, notwithstanding the outcome of the consultation legal officers have highlighted that there remains the issue of assessing the need for HMOs in the city. The legislation requires that “the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need” should be assessed at the same locality at which the threshold would be applied. In the proposed policy this is at Census Output Area which averages 57.7 units. No guidance has been received from the Scottish Government on how the need for HMOs could be assessed at this geographic level and no methods have been identified over the past 4 years by officers or through the discussions and consultations that have taken place.

Therefore at present officers cannot suitably assess need to an extent that would enable an overprovision policy to be properly formed under the 2006 Act. As no

guidance has been forthcoming from the Scottish Government and it is therefore proposed that the Committee instruct officers to write again to request this. If this guidance is not given then it is suggested that the legislation may need to be reviewed and potentially amended to allow full guidance to be provided and a properly formed policy to be adopted.

In the absence of an assessment of need, legal officers advise that any HMO overprovision policy implemented by the Committee could be subject to challenge by any person whose HMO licence is refused in reference to same.

It is therefore recommended that the Committee agrees not to introduce an HMO overprovision policy at this time. Officers will continue to monitor any developments in the area with a view to reporting back to Committee if the position changes.

6. IMPACT

Improving Customer Experience –

If an HMO Overprovision policy is implemented it is clear from the responses to the survey that this this would be seen as a positive decision by some members of our communities and a negative decision by others.

Improving Staff Experience –

An HMO Overprovision policy would require reviews of existing processes for managing HMO licence applications and for the Licensing Committee. Additional steps would have to be implemented particularly in relation to advising on the current number of HMOs in a locality and any 'capacity' issues.

In terms of practical implementation, Aberdeen City Council would have to be able to provide information to prospective HMO applicants on the threshold level in that particular COA. Currently, Dundee City uses an IT system which allows for this information to be generated but Aberdeen City Council does not. This would have to be explored prior to implementation.

Improving our use of Resources –

Corporate -

n/a

Public –

As outlined above the consultation was covered by local and national media and received a good response from a range of individuals and organisations. The range of very strongly held views expressed shows the high level of interest in this issue.

7. MANAGEMENT OF RISK

Any HMO Overprovision policy implemented and decisions made by the Licensing Committee based on this policy are open to legal challenge. If the policy is not formed in accordance with the provisions of the 2006 Act it is likely that a refusal of an HMO licence on the grounds of overprovision would be appealed to the Sheriff Court and considered by the Sheriff. There may be legal expenses awarded against the Council as licensing authority if such an appeal was successful.

8. BACKGROUND PAPERS

n/a

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)”

Scottish Government Guidance

The Scottish Government provides Statutory Guidance on HMO Licensing for Scottish Local Authorities. This was updated in January 2012 to reflect these new powers.

“4.11 ASECTION 131A – OVERPROVISION

4.11 A.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.

4.11 A.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.

4.11 A.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.“

Consultation Policy 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 fourteen days 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
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.