

COMMITTEE	Council
DATE	23 rd August 2017
REPORT TITLE	HMO Overprovision Policy – Report on Public Consultation
REPORT NUMBER	CHI/17/113
DIRECTOR	Bernadette Marjoram
REPORT AUTHOR	Graeme Stuart

1. PURPOSE OF REPORT:-

- 1.1 This report advises Council on the response to the public consultation on the draft HMO Overprovision policy and seeks further instructions from Council.

2. RECOMMENDATIONS

It is recommended that Council

- i Note the responses received to the public consultation on the draft HMO Overprovision policy;
- ii Note that it is not possible at the moment to assess suitably the need for HMOs in localities to an extent that would enable an overprovision policy to be properly formed under the Housing (Scotland) 2006 Act; and
- iii Does not introduce an overprovision policy at this time;

3. BACKGROUND/MAIN ISSUES

- 3.1 At its meeting on 24th January 2017 the Communities, Housing & Infrastructure Committee considered a report on HMO Overprovision.

3.1.1 The Committee resolved:-

- (i) to note the high concentration of HMOs within the Froghall, Powis and Sunnybank and Old Aberdeen neighbourhoods;
- (ii) to note the information provided towards meeting the requirement to complete assessment of the need for housing accommodation and the extent to which HMO accommodation is required to meet that in the city and including the Froghall, Powis, Garthdee, Sunnybank and Old Aberdeen neighbourhoods;
- (iii) to instruct officers to consult on the draft HMO overprovision policy at appendix 13, this policy would apply in Froghall, Powis, Garthdee, Sunnybank and Old Aberdeen neighbourhoods. The overprovision threshold applies if there is a concentration of HMOs in any one particular Census Output Area within the Froghall, Powis, Garthdee, Sunnybank and

Old Aberdeen neighbourhoods in excess of 10% of qualifying residential properties in that neighbourhood; and

(iv) to instruct officers to report back to Council in June 2017.

3.2 A public consultation was carried out from 10th May to 7th June 2017 with the consultation placed on the Council's Consultation Hub. Contact was made directly with a range of interested parties including Community Councils and Student Representative bodies with media coverage of the consultation.

3.2.1 Appendix 1 provides details of the consultation that was undertaken.

3.2.2 Appendix 2 provides details of the 299 responses who made additional comment with 298 making no comment.

3.2.3 There were 597 responses to the consultation. Of these 117 agreed and 480 did not agree with the introduction of an HMO Overprovision Policy.

3.2.4 The responses are categorised as

An individual	121
A current HMO licence holder / applicant	10
A landlord	12
A letting agent	1
A student	391
An HMO neighbour	34
Other	28

3.2.5 *Other includes the following organisations who responded*

Ashley and Broomhill Community Council
 Garthdee Community Council
 Kincorth & Leggart Community Council
 Scottish Association of Landlords
 Old Aberdeen Community Council
 RGU Students' Union
 Torry Community Council
 Old Aberdeen Heritage Society
 University of Aberdeen
 Aberdeen Student Representative Association

Do you agree with the introduction of an HMO overprovision policy?	Yes	No	Total
An individual	59	62	121
A current HMO licence holder / applicant	2	8	10
A landlord	2	10	12
A letting agent	0	1	1
A student	16	375	391
An HMO neighbour	28	6	34
Other	10	18	28
	117	480	597

3.2.5 As with previous consultations on HMO Overprovision there are clearly two views expressed which can be broadly identified as residents in the neighbourhoods, neighbours of HMOs and Community Councils being in favour of the introduction of a

HMO Overprovision Policy and students, landlords and the University of Aberdeen being against the introduction.

- 3.2.6 As well as responses to the consultation a number of specific comments have been made by organisations.
- 3.2.7 University of Aberdeen – Licensing of purpose built student accommodation closed for refurbishment which although purpose built in the 1960s is not covered by a S75 agreement and therefore could potentially be restricted under a policy. If an Overprovision Policy is introduced it would be appropriate for the policy to cover purpose built student accommodation delivered before the S75 planning agreements were introduced.
- 3.2.8 Mile End Community Council – Requested report to provide a proposed timeline for extending the policy to the Rosemount and Mile End area as well as other neighbourhoods.
- 3.2.9 Old Aberdeen Heritage Society – reference is made to “HMO Guidance on Planning Control; and Licensing”. However the policy being considered here is a licensing policy not a planning policy which SGP Circular 2/2012 refers to. They also asked that the following extracts be include in the report:

Extract

“3. High concentrations of HMOs can lead to a range of cultural, social, physical and economic changes in a community. Such changes may be positive or negative, and may be perceived differently from community to community. Some of these changes, particularly regarding the behaviour of HMO tenants, are not matters for planning authorities. However, planning authorities may wish to adopt policies to limit HMO concentrations where the residential amenity of a community is already adversely affected by high concentrations of HMOs, or in areas where it is likely that this may happen in the future.

4. The range of potential problems associated with high concentrations of HMOs can include:

- changes in demand for services, altering the availability and nature of services provided;
- increased competition for private houses, consequential rises in house prices, and reduced availability for non-HMO residents;
- areas of high HMO concentrations can become unpopular with non- HMO residents, altering the community;
- potential physical deterioration caused by lack of investment by absentee landlords;
- increased population density, resulting in increased demand on services, infrastructure and on-street parking provision;
- a high number of transient residents leading to less community cohesion.”

Old Aberdeen Heritage Society – suggested that community council areas be used not neighbourhoods,

Old Aberdeen Heritage Society – asked that 54-88 Tillydrone Avenue are also included

Old Aberdeen Heritage Society – any Census Output Area partly included within the area should be included.

- 3.2.10 Old Aberdeen Community Council made the following comments

- That the boundaries of any defined area should run along the boundaries of the COAs, not cut across them, and that COAs should be defined by number, not just a woolly map.
 - The Community Planning locality boundaries are meaningless to the public as they are not available. Community Council boundaries are public knowledge and are published on the ACC website and we recommend their use if the policy is to remain focussed on localities.
 - One submission contended that the focus on specific areas is inappropriate and that, if a density limit was to be imposed, then it should address COAs throughout Aberdeen; focusing on specific university centred localities could well be identified as 'anti-student'.
 - That there is no identified basis for a 10% limit. (A 12.5% limit would have the justification that this is the limit set by Dundee, however we note that Stirling has set up a 5% limit (apart from specific named areas which are limited to 1%) and Inverness is preparing to set up a 13% limit on HMOs of 6 or over persons).
 - The inadequacy of citywide cycle routes and that we have perhaps the most expensive bus service in Scotland adds to the pressure on students to cluster around Old Aberdeen.
- "Some of the above do not necessarily reflect the position of the OACC, but we consider they are valid issues for consideration by the committee."

3.2.11 The original instruction from the CH&I Committee in January 2017 was to report on the outcomes to Council on 21st June 2017. Due to time required to undertake the public consultation and thereafter collate the responses it was not possible to report to the June Council meeting as was reported to that meeting.

3.3 Statutory Position

3.3.1 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 and having regard to the relevant provisions of the 2006 Act.

3.4 Section 131A of the Housing (Scotland) Act 2006 (see Appendix 3) states that in considering whether there is overprovision of HMOs the local authority must have regard to:

- i. the number and capacity of licensed HMOs in any locality; and,
- ii. the need for housing accommodation in the locality together with the extent to which HMO accommodation is required to meet that need.

3.5 Accordingly the local authority must carry out an assessment of housing need in each locality. It is for the local authority to determine its localities as it sees fit.

3.6 Appendix 4 sets out the Scottish Government's Statutory Guidance on the legislation.

3.7 Section 131A of the 2006 Act 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 a threshold would be applied. Guidance exists for Housing Needs and Demand Assessment and the Council has undertaken Housing Needs and Demand Assessments at a city wide level. However the requirement here is for the assessment of need to be at the same geographic level as any proposed locality for which a policy would be introduced i.e. neighbourhood.

- 3.8 The requirement for an HMO Overprovision policy is to assess housing need at a locality and a methodology for doing so has not been established. Enquiries were made with partner agencies, consultees, other Local Authorities and the public but no feasible method of obtaining the relevant data has been forthcoming. The report to the CH&I Committee on 24th January 2017 provided information towards meeting the requirement to complete assessment of the need for overall housing accommodation but officers remain unable to provide further guidance on the extent to which HMO accommodation in particular is required to meet that need in the Froghall, Powis, Garthdee, Sunnybank and Old Aberdeen neighbourhoods. At best it would be possible to demonstrate a general demand for HMO properties overall but “demand” is not the same as “need” and it is difficult to envisage circumstances that would mean an HMO property would “need” to be in one particular locality as opposed to another. HMO properties respond to a market demand and their delivery location depends on the availability of property of an appropriate size and value which makes the delivery of an HMO viable.
- 3.9 In the absence of any reliable method of calculating such a need at the required level any policy established on the more general evidence available would therefore not satisfy all the legislative requirements detailed at paragraph 3.4.
- 3.10 There is also no guidance provided on how to set a threshold beyond which HMO overprovision may be deemed to exist. The figure of 10% contained in the draft policy which was the subject of the public consultation was agreed by the CH&I Committee on 24th January 2017 as part of the resolution moved by the Convenor at the meeting. Officers have no evidential basis to justify a 10% threshold and it may accordingly be subject to challenge.

4. FINANCIAL IMPLICATIONS

- 4.1 As previously reported, in order for the Council to put in place an HMO Overprovision policy the current ICT software and applications used by the Private Sector Housing team would have to be replaced with a system 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. As indicated above, there is, however, no methodology available to assess housing need at the requisite local level.
- 4.2 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 likely increase in applications that will be placed before the Committee for a decision, rather than being determined by an officer. There may also be an increase in appeals, either against individual decisions based on the policy or against the policy itself which would result in additional officer time and possible court expenses. The cost of administering HMO licensing is met from the licence fees paid by HMO landlords when they make an application for a HMO licence. These additional costs would need to be reflected in future HMO fees set by the Council.

5. LEGAL IMPLICATIONS

- 5.1 Having undertaken the consultation as directed by CH&I committee on 24th January 2017, this report updates Council on the results of the consultation on HMO overprovision. As indicated since reporting to CH&I committee in March 2016, it is currently the case that the need for HMOs cannot be suitably assessed at a

sufficiently local area that would enable an overprovision policy to be properly formed under the 2006 Act.

5.2 Officers have previously undertaken a general evaluation of the overall housing need and a presumption as to the extent to which HMOs could meet that need. Given the lack of guidance and the wording of the legislation, such an assessment would not precisely meet the requirements of the 2016 Act.

5.3 It should be noted that there is an existing ground for refusal where a property is not suitable for occupation as an HMO. In determining suitability a number of factors have to be taken into account including location of the property, its condition, the type and number of persons likely to occupy it, and the possibility of undue public nuisance.

Any HMO policy put in place will only have effect in relation to new applications in the relevant localities and will not affect renewals of currently licensed properties. Again, renewal applications for currently licensed properties would still be able to be refused on grounds of unsuitability as detailed above.

6. MANAGEMENT OF RISK

6.1 Financial and Technological

In the event that an HMO Overprovision policy was introduced additional costs would be incurred with the need to upgrade the ICT systems used to manage HMO licensing. This may take a period of time and require an increase in HMO Licence fees.

High Risk

6.2 Employee

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. It would also introduce a further ground for refusal of an application which would result in a greater number of applications being referred to the Licensing Committee.

High Risk

6.3 Customer / citizen

If an HMO Overprovision policy is implemented it is clear from the responses to this and previous surveys that this this would be seen as a positive decision by some members of our communities and a negative decision by others. Long term residents of neighbourhoods with higher HMO density are likely to consider the non-implementation of a policy as a negative outcome whilst single people, low-income workers, the education and student community are more likely to support non-implementation.

High Risk

6.4 Environmental

Not Applicable

6.5 Legal

Any HMO Overprovision policy implemented and decisions subsequently made by the Licensing Committee based on this policy, may leave the Council open to the risk of legal challenge if the policy is not formed in accordance with the provisions of the

2006 Act. As stated in the report it is not currently possible to formulate a policy which precisely meets those statutory provisions.
High Risk

- 6.5 Reputational
Whether a HMO overprovision policy is introduced or not will potentially have reputational issues given the polarised views on this issue.
High Risk

7. IMPACT SECTION

- 7.1 This section demonstrates how the proposals within this report impact on the strategic themes of Aberdeen City Council and Community Planning Aberdeen, as set out in the [Aberdeen City Local Outcome Improvement Plan 2016-26](#) and the [Aberdeen City Council Strategic Business Plan](#).

7.2 Economy

- 7.2.1 The Council aims to support improvement in the local economy to ensure a high quality of life for all people in Aberdeen.

If an HMO Overprovision policy is introduced it will provide the policy framework to restrict the number of new HMOs approved in census output areas located within the Froghall, Powis & Sunnybank; Old Aberdeen and Garthdee neighbourhoods. This does not restrict an increase in the provision of new HMOs but may restrict this in specific neighbourhoods. The economic impact is therefore likely to be neutral

7.3 People

- 7.3.1 The Council is committed to improving the key life outcomes of all people in Aberdeen and so has agreed a set of Equality Outcomes (2017-21) http://www.aberdeencity.gov.uk/council_government/equality_and_diversity/eqd_report_2017_21.asp

- 7.3.2 No equalities data exists to demonstrate how the introduction of a HMO Overprovision policy would impact on the groups with the 8 protected characteristics. It is considered that the greatest impact will be on students or low income workers who are not protected groups in terms of the legislation. The demand for single person accommodation highlights the lack of housing provision for this group and the potential impact any restriction in HMO availability may have. A previous EHRIA demonstrating a neutral impact on the whole, with possible indirect implications for younger persons on the basis that many students will be of that age, is attached.

7.3 Place

- 7.3.1 The Council is committed to ensuring that Aberdeen is a welcoming place to invest, live and visit and operating to the highest environmental standards.

- 7.3.2 If an HMO Overprovision policy is introduced it will provide the policy framework to restrict the number of new HMOs approved in census output areas located within the Froghall, Powis & Sunnybank; Old Aberdeen and Garthdee neighbourhoods. The policy would be welcomed by some parts of our communities particularly those who have lived in the areas covered by the draft policy for a period of time along with community councils and seen as a negative proposal particularly by students and the University of Aberdeen. If approved the policy would apply to new applications only and not to renewals of existing licences. The impact on the neighbourhoods may

therefore be felt most in census output areas where 'capacity' for new HMOs still exists.

7.4 Technology

- 7.4.1 In the event of a policy being put in place the ICT Systems required to manage the HMO Licensing service would need to be upgraded to ensure accurate information on the number of properties and licensed HMOs that exist in each census output area covered by any policy introduced.

8. BACKGROUND PAPERS

Previous committee reports in relation to this issue are detailed below:

[H&E/12/031 - 28th August 2012](#) (Item 14)

[H&E/13/050 - 27th August 2013](#) (Item 14)

[H&E/14/55 - 28th October 2014](#) (Item 16)

[CHI/15/156 - 19th May 2015](#) (Item 17)

[CHI/15/208 - 27th August 2015](#) (Item 17)

[CHI/15/335 - 15th March 2016](#) (Item 14)

[CHI/16/121 - 24th January 2017](#) (Item 7)

9. APPENDICES (if applicable)

Appendix 1 – Consultation Paper

Appendix 2 – Consultation Responses

Appendix 3 - Section 131A of the Housing (Scotland) Act 2006

Appendix 4 - Scottish Government's Statutory Guidance on the legislation

10. REPORT AUTHOR DETAILS

Graeme Stuart
Housing Strategy & Performance Manger
gstuart@aberdeencity.gov.uk
01224 523043

HEAD OF SERVICE DETAILS

Derek McGowan
Head of Communities & Housing
demcgowan@aberdeencity.gov.uk
01224 522226