SUBMISSION FROM SUSTAINABLE COMMUNITIES SCOTLAND

Abstract

1. HMOs are a vital component of housing stock, providing accommodation in the main for young single people. There is a tendency for HMOs to concentrate in certain areas, and when the density of HMOs reaches a tipping point a domino effect takes place whereby long term residents move out, and new family residents are deterred from living there. In these circumstances, HMO tenants become the community, rather than being part of a mixed, sustainable community.

2. The average length of tenancies in HMOs is ten months, and in many cases they are also seasonal. Districts in which HMOs concentrate lose family oriented shops and facilities and fast food outlets predominate. Previously functioning communities lose their sense of identity and the long term population which provides pride of place. Buy-to-let landlords are often absentees, have no long term commitment to the community in which their accommodation is located, and can be difficult to deal with when such issues as common repairs have to be arranged and paid for. When there are problems for neighbours of HMOs these can be more difficult to deal with when there are few permanent neighbours and community support is missing.

3. We support the need for HMOs but would wish to see them as a part of mixed housing provision in functioning communities rather than becoming the predominant housing type in an area.

4. Social and Planning Policy promote the establishment and maintenance of mixed, sustainable communities. Planning policy specifically seeks to avoid the adverse cumulative effects of development. At present many HMOs are “under the planning radar” and the planning system cannot regulate concentrations.

5. This paper describes the problems in more detail, and proposes simple, proportionate and socially responsible measures which would improve the quality of life for HMO residents and other members of the community in which HMOs are located. We consider that they are very relevant to the policy intention of the Housing Bill that people should “live in well-designed sustainable places and in strong communities”

6. In essence our proposals are:

   - That all HMOs as defined in the Housing Act should require prior planning consent
   - Measures should be enacted to prevent the adaption of flats in traditional tenement properties which involve sub-division of rooms and relocation of services (such as water supplies to toilets, sinks and showers) which increase flooding risks for downstairs tenements and produce noise problems which adversely affect living conditions and amenity for neighbours.
• Enforcement processes to reduce the number of illegal landlords who continue to operate unlicensed HMO and other let accommodation with impunity, should be improved and suitably resourced

• A more effective national register of landlords and premises, up to date and suitably maintained should be provided so that the public will have access to accurate, up to date information.

Housing Bill – Houses in Multiple Occupation
7. Sustainable Communities Scotland (SUSCOMS) has membership from Glasgow, Edinburgh and St Andrews. A major issue of concern since its inception in 2006 has been adverse changes to the sustainability of communities where Houses in Multiple Occupation are concentrated. HMOs provide essential accommodation, but because their tenants are predominately young single people, with an average tenancy of ten months, concentrations of HMOs in an area can destroy social cohesion, pride of place, and the mixed sustainable communities which planning policy recognises as being essential for social well-being. HMOs will fulfil their social purpose more effectively if their residents are part of a mixed, vibrant and sustainable community.

8. We must emphasise that Suscoms does not wish to limit the number of HMOs to the detriment of housing needs but to ensure that the local authorities have the power to regulate their density when it adversely affects a community and that the HMOs which are granted licences do not lead to a deterioration in the fabric of a building and the amenity of the environment.

9. Unrestricted growth of HMOs produces a domino effect whereby an area becomes increasingly a monoculture of HMO tenants, with a reduction in the amenities, shops and services required in a mixed community The natural regeneration of the community is undermined because HMOs are businesses and command a premium in the property market (up to £100,000) causing new young families to be priced out.

10. A public petition for the better regulation of HMOs presented to the parliament attracted support from thirty nine community councils and other local organisations as well as many individual signatures and cross party support. Managing concentrations of HMOs is therefore a key social policy issue.

11. This paper summarises the major outstanding matters which require to be tackled if this issue is to be effectively addressed. These are:

• Consistency in planning and licensing processes.
• Improved effectiveness in compliance arrangements.
• Improving standards of HMOs and protecting housing stock

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1 Studentification, Universities UK, 2006 deals with this issue in relation to HMOs in university towns. Similar problems have been identified in areas where non-student HMOs are concentrated.
Consistency in planning and licensing processes.

The problems

12. The two main legislative regimes affecting HMOs, Planning and Licensing, currently operate separately within their own legal frameworks. They have grown up independently and consequentially have inconsistencies and contradictions. This is confusing for the public and landlords, and even perplexes officials charged with interpreting and implementing the legislation. They are not integrated in policy terms.

13. At present an HMO can be legally operated under one legislative scheme, but unlawful under another. Currently, neither scheme can take cognisance of the other. At start will be made by the proposed changes in the Housing Bill which will require HMOs to have planning consent (when required) before a licence can be granted. However, this will provide only a partial solution as only HMOs in certain types of accommodation currently require planning consent. Indeed, it is likely that implementation of the proposed change will simply shift the problem and concentrate new HMOs in accommodation not subject to planning controls.

14. Planning permission is required only where there is deemed to be a Change of Use. The current Use Classes Order treats HMO houses and flats differently and is open to interpretation, resulting in authorities adopting different definitions of when a Change of Use has occurred. Some HMOs require planning consent, others do not. An improved definition of an HMO in planning terms would remove ambiguity for landlords and members of the public.

15. Whether an HMO is located in a semi-detached house, or in a tenement building, the outcome that is sought is to avoid concentrations of HMOs and the need to promote mixed sustainable communities. The concentration of HMOs in one area leads to an imbalance which authorities should have the power to correct as the need arises. The purpose of planning regulation is to ensure cohesion, avoid the adverse cumulative effects of development and promote sustainable communities. There seems no logical reason that the social benefits that come from planning controls are not extended to the regulation of all HMOs. The social benefits of requiring planning permission should outweigh any inconvenience or burden in requiring it.

16. All these matters have now been recognised as serious and detrimental problems in Northern Ireland and south of the border where the UK parliament has recently introduced legislation requiring all HMOs as defined in the Housing Act to have planning permission. The footnote provide detail of this secondary legislation.

17. Our proposal is that all HMOs as defined in the Housing Act should require planning consent before being considered for a licence. In addition to this being identified in

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2 http://www.opsi.gov.uk/si/si2010/uksi_20100653_en_1 (this sets up a new Class C4: HMOs, and defines HMO as in the (English) Housing Act 2004); General Permitted Development Order at http://www.opsi.gov.uk/si/si2010/uksi_20100654_en_1 (this allows a HMO to return to a dwelling house, without planning permission).
the Housing Act, a change in the Use Classes Order (secondary legislation) would be needed to achieve this. Local Authorities would then be able to adopt their own consistent policies which are sensitive to housing needs as well as environmental issues in their own area. The provision of suitable accommodation for young single people, including students, should be a legal requirement of each Councils’ development plans and we would expect that Council would have regard to housing need in their areas when granting permission from HMOs.

18. To support the policy of local decision making we urge the following additional changes:

19. We note that the Housing Act 2006, in its HMO provisions (yet to be implemented) provides that an HMO licence may be granted only if it is suitable for occupation as an HMO or can be made suitable by including conditions in the HMO licence. In deciding this, the local authority must consider, among other issues, its location. [Section 131 (2) (a)].

20. This should be clarified to give the local authority grounds to refuse a licence where it breaches planning policy or the type of property is unsuitable e.g., the density in that area is deemed by the authority to be excessive or the property is in a tenement area where the amenity of the neighbouring flats will be adversely affected.

21. Where a property has been occupied as an HMO without the required planning permission and therefore is able to claim “established use” an authority should have the power to refuse a licence if the landlord has been operating illegally and there are too many HMOs in the area. This would reward landlords who operated properly regulated HMOs and ensure that those who previously flouted planning requirements did not gain any advantage.

22. Dundee City Council has adopted a licensing policy to limit the number of HMOs in an area in order to retain mixed communities. This scheme has many benefits, but has no clear statutory authority, and will be weakened when the HMO provisions of the Housing Act (2006) remove the “any other reason” ground for refusal. A clear statutory basis for licensing authorities to take environmental and amenity issues into account would provide consistency between the licensing and planning regimes, and reflect similar provisions as, for instance, in liquor licensing arrangements.

Compliance Arrangements

The Problems

23. Locating and closing down unlicensed or unsafe HMOs is difficult to achieve under current legislation. A culture of impunity encourages unfit landlords to avoid the licensing regime.

24. Licensing is primarily a safety issue but the he worst and most dangerous landlords can continue to operate for extended periods. Specific powers of closure, as well as
the implementation of the power (incorporated in the Housing Act 2006) to withhold rents should be available to licensing authorities.

25. It is difficult for prospective tenants or neighbours to establish whether an HMO or other premises subject to Landlord Registration are licensed. Records are patchy and those landlords in process of registration are not included on most registers.

26. The identification of illegal HMO operations is under-resourced in a licensing scheme which is statutorily required to be self-financing. In effect, the license fees from responsible landlords subsidise any compliance activity undertaken by local authorities. It would be unfair to penalise law-abiding landlords by increasing their licensing fees to fund improved enforcement action against those landlords who continue to operate illegally.

27. Compliance processes are influenced by a policy of “light touch” regulation which is inappropriate where the reason for licensing is directly related to matters of health and safety. Only a few authorities have a pro-active approach to identifying illegal HMO operations. For many illegal landlords, the greatest hazard they face when detected is a requirement to obtain a licence.

28. As illegal operation of an HMO is a criminal offence, prosecutions can only be initiated by the Procurator Fiscal who must of necessity prioritise serious crime.

29. Criminal Procedures require a criminal standard of evidence and a sufficient standard of proof is often lacking for successful prosecutions. Procurators fiscal cannot give priority to such cases where the pressure is to deal with serious crime. Consequentially, prosecution rates are very low. The high standard of proof in criminal cases is difficult to achieve and successful prosecutions difficult to mount.

30. Fines when levied, are often insignificant, difficult to collect, and do not stop the illegal activity.

31. Fines are currently directed to the Exchequer, not the local authority, who could use this revenue to support their enforcement activity, without raising fees for other landlords, if illegal operation of HMOs and other qualifying rented property was made a civil offence.

32. It has been suggested that civil procedures are not suitable for dealing with illegal operation of HMOs as they are generally confined to low level offences such as parking. This is not correct. For instance local authorities can institute civil proceedings in a wide range of cases, including for instance freeing a child for adoption against the will of a parent.

33. In order to address the problems identified in compliance and enforcement we propose;
• Illegal operation of an HMO should become a civil offence, not a criminal offence as at present. The lower standard of proof in civil cases is more appropriate to this type of enforcement activity.

• Resulting fines should be available to the local authority for compliance activity.

• Compliance activity should be effectively enforced and properly resourced within the self-funding licensing scheme.

• Councils should have powers of immediate closure in cases where health and safety issues are present, as well as the proposed power to appropriate rents.

• Matters of criminal negligence, such as failure to ensure gas safety, should continue to be a criminal offence.

• The Private Landlord Registration Scheme needs to be more effectively resourced and the national Register of Landlords and premises should record all applications received but not yet approved as well as those refused.

• The register should be publicly available, online, up to date and in a searchable format.

Improving Standards of HMO accommodation and protecting housing stock

34. Landlords should not be allowed to increase revenue by subdivision of rooms and placing of showers, toilets, cooking and washing facilities and washing machines within these rooms, effectively dispensing with the shared facilities which would otherwise designate such properties as HMOs.

35. In tenements such subdivision and relocation of services are frequent causes of noise nuisance and water damage to flats underneath, with serious effects on the quality of life for neighbours and long term damage to the properties involved. This issue is covered in more detail in the evidence submitted by Hillhead Community Council.

36. Subdivision of rooms can lead to cramped conditions which offend against progressive housing policies. Standards for new HMO applications should seek to improve on the current minimum space requirements.

We recommend:

37. To maintain the viability of tenements, a vital housing resource, we propose that there should be a presumption against subdivision of flats in tenement properties and changes to the location of traditionally "stacked" facilities such as kitchens, toilets and bath/shower rooms. In addition, space standards for new HMOs should be improved
in line with modern standards. We consider this measure would meet the intention of
the Bill to improve standards in private rented accommodation, as well as reduce
serious problems for neighbours, whatever the status of their tenure. This would
require a review of existing HMO model registration standards.

Conclusion
38. The intention within the Bill to require planning consent for certain HMOs as a pre-
requisite to the granting of a license is welcome. The proposals in this paper identify
additional components of a comprehensive and effective licensing scheme which
would significantly improve the situation for HMO residents and the other members of
the communities in which they live. We stress that we do not wish to limit the number
of HMOs but ensure that local authorities are able to ensure that where a community
becomes vulnerable or unsustainable because of the density of HMOs that they have
the power to act by implementing policies appropriate to their own area.

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For Suscoms
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