

Crawley Borough Council

Report to Overview and Scrutiny Commission 8 January 2018

Identifying and Monitoring HMO's in Crawley

Report of the Head of Strategic Housing and Planning Services – **SHAP/68**

1. Purpose

- 1.1 This report has been produced at the request of the Overview and Scrutiny Commission to receive information on the way in which Houses in Multiple Occupation (HMOs) are identified and monitored to ensure they continue to be effective in contributing to meeting housing need without adversely impacting surrounding communities.

2. Recommendations

- 2.1 This report is for information purposes and therefore it is asked that the Overview and Scrutiny Commission note the report.

3. Background

- 3.1 The planning system regulates HMOs by identifying them as a specific type of land use, reflected in the existence of special 'use classes'. Shared houses occupied by between three and six unrelated individuals who share basic amenities (kitchens, bathrooms) fall within use class 'C4: Houses of Multiple Occupation'. Where a HMO is occupied by more than six people the 'use class' is sui generis (literally 'of their own kind'). In planning terms this is a 'large' HMO.
- 3.2 These two types of HMO are treated differently in national planning legislation. A change of use of a building to a large HMO requires express planning permission. On the other hand a change of use of an existing dwelling house to a HMO within the C4 use class is identified as 'permitted development' by the Permitted Development Order, a piece of national legislation which grants automatic planning permission to certain broad categories of development.
- 3.3 HMOs with three or more storeys, five or more occupants forming two or more households are subject to mandatory licencing. Therefore neighbourhoods with larger properties (town houses for example) are predisposed to the creation of HMOs that [may] require a licence. Licences are issued by the Councils Private Sector Housing Team and at present there are 49 licensed HMOs in the Borough. Two storey HMOs are more dispersed throughout the Borough and do not fall under the mandatory licencing requirements.

4. Local Planning Policy Context

- 4.1 Crawley's Local Plan, adopted in December 2015, includes Policy H6 (shown below) for the purpose of considering planning applications for HMOs. This seeks to balance the need for this form of accommodation against potential negative impacts on HMO occupiers and the wider environment.

Policy H6: Houses in Multiple Occupation

Proposals for the development and change of use of an existing property to a House in Multiple Occupation will normally be permitted provided that:

- i) The location, design and layout of the development is appropriate for the proposed occupiers;
- ii) The proposal, by virtue of its intensity of occupation and activity or due to its cumulative impact in the area, would have no adverse impact upon the character of the area and the amenity and privacy of neighbouring properties;
- iii) Development can meet its operational needs (e.g. parking, servicing) including Crawley Borough Council's adopted HMO Standards.

- 4.2 Proposals concerning HMOs are also assessed against other relevant Local Plan Policies, including Policy CH3: Normal Requirements of All New Development and Policy IN4: Car and Cycle Parking Standards. (The adopted parking standards specify a minimum provision of 0.5 car parking spaces per unit – i.e. per bedroom).

5. Local Planning Policy Impact

- 5.1 Between the adoption of the Local Plan in December 2015 and the end of October 2017 the council determined eleven planning applications concerning HMOs. These related to ten properties in total, spread across six neighbourhoods.¹ These may be summarised as follows:

- Addition of extension/garage conversion to existing small HMO: 1
- Change of use of small HMO to large HMO: 4
- Change of use of single family dwelling house to large HMO: 4
- Change of use of residential institution (use class C2) to large HMO: 1
- Combination of 2 existing flats to form a small HMO: 1

- 5.2 In each case the policies identified above were applied. Five of the applications (five out of nine of those involving the creation of a large HMO) were refused, with a revised scheme at one address subsequently being found acceptable. Reasons for refusal included insufficient on-site parking provision; failure to provide an acceptable living environment for occupants; and impact of additional activity levels on the amenity of neighbouring properties. One refusal on the basis of inadequate accommodation, failure to meet operational requirements, and inadequate parking arrangements (Policies CH3, CH5, H6 and IN4) was subject to an appeal, which was subsequently dismissed, with the Inspector upholding all four Policies as reasons for refusal.² Four of the permitted proposals were also made subject to conditions restricting the number of residents.

- 5.3 These outcomes evidence the effectiveness of the Council's planning policies in controlling new HMO provision.

6. Other potential planning controls

- 6.1 Where there is an identified harm arising from the operation of particular permitted development rights, Local Planning Authorities have the power to make directions known as 'Article 4' Directions which remove those rights within a specified area. Types of development affected by an Article 4 Direction need planning permission, whereas they would not do so normally. Crawley currently has Article 4 Directions in place to restrict the change of use of office and industrial premises to residential use within the Manor Royal Business District.³

- 6.2 Some councils have introduced Article 4 Directions removing the permitted development right to change dwelling houses into small HMOs. Typically these cover specific locations within the area of the council concerned which are considered to be particularly affected. In many cases these Directions are linked to policies which set a quantitative limit on the proportion of HMOs considered acceptable

¹ Four in Southgate, three in West Green, two in Northgate and one in Tilgate.

² Appeal Ref: APP/Q3820/W/16/3161422.

³ For further discussion of these and of Article 4 Directions generally see cabinet reports SHAP/47 and SHAP/56.

within the surrounding area. A maximum limit of 10% of properties within a 100m radius of any property seeking permission to change use, for example, is common.

- 6.3 At present the council does not have evidence that HMOs are having a sufficient impact within the borough to justify taking this approach. Most councils using Article 4 Directions in this way are in cities, coastal resorts, or University towns, where local demographic factors result in a particularly high demand for this form of accommodation. In addition the council is not aware that the ratio of HMOs to family dwelling houses in any part of the borough has exceeded the kind of level (e.g. 10% within a 100m radius) that would activate a restrictive policy of the kind used by some councils.
- 6.4 This position will continue to be monitored. Should the need for such an approach be evidenced in future then Cabinet approval will be sought to implement an Article 4 Direction.

7. Identifying HMO's

- 7.1 HMO's that fall outside of mandatory licensing (as described below) are not required to be reported to the Private Sector Housing team, therefore sections within the Council that may become aware of possible HMO's (such as Benefits, Environmental Health and the Noise and Anti-Social Behaviour (NASB) team) work together and report possible HMO's to the Private Sector Housing team for further investigation.

8. Mandatory Licensing

- 8.1 The licensing process identifies and sets the maximum number of occupants of a HMO based on the suitability of the property and the number and size of facilities present (bedrooms, bathrooms and kitchens). The number of occupants is checked during every visit to the premises and if numbers exceed what is permitted by the license, action is taken accordingly. The licensing process also looks at gas and electrical safety, fire safety measures, the provision of heating, waste disposal and the maintenance of living accommodation and common parts. Issues outside of the remit of licensing are dealt with under separate legislation. Housing standards and disrepair are investigated under the Housing Health and Safety Rating System (HHSRS) and are enforced by the Private Sector Housing Team. Issues of noise disturbance and anti-social behaviour are investigated and enforced by Environmental Health and/or the Noise and Anti-Social Behaviour Team depending on the nature of the complaint.
- 8.2 The legislation relating to mandatory licencing is very prescriptive and there is very limited scope to refuse an application to licence a HMO. Reasons for refusal are limited to the proposed licence holder and/or manager not meeting the 'fit and proper person' criteria, the property not meeting the Council's standards for HMOs, and there being no reasonable prospect of appointing an alternative license holder or bringing the property up to standard within an acceptable time period. Wider issues such as location, proximity to other HMO's, the impact on car parking and the wider community cannot be taken into consideration

9. Other potential licensing controls

- 9.1 Additional licensing - Additional licensing is a tool for local authorities to license HMOs that fall outside of the scope of the mandatory licensing scheme. However its use is subject to significant constraints. It is only available where specific conditions are met and where the authority believes its introduction would alleviate specific housing problems. The introduction of an additional licensing scheme can only be considered as an integral part of an authorities overarching approach and where sufficient resources are available to support private landlords and tenants to comply with any obligations placed upon them as part of the scheme.

- 9.2 To invoke an additional licensing scheme the local authority must be able to evidence that a significant proportion of HMOs are managed ineffectively and as a result have a detrimental effect on a local area (through serious and persistent anti-social behaviour for example). There is no evidence of problems at a level or scale that would warrant or justify this type of action by the Council.
- 9.3 Selective licensing - Selective licensing applies to all privately rented dwellings that fall outside of mandatory licensing (including properties rented to families and HMOs that do not require a licence). As with additional licensing, a local authority may introduce a scheme across all or part of its district, and as with additional licensing, to introduce a selective licensing scheme a local authority has to be able to demonstrate one or more of the following; low housing demand, a significant and persistent problem caused by anti-social behaviour, poor property conditions, high levels of migration, high levels of deprivation and high levels of crime. Again there is no evidence of problems at a level or scale that would warrant or justify this type of action by the Council.

10. Non-Licensable HMO's

- 10.1 Where HMO's do not require a license or planning permission (those with two storeys and fewer than six occupants for example), local authorities are likely to have limited contact with the property and its occupants unless a complaint is made. The Private Sector Housing Team respond to complaints of disrepair within the property and the NASB Team respond to complaints of noise and/or anti-social behaviour. Upon receipt of a complaint, issues are investigated under the relevant legislation and appropriate action taken (depending on the issues present and their severity).

11. Complaints

- 11.1 Historically there has been a higher rate of complaints from HMOs (both licensed and un-licensed) as they are often occupied by younger more transient tenants at a higher density of occupation than single households. In Crawley they are often shift workers so noise is not always confined to daytime hours. This noise itself is not necessarily 'unreasonable' and may be attributed to a clash of life styles rather than deliberately being anti-social. In some cases, poor sound insulation between properties can become an issue for neighbours. Currently only a small minority (no more than 1%) of complaints of noise and low level anti-social behaviour relate to HMOs. A similar pattern is mirrored in relation to disrepair complaints relating to HMOs.

12. Associated matters raised by OSC

- 12.1 Micro flats - HMOs do not come into the category of micro-flats. The latter are self-contained units while HMOs comprise of shared facilities.
- 12.2 Impact on Voter Registration - The canvassing of HMOs mirrors the same approach as other households in the borough. Electoral Services issue a Household Enquiry Form to every household in Crawley. Following this, two reminders are issued to those who do not respond and then canvassers will be sent to households where no response has been received. In addition to this, the Electoral Services team work closely with the relevant sections to understand the occupation of properties in the Borough.
- 12.3 Payment of Council Tax - HMOs are treated in the same way as other private rented accommodation with the landlord being responsible for payment. As with the application of Council tax rates to all properties, HMOs that are larger fall within a higher tax banding and are charged more.
- 12.4 Business Rates - The criteria for business rates is listed on the Valuation Officer's Rating List. For HMOs to be charged as businesses a change in legislation would be required by central Government. In late 2016 Brighton and Hove City Council lobbied Government on this matter but concerns were raised that an increase in costs to the landlord would be passed on to the tenants through higher rents, further adding to the issues of unaffordability in the private rented sector.

13. Conclusions

- 13.1 With private rent levels in Crawley being on average 25% more than the Local Housing Allowance rates, houses in multiple occupation fulfil a vital role in helping to provide affordable accommodation for small/single person households on a low income. With the impact of welfare reform continuing to be felt, the demand for HMOs and the ability to access well-run good quality accommodation is essential if the housing needs of the residents of Crawley are to be met.
- 13.2 The Council is making effective use of planning and housing powers to control and regulate new and existing HMO provision and there is currently no evidence base to justify the implementation of the further powers that are available in local authority areas where the presence of HMOs is adversely affecting the wider community.

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