

ENTERPRISE AND PROTECTIVE SERVICES

SUPPLEMENTARY PLANNING GUIDANCE: HOUSES IN MULTIPLE OCCUPATION (St Andrews Central Conservation Area)

The following Supplementary Planning Policy Guidance (SPG) on houses in multiple occupation (HMOs) was adopted by North East Fife Area Committee on 8th June 2011. The SPG is now a material consideration in the determination of an application for planning permission for an HMO in the central St Andrews Conservation Area (map attached on page 8).

This guidance will complement the Council's existing Fife-wide Local Plan policy on HMOs, and given the complex issues surrounding HMOs it is recommended that the operation of this SPG for St Andrews will be reviewed after 24 months to assess the effectiveness of the approach and to establish whether any amendments are required in the event of a change in Scottish Government legislation or other challenges to the policy.

The supplementary policy is as follows:

Proposals for multiple occupation of a house or a flat that requires planning permission will not be supported within the St Andrews Central Conservation Area (as defined on the map). The policy will apply to new planning applications or proposals for change of use of existing properties and does not affect the availability and operation of HMOs already with the benefit of planning permission.

Reason

This policy complements existing Local Plan Policy H3 'Houses in Multiple Occupation' and Policies E2 'Development within Town and Village Envelopes' and E4 'Development Quality – Design' which aim to maintain and protect residential amenity. Multiple occupancy use can impact on the character and amenity of an area due to the differing lifestyles and transient nature of the occupants. It may put pressure on facilities such as car parking, and can also lead to residential amenity issues particularly in flatted properties and adjacent properties. Due to the high concentration of HMO properties in central St Andrews it is considered appropriate to control further HMO development in the centre of St Andrews to help maintain a mixed and sustainable community whilst catering for the specific needs of students and others seeking shared accommodation.

Notes:

1. New build, purpose built HMO accommodation such as student residences and developments covered by Section 75 Agreements under the Town and

Country Planning (Scotland) Act 1997 which restricts their use as HMO accommodation are exempt from this policy.

2. *Planning permission is required for HMO use when more than five unrelated people live in a house and three or more unrelated people live in a flat*
3. *This policy applies only to applications considered after approval of the finalised SPG.*
4. *If planning permission or a Certificate of Lawfulness is granted, applicants should also apply for a licence for a 'House in Multiple Occupation'(HMO) An application form and guidance can be obtained from Fife Council Landlord Registration Team Tel: 01592 583397*

Fife Council supports the future development of purpose built residential accommodation which can specifically serve the needs of those who may benefit from this type of accommodation. The current Local Plan Fife-wide policy therefore prohibits the use of new houses and flats as HMOs if they do not meet specific criteria and seeks to control changes in use of existing property for use as HMOs. The policy also prevents the loss of houses specifically provided under the Council's 'affordable housing' policy. The Fife-wide policy has been approved with the aim of providing a balanced approach to the issue of HMOs in areas outwith central St Andrews. It is appropriate to control occupancy of property by non-family groups to maintain a mixed community within central St Andrews whilst catering for the specific needs of students and others seeking shared accommodation.

Background

A house or flat can be termed a house in multiple occupation (HMO) if it is the principal residence of a number of unrelated people. HMOs include:-

- Individual flats and houses occupied by unrelated people, most commonly students and young professionals
- Supported community care accommodation
- Hostels for homeless people
- Purpose built student accommodation

HMOs provide an important supply of housing, particularly for some groups of people such as students, young professionals or those who require supported accommodation. HMOs provide affordable housing for incoming workers and students and for those who are unable or unwilling to buy their own property.

The regulation of HMOs is undertaken through both the licensing and planning system.

Licensing of Houses in Multiple Occupation

In terms of licensing, the Council's current guidance specifies that houses, flats and hostels are classed as a HMO where there are three or more unrelated persons residing (not including the owner or family). The purpose of HMO licensing is to control standards in three main areas:-

- the suitability of a property owner to be an HMO landlord
- management of the premises
- the physical condition and facilities of the accommodation

A licence may be granted for a period of up to 3 years and it is a criminal offence to operate an HMO without a licence. The licensing of HMOs in Fife is administered by Fife Council Housing & Neighbourhood Services.

The Private Rented Housing (Scotland) Act has now been passed and amends Part 5 of the Housing (Scotland) Act 2006 to create links between the systems of licensing and planning permission for HMOs. As amended, the Housing (Scotland) Act 2006 gives the local authority the discretionary power to refuse to consider a HMO licence application if the occupation of the property as an HMO would constitute a breach of planning control - that is, carrying out the use without the required planning permission being obtained or without complying with the conditions attached to a planning permission. The Act also introduces timescale requirements for managing HMO licence applications.

Houses in Multiple Occupation and the Planning System

There is no definition of an HMO in planning legislation. Planning permission for an HMO is generally required only where use as an HMO is considered to be a material change of use. The Town and Country Planning (Use Classes) (Scotland) Order 1997 includes within the definition of a house that it is the sole or main residence of not more than five residents living together, including a household where care is provided for residents. In planning terms therefore, it is only where more than five unrelated people living in a house that it is considered 'development' and planning permission is required.

In determining the use of a flat as an HMO, it is a matter of fact and degree whether the nature of the use is materially different from that of a family flat. In Fife it is considered that three or more unrelated people living together in a flat is materially different from family use. Planning permission is therefore required where HMOs are created in flats that will be occupied by three or more people.

Building Standards

A building warrant may also be required to carry out any building work to make a property suitable for use as an HMO. Even if a warrant is not required the work may still have to meet building regulations. Advice should be sought from the Building Standards and Safety Officers on this matter. Contact details are included on Page 8 of this SPG

Planning Circular 8 2009 Houses in Multiple Occupation: Guidance on Planning Control and Licensing

Scottish Government guidance on the provision and management of HMOs through the planning system, as well as advice on how local authorities should co-ordinate HMO licensing and planning issues is contained in *Planning Circular 8/2009*.¹ This circular identifies a number of key issues that local authorities need to consider in the assessment of HMOs. These include:-

- the behaviour of HMO tenants are not matters for planning authorities.
- demand for HMOs should be met where it arises and local authorities should consider HMOs when developing Local Housing Strategies and Development Plans.
- planning authorities may adopt policies to manage HMO concentrations
- policies must be designed to safeguard community amenity and must not be in response to perceived concerns about behaviours of tenants.
- planning policy to manage HMO concentrations will apply only to properties being proposed for use as an HMO for the first time after the date in which the policy takes effect.
- concentration levels set should take account of the demand for HMOs in each area as well as a need to protect residential amenity.
- purpose built student accommodation should not be counted towards HMO concentration levels.
- policies should be included in Development Plans, preferably in the form of supplementary guidance
- planning authorities should justify the need for policies designed to manage HMO concentrations and policies should be subject to public consultation before being adopted.
- the granting of planning permission cannot be taken into account when considering whether to grant an HMO licence and vice versa (see proposed change to legislation on page 2 under 'Licensing of Houses in Multiple Occupation').

Scottish Planning Policy

The Scottish Government's *Scottish Planning Policy 2010* requires development plans to consider the need for houses in multiple occupation. It also advises that planning authorities should also consider the need for HMO accommodation as part of the housing requirement for the area.

¹ <http://www.scotland.gov.uk/Publications/2009/07/27095114/0>

Local Plan Policies

The three current area Local Plans include a Fife Wide core policy as follows:-

POLICY H3 HOUSES IN MULTIPLE OCCUPATION

The use of a new build house or flat as a house in multiple occupation (HMO) will not be permitted unless the development is purpose-built for that use. The Council will impose this restriction by applying a condition to planning permissions.

A change of use application for an existing property to be used as a house in multiple occupation will only be permitted if:

- (a) in the case of a flat with a shared internal stair or entrance, all other properties sharing the stair and entrance are already in multiple occupancy and have planning permission to operate as a HMO;*
- (b) it will not be detrimental to pedestrian or traffic safety arising from car or bicycle parking;*
- (c) it will not be detrimental to the established residential character and amenity; and*
- (d) the property is not designated as affordable housing provided through policies requiring affordable housing (Policy H2 or the earlier policy equivalents).*

<i>Reason</i>

This policy aims to achieve some degree of balance between the competing demands for accommodation and the need to maintain balanced and mixed communities. The Council supports the future development of purpose-built house accommodation which can specifically serve the needs of those who may benefit from this type of accommodation. At the same time there is a need to protect new development from being priced out of the market for general needs and affordable homes. The policy therefore prohibits the use of new houses and flats as HMOs and seeks to control the changes in use of existing property for use as HMOs.

Affordable housing provided as a result of policies requiring affordable housing contributions need to be safeguarded for that purpose to maintain that housing stock. These, too, are protected from change of use to HMOs.

St Andrews

While some concerns relating to HMOs can be addressed through the licensing regime there are a number of land use issues that HMOs can raise. These fall into two categories:-

Wider community issues:

- the demands for community services and facilities can change if the proportion of HMOs increase.

- established communities can be eroded by the more transient nature of occupants who do not have a long term commitment to an area.

Property specific issues:

- increased pressure on traffic movement and parking.
- the more independent lifestyles of occupants can increase demand for parking facilities, drying areas, gardens etc.
- pedestrian movement and noise and the resultant impact on residential amenity.

The issues of HMOs and their impact on communities and neighbourhood amenity has concentrated on St Andrews, specifically, the centre of the town where the housing stock is predominately comprised of flats and has proved attractive to university students. Residents and community groups in St Andrews believe that intensification of HMO use, in this part of St Andrews, has led to an unbalanced community and prevents potentially affordable housing being available for owner occupation.

The *Fife Housing Need and Demand Assessment 2010* which informs the *Local Housing Strategy 2010-2015* indicates that out of Fife's ten Local Housing Strategy Areas (LHSAs) the St. Andrews LHSA contains the lowest percentage of owner occupation at 60.0% (Fife average 68.7%);

The St. Andrews LHSA also experienced an 8.8% reduction in the percentage of owner occupied housing in the area between 2002 and 2008, despite overall increases in owner occupation at Fife level. During this period the St. Andrews LHSA also experienced a 10.3% increase in the proportion of private rented accommodation from 5.9% of housing in area to 16.2%.

In recent years, a number of new developments, particularly flats, in St Andrews have been purchased for use as HMOs. In some cases, mainstream housing has become exclusively HMO accommodation and this could add to the difficulties for others that may wish to enter the housing market, particularly those who are denied access to a house in their area due to market prices. The Council's affordable housing policy is therefore an important part of the suite of planning policies.

The number of future HMO applications in St Andrews will be influenced by many factors, including:

- future student numbers at the University of St Andrews;
- future development of student accommodation (provided by the University);
- market demands of students and others seeking to share accommodation outwith University halls of residence;
- the needs of incoming workers; and
- the needs of those requiring supported shared accommodation

Purpose built student and HMO accommodation provided by the University in line with planning policy will be supported as the Council wishes to encourage the future development of accommodation which can specifically serve the

needs of students and others in Fife who may benefit from this type of accommodation. At the same time the Council wants to protect new development from being priced out of the general needs market by competition from HMO property demand.

The Council also recognises that the private rented housing market, which includes HMOs is an important element of the housing stock in St Andrews. It provides affordable accommodation for those working and studying in the town and unable to buy their own property due to personal circumstances and the high price of property in the town. The Council also recognises that this form of housing is helping to support the St Andrews economy and that it is important that the supply of such accommodation is available to meet their needs.

Glossary:

Family - *A person is a member of the same family, if married to each other or living together as a couple, or one of them is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other (including step and half relations) (Source: Article 2(5) of The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000).*

Flat - *A separate set of premises whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally (Source: The Town and Country Planning (General Permitted Development)(Scotland) Order 1992).*

Certificates of Lawfulness - *A Certificate of Lawfulness is a formal certificate which clarifies or establishes the planning status of land, or whether existing or proposed development is lawful for planning purposes.*

Dwelling House - *Does not include a building containing one or more flats, or a flat contained within such a building (Source: The Town and Country Planning (General Permitted Development) (Scotland) Order 1992).*

Affordable Housing – *Housing of a reasonable quality that is affordable to people on modest incomes. It includes property for rent or sale (or both of these) and shared ownership. It could also include small low cost starter homes and self build plots*

New Build - *New buildings, excluding conversions and alterations and extensions to existing buildings.*

Scottish Planning Policy - *Documents produced by the Scottish Government that provide statements of Government policy on nationally important land use and other planning matters, supported, where appropriate, by a locational framework. Although not mandatory, these carry great weight, especially in the preparation of development plans and in the determination of planning applications.*

Section 75 Agreement- *A legal agreement, under Section 75 of the Town and Country Planning (Scotland) Act 1997, which is used to control the use or development of land. Such an agreement is entered in the Land Register of Scotland and can be enforced against the successors in title.*

Fire Council Contacts

Housing & Neighbourhood Services

- Landlord Registration Team: Tel: 01592 583397

Enterprise and Protective Services

- Building Standards & Safety Team, Tel: 08451 551122
- Development Management, Enterprise and Protective Services Tel: 08451 551122
- Local & Community Policy Team, Enterprise and Protective Services Tel: 08451 551122

