

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Thursday 21 May 2020

Decision Type: Non-Urgent Non-Executive Non-Key

Title: HOMES IN MULTIPLE OCCUPATION

Contact Officer: Ben Johnson (Head of Planning Policy and Strategy)
Tel: 020 8461 7845 E-mail: Ben.Johnson@bromley.gov.uk

Chief Officer: Assistant Director (Planning)

Ward: (All Wards);

1. Reason for report

- 1.1 To consider the current controls relating to Homes in Multiple Occupation (HMOs) and the nature and scale of HMOs in Bromley. To assess the current and potential impacts of HMOs (both positive and negative) and to set out potential avenues to address possible harm that may materialise, noting relevant processes, data requirements and the experience of other boroughs.
-

2. **RECOMMENDATIONS**

2.1 To note the impacts of HMOs identified in this report.

2.2 To note that officers will undertake further work to

- establish an understanding of the trends and spatial distribution of HMOs across the borough and assess the justification for, and implications of further actions where necessary, and
- consider the implications of emerging national and regional design guidance and observe any relevant outcomes from the national response to the Covid 19 pandemic.

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
-

Corporate Policy

1. Policy Status: N/A
 2. BBB Priority: Quality Environment, Excellent Council, Healthy Bromley
-

Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.596m
 5. Source of funding: Existing Revenue Budget for 2020/21
-

Personnel

1. Number of staff (current and additional): 10fte
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: N/A
 2. Call-in: Not Applicable
-

Procurement

1. Summary of Procurement Implications: None
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

- 3.1 In basic terms, a House in Multiple Occupation (HMO) is a home occupied by more than one household; however, HMOs are defined in a number of ways by different Council and government departments for the purposes of planning, housing and council tax. The purposes of these regimes are distinct, and the differences between HMO definitions in relation to the numbers of occupants are such that they do not align comfortably.
- 3.2 The particular nature of HMOs can result in harm to the character of an area, the amenity of neighbouring properties and the living conditions of the occupants. However, HMOs can also have positive impacts through addressing particular housing needs.
- 3.3 A 2008 report by the Ministry of Housing, Communities and Local Government (MHCLG) 'Evidence Gathering – Housing in Multiple Occupation and possible planning responses Final Report'¹ noted that:
- 'HMOs consist of a variety of property types including: bedsits, shared houses, households with lodger, purpose-built HMOs, hostels, guesthouses, bed and breakfast establishment and self-contained flats, although not all of these accommodation types fall within the planning definition of an HMO or a housing definition of an HMO as defined under the 2004 Housing Act. However, it should be noted that despite the legal definitions of what constitutes an HMO, some properties such as shared houses where up to 5 or so individuals live together, are often regarded by some stakeholders as houses in multiple occupation' (Paragraph 2.1)*
- 3.4 Local authorities have a mandatory licence requirement for certain types of HMOs to ensure they are properly managed and maintained and kept safe. There is scope for Local Authorities to extend the licencing regime to require licences for HMOs not falling within the mandatory licencing regime, either by area (selective licencing) or by type (additional licencing).
- 3.5 Planning permission is required for larger HMO's (see below) which are not considered to fit within any particular planning use class. However, within the last decade there has been a significant increase in the number of family homes being converted into small HMOs through permitted development across London, including conversions which only achieve National Minimum Standards² (known to licencing as "minimum standards HMOs"). Across parts of London where evidence suggests that concentrations of HMOs have caused harm, there has been an increased use of Article 4 Directions which require planning applications to be submitted for changes of use, which would otherwise have fallen under 'permitted development.'

¹<https://webarchive.nationalarchives.gov.uk/20120919230509/http://www.communities.gov.uk/documents/planningandbuilding/pdf/evidencegatheringresearch.pdf>

²https://www.rla.org.uk/landlord/guides/housing_act/docs/all/minimum_national_amenity_standards_for_licensable_hmos.shtml

Legislation and policy

Planning

- 3.6 Under The Town and Country Planning (Use Classes) Order 1987 (as amended), planning classifies two categories of HMO:
- A small HMO is defined as a dwelling that is occupied by between **3 and 6 unrelated individuals** who share basic amenities such as a kitchen or bathroom. A small HMO is classified as a '**C4**' use within the Use Class Order, 2015. Single dwellinghouses (classified as C3 use) have permitted development rights to change use to a C4 use and vice-versa without the need for planning permission under The Town and Country Planning, (General Permitted Development) (England) Order 2015.
 - A large HMO is defined as a property that is occupied by **more than 6 unrelated individuals** that share basic amenities such as a kitchen or bathroom. A large HMO is classified as **Sui Generis** (a use that does not fall in any Class). The creation of a large HMO requires planning permission.
- 3.7 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 3.8 Large HMOs (classified as Sui Generis uses) require planning permission. The Development Plan (Bromley Local Plan and the London Plan) provides policies against which applications for larger HMOs are assessed. These policies would also be applicable to smaller HMO's where an article 4 direction is in effect to remove permitted development rights.
- 3.9 The National Planning Policy Framework (NPPF) does not make specific reference to HMOs but advises that
- 'size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes.'*(para 61)
- 3.10 The 2016 London Plan and the draft new London Plan both acknowledge the potential positive and negative impacts of HMOs. Both the adopted and draft plans are concerned with achieving high standards of residential quality and design and ensuring mixed and balanced communities.
- 3.11 The adopted 2016 London Plan states that:
- 'Shared accommodation or houses in multiple occupation is a strategically important part of London's housing offer, meeting distinct needs and reducing pressure on other elements of the housing stock, though its quality can give rise to concern. Where it is of reasonable standard it should generally be protected and the net effects of any loss should be reflected in Annual Monitoring Reports. In considering proposals which might constrain this provision, including Article 4 Directions affecting changes between Use*

Classes C3 and C4, boroughs should take into account the strategic as well as local importance of houses in multiple occupation.'

3.12 The draft new London Plan (Intend to Publish version), in policy H9 D, retains the thrust of the adopted London Plan; paragraph 4.9.4 states that:

'Boroughs should take account of the role of houses in multiple occupation (HMOs) in meeting local and strategic housing needs. Where they are of a reasonable standard they should generally be protected'

3.13 The Mayors Housing SPG 2016 advises that a careful balance needs to be struck *"between local concerns, such as those to protect large houses for local family occupation, and the contribution they can make to meeting strategic and local needs if converted to HMOs"* (paragraph 3.4.2).

3.14 The Bromley Local Plan vision for 'Homes' reads:

'A range of decent homes of different types and sizes are available and housing supply is tailored to local needs. Any new housing complements and respects the character of the neighbourhood in which it is located, paying particular attention to the density of development, parking requirements and improving the choice of accommodation available.' (para 1.3.6)

3.15 Local Plan objectives for homes are set out in para 1.3.7:

- *Ensure there is an appropriate supply of homes to meet the varied needs and incomes of the local population, which responds to changing demographics, in particular as the population ages.*
- *Ensure new residential development, extensions and conversions complement and respect local character.*
- *Ensure new homes are designed to minimise environmental impact and are supported by appropriate social and environmental infrastructure.*

3.16 The Local Plan was informed by the South East London Strategic Housing Market Assessment (SHMA) (2014), covering Bromley, Bexley, Lewisham, Southwark and Greenwich.

3.17 The SHMA indicates that, as with all South East London boroughs, Bromley had a significant under-supply of one-bedroomed units against demand as measured by the bedroom standard (Table 36).

3.18 The SHMA notes that in Bromley and Bexley, family accommodation predominates, when compared to Lewisham, Southwark and Greenwich, and it suggests, on the basis of London findings of the English Housing Survey (2009 – 2012), that this may be attributable to income bands within the differing boroughs. Bromley & Bexley exhibited a greater share of higher income bands, whilst lower median incomes were noted in Lewisham, Southwark and Greenwich, where the housing stock is generally more suited to the housing of smaller households. (para 4.37)

3.19 The SMHA highlights that cost concerns play an important part in influencing household space consumption decisions and highlights that over the long term, the market has adjusted the housing stock in London to create smaller units in response to cost pressures, including through the conversion of single

family houses into flats. It advises that further pressures for adjustments of the existing housing stock of this kind must be expected in London, given the intensification of demand and resultant squeeze on affordability. (para 6.15)_

Policy 1 Housing Supply

3.20 Policy 1 Housing Supply advises that the Council will make provision for a minimum average of 641 additional homes per annum³ over the ten year plan period and where possible over the fifteen year plan period and sets out a number of ways in which this will be achieved, including “*g - The provision of suitable non self-contained units*”, a category which the glossary confirms includes houses in multiple occupation.

Policy 9 Residential Conversions

3.21 Policy 9 sets criteria for planning applications for the conversions of single dwellings into two or more self contained units or non-self contained accommodation, which would include HMOs with criteria to address the potential harms from such conversions. Criteria e) seeks to ensure that there will not be a detrimental impact on the housing choice in the locality.

3.22 The supporting text advises that the policy seeks to ensure that older properties are efficiently to increase the choice and supply for smaller households as an alternative to purpose-built flats. It refers to houses that are ‘too large for single occupation’ and notes that the existing housing stock comprising of small and medium size family dwellings continues to play an important role in meeting housing need.

3.23 The potential adverse external effects of conversions are set out in para 2.1.72 which clarifies that the Council will resist conversions where they may result in a traffic hazard and be detrimental to the amenities of the residential area by reason of noise, visual impact or other inconvenience.

3.24 Para 2.1.73 specifically addresses non-self-contained units, advising that they should be retained and improved where appropriate, and supporting applications for such accommodation if it provides a high standard living environment as defined in this and other policies in the plan and relevant Environmental Health standards are met.

Policy 4 Housing Design

3.24 Policy 4 requires all new housing developments to achieve a high standard of design and layout whilst enhancing the quality of local places. Housing schemes will also need to respect local character, spatial standards, physical context and density. The policy sets out a number of criteria which are expected to be demonstrated.

Housing

3.25 The 2004 Housing Act (sections 254 & 257) defines a HMO where a building or part of a building

³ Once adopted, the new London Plan will increase Bromley's housing target to 774 homes per annum.

- *“is occupied by more than one household and where more than one household shares, or lacks an amenity, such as a bathroom, toilet or cooking facilities;*
- *is occupied by more than one household and which is a converted building, but not entirely into self-contained flats (whether or not some amenities are shared or lacking); and or,*
- *is converted into self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations (known as S275 HMOs), and at least one third of flats are occupied under short tenancies.”*

- 3.26 To regulate the management and safety of larger, more complex HMOs, in response to the risk from hazards associated with fire and poor hygiene, the Housing Act 2004 introduced a national mandatory licensing scheme for all three storey HMOs occupied by five or more unrelated persons. The legislation became operative on 6 April 2006. New regulations came into force on 1 October 2018 which removed the 'three or more storeys' criteria, effectively extending the mandatory scheme to include most houses and flats occupied by five or more people in two or more households who share a kitchen, bathroom and/or toilet facilities.
- 3.27 The draft Bromley Housing Strategy advises that Bromley has a lower proportion of socially rented housing than elsewhere in London – 14%, compared to an average of 23%. In May 2018, 302 households were deemed homeless and accepted on to the Housing Register. HMOs can play a role in housing those in identified housing need.
- 3.28 The draft strategy highlights that only a small proportion of HMOs are regulated and monitored and that unregulated conversions are often done cheaply and without due attention to safety. It is noted that the overall quality of housing in Bromley is not fully known, as the last survey of housing conditions was carried out in 2005. Private tenants are often reluctant to complain about rogue landlords as they fear eviction, so complaints may not be a reliable indication of the situation. However, issues that are reported to the Council's Public Protection Team include severe overcrowding, serious cold and damp issues and lack of proper facilities for cooking, washing and hygiene.
- 3.29 There have been an increasing number of complaints about poor quality repairs in housing association homes. The draft Housing Strategy suggests the widening of HMO licencing and investment in resources to monitor and enforce this.

HMOs in Bromley

- 3.30 Bromley currently has 154 licenced HMOs, as identified through the mandatory licensing regime. This quantum has increased since July 2018 when Bromley had 82 mandatory registered HMO's, due largely to the widened mandatory licensing regime in October 2018. A council report published in advance of the October 2018 changes anticipated an increase to 219 registrations, to cover all HMOs of 5 or more individuals; however this scale of increase has not materialised. 19 of the 154 licensed HMOs (12%) are flagged as 'minimum standards' HMOs, the majority of which are in the Cray Valley.

- 3.31 The purpose of the mandatory licensing regime is to ensure that larger HMOs - those that are likely to present the most significant health and safety risks - are known to the local authority, requiring evidence that appropriate management arrangements have been made for the property, and that internal conditions are satisfactory.
- 3.32 Mandatory HMO licensing (since the new regulations came into force in October 2018) is required where HMOs meet the following criteria:
- Occupied by **five or more** people in two or more households, and
 - One or more amenity in the HMO is shared, or
 - One or more unit of accommodation is not entirely self-contained
- 3.33 Whilst under the October 2018 mandatory licencing requirements the Council will record HMO's consisting of 5 or more people from 2 or more households, some of which will fall within Use Class C4, this mandatory licencing scheme does not include all small HMO's currently benefitting from permitted development rights (i.e. properties between 3 and 6 people). There is currently limited data in relation to smaller HMO's consisting of 3 or 4 people, which would require the interrogation of Council Tax, Census, enforcement and / or other data sources.
- 3.34 A local authority may refuse to grant a licence, in the following circumstances:
- The HMO is exempt or ineligible for licensing
 - The HMO cannot be physically or practically brought up to the standards required by the local authority
 - The proposed Licence holder or manager is not a fit and proper person
- 3.35 There are two further types of HMO Licensing schemes which Bromley do not currently operate:
- Additional HMO licensing – this can be imposed on types of HMOs that do not meet the criteria for a mandatory licence to help manage a wider range of HMOs. For example, an additional licence scheme could be applied to smaller privately rented shared houses HMOs or those occupied by particular social group such as students.
 - Selective HMO licensing - is the licensing in certain areas, for example where there is high demand for housing and/or antisocial behaviour and covering all forms of private rented housing, including HMOs.
- 3.36 There are currently has no plans for any selective or additional licencing schemes for smaller HMO's, although as noted above, the draft Housing Strategy suggests a potential widening of the licensing regime.
- 3.37 Whilst licencing can control the standards of accommodation, the issuing of a licence does not consider the potential range of impacts associated with HMOs.
- 3.38 As noted above, HMOs can have positive benefits in terms of providing housing which meets identified needs. However, there are a number of potential negative impacts associated with HMOs. The 2008 Department of Communities and Local Government report on Housing in Multiple

Occupation⁴ related predominantly to the problems associated with high concentrations of student HMOs, noted a number of negative impacts from this concentration. Whilst some could be attributable to specific student HMO concentrations there are also impacts which are recognisable across the spectrum of HMOs and can lead to concerns being raised relating to:

- negative impacts on the physical environment streetscape and character of the property and area;
- impacts on local amenity;
- the loss of a single family dwellings and the potentially large number of properties throughout the Borough could be affected;
- pressures upon parking provision, and highway safety;
- The standards of accommodation in unregulated HMOs particularly given the 'minimum standards' HMO seen within the licenced sector; and
- Pressures on local services.

3.39 There is no evidence that these impacts will materialise at every HMO, hence there is a need to utilise information from a variety of sources to determine whether there is evidence that HMOs have been causing impacts. Such evidence would be essential to justify future actions to restrict the development of HMOs, such as Article 4 Directions.

3.40 The Council has a number of powers through which any harm arising from development (including HMOs), either individually or cumulatively, can be mitigated.

3.41 In terms of planning powers, Article 4 Directions are a commonly used tool to restrict the scope of permitted development rights (such as the C3 to C4 PD right) either in relation to a particular area or site, or a particular type of development

3.42 Planning Practice Guidance (PPG) advises that the use of article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. There should be justification for both its purpose and extent - a particularly strong justification for the withdrawal of permitted development rights relating to those covering the entire area of a local planning authority. Article 4 Directions can trigger compensation liability, which in this case could be a not insignificant sum. This liability can be removed by giving 12 months' notice prior to any Direction coming into effect; during this period, the PD right can continue to be utilised.

3.43 PD rights can also be removed from new developments by condition.

3.44 The use of article 4 directions to bring smaller HMO's within planning control has become increasingly common across London, with Bromley's five immediate London borough neighbours all having faced significant HMO pressure leading them to introduce article 4 directions, either to specific streets (Southwark), wards (Lewisham) or borough-wide (Croydon, Bexley and Greenwich).

⁴<https://webarchive.nationalarchives.gov.uk/20120919230509/http://www.communities.gov.uk/documents/planningandbuilding/pdf/evidencegatheringresearch.pdf>

- 3.45 It is likely that smaller-scale Directions (e.g. by street) would be related to an immediate issue that has been identified, and hence would likely need to be an immediate Direction in order to effectively tackle the identified issue. This would attract compensation liability which is a significant financial risk even if the Direction only affects a small number of properties. With larger-scale Directions, stronger justification is required as noted in the PPG.
- 3.46 Additionally all neighbouring boroughs have complimented this planning control with expansion of their licencing regimes to smaller HMO's not already covered by the mandatory scheme (i.e. those occupied by 3-4 people), either by area or borough-wide.
- 3.47 Southwark Council introduced two article 4 directions in 2014 and 2016 responding to specific areas of concentrated HMO pressure, whilst Royal Greenwich made a non-immediate Article 4 direction to withdraw this permitted development right boroughwide in 2018 and currently has over 700 licenced HMO's.
- 3.48 In 2017 Bexley confirmed a Boroughwide article 4 direction on the basis of analysis involving a range of data sources including census and private rental sector data, which, in addition to the 380 known HMOs predicted a further 1,025 HMOs across the borough.
- 3.49 Following the introduction of a boroughwide expanded licencing scheme in 2017, Lewisham confirmed a non-immediate Article 4 Direction in January 2020 covering 3 wards where the licensing data and census information indicated the greatest increases in shared households. Also in January this year Croydon Council confirmed a boroughwide article 4 direction, their research having demonstrated that over the past 10 years Croydon had lost over 900 family homes to conversion and to large HMO properties.
- 3.50 Outside of planning powers, Environmental Health can investigate instances of poor quality accommodation and any noise and disturbance that can arise as a result of development; and parking enforcement can investigate issues relating to parking and can put in place measures to alleviate highways impacts in certain circumstances.
- 3.51 HMOs are also often associated with instances of anti-social behaviour, disturbance and noise. However, this is not an inherent issue with HMOs, and relates more to the occupation of HMOs by certain groups, namely students. There is no evidence that HMOs in principle cause specific issues anti-social behaviour, disturbance and noise.
- 3.52 Anecdotally, there have been a number of concerns raised about HMOs, particularly associated with specific individual developments. These concerns often relate to the potential harms noted above, but also raise other more subjective and unevidenced concerns which are not considered relevant to this report, including any decision on whether to pursue an Article 4 Direction.

Planning enforcement data

- 3.53 Since 2010 there have been 27 HMO planning enforcement cases registered; 9 cases are currently 'live'. These cases have been raised with the Council in respect of both large and small HMOs and have been more prevalent in the last 5 years (see table below). Cases include both those requiring permission

and concerns regarding harms caused by smaller HMO's which do not require planning permission.

- 3.54 There have been 4 enforcement cases relating to possible HMOs registered since the beginning of the year, having caused nuisance and / or concern to the local communities.
- 3.55 All cases are being assessed to establish whether enforcement data highlights specific issues that would warrant further action.

Year	Number of enforcement cases registered
2010	1
2011	0
2012	1
2013	4
2014	0
2015	2
2016	3
2017	6
2018	3
2019	3
2020 (up to 5 th May)	4
Total	27

Public Health and the lessons from the Global Pandemic

- 3.56 The implications of the current COVID 19 pandemic are now being assessed by local, regional and national Governments. In the UK, public health considerations are likely to have a significant impact on the way we organise our society, including the ways we interact with the places in which we live, work and socialise and our utilisation of public space for travel and pleasure, which will need to be fundamentally realigned in the short, medium and potentially longer term.
- 3.57 This may well involve national and/or regional policy / guidance in relation to HMO's where essential facilities and services are shared or may affect the market for HMO development if there is a perceived litigation risk against landlords who have a duty of care to residents and a responsibility to maintain common areas "in good and clean decorative repair".

Conclusion & Recommendations

- 3.58 This report discusses a number of specific issues relating to HMOs. It identifies that HMOs can have positive impacts but also that there are some common adverse impacts which need to be addressed through various means. Based on the available evidence, there is no obvious indication that HMOs are currently causing adverse impacts across the borough.
- 3.59 Neighbouring boroughs appear to have been more significantly affected by the growth in HMO's, particularly smaller HMOs which are not controlled through the planning process, resulting in the application of area specific or borough-wide Article 4 directions. Currently, officers consider that the available evidence for Bromley does not equate to that which justified article 4 directions in other boroughs, certainly for larger-scale Directions covering wards or the

whole borough. The evidence also does not establish specific areas of concern that would suggest the imposition of smaller-scale Directions, although the evidence of a concentration of 'minimum standards' HMOs in the Cray Valley could suggest potential adverse amenity impacts and could be a specific focus for further evidence gathering.

- 3.60 Given the increased use of article 4 directions to control HMO's on the boroughs borders, there is potential that pressure for HMO's will build in Bromley and, given the concerns already around the impact of current HMOs, there is merit in ongoing work to assess the justification for, and implications of article 4 directions across part / all of the borough; and to work alongside licencing to consider additional / selective licencing.
- 3.61 In line with the draft new London Plan, this ongoing work should also assess the contribution of HMO's to meeting local and strategic housing needs and the relationship with the private rented sector (PRS).
- 3.62 Investigation will involve a range of data sources, including licencing data (increased since October 2018), Census data and other sources to develop the evidence base and to establish an understanding of the trends and spatial distribution of HMOs across the borough, including the impact, number and geographical spread of smaller HMOs, (some, but not all, of which are now known to the Council following the licencing changes introduced in Oct 2018) and the vulnerability across the borough by virtue of the nature of the housing stock.
- 3.63 This will also offer the opportunity to assess the implications of emerging national and regional design guidance and observe any relevant outcomes from the national response to the Covid 19 pandemic. Further consideration could also be given as to whether an HMO specific policy might be introduced through a future review of the Local Plan.

4. POLICY IMPLICATIONS

- 4.1 Policy implications are likely to be mixed and the range of implications will be considered through the further research to be undertaken in response to this report or to support a review of the Local Plan . Whilst there may be implications for the ability to address housing need there may be scope to enhance standards and support, for example, the need to operate safe social distancing as society adjusts to alternative ways of living in light of the Covid-19 pandemic

5. FINANCIAL IMPLICATIONS

- 5.1 None from report, but further actions could have financial implications

6. LEGAL IMPLICATIONS

6.1 None from report, but further actions could have financial implications.

Non-Applicable Sections:	Impact on Vulnerable Adults and Children Procurement Implications Personnel Implications
Background Documents: (Access via Contact Officer)	South East London Strategic Housing Market Assessment (2016) Article 4 Direction / licencing information (Borough websites)