



**LONDON BOROUGH OF HILLINGDON**

## **HOUSING OVERVIEW AND SCRUTINY COMMITTEE**

**2003/04 Report**

### **HOUSES IN MULTIPLE OCCUPATION**

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## **1) Synopsis**

Housing Overview and Scrutiny Committee undertook a project on Houses in Multiple Occupation (HMOs) between October 2003 and February 2004. This included taking evidence from a range of specialist witnesses, leading authorities and consideration of commissioned reports.

This is the report that emerged from that exercise. It includes definitions, legal situation, local HMO market, trends and demand, regulatory and control powers, local authority staffing and responsibilities, good practice and an outline HMO strategy for the authority.

## **2) Summary of Main Findings**

**1. There are 720 known HMOs in the Borough, but the estimated number is in the region of 1500. Eighty percent are small HMOs of 2 storeys or less (paras 1 and 2, page 2).**

**2. There is an increase in public concern and complaints about HMOs. These are generally around disturbance from residents, parking and matters external to the property (para 19, page 5).**

**3. Local authority powers are limited in dealing with unsatisfactory HMOs due to recent case law decisions (paras 7 to 14, pages 3 and 4)**

**4. Draft Housing legislation in Parliament may make any necessary enforcement more difficult (paras 22 to 25, page 5)**

**5. Compared to leading authorities Hillingdon is under resourced in dealing with HMOs (paras 29 to 33, pages 7 and 8). In this regard officers have submitted an unavoidable item of £35,000 in the Housing Medium Term Financial Forecast submissions for 2004/2005. This is the equivalent of one officer, for one year, and is required to identify and risk assess HMOs in order to comply with the requirements in the current Housing Bill (paras 33 to 41 below).**

**6. Once HMOs have been identified through this process, an informed bid will be made for necessary Housing staff to regulate the numbers found. It is not an option to identify an additional and substantial number of HMOs and do nothing about them (paras 34 to 35).**

**7. Revised Supplementary Planning Guidance on HMOs is appropriate and the Committee notes its inclusion in the forthcoming Cabinet Report to 12<sup>th</sup> February Cabinet (para 27, page 6)**

**8) An outline two phase HMO strategy is set out which is recommended to Cabinet through the consultation which has taken place (paras 37 to 47, pages 7 to 8).**

### **3) Reasons for the Project**

1. There has been a clear growth of HMOs in Hillingdon over the past 5 years. Many of these properties only become known to the Council through complaints, or by chance. Only a proportion of more responsible owners go through the process of obtaining planning permission and meeting physical housing standards.
2. Members have become concerned at this growth and the difficulties this has caused in terms of dealing with complaints and the effect on the regularisation process through Planning and Housing.
3. In this respect the HMO increase, from 720 to possibly 1500, has outstripped officer resources in terms of identification and necessary controls. The report recommends a framework to accurately identify our HMO stock and, with a subsequent report, on how to regularise those able to meet statutory criteria and be retained. This is intended to tie into the recommendations expected in the Cabinet Report on HMOs due at 12<sup>th</sup> February Cabinet.
4. It is accepted that local authority resources for HMO enforcement are limited in Hillingdon compared to good practice boroughs. Once the factual HMO position has been established, therefore, this Committee would expect to see realistic proposals, including resource implications, brought to a suitable Cabinet meeting later in 2004, or the first half of 2005.

### **4) General Background**

1. There are 720 known Houses in Multiple Occupation (HMOs) in the Borough. Of these, over 80% of these comprise small residential dwellings of two stories or less, most typically three bedroom semi-detached houses. The remainder comprise properties with three or more stories (including converted office buildings), flats above shops or flats in multiple occupation in larger blocks.
2. Responsibility for Enforcement and Regulation within the Council is largely split between Planning and Housing. The Planning Enforcement Team deal with planning applications for HMOs and for taking enforcement action to stop HMO use where a planning application is not forthcoming, or an application has been refused. Planning also has overall responsibility for the formulation of planning policy and guidance through the Unitary Development Plan (UDP), replacement Local Development Framework and SPG.
3. Housing is responsible for enforcement of standards in HMOs, regardless of whether they have or require planning permission (a national anomaly affecting all councils). This includes fire safety (following consultation with the fire authority), numbers of bathrooms, showers and kitchens, repairs and standards of management and overcrowding.
4. There is one officer only in Housing responsible for HMOs. He deals with complaints from tenants, enforcing standards, the Borough wide HMO Registration Scheme and routine inspection of high-risk premises, including those used for bed and breakfast accommodation. The Planning department does not have any staff with specific responsibility for HMOs.

5. The HMO Registration Scheme is compulsory. It was introduced in September 1997 and is intended to bring properties up to minimum standards. Some grant assistance is available to landlords to help with the costs of complying with Registration. Between 25 and 30 properties are registered annually. To date 181 properties are registered under the scheme.

6. Planning and Housing presently inform each other when new HMOs are brought to their attention.

## **5) Definitions of HMOs Housing**

7. The current definition of HMOs under Housing legislation is that of a house or flat occupied by persons who do not form a single household. All HMOs falling within this definition come within Housing controls.

8. However, case law decisions, most crucially the 'Sheffield v. Barnes' case, have resulted in certain categories of what were previously HMOs being excluded from the definition and hence local authority control.

9. The result of this case means that most student households, or others where there are a group of friends sharing, are now not 'HMOs' in legal terms. They are taken to be 'one household' causing difficulties when households of this type cause problems. Council action and control is restricted to the use of Noise Nuisance legislation and taking the matter up with the landlord.

10. Only HMOs of three storeys or more place a statutory duty on councils to inspect and take action; this duty was only introduced relatively recently. As over 80 per cent of Hillingdon HMOs are two storeys or less, the Council has a limited statutory duty where action must be taken. However, legislation and Government advice expect local authorities to have policies towards HMOs and to deal with housing enforcement and control issues on a planned basis, using both Housing and Planning legislation. This is the approach currently adopted by the Council.

## **Planning**

11. In respect of Planning controls the legislation and definitions are set under Town and Country Planning legislation. The definition is broadly similar to that in the Housing Acts. HMOs used by up to six people living together as a single household, fall within the same planning use class as residential housing and are exempt from the need for planning permission. Student houses, therefore, fall outside of the control of the planning system where there are six or fewer students. In addition, HMOs that have been in existence for over 10 years continuously have established use rights and are therefore excluded from action under development control powers.

12. Shared houses with more than six occupiers do represent a change of use and require planning permission. It is in this respect that Housing and Planning definitions vary most significantly.

13. Planning permission is also required where less than six people are not living together as a single household. Assessing whether occupiers of a property are living together can be a matter of fact and degree and presents the biggest difficulty for planning enforcement officers.

14. In this respect, recent case law through the “Regina. versus Kettering BC” case in 2002, has held that a common need for support and resettlement amongst tenants, rather than simply living as one household, can be sufficient for the property to be exempt from planning control. Again, this has the potential to reduce further the properties within local authority planning control.

15. Regardless of other factors, where tenancies are less than 90 days, a property will normally be defined as a hostel, rather than HMO. The change of use of a house to a hostel (unlike an HMO) is generally regarded as a loss of housing accommodation and so contrary to UDP Policy. Planning permission is normally refused for such conversions.

#### Building Control

16. There are also specific Building Control responsibilities upon owners who convert or allow their property to be used for multiple occupation. These generally apply to larger units, particularly in conversions to rooms, or flats above commercial premises.

### **6) Trends in demand**

17. HMOs are required to house those unable or who do not wish to buy privately and those not eligible for, or who do not want, council or housing association accommodation. People reliant on this sector in the borough include key and other local workers, people intending to stay for short periods, students, single wage earners, homeless persons, asylum seekers and younger people in general.

18. Over the past 5 years there has been widespread growth in the number of HMOs in Hillingdon. This growth is expected to continue. The areas where growth appears to be coming from include:

- Increasing demand from students including an additional 2,000 expected to transfer from Isleworth to Uxbridge campus, subject to the granting of planning permission for the expansion of Brunel;
- Terminal 5 temporary workers, anticipated to be in excess of 2,000 (although a proportion of these will be housed in a large ‘on site’ hostel and various caravan sites);
- An increasing tendency for service industry companies around Heathrow to enter into agreements with local owners to house workers.
- Housing of aircrew in ‘hotel annexes’, essentially HMOs in the south of the Borough.
- General demand from young and mobile wage/salary earners, unable to acquire property and who subsequently find a room or bedsit to rent in Hillingdon.
- Nurses and other Health staff through Hillingdon NHS Trust
- Some use by the Council, either directly or through move on agencies, for single persons or couples for whom there is a responsibility under homeless or other legislation. This includes Social Services schemes for 16 plus, and various hostel and supported accommodation schemes.
- Use for Asylum seekers including those placed there by the Government Asylum Agency.
- Some use of HMOs in the Borough by other councils placing, social services or Asylum cases in Hillingdon accommodation.

## **7) Current Concerns**

19. The increase in HMOs has led to an increase in complaints from members of the public and concern raised by elected members. These may be summarised as :

- Extension and internal conversion of a property without planning permission or Building Control approval. Includes conversion of outbuildings such as garages.
- Use of property as an HMO without fire precautions or basic minimum levels of baths, showers, toilets and kitchens.
- Poor internal and external standards of management.
- Unkept external appearance and lack of maintenance
- Gardens overgrown with accumulations of refuse and abandoned/dumped household items.
- Pressure on car parking due to lack of provision and high density occupation.
- Noise and disturbance to neighbours from HMO residents
- Anti-Social Behaviour from some HMO residents

20. Clearly not all HMOs cause problems, and many go unnoticed. However, others that may cause problems, often student or other 'single household' properties are perceived by the public as HMOs when in fact they are not (for the legal reasons round 'one household' above). As HMO legislation cannot be applied any intervention is generally through Noise legislation or, in some cases, the Public Health Acts

## **8) Regulatory and Control Powers Available**

### Housing

21. Existing powers are set out in the Housing ACT 1985 as amended. These relate to : overcrowding; levels of occupancy in relation to baths, showers, toilets and kitchens present. There are also 1990 Management Regulations in respect of internal and external management, cleanliness and up keep of common parts and refuse arrangements. Environmental Protection Act and general public health legislation can also be brought in to assist

22. It is anticipated that forthcoming changes proposed by the Housing Bill will address the loophole created by the Sheffield v. Barnes "one household" problem above. This will bring many more HMOs into statutory Housing control. No changes are scheduled for planning legislation at present.

23. However, powers in the Bill to improve conditions in HMOs are a change from the current basis of minimum amenities and fire precautions, to one of risk assessment, based upon a health and safety/hazard format. Future enforcement action will be based on the risk assessment and rating for a particular property. It is not clear yet what the final form will be but it does appear to represent a reduction in control, particularly for smaller properties such as those in Hillingdon.

24. Of more concern is that Registration schemes are to be stopped and replaced by Licensing schemes. Licensing schemes apply to larger HMOs of 3 storeys or more, which will exclude most of the properties in Hillingdon. The transitional arrangements between the 2 types of scheme are still being considered by Government.

25. Licensing is more prescriptive than Registration and is a matter for careful consideration. It will be possible for individual boroughs to apply to ODPM for licensing schemes that will include smaller properties. Hillingdon is likely to be in a position to do

this and an appropriate recommendation will be made when the final details are available and their implications for the Borough assessed.

#### Planning

26. There are no specific, statutory planning controls in respect of HMOs and proposals for HMOs are considered in the same way as all other planning applications. Proposals to convert dwellings are determined in accordance with the provisions of the Hillingdon UDP and any other material considerations.

27. There is, however, specific Supplementary Planning Guidance (SPG) on HMOs. This has been the subject of public consultation and carries considerable weight as a material consideration in the determination of applications. The current SPG on HMOs has, therefore, played a central role in the assessment of planning applications. A revised SPG will be considered by Cabinet on the 12<sup>th</sup> February.

28. As above, where properties are being used by less than six persons, living together as a single household, planning permission is not required. However, landlords are encouraged to apply for a Certificate of Lawful Development. If granted, this provides formal clarification that their property can be used in a prescribed manner without the need for planning permission.

#### **9) Regulatory Responsibilities within Hillingdon**

29. The resources available within the Council are currently insufficient to identify all properties, establish whether they require planning permission and to take appropriate steps to regularise the situation. Only known HMOs, or those brought to the Council's attention, are being dealt with by Planning and Housing.

30. Planning have recently appointed an additional enforcement officer, which has been of direct assistance. There are three planning enforcement officers with responsibility for all planning enforcement matters covering a wide range of land use planning breaches and alleged breaches. HMOs are not necessarily prioritised, given the range of other enforcement work which requires attention.

31. Within Housing, there is one HMO officer in the Private Sector Housing section. The HMO Officer is responsible for complaints from tenants, individual enforcement (often with Planning), programmed inspection of existing hostels, hotels and higher risk premises, registration of new HMOs and HMO grants of all types. The remaining HMOs used to provide temporary accommodation for the homeless, which no longer include families, is inspected by the Temporary Accommodation officer in Housing. That officer inspects all temporary accommodation, the majority of which is self-contained.

32. The Building Control Service deal with fire requirements and other Building Regulation HMO matters through their team structure.

33. Any significant increase in the number of identified HMOs will require additional resources in both the Planning and Housing departments given the substantial workload generated prior to, during and after the processing of an HMO application/registration. It was clear from the evidence received from Croydon and Birmingham that Hillingdon is under resourced to deal effectively with HMOs. Officers in Housing have put in growth bids for an additional HMO officer in the past, but due to the overall financial position of the Council at the time it was not possible to proceed.



34. In this regard officers have submitted an unavoidable item of £35,000 within Appendix A of the Housing Medium Term Financial Forecast submissions for 2004/2005.

This is the equivalent of one officer, for one year, and is required to identify and risk assess HMOs in order to comply with the requirements in the current Housing Bill (see also paragraphs 38 to 41 below).

35. Once the actual number of HMOs has been identified the Council will be under an obligation to inspect them in terms of complying with fire safety, fitness and amenity provision. This will require additional staff resources and will form the basis of an informed growth bid for 2005/2006.

36. It is not an option to identify an additional and substantial number of HMOs and do nothing about them. Officers and the Council could be liable if there was a fire death or serious injury in an HMO it was aware of, but had not taken or planned appropriate action. The Local Government Ombudsman would take a similar view.

### **10) A Hillingdon HMO Strategy**

37. Existing ways of working and resource allocation are considered to be insufficient to deal with the current growth in HMOs, any expansion of Brunel or to ensure that adequate standards are met. The following are outlined as steps to address the situation and integrate the changes set out in the Housing Bill, as part of an HMO Strategy for Hillingdon.

38. It is essential to identify as accurately as possible the current number of HMOs in the Borough. The starting point for this is existing Council records and public documents such as the Electoral Register. It is anticipated that a 'long list' of 1000 to 1500 properties would result from the exercise. This is likely to take one officer up to 4 months and the list would be updated thereafter on an ongoing basis.

39. It will then be necessary to visit most of the properties identified to establish basic details: ownership; tenants; amenities; condition; safety and any need for planning permission. Where planning permission is not required, landlords would be encouraged to apply for a Certificate of Lawful Development which, if granted, would confirm that the manner in which they are using or proposing to use their property, is exempt from the need for planning permission. This borough-wide survey is likely to take up to 8 months of officer time or 3-4 months each for two officers.

40. This exercise would be combined with an advice and publicity campaign for owners in relation to standards, planning requirements and any grants that may be available.

41. From the information obtained properties would also be risk assessed and prioritised for action. This would be done as an admin/technical task parallel to the site surveying process. Intervention and enforcement would continue to be on a joint basis between Planning and Housing.

42. Based upon this exercise a revised enforcement and control programme would be drawn up. This would take the form of a combination of encouragement and advice where standards are acceptable, and where Planning Permission has been granted, to removal of HMO use through appropriate use of powers.

43. The introduction of a Borough-wide Accreditation scheme would be introduced (a) as an incentive to raise standards with existing and new HMOs (b) to ensure that all properties have appropriate certification and (c) for use in conjunction with all new major developments likely to produce large numbers of HMO accommodation.

44. Officers from different Council services to implement through a formal protocol arrangements which prevent the placement of individuals or families into HMOs, by LB Hillingdon, without statutory requirements having first been met. The use of a borough-wide accreditation scheme may assist in this matter, by providing an up-to-date list of those properties suitable for immediate HMO use.

45. The first phase of the Strategy would be undertaken within 1 year as above. The extent of the programme and the resources required would be determined by the number of properties identified and the risk assessment results obtained. Subject to a report to Cabinet on these matters, prior to this second stage of enforcement and regularisation, this phase would take a further 2 years to complete.

46. Depending on the outcome of the Housing Bill, additional steps are suggested, which would also include those properties presently excluded by the Sheffield versus. Barnes loophole. These would include:

- Dealing with larger portfolio holders on an individual basis to achieve economies of scale.
- Use of the database obtained through the first part of the proposed exercise to contact all other known owners regarding Planning and Housing requirements, information and advice including any grant aid available.
- Possible adoption of a licensing scheme to replace the current Borough-wide Registration scheme
- Systematic enforcement action of properties on a risk assessment basis, starting with higher risk properties.
- Wider use of Housing Act powers to prevent further letting if standards are not met, known as 'Directions'. (This power may be removed through the current Housing Bill).
- Review of renewal grant assistance arrangements as the present contributions for qualifying owners, towards the costs of Registration is not sustainable on a wider basis without additional capital resources.

47. A commitment towards establishing and abiding to a pan-London protocol on out-of-borough placements is considered an important element in limiting the unauthorised HMOs. It is also important to improve working arrangements with the Government Asylum Agency, given their role in placing asylum seekers directly into Hillingdon accommodation. The Agency have only recently begun to inform the Council of addresses where asylum seekers are placed. This is in fact a national problem and a protocol needs to be sought through the LGA and ALG.

## **11 Acknowledgements**

48. The Committee would like to thank those officers, property owners and agents who attended and gave evidence as part of this Project.

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## **12) Background Documents**

- Hillingdon Unitary Development Plan adopted September 1998
- Houses in Multiple Occupation and other non-self contained housing, October 2000, Supplementary Planning Guidance
- HMO Project Reports to Housing Overview and Scrutiny Committee of 14<sup>th</sup> October 2003 and 14<sup>th</sup> January 2004 respectively.