

**Annex E: Proposed Amendments to the Controlling the Concentration of
HMO's SPD**



SUPPLEMENTARY PLANNING DOCUMENT

DRAFT **Controlling the Concentration of Houses in Multiple Occupation**

Approved 2012, Amended 2013

City of York

Local Plan

Draft Controlling the Concentration of Houses in Multiple
Occupation Supplementary Planning Document
Approved April 2012, amended 2013

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Contents

1.0	Introduction	1
2.0	Supplementary Planning Documents	1
	Purpose	1
	Scope	2
3.0	Context	4
	HMO Definition	4
	Powers under planning legislation to manage the spatial distribution of HMOs	4
	Powers under housing legislation to improve the management and condition of HMOs	5
4.0	Policy Framework	6
	Local Plan <u>(2005)</u>	6
	Emerging Local Plan Core Strategy Submission (Publication)	6
5.0	Policy Approach	7
	Assessing Concentrations of HMOs	10
	<i>Neighbourhood Level</i>	10
	<i>Street Level</i>	11
	Residential Amenity	13
	<u>Regularising Existing HMOs</u>	15
	<u>Flexible C3/C4 Permissions</u>	16
	Enforcement	16
	<u>Pre-application Advice</u>	16
6.0	Monitoring and Review	16

Further Advice
Background Papers

Annex 1: Local Plan (2005) Extract
Annex 2: ~~Core Strategy Submission (Publication)~~ Emerging Local Plan
Extract

Figures

Figure 1: Extent of Article 4 Direction - The Main Urban Area	3
Figure 2: Neighbourhood Area	10
Figure 3: Street Level	12

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1.0 Introduction

- 1.1 ~~The National Planning Policy Framework National policy guidance provides the context for local planning policy to meeting the overarching objective of creating sustainable, inclusive and mixed communities. ensure that balanced and mixed communities are developed. With the aim of avoiding situations where existing communities become unbalanced by the narrowing of household types and the domination by a particular type of housing.~~ Within this context, a key City of York Council priority from its *Sustainable Community Strategy, York – A City Making History 2008 -2025 (2008)* is building confident, creative and inclusive communities that are strong, supportive and durable.
- 1.2 Houses in Multiple Occupation¹, or HMOs as they are commonly referred to, represent a significant and growing proportion of the mix of housing in York. They make an important contribution to York's housing offer, providing flexible and affordable accommodation for students and young professionals, alongside low-income households who may be economically inactive or working in low paid jobs. Whilst HMOs are regarded as a valuable asset to the city's housing offer there has been debate about the wider impacts that concentrations of HMOs are having on neighbourhoods and increasing rental costs. This debate has mainly been driven by the increasing number of student households in the city and focuses on the detrimental impact large concentrations of HMOs can have on neighbourhoods, such as the loss of family and starter housing.
- 1.3 An evidence base has been developed by the Council to explore the distribution and impact of HMOs, typically occupied by student households, which indicates that it is necessary to control the number of HMOs to ensure that communities do not become imbalanced. This control ~~is~~ will be achieved through an Article 4 Direction which ~~came~~ will come into force on 20 April 2012. This removes permitted development rights, requiring a planning application to be submitted to change a property into an HMO. This Supplementary Planning Document (SPD) provides guidance on how these planning applications will be determined.

2.0 Supplementary Planning Documents

Purpose

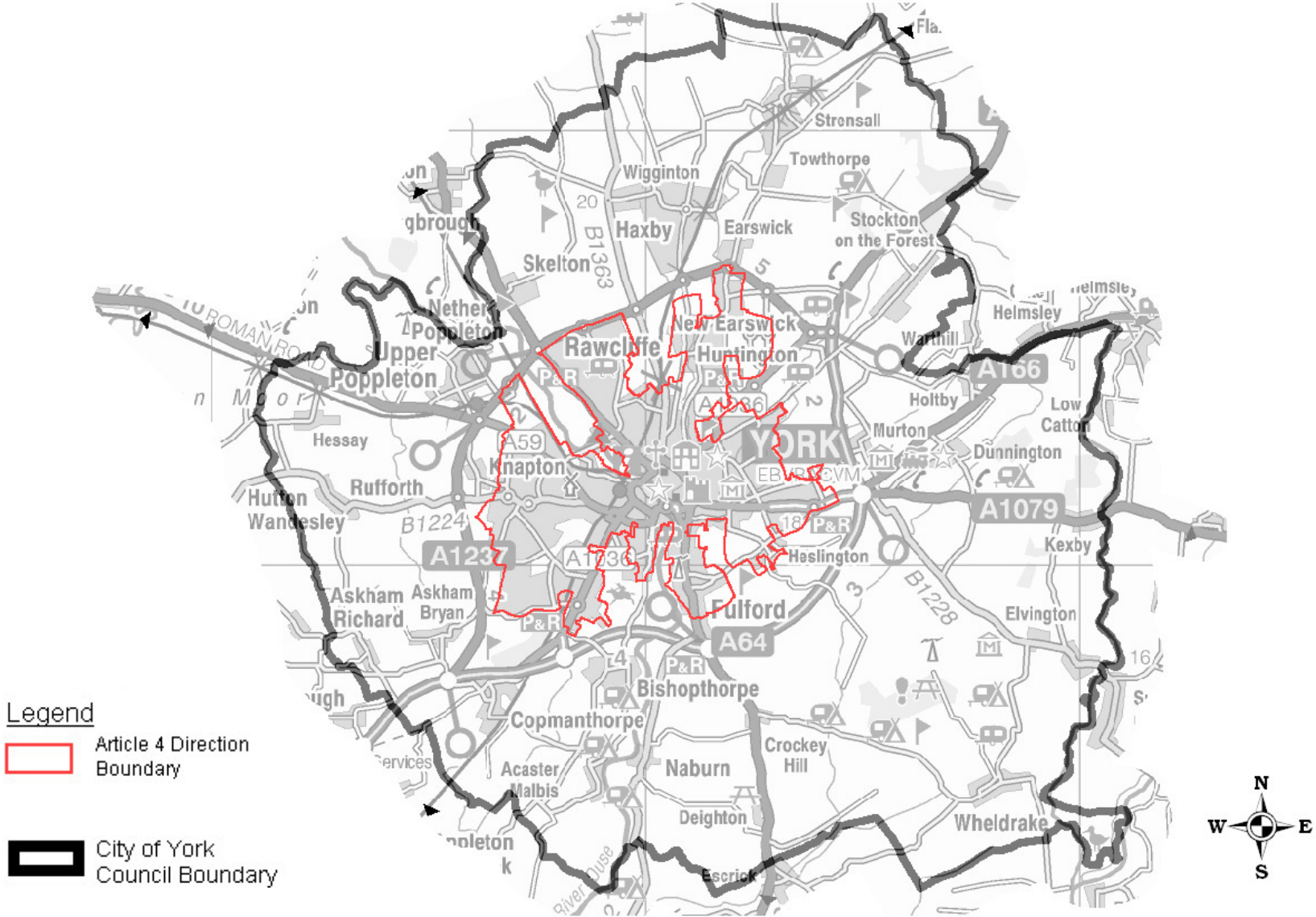
- 2.1 An SPD is intended to expand upon policy or provide further detail to policies in Development Plan Documents. It does not have development plan status, but it will be afforded significant weight as a material planning consideration in the determination of planning applications. This SPD remains a draft until such a time as there is an adopted development plan in York. Although a 'draft' SPD this documents is a material consideration in the planning application process.

¹ A House in Multiple Occupation or HMO can be defined as a dwelling house that contains between three and six unrelated occupants who share basic amenities

Scope

- 2.2 The guidance will apply to all planning applications for development consisting of a change of use of a building from a use falling within the Use Class 'C3' (a family dwelling house or flat for example) to Use Class 'C4' (small HMO) from dwellinghouse (Use Class C3) to small HMO (Use Class C4) within the main urban area, as shown at Figure 1. It will also apply to planning applications for the change of use from ~~dwellinghouse~~ Use Class C3 to 'sui generis' large HMOs (Use Class 'sui generis') and flexible permissions within Use Class C3 to C3/C4 or C3/Sui Generis large HMOs across the whole Local Authority area. Please see Section 3.0 below for further information with regard to what constitutes an HMO and Section 3.0 for information regarding the Council's Article 4 Direction
- 2.3 The guidance will not apply to purpose-built student accommodation and will not apply retrospectively to existing HMOs. It should be noted that change of use from a small HMO (C4) to dwellinghouse is permitted development and does not require planning permission. However, permission is still required to change a large HMO (sui generis) into a dwellinghouse.
- 2.4 In addition to this guidance, other policies from the Local Plan (2005) and emerging ~~Core Strategy~~ Local Plan may also be relevant to the consideration of an HMO planning application, depending on individual circumstances. This SPD provides guidance only; please contact the Council's Development Management team for further advice (contact details are provided at the end of this document).

Figure 1: Extent of Article 4 Direction – The Main Urban Area



3.0 Context

HMO Definition

- 3.1 On 6 April 2010, amendments were made to the Use Classes Order and the General Permitted Development Order to introduce a new class of type C development – C4 'Houses in Multiple Occupation'. These are commonly referred to as 'small HMOs'. 'Sui Generis'² HMOs where there are 6 or more unrelated people are still considered as HMOs, but these are now commonly referred to as 'large HMOs' which, in broad terms, consist of more than six occupants³. The new use class, C4, describes, for planning purposes, a house that contains between three and six ~~three, four or five~~ unrelated occupants who share basic amenities. However, in accordance with Circular 08/2010: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation⁴, properties that contain the owner and up to two lodgers do not constitute HMOs for these purposes. To classify as an HMO, a property does not need to be converted or adapted in any way.

Powers under planning legislation to manage the spatial distribution of HMOs

- 3.2 Following the formation of the Coalition Government, changes were made to the General Permitted Development Order on 1 October 2010 making changes of use from Class C3 (single household dwellinghouses) to C4 (HMOs) permitted development. This means that planning permission for this change in use is not required. Should Local Authorities wish to exert tighter planning controls on the development of HMOs, permitted development rights would have to be removed through a planning mechanism called an Article 4 Direction.
- 3.3 Under an Article 4 Direction planning permission, within a given area, would then be required for a change of use from a dwelling house to an HMO. It should be noted that the effect of an Article 4 Direction is not to prohibit development, but to require a planning application to be submitted for development proposals, to which it applies, in a particular geographical area. This is what has been done in York for the main urban area.
- 3.4 On 15 April 2011 the Council published its intention to implement an Article 4 Direction relating to development comprising change of use from Class C3 (dwellinghouse) to a use falling within Class C4 (HMO). The effect of the

² In a planning sense Sui Generis relates to uses that do not fit within the four main use class categories.

³ It should be noted that a property does not automatically become a large HMO or 'sui generis' just because it has more than six occupants. A change of use has to be 'material' and it is possible that individual circumstances may mean that an HMO with, for example, seven people could be assessed as not being materially different from a six person HMO. In which case, a material change of use has not occurred and planning permission would not be required.

⁴ See Annex A, paragraph 6 of Circular 08/2010: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation, Communities and Local Government, November 2010

Direction is that within the main urban area of York (see Figure 1 on Page 3), permitted development rights are removed for this type of development. Planning permission is therefore required for a change of use within the defined area from Class C3 to Class C4 ~~once the Article 4 Direction is in force~~. The Article 4 Direction, confirmed at Cabinet on 1 November 2011, applies to the main urban area as shown within the red line boundary on the map at Figure 1 and ~~came will come~~ into effect from 20 April 2012.

Powers under housing legislation to improve the management and condition of HMOs

- 3.5 The standard and management of existing HMOs is primarily controlled through the Housing Act 2004 and Regulations. Under this Act, Local Authorities have a duty to license any HMOs that are three storeys or over and are occupied by five or more persons. This is known as mandatory licensing. Authorities also have the option of extending licensing (known as additional licensing) to other types of HMO or to specific areas (known as selective licensing). Other actions may include a landlord accreditation scheme or street/community wardens to deal with anti-social behaviour.
- 3.6 The Council's current approach recognises that HMOs are a vital source of accommodation within the City used by a range of tenants and is to:
- rigorously enforce the mandatory provisions of the Act by licensing larger HMOs (three storey and more with five or more unrelated occupants);
 - ensure that we fulfil our duty to inspect all licensed HMOs;
 - respond to and investigate complaints about general housing conditions and management; we use the legal tool called the Housing Health and Safety Rating System to assess the condition and the HMO management regulations which provides a framework for managers to ensure that the accommodation including the outside space is kept in a good order, tidy and clean; and
 - investigate complaints of overcrowding; although the problem of overcrowding in the city is low we have found that HMOs can be more prone to overcrowding than other sectors.
- 3.7 This approach is complemented by the Code of Best Practice⁵ for shared student accommodation. This has been developed in partnership with the universities. It provides clear information about housing standards and is part of the Council's strategy to ensure that students feel welcome and reassured by removing some of the uncertainties from house hunting.
- 3.8 The Council is currently pursuing the implementation of an accreditation scheme which will be in place by the end of 2013. The new YorProperty scheme is voluntary and landlords and/or agents can sign up for accreditation

⁵ Please see http://www.york.gov.uk/downloads/file/1516/letting_property_to_students-the_2013_2014_code_of_best_practice_for_landlords_and_students
http://www.york.gov.uk/housing/hmo/Landlords_accreditation_scheme/

if they agree to meet certain standards which promote safe accommodation. Once accepted, properties of accredited members will be marketed on a branded website, supported by City of York Council. The aim behind accreditation is to provide landlords with information and skills to build successful businesses, to help tenants identify safe, high quality accommodation and for self-certification of private rented properties to dominate. As the scheme comprises an element of self-regulation on the parts of landlords and letting agents, 10% of properties registered with the scheme will be inspected annually to ensure the validity of the scheme. More information about the scheme can be found at www.yorproperty.co.uk. This will seek voluntary compliance by private landlords with good standards in the condition and management of their properties and their relationship with their tenants. Additional licensing which would require all HMO landlords to obtain a license is also being considered by the Council.

- 3.9 The exercise of powers available to the Council under the Housing Act 2004 does not directly control the scale and distribution of HMOs but importantly, it does provide opportunities for intervention to secure improvements to the management and maintenance of HMOs. Accordingly, it presents the Council with the opportunity to pursue complementary measures to support its planning policies. These measures cannot be developed through this SPD however and are instead covered by separate legislation.

4.0 Policy Framework

Local Plan (2005)

- 4.1 At the time of preparing the City of York Draft Local Plan (2005) the use class order provided no distinction between a dwelling occupied by one household, such as a family, and that of a dwelling occupied by up to 6 unrelated people. Albeit, shared houses where there are 6 or more residents did not fall within Class C3, and were defined as HMOs and fell within the Sui Generis use class. Accordingly, the Council had very limited control over the occupation of dwellings in the private rented sector by groups of up to 6 people.
- 4.2 It was within this context that Policy H7 'Residential Extensions' and Policy H8 'Conversions' of the City of York Draft Local Plan were written to control the conversion of properties to flats and for Houses in Multiple Occupation (for more than 6 people). These policies, appended at Annex 1 for information, essentially seek to ensure that residential amenity is protected. To support local plan policies Supplementary Planning Guidance on extensions and alterations to private dwelling houses was prepared which provide a reference for householders, builders and developers intending to alter or extend residential buildings.

~~Core Strategy Submission (Publication)~~ Emerging Local Plan

- 4.3 Work is currently underway on preparing a new Local Plan for the City of York. The Local Plan is a citywide plan which will help shape future development in York up to 2030 and beyond. It sets out the opportunities and

~~policies on what will or will not be permitted and where, including new homes and businesses. Using existing evidence base work and consultation undertaken as part of the Local Development Framework process as a starting point the council have prepared a draft Local Plan document that has been through a consultation process. Policy ACHM6 'Houses in Multiple Occupation' shown at Annex 2 replicates the policy approach set out in the original April 2012 Draft SPD in seeking to control the concentration of HMOs where further development of this type of housing would have a detrimental impact on the balance of the community and residential amenity. Policy CS7 'Balancing York's Housing Market' of the Core Strategy Submission (Publication) (2011) supports housing development which helps to balance York's housing market, addresses local housing need, and ensure that housing is adaptable to the needs of all of York's residents throughout their lives. This will be achieved in a number of ways as set out in the policy, which is shown at Annex 2. With regard to HMOs, the Local Development Framework (LDF) will seek to control the concentration of Houses in Multiple Occupation, where further development of this type of housing would have a detrimental impact on the balance of the community and residential amenity.~~

4.4 The emerging Core Strategy Local Plan continues to recognise that higher education institutions and the student population form an important element of the community and the presence of a large student population contributes greatly to the social vibrancy of the City and to the local economy. The Council are committed to ensuring their needs are met and will continue to work with the City's higher education institutions in addressing student housing needs. However, it is also recognised that concentrations of student households, often accommodated in HMOs, can cause an imbalance in the community which can have negative effects. These can include a rise in anti social behaviour, increases in crime levels, parking pressures and decreased demand for local shops and services, sometimes leading to closures. It can also put pressures on family and starter housing as owner occupiers and buy to let landlords compete for similar properties and have implications for non students seeking accommodation in the private rented sector.

4.5 It is considered that monitoring the spatial distribution and impacts of student housing will allow the Council to identify if it is necessary to prevent an increase in the number of student households in certain areas to ensure communities do not become imbalanced. As discussed in Section 3.0, this control can be achieved through an Article 4 Direction and the removal of permitted development rights, requiring landlords to apply for planning permission to change a property into an HMO.

5.0 Policy Approach

5.1 The policy approach to determining planning applications for change of use to HMO is guided by the emerging Local Plan LDF Vision to build strong communities. ~~for all of York's current and future residents having access to decent, safe and accessible homes throughout their lifetime.~~ A key element of the LDF Local Plan is its role in meeting the needs of specific groups, including students and supporting development which helps to balance York's housing

~~market, maintaining community cohesion and helping the development of strong, supportive and durable communities.~~

- 5.2 There is evidence to demonstrate that it is necessary to control the number of HMOs across the city to ensure that communities do not become imbalanced. A policy approach for the development management for HMOs of all sizes is required. A threshold based policy approach is considered most appropriate as this tackles concentrations of HMOs and identifies a 'tipping point' when issues arising from concentrations of HMOs become harder to manage and a community or locality can be said to tip from balanced to unbalanced.
- 5.3 Whilst there is no formal definition of what constitutes a balanced community, recently, there have been attempts to establish what constitutes a large HMO proportion and the threshold at which a community can be said to be/or becoming imbalanced. Useful precedents have been set in a number of Authorities. For York, through consultation, a threshold of 20% of all properties being HMOs across a neighbourhood and 10% at street level have been established as the point at which a community can tip from balanced to unbalanced.
- 5.4 Under the threshold approach an assessment of the proportion of households that are HMOs is undertaken within a given area. In assessing change of use planning applications, to capture as many different types of shared accommodation as possible the Council will use the following:
- council tax records - households made up entirely of students can seek exemption from Council Tax and the address of each exempt property is held by the Council. This applies to properties occupied only by one or more students either as full time or term time accommodation. Properties falling within 'Halls of residence' on campus will not be included, however some accommodation owned or managed by the universities off campus will included;
 - licensed HMOs - records from the Council's Housing team of those properties requiring an HMO licence will be utilised. These are those properties that are three storeys or over and are occupied by five or more persons;
 - properties benefiting from C4 or sui generis HMO planning consent – in addition to those properties already identified as having HMO permission, where planning permission is given for a change of use to C4 HMO or a certificate of lawful development issued for existing HMOs this will be recorded in the future to build up a clearer picture of HMO properties; and
 - properties known to the Council to be HMOs – this can be established through site visits undertaken by the Council's Housing team in response to complaints for example. Local knowledge of known HMOs is welcomed where there is demonstrable evidence that properties are operating as HMOs. If there is not sufficient evidence it will be assumed that properties are not HMOs.

- 5.5 These data sets will be collated to calculate the proportion of shared households as a percentage of all households. It is considered that these sources will provide the best approach to identifying the numbers and location of HMOs in an area, although it is accepted that it may not be possible to identify all properties of this type. The data will be analysed to avoid double counting, for example, identifying where a property may be listed as a licensed HMO and have sui generis HMO planning consent. Given that there are multiple data sources the HMO database will be updated a number of times a year to reflect these data sources ~~the information collated may be expected to change over the course of the calendar year as houses and households move in and out of the private rented sector it is considered appropriate to base the assessment on a single point in time.~~ Accordingly, data from the HMO licence register will be updated quarterly as and when the register is updated, planning permission and certificate of lawful use permissions will be updated monthly and Council Tax data will be updated annually, in May, to allow for a complete picture of Council Tax returns. Additional properties that become known to the Council will be added as and when they are confirmed to be HMOs. Updating the HMO database in this way will allow for best picture of existing HMOs to be known. City wide mapping ~~is~~ will be made available online for information, however for data protection reasons street level information collated in assessing a planning application can not be made public.
- 5.6 It is important to understand the appropriate geographic level at which the threshold approach should be applied. For York, it is considered appropriate to assess concentrations of HMOs at neighbourhood and street level. An approach that covers both neighbourhood and street level assessment of HMO will give the Council greater control in managing concentrations of HMOs. Under this approach, HMOs at a neighbourhood and street level will both be controlled, acknowledging that issues arising from concentrations of HMOs affect both neighbourhoods and individual streets
- 5.7 A combined approach of both a neighbourhood and street level analysis of HMOs will be undertaken to determine HMO planning applications. This will seek to control concentrations of HMOs of more than 20% of all households at a neighbourhood area and 10% at the street level. The following approach will be used:

Applications for the change of use from dwelling house (Use Class C3) to HMO (Use Class C4 and Sui Generis) will only be permitted where:

- *It is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and*
- *Less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the*

Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- *The accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.*

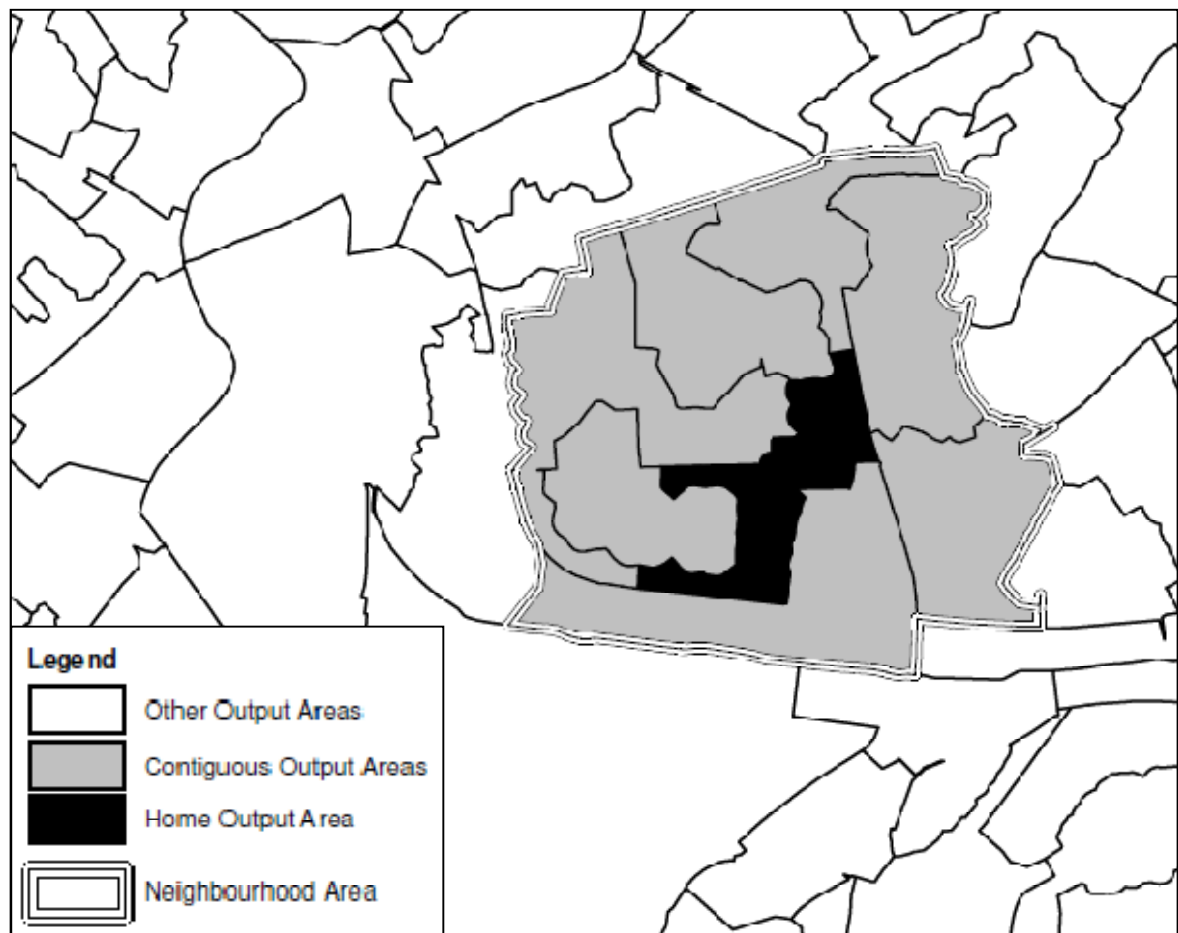
- 5.8 The aim of the policy is to continue to provide HMO accommodation to meet the City's housing needs but to manage the supply of new HMOs to avoid high concentrations of this use in an area. Given York's compact nature and well connected public transport network it is considered that the spreading out of HMOs to avoid unsustainable concentrations of HMOs will still mean that for students in particular, HMOs will remain highly accessible. Further information on the policy approach is set out below.

Assessing concentrations of HMOs

Neighbourhood Level

- 5.9 As highlighted in the evidence base underpinning the Article 4 Direction, it is considered that some issues arising from concentrations of HMOs can be a neighbourhood matter, going beyond the immediate area of individual HMOs. Particularly a decreasing demand for local schools and changes in type of retail provision, such as local shops meeting day to day needs becoming take-aways. Accordingly, a consistent and robust understanding of a 'neighbourhood area' has been developed.
- 5.10 Following best practice, it is considered that one 'output area' (capturing approximately 125 households, defined by the Office for National Statistics) is too small to properly represent a neighbourhood and accordingly, in assessing concentrations of HMOs a cluster of contiguous output areas will be applied. The number of contiguous output areas varies depending upon local circumstances but typically clusters comprised of between 5 and 7 output areas capturing 625 to 875 households will be used to calculate concentrations of HMOs at the neighbourhood level. An example of a cluster of output areas is shown at Figure 2. The 'home output area' is where the planning application is located. To ensure a consistent and robust approach, all adjoining output areas to the output area where the planning application is located will be used to form the neighbourhood area in all cases.

Figure 2: Neighbourhood Area



Street Level









- 5.11 An assessment of concentrations of HMOs at street level will allow the Council to manage the clustering of HMOs along streets. This would prevent whole streets from changing use from dwellinghouses to HMO. Such control may be beneficial for those streets with property types that are particularly suited to HMO use and would protect the character of a street by maintaining a mixed and balanced community. This could avoid the situation where whole streets or large sections of streets change use to HMOs; the effects of which are most keenly felt out of term time when properties are empty.
- 5.12 A street by street approach will address the impacts large concentrations of HMOs can have on increased levels of crime and the fear of crime, changes in the nature of street activity, street character and natural surveillance by neighbours and the community outside of term times, standards of property maintenance and repair, increased parking pressures, littering and accumulation of rubbish, noise between dwellings at all times and especially music at night. Although it is important to note that it is not suggested that these impacts can be attributed to the occupants of HMOs such as students, who can often be the victims of crime for example or suffer from a poor quality environment.

- 5.13 It is considered that a length of 100 metres of street frontage can reasonably be considered to constitute a property's more immediate neighbours and is therefore the proposed distance threshold for assessing concentrations of HMOs at street level. This is proposed to be measured along the adjacent street frontage on either side, crossing any bisecting roads and also continuing round street corners. This is illustrated at Figure 3.

Figure 3: Street Level



Legend

-  100m starting point
-  100 metres
-  100 metres
-  Properties not included
-  Properties within 100m on application street on opposite side of the road
-  Properties within 100m on same side of the road
-  Properties within 100m that turn the corner from application street
-  Application Property

Residential Amenity

- 5.14 The purpose of this SPD is to provide guidance on the change of use from a dwellinghouse to an HMO. This may not involve any internal or external alterations to the property but the change of use in itself constitutes 'development'. The Council seeks a standard of development that maintains or enhances the general amenity of an area and provides a safe and attractive environment for all, including neighbouring residents and the occupants of HMOs themselves.
- 5.15 It is recognised that concentrations of HMOs can impact upon residential amenity and can, in some cases, create particular issues with regard to:
- increased levels of crime and the fear of crime;
 - poorer standards of property maintenance and repair;
 - littering and accumulation of rubbish;
 - noises between dwellings at all times and especially at night;
 - decreased demand for some local services;
 - increased parking pressures; and
 - lack of community integration and less commitment to maintain the quality of the local environment.
- 5.16 Several of these issues can be most keenly felt during out of term times when properties can be empty for long periods of time. It is also important to note that occupants of HMOs, such as students, are often be the victims of crime or suffer from a poor quality environment themselves.
- 5.17 In assessing planning applications for HMOs the Council will seek to ensure that the change of use will not be detrimental to the overall residential amenity of the area. In considering the impact on residential amenity attention will be given to whether the applicant has demonstrated the following:
- the dwelling is large enough to accommodate an increased number of residents⁶;
 - there is sufficient space for potential additional cars to park;
 - there is sufficient space for appropriate provision for secure cycle parking;
 - the condition of the property is of a high standard that contributes positively to the character of the area and that the condition of the property will be maintained following the change of use to HMO;
 - the increase in number of residents will not have an adverse impact on noise levels and the level of amenity neighbouring residents can reasonably expect to enjoy;

⁶ Whilst planning powers cannot be used to enforce internal space standards of existing dwellings and the level of facilities to be provided, planning can be used to secure adequate living conditions in dwellings in so far as they are affected by sunlight, daylight, outlook, privacy and noise. These factors can impinge on the internal layout of dwellings, especially HMOs and will be taken into consideration.

- there is sufficient space for storage provision for waste/recycling containers in a suitable enclosure area within the curtilage of the property; and
- the change of use and increase in number of residents will not result in the loss of front garden for hard standing for parking and refuse areas which would detract from the existing street scene.

5.18 In some cases, such as parking and bin storage there are Council standards which may be useful for applicants to refer to. For further advice on the above please see the planning guidance section of www.york.gov.uk.

5.19 The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 is the principal statutory instrument that controls the display of advertisements in England. The legislation includes certain groups of outdoor advertisements, including property 'for sale' and 'to let' boards which benefit from 'deemed consent'. These advertisements do not require planning consent, provided that the advert is displayed in accordance with the criteria set out in the regulations. Importantly, any board advertising a property for sale or to let must be removed within 14 days of the completion of the sale or granting of tenancy. The Council recognises that the proliferation of to let boards can detract from the street scene and adversely effect residential amenity. As such, the provisions of the Town and Country Planning (Control of Advertisements) Regulations 2007 will be rigorously enforced.

5.20 Permitted development rights under the General Permitted Development Order⁷ allow certain types of development to proceed without the need for planning permission. The most commonly used permitted development rights relate to dwelling houses. In York, properties benefiting from a Sui Generis HMO planning permission already have permitted development rights removed for certain types of development within the curtilage of the property, such as small scale extensions and alterations to the roof, including dormer windows. Where it is considered reasonable to do so, the Council may decide that it is necessary to remove permitted development rights for properties benefiting from C4 HMO planning permission. This would be achieved through attaching planning conditions to permission for change of use to C4 HMO. In the interest of residential amenity, such planning conditions may seek to resist inappropriate alteration or extension to properties and to avoid the hard surfacing of gardens. This will ensure that HMOs with gardens are able to revert back to dwelling houses for family occupation over the lifetime of the property. In some cases it may also be considered necessary to attach a condition to retain garages for the purposes of vehicle parking and the storage of cycles and bins.

5.21 A number of changes and additions to the rights to carry out works or change the use of land or buildings without needing planning permission have recently been made through changes to Permitted Development Rights in May 2013.

⁷ Permitted development rights are provided by the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

This includes changes to domestic rear extensions. For HMOs falling under the new Use Class C4 the Council's position on this at present is that they do not benefit from permitted development rights and therefore planning permission is required for additions/alterations to these type of properties

- 5.22 Should the change of use from dwelling house to HMO also involve alteration, extension, or subdivision detailed guidance is provided in the Draft House Alterations and Extensions SPD and Draft Subdivision of Dwellings SPD. These SPDs set out the planning principles that the Council will use to assess such developments and in essence, seek to ensure that they do not have an adverse impact on residential amenity, including noise impacts. They cover issues such as bin storage, parking, good design, appropriate extensions to protect the character of an area and private amenity space. Applicants should also consult the Interim Planning Statement on Sustainable Design and Construction which is designed to help achieve the Council's objectives for sustainable development.
- 5.23 Given the important role shared housing plays as part of the city's housing offer, the condition of HMO properties should be of a high standard and this high standard is maintained. This is particularly important given that the Private Sector Stock Condition Survey (2008) identified that nearly 40% of HMOs failed the decent homes standard⁸. As such, in the interest of visual amenity and where considered reasonable to do so, the Council will request that the applicant submit and implement a management plan for external areas of the property, including arrangements for the regular maintenance of gardens and bin storage. This will be secured by planning condition. The Council is committed to continue working with partners such as the universities in improving standards of HMOs and tackling any residential amenity issues.
- 5.24 As set out in Section 3.0, the Council are able to secure improvements to the management and maintenance of HMOs (both internal and external) under the Housing Act 2004. In particular, applicants are encouraged to sign up to the forthcoming accreditation scheme. It should be noted that compliance with the planning requirements set out in this SPD does not mean that an HMO is compliant with other legislation and requirements.

Regularising Existing HMOs

- 5.25 A landlord may be eligible to apply for a 'Certificate of Lawfulness' to regularise an existing HMO dwelling which is not lawful under the Council's planning records. A certificate can be applied to regularise a large or small HMO. A small C4 HMO occupied on or before 20th April 2012 (when the Article 4 direction became effective) will be deemed the lawful use after this date. Satisfactory evidence will be required to demonstrate the lawful occupation of the HMO since 20th April 2012. If a Landlord does not want to

⁸ To meet the Decent Homes Standard, dwellings are required to be in a reasonable state of repair. For more information please see http://www.york.gov.uk/info/200486/repairs_and_modernisation/1075/major_improvements_and_maintenance/2 http://www.york.gov.uk/housing/Housing_plans_and_strategies/stockcon/

regularise their HMO, it is strongly recommended that they retain sufficient documentation to demonstrate lawful use as a small HMO since 20th April 2012, or 10 years as a large HMO. This will reduce the owner's risk of the Council taking enforcement action against them.

Flexible C3/C4 Permissions

5.26 For those landlords wanting to let their properties to both families and groups of individuals it is recommended that a flexible C3/C4 permission is sought under Schedule 2, Part 3, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). This would require a planning application to be submitted, but would allow continuous occupation of the building as either use for a period of 10 years without the need for subsequent planning applications. Applications seeking a flexible permission will be assessed against the provisions of this SPD and the threshold approach. Properties benefitting from a flexible permission will be added to the HMO database and be taken into consideration in threshold calculations irrespective of whether the property is being let as a C3 dwellinghouse or C4 HMO.

Enforcement

5.27 Enforcement will play a key role in ensuring the provisions of this guidance are implemented correctly. For more information on the Council's approach to planning enforcement and how to report an enforcement case please see the Council's website⁹. It should be noted that the Council can only take action on a breach of planning control when a material change of use has actually occurred, not when a property has been sold but remains unoccupied, or when it is in the process of conversion.

Pre-application Advice

5.28 The Council offer pre-application planning advice in a structured, time-bound manner which is subject to a set fee depending on the proposal. Advice can be sought as to whether permission/consent is required and/or in relation to the prospects of permission/consent being granted. This may be particularly useful for applicants wishing to understand whether the thresholds have been breached and if further change of use to HMO is likely to be granted. Information on our pre application advice service is available via our pre application webpage¹⁰. This provides answers to common enquiries, and guidance on our schedule of fees for advice. For further information please contact planning enquires, details can be found at the end of this document.

6.0 Monitoring and Review

6.1 Monitoring and review are key aspects of the Government's 'plan, monitor and manage' approach to the planning system. This SPD must involve monitoring

⁹ http://www.york.gov.uk/info/200390/planning_enforcement/346/planning_enforcement
<http://www.york.gov.uk/environment/Planning/enforcement/>

¹⁰ http://www.york.gov.uk/info/200385/planning_advice/318/planning_advice/2

of the success and progress of its guidance to make sure it is achieving its aims and making necessary adjustments to the SPD if the monitoring process reveals that changes are needed. The policy approach and in particular the thresholds will be reviewed annually to ensure that it continues to provide opportunities for a balance of household types and meets the needs for HMOs.

Further Advice

Key City of York Council Contacts:

Integrated Strategy Unit Planning and Environmental Management

01904 551388

integratedstrategy@york.gov.uk

Development Management

01904 551553

planning.enquiries@york.gov.uk

Planning Enforcement

01904 551553

planning.enforcement@york.gov.uk

Background Papers

'Student Housing' Report to the Local Development Framework Working Group 6 September 2010 and Minutes

'HMOs and Article 4 Directions' Report to the Local Development Framework Working Group 10 January 2011 and Minutes

'Minutes of Working Groups' Report to Executive 1 February 2011 and Minutes

'The Distribution and Condition of HMOs in York' Report to Cabinet 1 November 2011 and Minutes

'Controlling the Concentration of Houses in Multiple Occupation Supplementary Planning Document' Report to Cabinet 10 January 2012 and Minutes

'Controlling the Concentration of Houses in Multiple Occupation Supplementary Planning Document Consultation Outcomes' Report to Cabinet 3 April 2012 and Minutes

Houses in Multiple Occupation Technical Paper (2011) CYC

Article 4 Direction and Plan

Annex 1: Local Plan (2005) Extract

Policy H7: Residential Extensions

Planning permission will be granted for residential extensions where:

- a) the design and materials are sympathetic to the main dwelling and the locality of the development; and
- b) the design and scale are appropriate in relation the main building; and
- d) there is no adverse effect on the amenity which neighbouring residents could reasonably expect to enjoy; and
- e) proposals respect the spaces between dwellings; and
- g) the proposed extension does not result in an unacceptable reduction in private amenity space within the curtilage of the dwelling.

Justification for Policy H7

Residential extensions are generally acceptable provided they are sympathetically designed in relation to their host building and the character of the area in which they are located and do not detract from the residential amenity of existing neighbours. Particular care is needed, however, in the design of front extensions and dormer extensions. Pitched roofs on extensions will normally be the most appropriate with large, box-style roof extensions being resisted in most cases.

Policy H8: Conversions

Planning permission will only be granted for the conversion of a dwelling to flats or multiple occupation where:

- the dwelling is of sufficient size (min 4 bedrooms) and the internal layout is shown to be suitable for the proposed number of households or occupants and will protect residential amenity for future occupiers.
- external alterations to the building would not cause harm to the character or appearance of the building or area; and
- adequate off and on street parking and cycle parking is incorporated; and
- it would not create an adverse impact on neighbouring residential amenity particularly through noise disturbance or residential character of the area by virtue of the conversion alone or cumulatively with a concentration of such uses.
- adequate provision is made for the storage and collection of refuse and recycling.

Justification for Policy H8

Houses in multiple occupation (HMO's) are those occupied by a number of unrelated people who do not live together as a single household. They include

bed sits, hostels lodgings and bed and breakfasts not primarily used for holiday purposes.

The Use Classes Order (1987) does not distinguish between a dwelling occupied by a conventional household, and that of a dwelling occupied by up to six residents living together as a single household. Therefore a change of use from a family dwelling to one occupied by no more than six individuals does not constitute as a change of use.

There is potential for the number of dwellings in the City to be increased by the sensitive conversion of large dwellings. Such conversion can ensure a continued life for properties and can contribute to meeting housing need. Nonetheless, in certain situations, a concentration of such conversions can have an adverse impact on the residential environment. In considering this impact, attention will be given to the character of the street, the effect on and the amount of available amenity space, parking requirements, traffic generation and any other material planning considerations particular to the case.

The number of residential conversions will be monitored to calculate the contribution that they make to the Local Plan's housing requirement and so that the cumulative impact of several conversions in any one location can be ascertained.

**Annex 2: ~~Core Strategy Submission (Publication)~~ Emerging Local Plan
Extract**

Policy ACHM6: Houses in Multiple Occupation

Applications for the change of use from dwelling house (Use Class C3) to HMO (Use Class C4 and Sui Generis) will only be permitted where:

- i. it is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- ii. less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning permission and are known to the Council to be HMOs; and
- iii. the accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.

11.10 Under Policy ACHM6, HMO accommodation will continue to be provided to meet the city's housing needs but the supply will be managed to avoid high concentrations of this use in an area. Given York's compact nature and well connected public transport network it is considered that the spreading out of HMOs to avoid unsustainable concentrations of HMOs will still mean that for students in particular, HMOs will remain highly accessible. A threshold based policy approach is considered most appropriate as this tackles concentrations of HMOs and identifies a 'tipping point' when issues arising from concentrations of HMOs become harder to manage and a community or locality can be said to tip from balanced to unbalanced.

11.11 Whilst there is no formal definition of what constitutes a balanced community, recently, there have been attempts to establish what constitutes a large HMO proportion and the threshold at which a community can be said to be/or becoming imbalanced. Useful precedents have been set in a number of Authorities. For York, through consultation, a threshold of 20% of all properties being HMOs across a neighbourhood and 10% at street level have been established, following consultation as the point at which a community can tip from balanced to unbalanced.

11.12 Under the threshold approach an assessment of the proportion of households that are HMOs is undertaken within a given area. In assessing change of use planning applications, to capture as many different types of shared accommodation as possible the Council will use the following:

- council tax records - households made up entirely of students can seek exemption from Council Tax and the address of each exempt property is

held by the Council. This applies to properties occupied only by one or more students either as full time or term time accommodation. Properties falling within 'Halls of residence' on campus will not be included, however some accommodation owned or managed by the universities off campus will included;

- licensed HMOs - records from the Council's Housing team of those properties requiring an HMO licence will be utilised. These are those properties that are three storeys or over and are occupied by five or more persons;
- properties benefiting from C4 or sui generis HMO planning consent – in addition to those properties already identified as having HMO permission, where planning permission is given for a change of use to C4 HMO or a certificate of lawful development issued for existing HMOs this will be recorded in the future to build up a clearer picture of HMO properties; and
- properties known to the Council to be HMOs – this can be established through site visits undertaken by the Council's Housing team in response to complaints for example.

11.13 These data sets will be collated to calculate the proportion of shared households as a percentage of all households. It is considered that these sources will provide the best approach to identifying the numbers and location of HMOs in an area. Although it is accepted that it may not be possible to identify all properties of this type. The data will be analysed to avoid double counting, for example, identifying where a property may be listed as a licensed HMO and have sui generis HMO planning consent. Given that the information collated may be expected to change over the course of the calendar year as houses and households move in and out of the private rented sector it is considered appropriate to base the assessment on a single point in time. Accordingly, data will be updated annually, in May, to allow for a complete picture of Council Tax returns. City wide mapping will be made available online for information, however for data protection reasons street level information collated in assessing a planning application can not be made public.

11.14 In assessing planning applications for HMOs the Council will seek to ensure that the change of use will not be detrimental to the overall residential amenity of the area. In considering the impact on residential amenity attention will be given to whether the applicant has demonstrated the following:

- the dwelling is large enough to accommodate an increased number of residents¹¹;
- there is sufficient space for potential additional cars to park;
- there is sufficient space for appropriate provision for secure cycle parking;

¹¹ Whilst planning powers cannot be used to enforce internal space standards of existing dwellings and the level of facilities to be provided, planning can be used to secure adequate living conditions in dwellings in so far as they are affected by sunlight, daylight, outlook, privacy and noise. These factors can impinge on the internal layout of dwellings, especially HMOs and will be taken into consideration.

Draft Controlling the Concentration of Houses in Multiple Occupation
Supplementary Planning Document (April 2012, amended 2013)

- the condition of the property is of a high standard that contributes positively to the character of the area and that the condition of the property will be maintained following the change of use to HMO;
- the increase in number of residents will not have an adverse impact on noise levels and the level of amenity neighbouring residents can reasonably expect to enjoy;
- there is sufficient space for storage provision for waste/recycling containers in a suitable enclosure area within the curtilage of the property; and
- the change of use and increase in number of residents will not result in the loss of front garden for hard standing for parking and refuse areas which would detract from the existing street scene.

11.15 Further information can be found in the *Draft Controlling the Concentration of HMOs Supplementary Planning Document (2012)*