

Cabinet

7th January 2014

Report of the Cabinet Member for Transport, Planning and Sustainability

Controlling the Concentration of Houses in Multiple Occupation Supplementary Planning Document Review

Summary

1. The purpose of this report is to inform Members of the review of the Controlling the Concentration of Houses in Multiple Occupation Supplementary Planning Document (SPD). The review has explored the introduction of the SPD since April 2012, specifically looking at:
 - whether the approach is working, are there any elements that aren't working;
 - what impact has the Supplementary Planning Document had on a range of stakeholders;
 - the approach to data collection of known Houses in Multiple Occupation and whether this is the most appropriate and is it open and transparent; and
 - what is happening elsewhere to determine best practice.
2. This paper has been considered by Members of the Local Plan Working Group on 9th December 2013. The draft minutes from the meeting can be found at Annex G. At the meeting it was resolved that in accordance with Option 1, the Local Plan Working Group recommended Cabinet to:
 - (i) Note the contents of the report.
 - (ii) Approve the proposed amendments to the SPD as outlined at Annex E and the additional amendment outlined above.
 - (iii) Delegate to the Director of City and Environmental Services in consultation with the Cabinet Member for Transport, Planning & Sustainability the making of the amendments to the SPD and the republishing of the SPD.

Background

3. Houses in Multiple Occupation¹ or HMOs as they are commonly referred to represent a significant growing proportion of the mix of housing in York. A city wide Article 4 Direction was implemented on 20th April 2012 which removed permitted development rights, requiring a planning application to be submitted to change a property into an HMO. A Supplementary Planning Document (SPD) was prepared and subsequently approved to provide guidance on how planning applications for change of use to HMO arising from the Article 4 direction will be determined. The Controlling the Concentration of HMOs SPD was a new area of planning policy following changes to government legislation. As such, it was requested by Members that the SPD be reviewed after a year and a report outlining the review be reported back to Members.

The Review

4. A comprehensive review of the Controlling the Concentration of HMOs SPD has been undertaken which has comprised the following:
 - review of HMO change of use planning applications and decision and appeal decisions alongside enforcement cases;
 - telephone interviews with estate agents, letting agents and the York Residential Landlords Association to explore their experiences since the introduction of the SPD;
 - attending a meeting with representatives from both the University of York and York St. John University to explore their thoughts on the impact of the SPD;
 - attending a meeting of the Student Community Partnership group to engage with students;
 - targeted meetings with residents groups to understand how they think the policy is working or could be improved.
 - internal consultation with Development Management and Housing and Adaptation officers to explore the implementation side of the SPD;
 - revisiting the timing of updates to the data sources that comprise the HMO database and explore whether the database should be updated in a different way to ensure a robust approach that reflects as accurately as possible all known HMOs.

¹ A house in multiple occupation or HMO can be defined as a dwelling house that contains between 3 and 6 unrelated occupants who share basic amenities.

- extracting Local Plan Preferred Options consultation responses relating to Policy ACHM6' Houses in Multiple Occupation' which is the same as the approach in the SPD.
- telephone interviews with other Local Authorities using similar threshold approach to explore the issues they are facing.

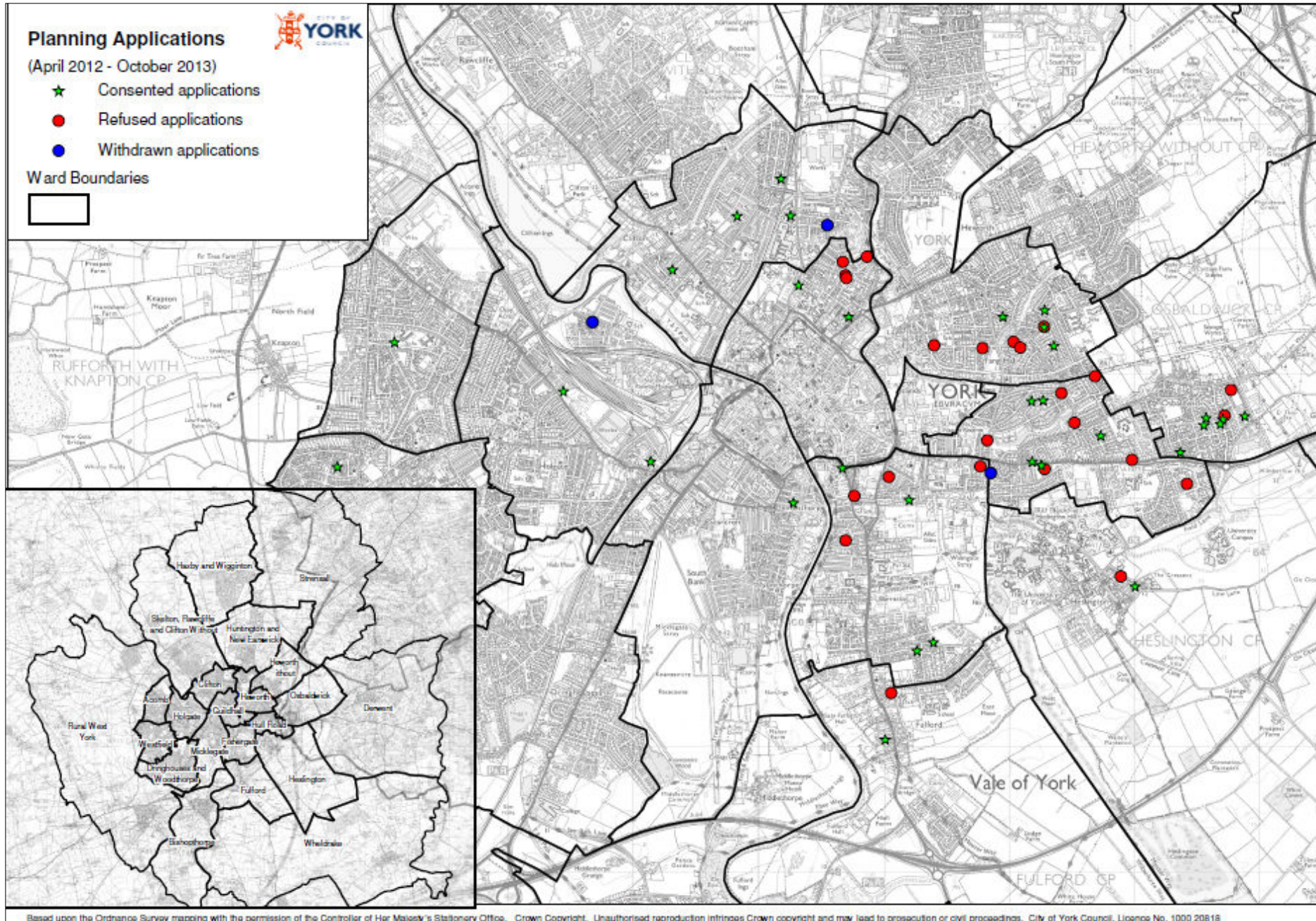
Impact of the SPD

Planning Applications

5. A review of HMO change of use planning applications has been undertaken which has looked at how many applications have been submitted, what proportion have been approved/refused and how many applications have been delegated officer decisions or have gone to planning committee. The number of planning appeals and outcomes was also explored.
6. Since April 2012 there have been 60 applications regarding HMO change of use. Of these, 54 applications were for change of use from dwelling house (use class C3) to small HMO (use class C4) and 6 applications were for dwellinghouse (use class C3) to large HMO (use class Sui Generis²). A small HMO (use class C4) is a house of multiple occupation with between 3 and 6 unrelated occupants who share basic amenities, whilst a large HMO (use class Sui Generis) is for 6 or more unrelated occupants who share basic amenities. The spatial distribution of these applications is shown overleaf. Please note that the applications shown on the map do not total 60 applications as there are some properties where a number of applications were submitted. The map shows the ultimate decision made on the property:

² In a planning sense Sui Generis relates to uses that do not fit within the 4 main use class categories

Map1: Spatial distribution of HMO change of use applications



7. The ward with the most HMO change of use applications was Hull Road with 13 applications, followed by Fishergate and Heworth Wards both with nine applications. In Hull Road six of the applications were approved and seven were refused. In Fishergate four were approved and five were refused. This was the same for Heworth. The map shows a broad spatial distribution of applications which could indicate that the SPD is having the desired effect in that HMOs are being spread out to avoid high concentrations forming. Albeit there is a clustering of wards closest to the universities who experienced the most HMO change of use applications.
8. Of the 60 applications submitted three were subsequently withdrawn. Of the remaining 57 applications 33 were approved whilst 24 were refused. 32 of the approved applications were for change of use from dwelling house to small HMO and one application was approved for change of use from dwelling house to large HMO. Of the 24 refused applications 20 applications were for change of use from dwelling house to small HMO whilst four applications were refused for change of use from dwelling house to large HMO.
9. 28 of the applications submitted and not withdrawn were approved by officers through delegated powers. 22 applications were refused by officers through delegated powers. Seven applications were decided by planning committee; two applications were refused and five applications were approved.
10. Out of the 24 applications that were refused three applicants appealed against the decision. Copies of the appeal decisions can be found at Annex A. The first of these appeals was allowed whereby the Inspector decided that permission should have been granted. The remaining two appeals were dismissed and the Council's decision to refuse permission was upheld. There is currently one other appeal in progress.
11. The Inspector of the allowed appeal concluded that there was not a strong case provided by the Council that the property would fail to provide good accommodation. He commented that the appeal property is well maintained and provides outside storage in the rear yard for its occupants. Parking in the area is controlled and it is served by local bus services, with the centre of the city close by which could mean a low level of car ownership among occupants. Although the street level has been breached the Inspector stated that a degree of flexibility and pragmatism should be applied and planning permission should not be

refused solely on the basis that a numerical threshold has been breached. Alongside this, he argued that no evidence was been provided to indicate how this change of use would adversely affect the specific area and community.

12. This is in contrast to the views of the two Inspectors who dismissed their appeals and upheld the Council's original decision to refuse permission. In these cases the Inspectors made the following comments in support of the Council's policy approach to HMOs:

- the threshold for the concentration of HMOs advocated by the SPD seems a sensible and pragmatic approach to meeting the overarching objective of paragraph 50 of the National Planning Policy Framework to create sustainable, inclusive and mixed communities;
- the Council's decision merits support unless other material considerations justify reaching a different conclusion;
- the SPD is deemed to not be flawed as it has undergone appropriate levels of public consultation which carries significant weight;
- by allowing an additional HMO would breach the guideline figure by 100% which would make it very difficult for the council to support the SPD threshold in the future;
- the proposed scheme would materially breach the Council's recently published SPDs and the objectives of the Framework pertaining to inclusive and mixed developments and have a harmful effect on the character of and community in the area; and
- the proposal would increase the already high concentration of HMOs in the immediate area, which detracts from its character and contributes to an imbalance in the make up of the local community. It would also cause material harm to the residential character of the area.

Enforcement

13. There has been a sharp increase in the number of HMO enforcement cases raised. In 2010 there were just 6 cases rising to 95 cases in 2012. There have been 19 cases so far in 2013. Albeit this cannot be solely attributed to the implementation of the Article 4 Direction and SPD. A large number of cases were raised in early 2012 by enforcement officers as a result of an investigation into suspected large HMOs (sui generis), which would have needed consent regardless of the Article 4 Direction.

14. As a result of the investigations 15 planning applications were subsequently submitted and 10 Certificate of Lawful Use applications received. Three enforcement notices have been served, all three have been appealed. One of appeals was dismissed by the Inspector who agreed with the Council's decision to issue an enforcement notice, two appeals are pending decision. In his report into the appeal that was dismissed the Inspector gave considerable weight to Council's policy approach to HMOs set out in the SPD.

Key Stakeholders

Estate Agents and Letting Agents

15. Telephone interviews were undertaken with estate agents to explore if there have been any issues of blight or impact on house prices since the policy has been introduced. Coalters, Reeds Rains, Ashtons, Yor Move and Churchills were contacted and made the following comments:
- whilst one estate agents felt they were still having many enquiries for buy to let properties and haven't experienced any decrease in interest for buy to let properties another said that there has been a decline in interest specifically for student lets. Albeit there is still plenty and growing interest for buy to let for professionals and families;
 - it is considered that there has been some interest in buying family homes in areas where there are lots of student housing and another comment was made that families are still prepared to buy family housing in student areas ;
 - another estate agents felt that the Article 4 Direction has had a strong impact on the buy to let market. Interest is still high but when it is known a change of use planning application is needed this puts some people off purchasing. It was also felt that in some instances they are struggling to sell family homes for families in the Badger Hill/Tang Hall areas;
 - it was felt by one estate agents that people still want properties for buy to let but are moving away from student lets to the profession/family rental market. In some case when people become aware of the need to apply for change of use permission they are put off by the "hassle factor". Another estate agent felt that there is a range of buyers out there and an area which is known for its high student population doesn't always put buyers off;
 - another estates agent commented that demand for buy to let properties needing a change of use planning permission has

decreased and that they are struggling to get offers on houses in student areas without HMO permission; and

- it was noted that houses that benefit from HMO planning permission sell very fast and that there has been some cases where HMO properties have been bought and reverted back to family housing.

16. Telephone interviews were also held with letting agents to explore whether the private rented sector has changed as a result of the SPD, including any changes in supply and demand. Comments received are summarised below:

- considered that there has been a noticeable loss of family housing to rent as a result of the Article 4 Direction as previously landlords could swap between C3 and C4 uses depending on what the demand is but now landlords would rather leave their property empty than let to family and lose their HMO permission. As such there are international families looking for rental homes that come to lecture at the Universities or work at major employers in the city but struggle to find properties to rent;
- there are lots of landlords approaching with properties now aware of the need for change of use planning permission;
- there is approximately the same number of properties coming on to the books but they are starting to move further afield from the usual areas into areas such as Appletree village and Heworth village;
- there have been a number of cases where it has proved very difficult to find family rental properties in the Hull road area and very few new HMOs are coming on to the books, they are moving from other agents;
- purpose built student accommodation is very expensive and its felt that this has had very little impact on the HMO market. The university is now offering accommodation on campus for 2 and 3rd years and this has affected the demand for 6 bedroom HMOs. The demand for 3 and 4 bed HMO is still high and there is not enough to meet demand; and
- the spread of HMO does not seem to be moving outwards significant, students want to be as near to the University as possible and there is a boundary that people are not prepared to live beyond, unless they are medical or teacher training.

17. A formal response was also submitted by the York Residential Landlords Association (RLA) which has sought the opinions of their

members (in excess of 500) on the effect the Article 4 Direction is having on them as landlords and on the Private Rented Sector (PRS) in general. The RLA have had a significant level of feedback. The views expressed by the York RLA members fall broadly into three groups as set out in the following paragraphs.

18. A small but significant minority feel that as a landlords association the RLA should totally disengage with City of York Council; they feel that despite the fact that they are one of the two major stakeholders in the PRS, their views are totally ignored. This group of members cites amongst other things the York RLA's original objection to the introduction of Article 4 and more recently the RLA's opinions on Landlord Accreditation as examples of the Council ignoring the views of landlords and the public.
19. The second group of opinion is larger, and although still in a minority, are in favour of the Council keeping the Article 4 Direction in place. This tends to be the view expressed by older landlords and/or those not wishing to invest in further improvements and/or do not wish to expand their portfolios. They feel that the Article 4 Direction has already, and will in future reduce competition thereby enabling them to increase rents and spend less time and money improving their houses. It was also noted that many landlords in this group have benefited from increases in the value of their portfolios by 20% to 30% which is considered to be as a result of the introduction of the Article 4 Direction. Many have put some or all of their rental properties on the market to 'cash in' on this additional profit.
20. The majority of opinion within the RLA however is that the Article 4 Direction is bad for tenants and bad for the City's economy. This group acknowledge that it is good for existing landlords in the short term but consider that it will be very damaging in the long term. A copy of the full response from the RLA can be found at Annex B.

The Universities

21. A meeting was held with representatives from both universities, including the Director of Estates and Campus Services for the University of York and the Director of Facilities at York St. John University. The following comments were made following a discussion about the PRS, university campus accommodation and the impact of the Article 4 direction and SPD:

- demand in the PRS was felt to be reducing due to there being more on campus accommodation and increasing purpose built student accommodation being provided by third parties independent of the Universities;
- there are concerns about the quality of some properties in the PRS, with recent evidence of some properties not meeting each Universities' Fire and Safety requirements;
- there have been no notable issues in supply of HMOs since the Article 4 Direction was introduced, it is felt that letting agents can often over hype the issue of finding accommodation to encourage students to sign leases. If anything there is evidence of oversupply due to additional on campus provision and purpose built student accommodation;
- both universities are hoping to use purpose built student accommodation to eventually withdraw from university managed housing in the PRS, however these properties are appealing to 'returners' or second and third years. It was stated that there will always be a demand for a significant proportion of University students to live in the private sector, it is considered as part of the student experience. However through the provision of additional purpose built accommodation the proportion of PRS housing occupied by students is likely to reduce;
- it was stated that all students can apply for on campus accommodation for both universities. There are also plans for a significant increase in purpose built student accommodation within the City by third party developers independent of both Universities. Because of this it is likely that a lower proportions of students per academic year will go into the PRS; and
- there seems to be a slower uptake of properties for sale in places like Badger Hill because of the threshold approach and planning permission not being forthcoming due to there already being large concentrations of HMOs.

22. On a wider issue in relation to the recent increases in granting of planning permission for purpose built student accommodation it was suggested that a balance needs to be established between the provision of student accommodation provided by Universities, third party developers and the PRS. The development of additional purpose built student accommodation will be dependent upon economic viability and a guarantee that it can be filled.

Students

23. To engage with the student body officers attended a meeting of the Student Community Partnership. The partnership comprises students' unions representatives, students, Councillors, Council officers and the wider community to discuss issues, celebrate successes and good practice and to ensure that there is a constructive dialogue between students and members of the communities they live in. Members of the partnership were informed of the review and feedback on their experiences of HMOs and student housing since the introduction of the SPD was requested. The following feedback was given at the meeting:
- increases in student numbers has not been matched by an increase in housing;
 - the price of purpose built student accommodation is putting students off living in this type of accommodation and that a lot of second and third year students want to have their own space so do not want to live in purpose built blocks. Students feel that they will have a better level of pastoral care if they are in university-managed accommodation in the first year and often want to live in traditional housing in their second and third years. It was noted that it would be useful to investigate this further in the next housing survey;
 - due to increased student numbers at the University of York, students are having to live further away from campus, which is harder for students in terms of getting to campus, and results in problems with residents who are not used to having students living in their area; and
 - There was a particular concern for student families who over the last year had found it difficult to source adequate housing close to campus. It was requested that the HMO review takes account the needs of student families, as often landlords are unwilling to rent to families as they will lose their HMO permission and would have to reapply if they then wanted to let to individual students.
24. In relation to the last bullet point, following the meeting a formal response was received from the Graduate Students' Association (GSA) which can be found at Annex C. This response highlights that the GSA believe that the SPD has negatively impacted student families. In talking to student families the GSA had concluded that one of the unintended consequences of the introduction of the SPD has been that landlords with HMO properties which would be suitable for student families are unwilling to rent to families as this would revert the properties use back to dwellinghouse (Use Class C3) which would mean they would then be

unable to subsequently rent out to individual students. It is considered that the Article 4 Direction effectively removes flexibility to cater to both student families and the more traditional individual students/young professional market. The GSA recognise that planning policy is a complex issue and discussions about the merits and drawback of the Article 4 Direction are ongoing but would welcome discussion on this issue.

25. A formal joint response from the University of York and York St. John students' unions can be found at Annex D. In summary the students' unions made the following comments:

- the Article 4 Direction and SPD has prevented more HMOs for students nearer campus, driving prices up as competition is reduced. Any increases in accommodation prices across wider areas of the city is a major concern;
- students are having to look for houses in new areas not traditionally occupied by students. The 'Rate Your Property' survey(see Annex D) shows that students living outside some of the typical 'student areas' (such as South Bank and Huntington) choose to do so due to cost of accommodation but also because of a lack of availability close to their place of study; over 10% of students were unable to find property in their chosen location;
- as students move into areas not traditionally occupied by students this will create the usual problems in new areas;
- whilst students wishing to remain on campus are supported by lobbying the universities to make adequate, affordable accommodation available it is also recognised that many students choose to live off campus. The importance of choice should not be undermined and it is considered that in order to provide this, more HMOs are needed in some areas;
- more properties should be made available close to the universities campuses, although there is not support for an approach which 'ghettoises' students as it is considered that students living out in the community should feel part of, and get involved in their local community;
- the concerns made by the GSA regarding the impact upon housing for students with families are supported; and
- if HMO restriction is to continue to apply there would be support for a redistribution of HMOs in order to balance the demand for quality student housing which is both affordable and conveniently located.

Residents

26. Targeted consultation was undertaken to understand the views of residents on the impact of the SPD. Meetings were held with groups who have previously been actively involved in HMO issues including representatives from Osbaldwick Parish Council, the Badger Hill Residents Community Group and the Heslington Village Trust. Heslington Parish Council provided written comments.
27. The following views were expressed by Osbaldwick Parish Council:
- 10% at the street level is still considered to be too high a threshold. Between 0% and 5% was considered to be more appropriate as this would ensure that all HMO applications would be determined on their own merits and with all factors considered and not just based on a threshold;
 - it is important that both the threshold calculations and assessment of residential amenity are taken into consideration and afforded equal weight when determining planning applications;
 - there should be a mechanism for residents to challenge the database and local knowledge should be taken into account;
 - large HMOs (6 or more people) should be resisted in quiet residential areas but are more suitable on busy roads;
 - there should be an exceptional circumstances clause in the policy for those properties blighted by the threshold approach. There should also be more flexibility in cases where there are groups of properties next to each other i.e. account should be taken of the specific location of HMOs at the street level;
 - as the areas closest to the universities reach the threshold of concentration of HMOs and become less attractive to landlords the problem of HMOs will only be passed to the next area which will be targeted by landlords wishing to buy new properties to let. This is happening to Osbaldwick which the Parish Council states has experienced an increase in HMOs since the introduction of the Article 4 Direction;
 - it was felt that more can be done to improve standards and the quality of HMOs; and
 - many residents are still querying why students do not pay Council Tax. The Parish Council fully support these concerns and believe as the Council tax exempt student HMOs are in effect businesses run by landlords then the properties should have business rates levied. It is unfair to increase pressure on services in an area

(waste collection, parking etc.) and expect the existing residents to pay an increasing burden on local taxations.

28. The Badger Hill Residents Community Group made the following comments:

- there is support for the Article 4 Direction and SPD which helps to maintain the balance of communities where it was previously threatened. It is felt that the SPD does control the location of HMOs to avoid new concentration forming;
- there has been a reduction in the number of family homes that have been converted to HMOs. This is also possibly due to the growth of purpose built student accommodation;
- would like to see a lowering of existing HMO numbers which would see the restoration of family homes in areas like Badger Hill. Need to exploit all opportunities to restore the balance of communities;
- would like to see homes let to families rather than left empty as they are now, this is because landlords want to retain C4 status for their properties which they would lose by letting to a family and so would rather see their property empty than lose HMO status ;
- the approach to HMOs could be improved by having a compulsory registration scheme for HMOs of all sizes. Registration should be along the lines of licensing with standards of conditions for tenants, including fire escapes. There should be a minimum standard which allows a landlord to register their HMO with a reduction in registration fee according to the better standards the property demonstrates; and
- the quality of the environment is no better since the introduction of the SPD, by having a registration system this could help to improve the environment such as gardens and bins.

29. The Heslington Village Trust commented that since the introduction of the Article 4 Direction and SPD there hadn't, to their knowledge, been any applications for change of use to HMOs, other than a retrospective application at 12 School Lane, and an application to convert Fairfields, again in School Lane, both of which were refused. The Trust had no further comments to make other than that they supported the Article 4 Direction and SPD.

30. Heslington Parish Council made the following comments:

- “neighbourhoods” are the special units in which face-to-face social interactions occur – the personal settings and situations where

residents seek to realise common values. Thus the “neighbourhood” for any application in Heslington should be just the parish of Heslington or it could be enlarged to include Badger Hill but certainly should not include more distant settlements;

- thresholds are to be reviewed annually, the criteria used for these thresholds should also be reviewed; and
- the 100m street length rule should include any property with a boundary which can be reached on foot within 100m of the applicant property.

31. The Tang Hall Residents Association approached the Council to discuss their experiences of HMOs since the introduction of the SPD and a meeting was offered and the opportunity to provide written comments, but was not taken up prior to publishing this report.

Implementation of the SPD

Development Management and Enforcement

32. Consultation with Development Management and Enforcement officers was undertaken to find out how the SPD is being applied from an implementation perspective, what is and isn't working and what changes could/should be made. Comments made by officers are summarised below:

- expansion of paragraph 2.1 of the SPD to clarify why the SPD remains a *draft* SPD but that it is still a material consideration. Ambiguity relating to the status of the SPD was raised by an Inspector in a recent appeal decision;
- it should be clearly set out in paragraph 2.2 that the SPD applies to all development consisting of a change of use of a building from a use falling within the Use Class 'C3' to Use Class C4. It does not just apply to change of use to HMO from traditional family dwellings for example, but change of use to HMO from any property falling within use class C3, such as houses that have been subdivided into flats;
- paragraph 3.1 and the definition of a small HMO should replicate the wording in Government circular 08/2010 i.e. a use class C4 HMO is a property occupied by between 3 and 6 people;
- clarity should be provided as to whether government changes to permitted development rights apply to HMOs, particularly in relation to small HMOs;

- advice should be added in relation to applying for Certificates of Lawful Development to demonstrate that a property had been operating as an HMO prior to April 12 2012 when the Article 4 Direction came into force and been operating as an HMO since; and
- a new section should be added to provide information on the Council's pre application advice.

Housing Standards and Adaptation

33. There has been a continued dialogue between planning officers and colleagues from housing standards and adaptation since the introduction of the SPD. This is essential given the complimentary powers available to the Council in relation to HMOs under both the planning act and the housing act. This dialogue has mainly taken the form of information sharing on known HMOs, particularly in relation to enforcement cases. Colleagues in housing and adaptation are currently looking at ways of making this information sharing better.

The Database

34. The HMO database was updated in May 2013 in accordance with the provisions of the SPD and is being used to determine HMO change of use planning applications. Updated mapping is available to download from the website to provide an indication of where existing large concentrations of HMOs exist.
35. Following the implementation of the SPD a number of queries have been made about the accuracy of the database and only proposing to update it annually. It has been argued that particularly with new HMO planning permissions being granted monthly it is necessary that the HMO database used to determine new applications is as up to date as possible to reflect the most up to date picture of HMOs and to ensure a robust decision making process. As such work has been undertaken to explore the possibility of updating the database more frequently. Following this work it is proposed that the most appropriate way forward is to have mechanisms in place to update the database with information from Development Management on approved HMO change of use applications and certificates of lawful use on a monthly basis. Having spoken to colleagues in Council Tax, it is proposed to continue to update the Council Tax exemption data annually. It is not possible to update this part of the database more frequently as this would result in an incomplete picture of council tax returns and would not result in robust decision making.

36. Several residents have also queried the database with their own local knowledge since the implementation of the SPD. This is been welcomed to help aid the Council in building up as complete a picture of HMOs as possible and to ensure the database is scrutinised and challenged to build in robustness. It is proposed that this is acknowledged in the SPD under the 'properties known to the council to be HMOs' element of the database. Albeit it will be necessary caveat that there must demonstrable evidence from residents that a property is an HMO otherwise it will be assumed the database is correct. Please see Annex E for proposed amendments to the SPD which are discussed in more detail in the 'recommended amendments to the SPD' section of this report from paragraph 51.

Outcomes of the Local Plan Preferred Options Consultation

37. An eight week consultation was undertaken on the City of York Local Plan Preferred Options (June 2013). The emerging Local Plan replicated the SPD approach to HMOs in Policy ACHM6 'Houses in Multiple Occupation'. Whilst analysis of the outcomes of the consultation is still ongoing comments received in relation to ACHM6 have been extracted to contribute to this review. Policy ACHM6 did not receive a large volume of responses, overall, comments were favourable and there is support for the current approach. A summary of the comments received relating to Policy ACHM6 is set out below:

- the student population should be distributed more or less evenly throughout the city in order to minimise student hotspots which can have harmful impacts on a neighbourhood;
- more control should be exhibited on HMOs, whilst the two universities are of benefit to the city they do not and should not have priority over local people's needs;
- HMOs must be carefully situated and universities must take responsibility for student accommodation needs;
- the Plan should provide local policy to guide development of student accommodation towards campus locations. Such accommodation located in residential areas is adversely affecting the amenity value of long established residential areas;
- in Fulford there is a shortage of houses because hundreds of family homes have been turned into HMOs. The University must take its share of responsibility by creating more student accommodation and encouraging students to live there; and
- a policy should be adopted which would strictly control the creation and extension of HMOs.

The National Picture

38. Telephone interviews were undertaken with other Local Authorities who have similar threshold policy approaches to HMOs to explore the issues they are facing. In Exeter on the whole the Article 4 Direction and threshold approach has been well received by householders and letting agents. There has been frustrations from some at the boundary cut offs dividing streets rather than encompassing the whole street. There has also been a significant amount of purpose build student accommodation which has resulted in empty HMOs. With regard to appeals there have been a small number, the majority of which have been dismissed. The Council are looking to reduce the current threshold from 20% to 15% and also to extend the area covered by the Article 4 Direction.
39. In Southampton there have been a number of appeals of decisions on HMO change of use applications which have been dismissed by the planning inspectorate, providing support for their threshold policy approach. Inspectors who have made similar comments to those received for appeals in York; namely agreeing that further change of use would give rise to an unacceptable concentration of HMOs.

Analysis

40. It is evident from engaging with a range of stakeholders that on balance, the SPD is welcomed and supported and is considered to have had a positive impact. Albeit there remains some opposition to the Council exerting control over HMOs through the Article 4 Direction and concerns raised with impacts from the introduction of the SPD. Overall it is considered that the policy approach set out in the SPD has enabled the Council to control the location of HMOs to ensure that new unsustainable concentrations of HMOs are not formed. Importantly, the policy approach set out in the SPD is standing up to scrutiny at appeal. However concerns have been raised by stakeholders which are addressed below.

Impact on Student Families/Empty HMOs

41. The review has highlighted that in some instances landlords have been unwilling to rent properties to student families to avoid losing the HMO status of the property. This has meant some student families have found it difficult to find accommodation since the Article 4 Direction was implemented and the SPD threshold approach introduced. It has also meant that there has been an increase in HMOs standing empty as landlords would rather this than let out to a family and have their property revert back to use class C3. Whilst there is currently no evidence that the SPD is constraining supply and creating issues of

undersupply this is an issue that will need close monitoring to ensure there are not supply issues for student families and also to prevent increases in empty properties in the city.

42. It is possible under Schedule 2, Part 3, Class E of the Town & Country Planning (General Permitted Development) Order 1995 (as amended) to apply for a flexible planning permission. In the short term to address the issues raised through the review it is proposed to include new text in the SPD to inform landlords of the opportunity to apply for a flexible C3/C4 permission. 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. Should such an application be successful it is hoped that this flexibility will ensure that student families in particular are not marginalised and are able to find appropriate accommodation in the future. Where C3 to C3/C4 applications are sought the provisions of the SPD and the threshold approach would be applied. Any properties with flexible C3/C4 permission will be recognised on the database as an HMO.

Threshold Approach

43. Osbaldwick Parish Council consider that the thresholds set out in the SPD do not go far enough and have suggested that they are made more stringent with between 0% and 5% considered most appropriate at the street level. Heslington Parish Council have also commented that the threshold approach should be modified with regard to the application of the neighbourhood area in Heslington and that the criteria for calculating the thresholds should be reviewed annually. Overall however stakeholders seem happy with the thresholds and the approved approach and importantly two independent Inspectors have been supportive of the thresholds set. Indeed one Inspector made reference to the 'appropriate levels of public consultation' undertaken in preparing the SPD and agreeing its approach which was said to carry 'significant weight'. In light of this and the overall support for the threshold set out in the SPD it is not considered appropriate at this time to amend the thresholds. That is not to say that a later date these maybe revisited should another comprehensive consultation on the SPD be undertaken.

Supply of HMOs

44. The students' unions have commented that since the introduction of the SPD more HMOs nearer campus have been prevented which has meant that students have had to look for houses in new areas. There are concerns as students move into areas not traditionally occupied by

students this may create problems in new areas. Firstly it is important to note that the purpose of the Article 4 Direction and the policy approach in the SPD is not to unreasonably suppress the number of HMOs or to restrict HMOs but to allow the Council to exert control over the location of HMOs to avoid large concentrations forming which can have negative impacts. The aim of the SPD is to continue to provide HMO accommodation to meet the City's housing needs but to manage the location to avoid high concentrations of HMOs in one area.

45. As shown by the analysis of the planning applications submitted since the introduction of the SPD (see paragraph 5 onwards and Map 1) there has been a broad spatial distribution of applications for change of use to HMO, albeit there has been a clustering of applications in the wards closest to the universities. More applications have been approved than refused which demonstrates that the SPD is not unnecessarily restricting the number of new HMOs. Moreover, supply of HMOs has not been raised as an issue by key stakeholders as part of this review. As set out in the SPD, it is still considered that given the compact nature and well connected public transport network, the spreading out of HMOs to avoid unsustainable concentrations of HMOs will still mean that for students in particular, HMOs will remain highly accessible. It also in the students' unions words, avoids the 'ghetto-isation' of student housing through ensuring mixed and balanced communities where students can feel part of the wider community.

Increasing Rents

46. The student's unions also commented that in preventing more HMOs for students nearer campus this is driving prices up as competition is reduced. Any increases in accommodation prices across wider areas of the city is a major concern for the student' unions. The York RLA also suggested that the Article 4 Direction already has, and will in the future, reduce competition enabling landlords to increase rents.
47. Prior to implementing the Article 4 Direction City of York Council discussed with Oxford City Council their experiences of managing concentrations of student housing and its was indicated that increases in rents could be a possible outcome of controlling HMOs. Given that only a year has passed since the introduction of the Article 4 Direction and SPD it is difficult to say whether comments made about increases in rents can be attributed to the control exerted by the Council. It is recommended that further work be undertaken into this issue to establish if any rises in rents can be directly attributed to the SPD.

Quality of Properties/Residential Amenity

48. The quality of HMOs and the impact of HMOs on residential amenity continue to be concerns of stakeholders. In assessing HMO applications there are both threshold and residential amenity considerations to take into account. When giving advice to Development Management on HMO applications Forward Planning officers highlight the threshold and indicate that an assessment of residential amenity (bin storage, parking etc.) and the ability of the area to absorb further change of should also be undertaken. This is done by Development Management officers when undertaking site visits. As such, for permission to be granted both the street and neighbourhood thresholds must not have been breached and residential amenity should be satisfactory. However, to date, there have been no cases whereby officers have considered there to be overriding residential amenity concerns to warrant overriding the outcomes of the threshold calculations.
49. In accordance with the provisions of the SPD, in the interests of the proper management of HMO properties, to ensure quality property standards and in the interests of the amenity of adjacent residents all HMO applications that have been granted permission have had a condition attached requiring that prior to the dwelling being occupied a management plan shall be agreed in writing with the Local Planning Authority to demonstrate the control of the following: i) Information and advice to occupants; ii) Garden maintenance; iii) Refuse and recycling facilities; iv) Property maintenance. This approach will continue to be adopted.
50. Alongside this, to promote good quality, safe accommodation the Council is currently pursuing the implementation of a voluntary accreditation scheme which will be in place by the end of the year. The aim behind accreditation is to provide landlords with information and skills to build successful business and to help tenants identify safe, high quality accommodation. The scheme website (www.yorproperty.co.uk) will be going live in the coming weeks and landlords and agents will be invited to join. To date there have been 14 expressions of interest in joining. Higher York, the universities and students' unions have agreed to support the scheme and will be directing all students to the website to look for accredited accommodation in future. The existing university code of practice will be phased out after the next academic year and landlords encouraged to join the accreditation scheme instead. A major promotion of the scheme will take place in January 2014 at the time students are being recommended to look for properties.

Withdrawal of the Article 4 Direction

51. Whilst it was not the purpose of the review to consider whether the Article 4 Direction should remain in place the York RLA have expressed that the Article 4 Direction is bad for the city and should be withdrawn (see Annex B for further detail). This is not the view of the Council or other key stakeholders. Overall this review has indicated that a range of stakeholders are supportive of both the Article 4 Direction and the policy approach set out in the SPD. It is evident that the Article 4 Direction is not constraining the supply of new HMOs, with more change of use applications being approved than refused. Furthermore, stakeholders have not raised supply of HMOs as an issue and there has been no identified shortfall in provision of this type of housing. The Article 4 Direction and corresponding SPD would appear to be achieving their main purpose, namely to continue to provide HMO accommodation to meet the city's housing needs but to manage the supply of new HMOs to avoid night concentrations of this use in an area. It is therefore not considered appropriate to withdraw the Article 4 Direction.

Recommended Amendments to the SPD

52. Proposed amendments to the SPD can be found at Annex E. These minor amendments are considered necessary to make the SPD fit for purpose. For example amendments have been made to references to national and local policy contexts and weblinks have been updated. Amendments have also been made to ensure the document is clear and concise and easily understandable by residents and landlords. In some cases new text has been added to increase clarity and provide additional information, this can be found at paragraphs 5.21, 5.25, 5.26 and 5.28 of the SPD in relation to information on permitted development rights for use class C4 HMOs, regularising existing HMOs through applying for a certificate of lawful use, flexible C3/C4 permission and information on the Council's pre application advice.
53. Importantly, it is not considered necessary or appropriate to make amendments to the policy approach to determining HMO change of use applications. Albeit, there are proposed changes in relation to data collection and the updating of the HMO database as discussed at paragraph 34 of this report. These changes can be found at paragraph 5.4 and 5.5 of the SPD.

Options

54. The options below are available to Cabinet.

Option 1: Approve the proposed amendments to the SPD as shown at Annex E

Option 2: Make no changes to the SPD

Option 3: Request officers to undertake further work

Council Plan

55. Exploring the impacts of HMOs relates to the following Council Plan Priorities:

- Build strong communities.
- Protect vulnerable people.
- Protect the environment.

Implications

56. The implications are as listed below:

- **Financial:** None
- **Human Resources (HR):** None
- **Equalities:** None
- **Legal:** None
- **Crime and Disorder:** None
- **Information Technology (IT):** None
- **Property:** None
- **Other:** None

Risk Management

57. In accordance with the Council's risk management strategy, the main risk associated with the HMO SPD is financial, relating to the impact on Planning and Environmental Management resources arising from the implementation of the SPD. Following the introduction of the SPD there has been a significant and ongoing proportion of officer time spent dedicated to both formal planning application policy comments and informal queries on whether thresholds have been breached and advice on whether to pursue planning applications for change of use. Officer time has also been ongoing with regard to maintaining the HMO

database and mapping requests. Measured in terms of impact and likelihood, this risk has been assessed as requiring frequent monitoring.

Recommendations

58. That Cabinet:

- i) note the contents of the report
- ii) approve the proposed amendments to the Supplementary Planning Document at Annex E
- iii) delegate to the Director of City and Environmental Services in consultation with the Cabinet Member for Transport, Planning and Sustainability the making of the amendments to the SPD and the republishing of the SPD.

Reason: So that the SPD be fit for purpose and can continue to be used effectively for Development Management purposes to support the emerging Local Plan and the Article 4 Direction which came into force on 20 April 2012.

Contact Details

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	Report Approved	√	Date 18/12/2013
Specialist Implications Officer(s) N/A			
Wards Affected: All			√
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Annexes:

Annex A: Appeal Decisions

Annex B: York Residential Landlord Association Response

Annex C: Graduate Students Association Response

Annex D: Students' Unions Joint Response

Annex E: Proposed amendments to the Controlling the Concentration of
HMOs SPD

Annex F: Abbreviations

Annex G: Draft Local Plan Working Group Minute