

**Report to:** Leader of the Council

**Date:** 26 July 2024

**Title:** Houses in Multiple Occupation (HMO) Development Plan Document (DPD)

**Report of:** Robert Cottrill, Chief Executive

**Cabinet member:** Councillor Stephen Holt, Leader of the Council and Chair of Cabinet (Community Strategy, Local Strategic Partnership, the Corporate Plan, Performance and Staff)

**Ward(s):** All

**Purpose of report:** To seek Leader's approval to publish the Eastbourne Houses in Multiple Occupation Development Plan Document (HMO DPD) for public consultation between 2<sup>nd</sup> August and 27<sup>th</sup> September 2024

**Decision type:** Key

**Officer recommendation(s):**

- (1) That the Leader approves the publication of the Eastbourne HMO DPD (Appendix 1) for public consultation between Friday 2<sup>nd</sup> August and Friday 27<sup>th</sup> September 2024.
- (2) That the Leader delegates authority to the Chief Executive, in consultation with the Cabinet member for enterprise, community spaces and planning, to make any necessary editorial changes and minor amendments to the consultation document and supporting evidence prior to publication if necessary.

**Reasons for recommendations:**

- (1) To meet the requirements of Regulation 18 of the Town & Country Planning (Local Planning) (England) Regulations 2012 (as amended) in the preparation of a Development Plan Document
- (2) To ensure that any minor or typographical errors can be corrected prior to the HMO DPD being published for consultation

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## **1 Introduction**

- 1.1 At its meeting on the 17<sup>th</sup> July 2024, Cabinet agreed a series of interventions to address concerns relating to the proliferation and impact of Houses in Multiple Occupation (HMOs) in the town. This included the introduction of new planning policy to provide more extensive criteria for applications for new HMOs to be assessed against, through the preparation of an HMO Development Plan Document (DPD).
- 1.2 This report identifies the approach being taken to the HMO DPD, and seeks approval to undertake a public consultation on a draft version of the Eastbourne HMO DPD under Regulation 18 of the Town & Country Planning (Local Planning) (England) Regulations 2012 (as amended), which represents the first consultation stage in the plan-making process.

## **2 Context**

- 2.1 Houses in Multiple Occupation (HMOs) are legally defined in the Housing Act 2004 (under sections 254 to 259). A House in Multiple Occupation is generally considered to be a property that is occupied as a main residence by at least three people who are not part of the same household but share facilities like a kitchen and bathroom, where the building does not entirely consist of self-contained flats (although it may include some self-contained flats), and rents are payable (or some other form of consideration) for at least one person's occupation. However, there are legal exemptions for certain buildings that meet the definition for an HMO under the Housing Act 2004.
- 2.2 Under planning legislation, small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen and bathroom, fall under Use Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987 (as amended). Where there are more than six unrelated individuals sharing amenities, this is termed an HMO in Sui Generis use because it is not within any specific planning use class.
- 2.3 Under national legislation, a change of use from Class C3 (Dwellinghouse) to Class C4 (House in multiple occupation), or vice versa, benefits from permitted development rights and therefore does not require a planning application or

approval from the local planning authority. However, any change of use to a large HMO in Sui Generis use or changes of use to class C4 from any other use apart from class C3 does require planning permission. These planning applications should be determined in accordance with Local Plan policies and other material planning considerations.

- 2.4 Under the Housing Act 2004, HMO's that are occupied by five or more people forming two or more separate households and sharing basic facilities and meet certain statutory criteria are required to be licensed (known as mandatory licensing). However, not all HMOs require a licence. HMOs that fall below the mandatory threshold (those occupied by three or four people forming two or more separate households) are not subject to mandatory licensing, and there are also some other types of large HMOs that are exempt from mandatory licensing under Schedule 14 of the Housing Act 2004.
- 2.5 Therefore, an HMO that falls below the threshold for mandatory licensing would be in Class C4 use, however an HMO requiring a mandatory licence could be either in Class C4 use or Sui Generis depending on how many people the property is occupied by.
- 2.6 HMOs form an important part of the housing mix within an area as they increase the range and mix of accommodation, especially for people whose housing options are limited, such as young professionals, students and people on low incomes who are unable to afford or access their own self-contained accommodation. Demand for this type of smaller and cheaper accommodation is likely to be impacted by current circumstances in relation to rises in the cost of living and pressure on wages and benefits.
- 2.7 However, HMOs have the potential to negatively impact on communities in terms of the standard of living environment for local residents and businesses, particularly where there is a high concentration of HMOs in a specific area. In addition, it is acknowledged that there are contributory factors associated with a high turnover of HMO residents; the concentration of HMO residents facing economic hardship (amongst a wider community that faces hardship also); and the higher proportion of HMO residents living with mental health/complex needs. Together, these factors can result in detrimental effects on the character of local communities and neighbourhoods, and perceptions around increased levels of anti-social behaviour, petty crime. Additionally, unkempt properties that are not properly maintained impact on the amenity of an area and can adversely impact community cohesion.

### **3 Eastbourne HMO Study**

- 3.1 Evidence to justify interventions on HMOs, including the HMO DPD, has been provided by the Eastbourne HMO Study 2024. This study analysed the supply of HMOs, examined the physical conditions of HMOs through a series of external inspections on a sample of HMOs, assessed the impacts of HMOs drawing on surveys of local residents, and considered the role that HMOs play in the local housing market in terms of occupant groups, affordability, size and tenure. It then drew on this data, in comparison with approaches from other local authorities, to evaluate the evidence gathered in relation to the potential interventions open to the Council to control the quality and spread of HMOs.
- 3.2 The HMO Study confirmed that, as of August 2022, there were 318 licensed HMOs recorded on the Council's register<sup>1</sup>, with indications that the number of licensed HMOs in Eastbourne is broadly increasing over time. The study also recognises serious limitations with estimating the number of HMOs that fall outside of mandatory licensing thresholds (i.e. occupied by less than five people).
- 3.3 The study found that there is clear evidence of the valuable role that HMOs provide in the housing market by providing low-cost accommodation that people on lower incomes, key workers, and vulnerable groups rely on, and there could be significant adverse consequences from overly restricting the current provision or future supply of HMOs. Therefore, the study suggests that interventions that mitigate impacts and improve standards for residents, rather than aiming primarily to control HMO numbers, may be more prudent.
- 3.4 The Study does identify that there are impacts caused by HMOs. On the whole, it is considered that these impacts arise not from individual HMO properties themselves (with some notable exceptions), but from their concentration.
- 3.5 The most significant impacts identified by the study are the loss of relatively scarce family housing through conversion of existing single-household housing to HMO, and the impact on occupants and communities from anti-social behaviour in areas of high concentration. Secondary impacts with less conclusive evidence relate to condition of properties and standards for occupants, the impact on parking and waste collection amenities, and impacts on the wider economy.

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<sup>1</sup> The HMO Register in April 2024 shows 331 licensed HMOs

## **4 HMO DPD**

- 4.1 New planning policy can only be introduced through the statutory plan-making process. However, alongside the Levelling Up and Regeneration Act, the Government proposed changes to planning regulations to reform the plan-making process. This included a deadline of the end of June 2025 for local planning authorities to submit plans for examination under the existing national framework.
- 4.2 Work on a new comprehensive local plan for Eastbourne has been progressing, however uncertainty around planning reforms that are due to be implemented alongside the Levelling Up and Regeneration Act means that the timing for adoption of a new local plan is currently uncertain.
- 4.3 In order to bring forward new planning policy relating to HMOs as soon as possible, Cabinet previously agreed that a specific Development Plan Document (DPD) that provides new planning policy relating only to HMOs should be prepared in advance of the new local plan.
- 4.4 Under Planning & Compulsory Purchase Act 2004 (as amended), a DPD is a local development document that has development plan status. Once it has been adopted by the local planning authority, development control decisions must be made in accordance with them unless material considerations indicate otherwise.
- 4.5 DPDs need to be prepared in accordance with national planning legislation and policy. This requires community involvement, consultation procedures and independent assessment. Prior to use in determining planning application, DPDs are required to be officially adopted by Council after a binding report is produced by an independent planning inspector following an independent examination of the DPD and any representations made in respect of it.
- 4.6 The draft Eastbourne HMO DPD (Appendix 1) outlines out four new planning policies that will provide more extensive criteria for applications for HMOs to be assessed against. This includes one overall 'strategic' policy for HMOs, and three non-strategic policies that expand upon and provide more detail on matters identified in the 'strategic' policy.
- 4.7 Policy HMO1 is the strategic policy that provides the overall policy direction for how we will be looking to address HMOs in future. As there is clear evidence of the valuable role that HMOs provide in the housing market and an on-going need for this type of accommodation in the future, Policy HMO1 supports the provision of new HMOs, but only where the impacts associated with HMOs can be mitigated.

- 4.8 Policy HMO1 takes into account issues such seeking to prevent the loss of family housing to HMO in areas where this is relatively scarce (which can be achieved in conjunction with an Article 4 Direction), ensuring that HMOs are only located in accessible locations in order to reduce the need for occupants to own a car, not creating or adding to areas of concentration, not having an adverse impact of the amenity of neighbours, providing a good standard of accommodation for occupants, and incorporating high environment standards to reduce carbon emissions and reduce fuel poverty.
- 4.9 Furthermore, Policy HMO1 as drafted would continue the current policy position of restricting the provision of new HMOs within the Tourist Accommodation Area. The presence of HMOs in the prime tourist areas does not portray a positive image of the destination and could adversely impact the visitor experience, and therefore new HMOs within this area would not be permitted by the draft policy.
- 4.10 Policy HMO2 is a non-strategic policy that provides more detail on the 'concentration' issue. It states that new HMOs will not be supported if the site is within an area with a high concentration of existing HMOs. It sets out three ways that 'concentration' will be assessed:
- The percentage of residential properties within a 100m radius of the application site that are HMOs, with this not exceeding 10%
  - Ensuring that applications would not result in a residential property being 'sandwiched' between HMOs
  - Preventing instances where there is a continuous frontage of three or more HMOs
- 4.11 Policy HMO3 is a non-strategic policy that provides more detail on how the impact on the neighbourhood amenity should be addressed. This policy requires applications to demonstrate that parking demands arising from the HMO can be accommodated, adequate cycle parking is provided, sufficient space is provided for waste and recycling bins within the curtilage of the property, there would be no unacceptable noise disturbance to neighbours, and any external alterations are of high quality design.
- 4.12 Policy HMO4 is a non-strategic policy that provides more detail on how the living conditions and standard of accommodation for HMO occupants should be addressed. This policy requires applications to demonstrate that the building can accommodate the number of people proposed, minimum room sizes are being met, the internal layout is appropriate for privacy and safety reasons, appropriate communal space, kitchens and bathrooms are provided, and private outdoor amenity space is provided as an alternative to congregating in the public realm at the front of the building

## **5 Article 4 Direction**

- 5.1 At its meeting on the 17<sup>th</sup> July 2024, Cabinet also agreed to introduce an Article 4 Direction to remove the permitted development rights that apply to changes of use between Class C3 (Dwellinghouse) and Class C4 (House in multiple occupation). This would mean that changes of use from dwellinghouses to small HMOs would in future be required to apply for planning permission from the local planning authority, which means policies within the HMO DPD can be applied in the determination of these applications.
- 5.2 The making of an Article 4 Direction is a function of Planning Committee, which approved a decision to commence the process of making the Article 4 Direction at their meeting on 23<sup>rd</sup> July 2024.

## **6 Timescales**

- 6.1 Following the Regulation 18 consultation, responses will be considered and addressed, and a Regulation 19 'Proposed Submission' version will be presented to Cabinet and Full Council by February 2025. This will then be subject to a further round of public consultation before being submitted for Examination before June 2025.
- 6.2 The length of the examination period would depend on the nature and extent of the representations made, but it is anticipated that the examination process should be completed by the end of 2025, meaning that if found sound by Inspector, the HMO DPD can be finally adopted by Full Council in February 2026.

## **7 Consultation**

- 7.1 Following approval, public consultation on the Eastbourne HMO DPD will take place between Friday 2<sup>nd</sup> August 2024 and Friday 27<sup>th</sup> September 2024. Consultation will be undertaken in accordance with the Council's Statement of Community Involvement (SCI), which was revised and adopted in February 2019. The SCI identifies a minimum consultation period of 8 weeks.
- 7.2 All statutory bodies and individuals and organisations who have asked to be informed of the progress of the Eastbourne Local Plan will be notified directly about the consultation. The consultation will be hosted via the Council's on-line consultation portal that allows comments to be made directly via the website, and will be further publicised on the Council's website, and through press releases and social media.

- 7.3 Consultation on the Article 4 Direction will be undertaken at the same time as consultation on the HMO DPD.
- 7.4 There will be a further round of public consultation on the 'Proposed Submission' version of the HMO DPD, which is currently anticipated for early 2025. Responses to this Regulation 18 consultation and how they have been addressed within the HMO DPD will be reported at this time.

## **8 Corporate plan and council policies**

- 8.1 The Corporate Plan 2024-2028 identifies that the cost of living crisis has taken its toll on communities, and the Council is committed to continuing to play its part to support residents most badly affected and ensure adequate support networks are in place. The Corporate Plan also recognises that many people in the town are finding it hard to find suitable accommodation for their needs, and the Council will continue to help support those who are at risk of homelessness or in housing need, along with looking to enable and develop new housing in the town. The HMO DPD recognises the important role that HMOs play in the housing market, and policies will support addition provision, but only where the impacts of HMOs can be mitigated.
- 8.2 The Housing Strategy 2020-2024 recognises that the challenges for Eastbourne include rising housing costs, a changing demographic, the expansion of the private rented sector, tackling poverty and inequality, and homelessness. It recognises a priority to shape a thriving, high standard, private rented sector by putting in place measures that promote a good quality private rented housing supply, encourage good quality management across the sector and balance the interests of landlords and tenants.
- 8.3 In relation to the priority of promoting homes that sustain health and wellbeing, the strategy recognises that where the basic 'foundations' of a healthy home are not in place and households find themselves living in poor quality homes, experience precarious housing circumstance or have no home at all, then wellbeing, physical and mental health all suffer. The HMO DPD seeks to ensure that new HMOs meets minimum standards that would ensure a decent standard of accommodation.

## **9 Financial appraisal**

- 9.1 The financial implications of undertaking public consultation on HMO DPD are expected to be minimal, and as such it is considered that these costs will be covered within the existing budget.



## **10 Legal implications**

- 10.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 governs the preparation and adoption of a local development document which contains the local planning authority's policies in relation to the area. Once adopted, a DPD becomes part of the council's local plan and planning decisions must be made in accordance with the new policy unless material considerations indicate otherwise.
- 10.2 Consultation on the HMO DPD is being undertaken in order to comply with Regulation 18 of the Town & Country Planning (Local Planning) (England) Regulations 2012, and with regard to the requirements of the National Planning Policy Framework.

Legal implications confirmed - 010353-EBC-JCS 05.06.24

## **11 Risk management implications**

- 11.1 The risk of not undertaking a public consultation at this time is that the preparation of the HMO DPD will be delayed. This means that the HMO DPD may not be ready by the anticipated deadline for submission of local plans under the current plan-making system. A new plan-making system is likely to preclude the preparation of DPDs covering a single issue, and therefore missing this deadline would mean that an HMO DPD may not be adopted, and instead planning policies relating to HMOs would need to be brought forward through a new comprehensive local plan.

## **12 Equality analysis**

- 12.1 An Equality & Fairness Analysis has been undertaken on these proposals. This has concluded that the HMO DPD would have an overall positive impact, as the HMO DPD would support opportunities for increasing housing options for people on lower incomes, key workers, and vulnerable groups through the provision of new HMOs, and ensuring that new HMOs provide a decent standard of living condition. However, the HMO DPD will also expect that these only come forward where the impacts associated with HMOs can be appropriately mitigated and the impacts on neighbourhoods and local communities minimised.
- 12.2 Once public consultation has taken place, the results will be added to the equalities analysis and any mitigating actions around any possible impact of recommendations added.

## **13 Environmental sustainability implications**

- 13.1 The HMO Study identifies that the average HMO in Eastbourne tends to have a lower energy performance rating than the average non-HMO. Policies in the HMO DPD will require that conversions or changes of use to HMO incorporate measures to reduce carbon emissions and improve energy efficiency. In addition, the HMO DPD will place restrictions on changes of use or conversion to HMO may result in the housing stock being retained as single-family housing and or converted into self-contained flats where there is greater potential for insulation and renewable energy sources to be secured.

## **14 Appendices**

- Appendix 1 – Eastbourne Houses in Multiple Occupation Development Plan Document – Regulation 18 version – July 2024

## **15 Background papers**

The background papers used in compiling this report were as follows:

- [Housing Act 2004 \(as amended\)](#)
- [Planning & Compulsory Purchase Act 2004 \(as amended\)](#)
- [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(as amended\)](#)
- [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#)
- [National Planning Policy Framework \(2023\)](#)
- [Eastbourne Borough Plan 2001-2011 \(Adopted 2003\)](#)
- [Eastbourne Core Strategy 2006-2027 \(Adopted 2013\)](#)
- [Eastbourne Borough Council HMO Register](#)
- [AECOM, Eastbourne HMO Study \(2024\) – Main Report](#)
- [AECOM, Eastbourne HMO Study \(2024\) – Appendices](#)