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27th September 2004

Dear Sir/Madam

CIRCULAR 4/2004: HOUSES IN MULTIPLE OCCUPATION – GUIDANCE ON THE INTERFACE BETWEEN PLANNING CONTROL AND LICENSING

Please find enclosed SEDD Circular 4/2004: Houses in Multiple Occupation – Guidance on the Interface between Planning Control and Licensing.

The Circular has been issued to provide planning officials with brief background on the licensing scheme for houses in multiple occupation (HMO) and guidance on the implications for development plan policies on HMO. The description of the licensing scheme emphasises those aspects which will be of interest to planners.

This Circular should be read in conjunction with the Scottish Executive's guidance, "Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities". Copies of the latter may be obtained by telephoning 0131 244 5528 or through the Scottish Executive web-site at www.scotland.gov.uk/hmo.

Yours faithfully

TIM BARRACLOUGH



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2004

HOUSES IN MULTIPLE OCCUPATION: GUIDANCE ON THE INTERFACE BETWEEN PLANNING CONTROL AND LICENSING

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SCOTTISH EXECUTIVE
Development Department

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PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Scottish Executive policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development control.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location-specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

This Circular summarises the Scottish Ministers' understanding of the general effect of the relevant primary or secondary legislation although the summaries do not carry statutory authority in themselves and legal advice should always be taken in case of doubt.

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INTRODUCTION

1. The purpose of this circular is to give planning officials brief background on the licensing scheme for houses in multiple occupation (HMO) and guidance on the implications for development plan policies on HMO. The description of the licensing scheme emphasises those aspects which will be of interest to planners.

HMO LICENSING SCHEME

BACKGROUND

2. The purpose of HMO licensing is to improve standards in this part of the private rented sector, in terms of both physical accommodation and the management of tenancy issues. HMOs provide an important supply of housing, particularly for some groups of people, such as students, transient workers, and those who require support in a homely setting. In 1991, local authorities in Scotland were given discretionary powers to introduce licensing of HMOs under the Civic Government (Scotland) Act 1982. In 2000, a new Order¹ under that Act was made, making it obligatory for all authorities to introduce an HMO licensing scheme. The Executive has produced revised guidance on the licensing system, "Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities" (the HMO guidance). This guidance focuses on the procedures and activities involved in operating the HMO licensing scheme and includes a section on the interface with planning controls.
3. HMOs subject to the licensing scheme are defined as follows: **A house is an HMO if it is the *only or principal residence of three or more qualifying persons from three or more families*** (definitions of terms are given in the HMO legislation and the HMO guidance). There are exemptions from the HMO licensing scheme, including religious communities, properties owned by communal groups and accommodation provided as part of certain services registered with the Care Commission. It is a criminal offence to operate an HMO without a licence.

LICENSING PROCEDURES

4. Licence applications are made by the owner of the property. The licensing authority has to satisfy itself:
 - That the applicant, and any manager of the HMO, is a fit and proper person to hold a licence.
 - That the property is suitable for use as an HMO, for the proposed number of people.
5. The applicant must also display a notice outside the property for 21 days, informing the public of the application and how to submit objections. Any person may make an objection to a licence application. The authority must copy any such

¹ *Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000*



objection to the applicant, and must notify the applicant of any other information they intend to take into account in considering his application. The applicant must at least be given an opportunity to comment in writing on any objections and other information, and the licensing authority may give the applicant and any objectors an opportunity to be heard in person. The licensing authority can also make any reasonable inquiries it thinks fit to determine the questions in paragraph 4. This usually includes a physical inspection of the property, scrutiny of management procedures and records, and a police check on the applicant and any manager.

6. Decisions on licence applications are made either by the Licensing Committee, or by an officer with delegated powers. Licences are usually granted subject to conditions, which ensure that the HMO is properly managed and appropriate standards are maintained throughout the period of the licence. The route of appeal against a licensing decision, for either the applicant or an objector, is to the sheriff.
7. A licence may be granted for any period up to three years. An application for renewal must be made before the end of the licence period, and goes through the same process as for the initial application, including the opportunity for objections to be made. If there is a material change of circumstance affecting the licence-holder or the operation of the HMO, the licence-holder must inform the licensing authority as soon as possible. The authority can also vary the terms of the licence at any time, either at their discretion or if the licence-holder asks them to do so.
8. A licensing authority can suspend a licence if, for example, in their opinion the licence-holder is no longer a fit and proper person to hold the licence or the licensing conditions have been breached. The process for suspension includes a hearing and appeal process. A licence may be revoked by the sheriff if a licence-holder is convicted of a relevant offence in relation to the licence. In most cases where an unlicensed HMO is identified, the licensing authority will seek to resolve the situation without applying statutory enforcement proceedings, however, the ultimate sanction in the licensing scheme is prosecution.

ADMINISTRATION

9. Processing an application for an HMO licence requires the involvement of officers from several different disciplines, departments and agencies. The officers involved are likely to represent:
 - Legal services / licensing section
 - Environmental Health
 - Building Control
 - Housing
 - Fire authority (statutory consultee)
 - Chief Constable (statutory consultee)

10. The HMO guidance emphasises that, in terms of administration, to provide an effective service to the public, it is usually best to have a clearly identified team as a single point of contact for enquiries, applications, objections and complaints. Information from other council departments or partner agencies about suspected HMOs, or suspected breaches of conditions, could also feed into this point.
11. In view of the possibility of landlords requiring both a licence and planning permission, it would make sense for lines of communication to be established between such a team and the council's planning department. In addition, there needs to be a co-ordinated approach to the policy on HMOs across a local authority's housing and planning departments and their HMO licensing team.

STANDARDS AND LICENSING CONDITIONS

12. The licensing of HMOs seeks to control standards in three main areas: the suitability of a property owner to be an HMO landlord, his management of the premises, and the physical condition and facilities of the accommodation. A licensing authority has discretion to set any reasonable conditions it thinks fit.
13. The HMO guidance stresses that good management by the landlord is vital if the aims of HMO licensing are to be achieved. Physical standards must be maintained, tenants' rights must be respected, and any problems which arise during the period of the licence must be effectively addressed. Good management is also key to tackling the issues which most concern neighbours of HMOs, such as building maintenance, cleaning, and noise or disturbance. For these reasons, licensing authorities are expected to give equal weight to management issues as to physical standards in deciding whether to grant, renew or suspend a licence.
14. The HMO guidance contains recommended licensing conditions, including:
 - The landlord must provide each tenant with a clear statement, in a form they can understand and keep for reference, of what is expected of them and what they can expect from the landlord.
 - The landlord must take steps to ensure that the property, fittings and furniture, including fire precautions and gas and electrical installations, are maintained throughout the period of the licence to the standard required. Where the HMO is in a shared building, the licensing authority may also wish to emphasise the shared responsibility of the landlord for the maintenance of common parts, and of the tenants for their cleaning.
 - The landlord must manage the property in such a way as to seek to prevent or deal effectively with any anti-social behaviour by tenants to anyone else in the HMO or in the locality of the HMO.
 - The landlord must provide tenants and adjoining neighbours with details of how they can contact him or his agent in an emergency, or with non-urgent complaints.



15. With particular regard to preventing or dealing with anti-social behaviour, as part of a landlord's tenancy management duties he must ensure as far as he is able that tenants conduct themselves in a way that does not cause nuisance or distress to any other person in the HMO or in the locality of the HMO. This should be made clear to tenants as part of the tenancy/occupancy agreement, and if a complaint is made to the landlord, he should take steps to deal with it. The local authority can help by engaging with landlords and providing information and advice on good management practice. If a complaint is made to the local authority by a neighbour of an HMO, the authority is expected to investigate and, if appropriate, request that the landlord take action. In deciding whether action is required, the authority should consider whether the behaviour complained of would be unacceptable in any other, non-HMO household. Any approach to the landlord must be based on clear evidence that tenants of that particular property were responsible for the behaviour complained of.
16. The actions open to a private sector landlord for the better management of antisocial behaviour include, for example, enforcing terms in the tenancy agreement, setting clear standards, advising tenants (for example on reducing noise nuisance), investigating complaints, requesting the local authority to initiate an Anti-Social Behaviour Order (ASBO), providing information in support of ASBO proceedings, seeking an interdict, seeking possession at the end of the term of the tenancy or seeking possession on the grounds of antisocial behaviour.
17. The HMO guidance emphasises the importance of tenancy/ occupancy agreements and recommends elements to be included in these agreements. These elements include:
 - the respective responsibilities of the landlord and the tenant for cleaning, maintaining and repairing the property, fittings and furnishings.
 - makes clear that the tenant, and any person visiting the tenant, must not commit any form of harassment, or behave in a way that causes nuisance or distress, to any other person in the HMO or in the locality of the HMO.

The HMO guidance also mentions addressing physical aspects of the property in order to reduce noise.

HMO LICENSING AND PLANNING POLICIES

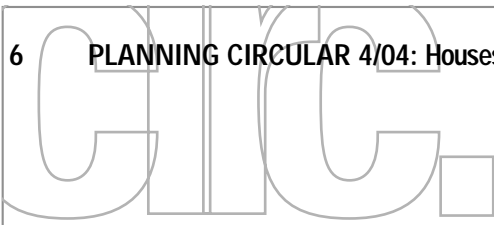
18. The HMO guidance contains an outline of the role of the planning system, the way it controls development, including changes in occupancy levels which constitute a change of use and the role of the Town and Country Planning (Use Classes) (Scotland) Order 1997 in relation to houses. For information and ease of reference, these paragraphs are set out in Annex A to this circular.
19. The HMO guidance also refers to the guidance in paragraph 57 of Scottish Planning Policy 1: The Planning System, on the interaction of planning and other

statutory control regimes. It also points to planning decisions being required to be made in accordance with the development plan for the area unless material considerations indicate otherwise.

20. As far as the development plan policies on HMOs are concerned, planning authorities are asked to bear in mind the important role the HMO sector plays in providing residential accommodation for certain groups. Attention is also drawn to the requirements of the HMO licensing system. Where issues relate to the behaviour of the landlord or tenants, such as maintenance or noise, planners should take account of the controls offered by HMO licensing. They should also be clear that all kinds of people may live in HMO accommodation, and it is not necessarily the case that HMO residents would cause more disturbance than other types of household who might occupy the property.
21. Whilst these points do not mean that the planning system can ignore issues which are addressed by the HMO licensing system, it is important for planning authorities to strike an appropriate balance in the level of control in their policies taking onboard the importance of HMOs in the housing market and the controls available under HMO licensing. When reviewing such planning policies, authorities should bear in mind that existing policies were probably drawn up when the planning system was seen as the only means of controlling HMOs, and may be more restrictive than is now necessary.

CO-ORDINATED ADMINISTRATION OF PLANNING AND LICENSING

22. Not every HMO requires planning permission. Where both planning permission and an HMO licence are required, it is important to coordinate the approach to both and ensure that the features of each system are made clear to the applicant. These are separate regulatory regimes with different purposes, each of which has its own enforcement powers to deal with any breach. Planning authorities are reminded of the guidance in Circular 4/1998: The Use of Conditions in Planning Permissions (Paragraphs 6 and 20-22) regarding conditions in relation to matters subject to control under other legislation.
23. In cases where planning permission may be required, planning officers should advise applicants to also contact the HMO licensing section within the council. It may be helpful to establish systems for sharing information with the HMO licensing section. These arrangements should be reciprocal, since applications for HMO licences may also identify HMOs which require planning permission.
24. When coordinating the planning and HMO licensing procedures, including enforcement measures, it should be borne in mind that upgrading a property to HMO standards can be expensive, but, provided there are no pre-existing complaints from neighbours, it should be entirely within the control of the owner to meet the conditions for licensing. However, since planning deals with the balance of development in an area, factors outwith the owner's control may affect whether planning permission is granted. It is understandably frustrating for an operator to spend considerable sums upgrading a property and obtaining an HMO licence, and then to be refused planning permission to operate. Local authorities



should consider how they can better ensure that in the operation of their powers and responsibilities under the two systems and in the exercise of their enforcement powers they can provide a consistent service.

25. Both planning and licensing applications include an opportunity for objections to be put to the authority. Neighbours need clear information similar to that provided to applicants, to explain the two systems and what matters each can control. This may help to avoid the situation where the same objections are made in respect of both applications, and to reduce the frustration felt by objectors when their arguments are rejected as not relating to relevant considerations under the system in question.

FURTHER COPIES AND ENQUIRIES

26. Any enquiries about this Circular should be addressed to Alan Cameron, Scottish Executive Development Department, Planning Division, Area 2H, Victoria Quay, Edinburgh EH6 6QQ telephone (0131) 244 7065. Further copies may be obtained by telephoning (0131) 244 7066 or from the Scottish Executive web-site at www.scotland.gov.uk/planning. Copies of the HMO guidance, "Mandatory Licensing of Houses in Multiple Occupation: Guidance for Licensing Authorities", may be obtained by telephoning 0131 244 5528 or through the Scottish Executive web-site at www.scotland.gov.uk/hmo.

ANNEX A

EXTRACT FROM “MANDATORY LICENSING OF HOUSES IN MULTIPLE OCCUPATION: GUIDANCE FOR LICENSING AUTHORITIES”

2-5.6 Planning

1. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The aim is to ensure that development and changes in land use occur in suitable locations and are sustainable². Most people are aware of the need to obtain planning permission for new buildings, but the issue in relation to HMOs is usually change of use of existing buildings, which is perhaps less well understood.
2. Planning permission will be required if there has been, or is proposed to be, a change of use which, based on the circumstances of the case, constitutes “development” within the meaning of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). If the present use of the property is a lawful use, e.g. it has been used for that purpose for more than a period defined in statute (currently 10 years), then such use would be immune from enforcement action.
3. Planning law provides that certain changes of use do not constitute development within the meaning of the 1997 Act. The Town and Country Planning (Use Classes) (Scotland) Order 1997 (the Use Classes Order)³ groups certain uses or types of uses into classes and provides that changes of use within a class are not “development”, and therefore do not require planning permission. HMOs may fall into one of three classes - Class 7, Hotels and Hostels, Class 8, Residential institutions, or Class 9, Houses - or may fall outwith all these classes. Changes of use between classes are development for planning purposes and will therefore require planning permission.
4. Class 9, Houses, includes, among others, houses occupied by a single person, people living together as a family and up to 5 people living together, including a household where care is provided for residents. If the occupation of a house changed from family use to an HMO with no more than 5 occupants, there would therefore be no requirement to obtain planning permission for a change of use on that ground alone. However, a change from a family home, however large the family, to a house with more than 5 occupants who do not form a family, may represent a change of use constituting development, depending on the circumstances of the case. Where development was involved, and the multiple occupation was not a “lawful use”, planning permission would be required.
5. Flats are outwith Class 9 and consideration would need to be given as to whether any increase in the number of occupants of a flat would constitute development for the purposes of the 1997 Act and therefore require planning permission.
6. Article 4 of the Use Classes Order provides that sub-division of a house to form 2 or more separate houses constitutes development requiring planning permission.

² Extract from Scottish Planning Policy 1: The Planning System

³ Further guidance on the Use Classes Order is contained in Scottish Executive Development Department Circular 1/1998



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