

EXETER CITY COUNCIL

EXECUTIVE 28 SEPTEMBER 2010

PLANNING ISSUES RELATING TO HMOs FOR 3-6 STUDENTS PROPOSED ARTICLE FOUR DIRECTION AND AMENDED PLANNING POLICY

1 PURPOSE OF REPORT

1.1 The purpose of this report is to:

- (i) Update Members on Government proposals for planning control of small HMO uses (Use Class C4);
- (ii) To agree a proposed Article 4 Direction to remove permitted development rights for such uses in parts of Exeter;
- (iii) To undertake further work on proposed amendments to the Council's Supplementary Planning Guidance on Student Accommodation including further public consultation.

This report was considered by Planning Member Working Group on 24 August 2010.

2 BACKGROUND

- 2.1 In February 2010, the previous Government announced that it proposed to create a new use class (C4 Small HMOs) to bring such uses within planning control. This change took effect on 6 April 2010 (see PMWG report – February 2010). Prior to this time, a group of 3-6 people living as a single household (such as a shared student house) was not treated as a material change of use from a Class C3 family dwelling. In June 2010 the Coalition Government announced that it intended to retain the new Use Class, but from October it intended to treat changes of use from Class C3 to Class C4 as Permitted Development that would not normally require planning permission. If Councils wish to exercise planning control over changes from Class C3 to C4 they need to make Article Four Directions removing permitted development rights. Following a short limited consultation, the Government announced on 7 September that it would proceed with this approach and laid the regulations before Parliament.
- 2.2 In Exeter, the issue of HMOs is largely synonymous with student properties. Over 70% of registered HMOs are exempt from Council Tax due to entire student occupation. Relatively few HMOs are more than six persons constituting 'sui generis' uses that always need planning permission.
- 2.3 The Council adopted a policy in 2007 of supporting the expansion of the University of Exeter, subject to a caveat that at least 75% of the additional student numbers should be accommodated in purpose built accommodation. The University has completed about 1,000 bedspaces of additional accommodation in accordance with this policy and about 2,000 bedspaces have planning permission or are under construction. Despite this progress, the number of private properties that are exempt from Council Tax, due to their entire occupation by full time students, continues to grow from 1,184 in 2006

to 1,930 in 2010. These additional properties focused in certain areas of the City are causing problems of imbalanced communities and are affecting the character of areas. About forty roads have more than 25% of properties exempt from Council Tax and six roads have more than two thirds of properties. A schedule of roads with a high proportion of exemptions is at Table 1 and of exemptions by Ward is at Table 2.

- 2.4 The Council's existing policy on HMOs and purpose built student housing is H5 of the Exeter Local Plan First Review. This policy supports additional accommodation subject to a number of criteria. Criterion 'b' relates to avoiding the creation of imbalanced communities. Supplementary Planning Guidance on the application of the criterion was adopted by the Council in February 2008 (Student Accommodation Development in Residential Areas: Supplementary Planning Guidance). This guidance identifies three areas of the City where the proportion of Council Tax exemptions already exceeds 25% of dwellings where further student accommodation development will be resisted.

3 THE NEED FOR AN ARTICLE FOUR DIRECTION

- 3.1 The Council has previously considered it important to seek to limit excessive concentrations of student accommodation to avoid adverse impacts upon areas. The recent Government proposals have resulted in the creation of new small HMOs becoming subject to planning control in April 2010, however this will be lost from 1 October unless an Article 4 Direction is applied removing this new Permitted Development right.
- 3.2 The procedure for making an Article Four Direction is that Executive needs to approve a proposed direction, notice must be published through a local advertisement, and at least two notices posted stating a place where the Direction can be inspected. A period of at least 21 days must be allowed for consultation. Executive could delegate to the Head of Planning and Building Control, in consultation with the Portfolio Holder, authority to consider the results of the consultation and to decide whether to proceed or modify the direction. A copy of the notice is served on the Secretary of State in case he wishes to modify or quash the direction. He can do this anytime before it comes into force.
- 3.3 A period of at least 28 days and no more than two years must be allowed before an Article Four direction comes into force. The Government has decided that the compensation provisions that normally apply to Article Four Directions be limited to a liability where less than 12 months notice is given and limited to applications submitted within 12 months of Direction taking effect. The liability extends to abortive expenditure such as conversion work and depreciation from the loss of the Permitted Development right. Properties will acquire an enhanced value due to the Permitted Development right on 1 October.
- 3.4 The Government has stated it aims to issue revised guidance on the general procedures for making Article Four directions before 1 October, however, this was not available at the time of preparation of this report.
- 3.5 If the Council provides 12 months notice, then an Article Four direction could not take effect until after the start of two further academic years.

- 3.6 The area covered by an Article Four direction should have regard to areas where there is an existing problem of a concentration of HMOs that the Council may wish to control and a 'buffer zone' of areas that have a lesser concentration and may come under pressure due to future expansion of the University. A proposed area is shown on Plan One. The background of how it is defined is explained in paragraph 8.3.

4 FUTURE COUNCIL POLICY

- 4.1 Policy H5 of the Exeter Local Plan First Review remains the development plan policy against which proposals need to be assessed. Members may wish to re-assess the Supplementary Planning Guidance on the implementation of criterion 'b' on community imbalance.
- 4.2 In assessing the SPGs it is appropriate to have regard to recent public representations on the issues.

5 REPRESENTATIONS ON EXISTING POLICY

- 5.1 The Council has received a significant number of representations seeking changes in the existing policy in the period since February 2010 when the former Government announced the introduction of controls on HMOs.
- 5.2 A letter has been received from ten Residents Associations in St James Ward seeking a policy based on ward boundaries and fine-grained controls to reflect different circumstances. The Head of Planning and Building Control subsequently met with representatives of the residents' associations to discuss their concerns.
- 5.3 About 100 letters have been received from members of the public, the majority from the areas covered by the Thornton West Residents Associations and the Bury Meadow Residents Association, seeking restrictions applying to their areas. About 50 of these are standard letters from the area covered by the Thornton West Residents Association seeking a restriction in their area and a more flexible approach where the proportion of HMOs is already high. One of these is a petition from 17 residents of Norwood House.
- 5.4 A representation has been received from the University of Exeter Student's Guild. This states that restrictions will not solve existing problems, will divide residents and students; the public transport infrastructure does not facilitate a more dispersed pattern and it is concerned about potential in-year consequences for students from enforcement against unauthorised uses.
- 5.5 A copy of all the representations can be inspected in Planning Services.

6 POLICY ISSUES

- 6.1 It is considered appropriate to separate out two issues:
- (i) the approach to large scale purpose built student accommodation;
 - (ii) the approach to changes of use of family dwellings (Class C3) to HMOs (Class C4).

- 6.2 In order to provide certainty, the Council should identify its future policy as soon as possible so that interested parties understand where within the wider area covered by any Article Four direction applications will be refused after it comes into force.

7 LARGE SCALE PURPOSE BUILT STUDENT ACCOMMODATION

- 7.1 The Council's 'nine principles' SPG, adopted in 2007 states:

The City Council

- *Supports the intention of the University to expand. The City Council, where appropriate, will impose planning conditions or seek a planning obligation to ensure that expansion in the University's teaching, research and general facilities is accompanied by the provision of significant increases in purpose-built student residential accommodation, such that 75% or more of the additional student numbers are accommodated.*
- *Seeks the provision of as much purpose built student housing as possible to reduce the impact on the private sector housing market.*
- *Recognises that relatively high density managed accommodation on appropriate sites will need to make a significant contribution to meeting future needs. Developments will be permitted subject to management and supervision arrangements appropriate to the size, location and nature of occupants of schemes.*
- *Favours provision of further student accommodation in the following general locations:*
 - *The City Centre*
 - *St David's Station/Cowley Bridge Road area*
 - *More intensive use of the Duryard Campus*

- 7.2 The University and its partners have been very successful in increasing the stock of purpose built accommodation. However, further sites will have to be found to meet the 75% criterion for longer term expansion. It is desirable that this form of accommodation is maximised to reduce impacts on the private housing market and local communities. The Council will continue to discuss with the University whether, in the longer term, further accommodation can be provided on the two campuses.

- 7.3 Private sector providers of purpose built student accommodation are unlikely to consider sites that do not have good accessibility to the University campuses. A number of sites can be identified that may provide an opportunity to deliver new purpose built accommodation. Sites of sufficient size to enable a permanent on-site management presence include:

- St David's Station
- Johnson's Laundry, Cowley Bridge Road
- Land at Exmouth Junction, Prince Charles Road
- Townsends, Western Way
- Around Exeter City Football Ground
- Upper Floors of Sidwell Street

- 7.4 Any overall policy should allow such sites to come forward if appropriate even in areas where small student HMOs may be resisted.

8 CHANGES OF USE OF FAMILY DWELLINGS

- 8.1 It is considered that an approach based upon Council Tax exemptions is the most robust, evidence based, approach to identifying any area proposed to be subject to restrictions. Areas will be identified in a more broad brush way than in the existing SPG with greater reference to Ward boundaries to reflect representations received. The assessment will be based on a 'snapshot' of data at May 2010. Data will usually be monitored on an annual basis and the policy reviewed if there are significant changes.
- 8.2 The threshold for restrictions was previously set at 25% based upon experience in Nottingham where this level was understood to correspond to areas where there was a perceived problem. Survey work in Loughborough (Charnwood Borough Council) identified that about 50% of respondents considered there was a problem at 10% student accommodation, rising to 68% at 20%. Some local residents comment that student household sizes are typically 4-6 people, while families are more typically about 2.2 people, so 25% student households may mean approaching half of an area's population. In view of public concerns that communities may still be imbalanced at around 25%, it is proposed to reduce the threshold to 20%. The more broad brush approach will result in the inclusion of some areas of St James that are presently below 20% while the Ward as a whole is over 27%, Plan Two shows a basis of possible new policy restrictions based upon a 20% exemption.
- 8.3 It is proposed to define the area subject to Article Four direction more widely to include areas that have significant numbers of Council Tax exemptions but below 20%. In these areas a restriction will also be applied when and if they should reach 20% in the future.
- 8.4 Some residents in areas such as Danes Road, where student council tax exemptions are already very high (74%) have expressed concern that a policy makes their properties unsaleable. The policy will deter investors who wish to use homes for HMOs, however, private occupiers are unlikely to buy them because of the high proportion of HMOs. An approach of applying no restrictions in areas where HMOs are already clearly in the preponderance and permanent communities may have already largely ceased to exist would be unfair to those private residents who do wish to stay in their areas. Where proposals in such areas are supported by other residents, Members may wish to allow exceptions to the general policy of restriction on new HMOs.

9 ENFORCEMENT ISSUES

- 9.1 The Council can only take action on a breach of planning control when a material change of use has actually occurred, not when a property has been sold but remains unoccupied, or when it is in the process of conversion.
- 9.2 The changes in Government policy, leading to small HMOs requiring consent from 6 April but not needing consent after 1 October until, in some areas, an Article Four is imposed, will inevitably cause confusion.

- 9.3 While the Council is under an obligation to enforce planning law, it would not be expedient to take any action against unlawful changes of use at present, where they will become lawful in October 2010.
- 9.4 Where enforcement action is taken in future it will also be important to try and avoid the eviction of students mid-term.

10 WHAT HAPPENS NOW

- 10.1 Residents' Associations, local residents and other stakeholders have expressed a strong wish to work with the Council on the development of any new policy. It is proposed that this paper be released for initial informal general consultation. Any comments received on the proposed Article Four Direction will be updated to Executive when it considers making the decision. Comments on the future policy approach will be reported back to Planning Member Working Group before a later report to Executive on an amended 'Student Accommodation in Residential Areas' Supplementary Planning Document for formal public consultation.

11 SUMMARY OF PROPOSALS

- 11.1 These proposals are subject to any revised Government guidance on general procedures for making Article 4 directions :
- Article Four Direction to be made with 12 months notice covering area shown on Plan One;
 - Existing Student Accommodation in Residential Areas Supplementary Planning Guidance to be superseded;
 - Policy to be based on a snapshot of data on Council Tax exemptions;
 - Policy only applies to Class C4 uses. Proposals for significant student accommodation (such as sites in para 7.3) will be determined on their merits;
 - Areas to be defined on a Ward/part Ward basis;
 - Future restriction to be based upon 20% Council Tax exemptions;
 - Further areas within Article Four direction will be restricted after annual monitoring indicates proportions of exemptions in those areas exceed 20%;
 - Where the proportion of Council Tax exemptions is very high and there is public support, Members have the option of considering proposals on their merits;
 - Enforcement action will not be taken against unlawful uses that will become lawful after 1 October 2010.

12 PLANNING MEMBER WORKING GROUP

- 12.1 Planning Member Working Group considered this report on 24 August 2010. It supported the proposals. Members were keen to introduce an Article Four Direction, with less than twelve months notice, if significant compensation liability could be avoided and requested that officers investigate the potential liabilities further. One Member was concerned about students being encouraged to live in other areas of Exeter where they might contribute to housing stress.

13 FINANCIAL IMPLICATIONS

- 13.1 Properties may acquire an enhanced value due to the permitted development right on 1 October. Local agents indicate that in some circumstances student HMO usage attracts a premium of about 15% on the value of properties, in other cases, there may be no premium. This would amount to about £30,000 on a £200,000 property. The Council would be liable for any depreciation, plus any abortive works. There is an average of over 180 additional Council Tax exemptions per annum, the majority of these are likely to be in areas proposed to be subject to restrictions where planning permission would be refused. Put simply, on £30,000 per property on 180 properties, we would be looking at around £5.4m. The Council could be faced with significant compensation liabilities on a large number of properties. There is no compensation liability if 12 months notice is provided. Officers strongly advise Executive to agree the 12 months notice to avoid any compensation liability.

14 RECOMMENDATION

- 14.1 That authority be delegated to the Head of Planning and Building Control, in consultation with the Portfolio Holder, Sustainable Development and Transport to make an Article 4 Direction covering the area shown on Plan 1, to remove permitted development rights for changes of use from Class C3 dwellings to Class C4 (small HMOs) with twelve months notice and to consider any representations made and, if appropriate, confirm any direction.
- 14.2 That officers undertake informal consultation on amending Council policy on student accommodation in residential areas, as outlined above, and report back to Planning Member Working Group on a draft amended document for further public consultation.

RICHARD SHORT
HEAD OF PLANNING AND BUILDING CONTROL

ECONOMY AND DEVELOPMENT DIRECTORATE

Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:

None

TABLE 1

+5-10%

+10%

ROAD	Total Dwgs at Aug 2008	Dwgs Exempt C Tax	% Exempt Dwgs	Dwgs Exempt C Tax	% Exempt Dwgs	Dwgs Exempt C Tax	% Exempt Dwgs	Dwgs Exempt C Tax	% Exempt Dwgs
Victoria Street	102	67	65.7	76	0.0	72	70.5	70	68.6
Monks Road	250	56	22.4	55	22.0	61	24.4	75	30.0
Danes Road	65	40	61.5	46	70.8	46	70.7	51	78.4
New North Road*	485	17	3.5	45	9.3	64	13.2	82	16.9
Springfield Road	54	32	59.3	37	68.5	38	70.4	40	74.1
Old Tiverton Rd	205	30	14.6	34	16.6	37	18.0	47	22.9
Culverland Road	57	33	57.9	34	59.6	38	66.6	36	63.1
Pennsylvania Rd	311	33	10.6	33	10.6	37	11.9	38	12.2
Hoopern Street **	81	17	21.0	32	39.5	33	40.7	40	49.4
Priory Road	83	30	36.1	31	37.3	32	38.5	31	37.3
Pinhoe Road	437	32	7.3	30	6.9	35	8.0	35	8.0
Mount Pleasant Rd	158	30	19.0	30	19.0	31	19.6	33	20.8
Oxford Road	88	22	25.0	24	27.3	25	28.4	28	31.8
Union Road	121	21	17.4	23	19.0	26	21.5	30	24.8
Park Road	110	24	21.8	21	19.1	25	22.7	33	30.0
Longbrook Street	83	22	26.5	21	25.3	23	27.7	39	46.9
Howell Road	102	13	12.7	21	20.6	21	20.6	26	25.5
Well Street	87	21	24.1	20	23.0	22	25.3	22	25.3
Portland Street	111	20	18.0	20	18.0	24	21.6	29	26.1
Elmside	70	20	28.6	20	28.6	23	32.9	22	31.4
Richmond/ Windsor Ct	84	5	6.0	19	22.6	26	30.9	28	33.3
St Johns Road	56	18	32.1	17	30.4	16	28.6	20	35.7
Rosebery Road	54	13	24.1	16	29.6	14	25.9	15	27.8
Monkswell Road	41	16	39.0	16	39.0	17	41.5	17	41.5
Edgerton Pk Rd	26	14	53.8	16	61.5	16	61.5	16	61.5
Prospect Park	63	13	20.6	15	23.8	15	23.8	17	26.9
Hillsborough Ave	25	15	60.0	15	60.0	16	64.0	19	76.0
Bovemoors Lane	137	25	18.2	15	10.9	15	10.9	15	10.9
Lower North St	63	14	22.2	13	20.6	16	25.4	23	36.5
Haldon Road	128	10	7.8	13	10.2	10	7.8	10	7.8
Bonhay Road	144	15	10.4	13	9.0	10	6.9	20	13.8
Powderham Cresc	108	11	10.2	12	11.1	12	11.1	13	12.0
Polsloe Road	169	14	8.3	12	7.1	13	7.7	17	10.0
Mowbray Avenue	17	11	64.7	12	70.6	12	70.6	12	70.6
Blackall Road	90	14	15.6	12	13.3	12	13.3	19	21.1
St Annes Road	60	7	11.7	11	18.3	9	15.0	14	23.3
Queens Cresc	32	10	31.3	11	34.4	12	37.5	15	46.8
Sylvan Road	83	10	12.0	10	12.0	13	15.6	16	19.3
Herschell Road	33	6	18.2	10	30.3	7	21.2	8	24.2
Blackboy Road	173	7	4.0	10	5.8	12	6.9	15	8.6

Wrentham Estate	15	8	53.3	9	60.0	9	60.0	9	60.0
Manston Road	72	10	13.9	9	12.5	10	13.9	12	16.6
Mansfield Road	40	11	27.5	9	22.5	11	27.5	13	32.5
Iddesleigh Road	27	9	33.3	9	33.3	8	29.6	9	33.3
Toronto Road	53	8	15.1	8	15.1	5	9.4	5	9.4
Salisbury Road	41	6	14.6	8	19.5	11	26.8	12	29.3
Old Park Road	15	6	40.0	8	53.3	10	66.7	10	66.7
Morley Road	20	8	40.0	8	40.0	8	40.0	8	40.0
Magdalen Road	188	9	4.8	8	4.3	11	5.8	10	5.3
Kings Road	24	7	29.2	8	33.3	9	37.5	9	37.5
Addington Court	45	4	8.9	8	17.8	9	20.0	11	24.4
Victoria Road	68	5	7.4	7	10.3	9	13.2	9	13.2
Sandford Walk	67	6	9.0	7	10.4	8	11.9	8	11.9
Monterey Gardens	35	5	14.3	7	20.0	3	6.9	3	6.9
King William St	43	6	14.0	7	16.3	4	9.3	4	9.3
Horseguards	40	6	15.0	7	17.5	6	15.0	5	15.0
Devonshire Place	68	6	8.8	7	10.3	9	13.2	8	11.7
May Street	41	7	17.1	6	14.6	10	24.3	9	21.9
Clinton Avenue	18	6	33.3	6	33.3	6	33.3	6	33.3
Bystock Terrace	27	5	18.5	6	22.2	3	11.1	5	18.5
York Terrace	9	4	44.4	5	55.6	6	66.6	5	55.5
Water Lane	168	2	1.2	5	3.0	2	1.2	3	1.8
Lucas Avenue	30	4	13.3	5	16.7	5	16.6	7	23.3
Leighton Terrace	21	5	23.8	5	23.8	6	28.5	6	28.5
Jubilee Road	27	5	18.5	5	18.5	6	22.2	7	25.9
Eldertree Gdns	20	4	20.0	5	25.0	6	30.0	6	30.0
Acland Road	50	4	8.0	5	10.0	0	-	13	26.0
Woodbine Terr	12	4	33.3	4	33.3	4	33.3	3	25.0
St Davids Hill	279	11	3.9	4	1.4	10	3.5	8	2.8
Bedford Street	74	4	12.5	4	5.4	7	9.4	9	12.1
Abbots Road	20	7	35	4	20.0	6	30.0	5	25.0
St James Road	28	4	14.3	3	10.7	4	14.2	8	28.6
St James Close	10	4	40	3	30.0	2	20.0	1	10.0

* Includes 8 cluster flats at Molly Hayes apartments in 2008 and 41 flats at Isca Place

** Includes 14 flats at Hoopern Mews in 2008

40 roads show an increase in 2008 to 2009

13 roads show a decrease

19 roads stay the same

TABLE 2**COUNCIL TAX EXEMPT DWELLINGS**

(due to entire occupation by full-time students)
at 18 May 2010

Ward	Total Dwellings	Council Tax Exempt	Percentage Council Tax Exempt
Alphington	3921	18	0.5%
Cowick	2288	4	0.2%
Duryard	1263	47	3.7%
Exwick	3984	31	0.8%
Heavitree	2539	37	1.5%
Mincinglake	2357	9	0.4%
Newtown	2611	263	10.1%
Pennsylvania	2403	77	3.2%
Pinhoe	2625	6	0.2%
Polsloe	2506	359	14.3%
Priory	4013	26	0.6%
St David's	3347	239	7.1%
St James	2733	741	27.1%
St Leonard's	2482	36	1.5%
St Loyes	2763	9	0.3%
St Thomas	2810	15	0.5%
Topsham	2741	6	0.2%
Whipton Barton	3374	7	0.2%
ECC	50,760	1930	3.8%