

NOTTINGHAM ACTION GROUP ON HMOs

UPDATE ON HOUSES IN MULTIPLE OCCUPATION

Presented at a Meeting of the Nottingham Action Group on HMOs

By

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Nottingham City Council

21 July, 2010

SUMMARY

This report updates the Group on a proposal for significant change to planning control for Houses in Multiple Occupation (HMO), which has been subject of a short and limited consultation exercise by the Coalition Government, together with the City Council's response submitted by Cllr Clark.

BACKGROUND

In April 2010, following extensive consultation, the previous Government introduced an amended Town and Country Planning (Use Classes Order) 1987 to provide for a specific definition of an HMO within a new use class C4, changing the requirements for planning permission. The new position was that permission would be required from 6th April 2010, where a material change of use would occur for properties changing use from C3 (dwelling house) to the new use class C4 (house in multiple occupation).

This means that it was, from that date, necessary to apply for planning permission to switch to using a dwelling house to accommodate between 3 and 6 unrelated people sharing, rather than just those with 7 or more unrelated people sharing as had previously been the case. At the same time as making this change, CLG also indicated that movement between the new C4 HMO Use Class (3 to six 6 unrelated people sharing) back to the C3 (dwelling house) would not require planning permission.

Since April 2010, a number of submitted HMO applications were considered by the City Council's Development Control Committee on 16th June as summarised in **Appendix A of this report**.

NEW PROPOSALS FOR PLANNING WITH REGARD TO HOUSES IN MULTIPLE OCCUPATION

However the Coalition Government on 14th June issued a limited 'by invitation only' consultation on proposals **as set out in Appendix B** to this report which would give 'permitted development' rights for conversion from C3 dwelling house to C4 HMO, and thereby remove the requirement to obtain planning permission for this change of use. The consultation suggested councils could introduce Directions under Article 4 of the General Development Order to control areas where pressures associated with HMOs existed.

The City Council was not consulted as part of the original invitation. However following a letter from Cllr Clark seeking permission to respond, the Government confirmed it would consider submissions from areas where circumstances were felt to justify such a contribution. The short timescales involved (original invitation from 14th June until Friday 9th July 2010) precluded full discussion of the issues, but Cllr Clark as the responsible Portfolio Holder submitted the response **attached at Appendix C** to this report.

The City Council has also pushed this line through the Core Cities Group and is seeking to influence the Local Government Association's view on this matter.

NEXT STEPS

The Government has indicated that it wishes to implement the changes by October 2010. It is recommended that City Council officers and Cllrs continue to apply pressure in respect of the proposed changes. The Government is being criticised from a number of quarters due to the compressed timetable and limited nature of the consultation exercise.

Further reports on progress will be brought to City Councillors in due course as the Coalition Government's response becomes clearer.

Grant Butterworth
19th July, 2010

APPENDIX A: HMO APPLICATIONS CONSIDERED BY DEVELOPMENT CONTROL COMMITTEE 16TH JUNE 2010

1. 28 GREGORY STREET (vacant 2 storey end terrace within approved Medipark site)

Proposal: Change of use to 4 person house in multiple occupation (Use Class C4)

Officer Recommendation: Refuse - contrary to policies ST1 and H6.

OUTCOME: Withdrawn prior to Committee.

2. 10 CHURCH GROVE, LENTON (3 bed house in compact cul de sac)

Proposal: Conversion of dwelling to 5 person house in multiple occupation (Use Class C4)

Officer Recommendation: Refuse - contrary to policies ST1, H6 and H7.

OUTCOME: Refused as recommended.

3. 18 POPLAR AVENUE, SHERWOOD (4 bed detached house in cul de sac)

Proposal: Change of use of C3 dwelling to 6 person house in multiple occupation (Use Class C4)

Officer Recommendation: Refuse - contrary to policies ST1, BE2 and H7.

OUTCOME: Refused as recommended.

4. 22 NOEL STREET & 24 NOEL STREET (3 storey semi-detached, former dwelling houses)

Proposal: Change of use of each property from 3 flats to 7 bed house in multiple occupation (i.e. 2 x 7 bed HMOs)

Officer Recommendation: Grant permission - Policies ST1, H6 and BE2 considered.

OUTCOME: Granted as recommended (just 3 year implementation condition).

5. 128 HARRINGTON DRIVE (semi-detached house with 4 student bedrooms – C4HMO)

Proposal: Erection of single storey rear extension.

Officer Recommendation: Grant conditionally - Policies ST1, H6 and BE3 considered.

OUTCOME: Granted as recommended (3 year implementation and materials conditions).

APPENDIX B: CLG CONSULTATION NOTE

HOUSE IN MULTIPLE OCCUPATION (HMOS): CHANGES TO PLANNING LEGISLATION

PROPOSALS

We propose to:

- retain the current legislative provisions i.e. the C4 use class for small HMOs and the permitted development rights to change from a C4 HMO to a C3 dwelling house
- amend the legislation to make changes of use from C3 dwelling houses to C4 HMOs permitted development as well
- amend the compensation provisions for Article 4 directions to reduce local authorities' liability to pay compensation.

Our aim is that the necessary legislation will be laid before Parliament at the beginning of September and the changes will come into effect on 1 October 2010.

BACKGROUND

There is a current blanket requirement for applications for planning permission for material changes of use from dwelling houses to small HMOs. This imposes a regulatory burden on landlords and local authorities in those areas where HMO development is not a concern. There is a risk that this will deter prospective landlords from entering the market and endanger the supply of what is a vital source of low cost housing in many areas.

However there is a belief that the planning system needs to enable local people to take action to deal with specific local problems such as those which can be associated with concentrations of HMOs.

The proposals outlined above will mean that, in future, any change of use between C3 dwelling houses and C4 HMOs can take place freely without the need to submit planning applications. Where there are concerns about the impact of future HMO development in a particular area, local authorities will be able to use existing powers, in the form of Article 4 directions, to remove the permitted development rights and require planning applications for such changes of use.

There will be costs associated with the use of Article 4 directions. In order to reduce local authorities' liability we are proposing to apply the compensation provisions inserted by s189 of the Planning Act 2008 to this kind of development. Currently local authorities are liable to pay compensation for the 12 months following the effective date of the direction. We intend to make changes to the compensation provisions to limit their liability further so that they are only liable if they choose to implement Article 4 directions with immediate effect or with less than 12 months notice. In delivering local solutions it will be for authorities to make a judgement on whether the benefits outweigh the costs associated with taking action.

CONSULTATION QUESTIONS

Do you consider that the proposals will allow local areas to take action without imposing unnecessary burdens on unaffected areas?

- If not, why not? What do you think could be done, within the constraints of the current planning framework, instead?
- Do you think there will be unintended consequences as a result of the proposed changes? If so what will they be and how do you think they could be mitigated?
- Do you think there are any other changes which need to be made to make this approach work more effectively e.g. to HMO definition?
- Do you have any information on costs/benefits which would be relevant to impact assessment?
- Do you think LPAs will choose to issue Article 4 directions with immediate effect or less than 12 months notice?
- How should we monitor the impact of these proposals and assess their success? What is the best review approach?
- Do you have any comments on the legislation as drafted?

APPENDIX B : NOTTINGHAM CITY COUNCIL RESPONSE TO HMO CONSULTATION

Grant Shapps MP
Minister of State for Housing
Department for Communities and Local Government
Planning – Development Management
1/J2, Eland House
Bressenden Place
London
SW1E 5DU

9 July 2010

Dear Mr Shapps

Houses in Multiple Occupation (HMOs): consultation on changes to planning rules

Please find below the response of Nottingham City Council in relation to draft amendments to planning rules that would remove the current requirement for planning permission to be obtained for changes of use from Class C3 dwelling houses to Class C4 HMOs, and modify the compensation provisions for Article 4 Directions.

HMOs are a particular issue in the City of Nottingham and so the City Council welcomes this opportunity to comment on the proposed changes to planning rules. At the meeting of the City Council's Development Control Committee on June 16th 2010, (see <http://open.nottinghamcity.gov.uk/comm/agenda.asp?CtteMeetID=3682>), six applications relating to differing HMOs were determined, all with differing impacts and issues. Consideration of these applications generated a full debate, and local councillors considered the various merits of the applications with due consideration of the potential impacts upon the local communities. If the Government proceeds with its proposals, in future the council would not be able to determine applications similar to four of these without the need for lengthy, costly and potentially challengeable Article 4 Direction work. And the 12 month notice period would effectively be a perverse incentive which would encourage the owners of the properties to take advantage of their permitted development rights to implement the development before the Direction became applicable. This highlights one of the real weaknesses of using an inflexible and unresponsive system.

The creation of the C4 use class for small HMOs in April 2010 was strongly welcomed by Nottingham City Council as an important recognition of the distinct difference in character between C3 dwelling houses and C4 HMOs. This decision, which was subjected to lengthy, inclusive and extensive consultation, allowed local controls to be applied in a manner which the City Council considers to be in full accord with the Government's new approach to planning in a localised, responsive manner in very strong contrast to what is happening now.

Acknowledgement of this difference, and that a change between the two uses constitutes development for which express planning permission is required, provided local planning authorities with a valuable ability to consider the planning merits and impacts of such changes, including the cumulative impact of a series of changes on an area, when deciding whether or not to permit the development.

Although the current draft proposals reaffirm the clear difference between the two uses by retaining the C4 use class, they would take away the automatic ability for local planning

authorities to consider the planning impacts arising from C3 dwellings changing to C4 HMOs, and therefore their ability to undertake proper planning in relation to these uses in their areas.

The limited re-instatement of this ability to review the merits of such changes in specifically defined areas by the use of Article 4 Directions is not considered to provide an adequate basis for effective planning in relation to HMO uses at a local level. The nature and pace of change in communities means that a closely defined area based approach will prevent local authorities from being able to respond quickly to changing demands and the supply of HMOs. The proposed changes to the planning rules **are therefore strongly opposed** by Nottingham City Council.

The reasons why the proposed changes are not judged to provide an adequate basis for effective planning are considered below within the framework of the consultation questions presented:

Consultation Questions

- **Why do you consider that the proposals will not allow local areas to take action without imposing unnecessary burdens on unaffected areas? What do you think could be done, within the constraints of the current planning framework, instead?**

It is noted in the briefing note summarising the draft proposals that there is a belief that the planning system needs to enable local people to take action to deal with specific local problems such as those which can be associated with concentrations of HMOs. However, it is felt that the proposals would not allow local areas to take timely and effective action because of:

- a) the costs to local planning authorities associated with Article 4 Directions that would deter and/or preclude their use. These include evidence gathering, liability to pay compensation, the work involved to support and make the directions and the loss of fee income that would ordinarily be generated from planning applications;
- b) the delays to a local authority's ability to take action arising from the need to first make a case for (i.e. demonstrate that there are exceptional circumstances that constitute a real and specific threat) and then remove permitted development rights by direction, and then subsequently prepare the statutory policy context by which the applications would then be determined. This would actually encourage HMO conversions in an area to first emerge and then escalate before measures can be introduced to deal with future problems, whilst offering no scope to reverse the impacts that have already occurred;
- c) difficulties in compiling robust and precise evidence to support the case for the directions due to the nature of the issues associated with HMO uses, and problems with establishing a clear and defined boundary around an affected area, together with the adjoining areas which could be considered to be at risk of emerging concentration ;
- d) the Article 4 approach being wholly inadequate when the fluid nature of changes in HMO demand and supply will move quickly beyond the areas strictly in defined control, and there being insufficient provision to quickly modify and/or extend the Article 4 boundaries; and

- e) an absence of up to date policy guidance that provides a supportive framework for widening the scope of use of Article 4 Directions to deal with local issues beyond, for example, those associated with conserving narrowly defined physical fabric in conservation areas that has so far been one of the main focuses for Article 4 Directions, and is very much reflective of the emphasis of current guidance set out in Circular 09/95.

It is acknowledged that the changes to the procedures relating to Article 4 Directions that came into force in April, and the further changes that are proposed to the compensation arrangements under the current draft proposals, are intended to assist local planning authorities to use the directions to address identified problems at a local level. However, these changes are not considered to address the cost implications to local authorities associated with Article 4 Directions.

Under the proposed rules, the local authority would remain liable to pay compensation in cases where an application was refused or granted conditionally unless 12 months' notice was given. The aim of a local authority would be to seek to tackle an identified problem as swiftly as possible by withdrawing the relevant permitted development rights as soon as there was evidence indicating a need to do so in respect of a given area.

However, the compensation liability arising from restricting changes of use from Class C3 to Class C4 would potentially be substantial. For example, the rental income generated from a dwelling in Class C4 use can in some areas be three times greater than that yielded from a Class C3 dwelling. Exposure of the local planning authority to this level of compensation liability would be highly likely to make the use of Article 4 Directions for controlling HMOs without first giving twelve months' notice, and therefore at a time when they would be most effective, unaffordable, and therefore prohibitive. In the current extreme financial constraints facing local authorities including the withdrawal of Housing and Planning Delivery Grant, it is inconceivable that this is a realistic option.

The gathering of information and evidence about an area in order to demonstrate the case for removing permitted development rights would be time consuming and substantial. The nature and extent of issues that can be associated with concentrations of HMO uses can be quite fluid and are not always tangible in a physical sense. Some of the problems that occur include anti-social behaviour, negative impact on retail facilities, high levels of residential turnover and a socio-economic imbalance in the communities concerned, in addition to physical impacts such as deficient standards of property repair and day to day management such as disposal of domestic waste and litter along with broken/unwanted white goods, bedding, mattresses etc.

As well as the information about such problems being difficult to precisely define, data about numbers of HMOs is also not readily available from definitive sources and will tend to vary over time. Furthermore, your recent decision not to proceed with Registration requirements removes a potential source of this information. To ensure evidence was robust, it would be necessary to undertake a comprehensive household survey across the areas involved in order to determine the current lawful use of each individual property, something which would be prohibitively expensive and only accurate at a given point in time.

The fluid and often intangible nature of evidence relating to HMOs contrasts markedly with that typically associated with the making of an Article 4 Direction to address problems of incremental erosion of high quality, historic fabric in a conservation area. In the latter case, the physical fabric that the local authority is seeking to conserve can be readily surveyed and the boundary of the area can be clearly defined. Once the direction is made to withdraw the permitted development rights to alter the physical fabric, the way in which the fabric evolves will be within the control of the local planning authority and can be precisely monitored. However, areas affected by a concentration of HMOs often do not have a clear boundary with easily identified physical limits, and both the proportion of HMO uses and the problems associated with them may not be static. This makes the justification for, and effectiveness of, using Article 4 Directions to address problems arising from concentrations of HMOs difficult to clearly establish.

The current policy guidance does not support the use of Article 4 Directions to withdraw permitted development rights over wide areas. It is also heavily oriented towards supporting the use of Article 4 Directions to conserve high quality landscapes and buildings rather than tackling the material but non-physical problems as well as the physical problems that can arise from permitted changes of use in areas that do not have these qualities. Even where it can be demonstrated that changes of use may have undesirable physical consequences, the current legislative and policy framework require that a locality must be of special quality to justify the use of an Article 4 Direction to introduce control over such changes. Some places that have a high concentration of HMOs fall within conservation areas. However, in many cases they lie outside conservation areas and although they make an important contribution to the character and local distinctiveness of the city, they do not possess exceptional physical qualities.

Due to the presumption against the use of wide area directions, in a city like Nottingham it is not inconceivable that up to around 10 separate Article 4 Directions would need to be made to introduce some level of control in those areas most affected by HMO issues. The cost of evidencing, scoping and legally pursuing multiple Article 4 Directions would be considerable, not only in the City of Nottingham, but also in the 60 or more university towns and cities throughout the country, as well as the numerous coastal towns that experience HMO associated problems. There would therefore be a disproportionate burden on those places where there was a real need to apply necessary levels of planning control for the proper management of local issues, far outweighing the relatively modest costs to other places associated with straightforward change of use applications.

It has been suggested that 8,500 planning applications per year would be generated by maintaining the need to expressly apply for permission to change from Class C3 to Class C4. Although the basis of this estimate is unclear, if correct it would equate to an approximate average of 25 per local authority area and the fee would contribute towards the costs of those authorities for whom in many cases the processing of the applications would be straightforward. In contrast, under the draft proposals, in the areas that experience the most extreme problems with HMOs and for whom the consideration of applications will often more complex, there would be no fee payable and the costs would therefore be fully borne by the local authority. This is an iniquitous approach.

The difficulties of effectively using Article 4 Directions to deal with problems associated with HMOs in the current legislative and policy framework is evidenced in

the written advice received from the Government Office for the East Midlands, a copy of which is appended to this letter. Although the letter dates from 2005, the policy position set out within Circular 09/95 has not changed and the advice in the letter is very clear about the limitations on the use of Article 4 directions.

Within the context of the evidence difficulties and policy constraints identified above, local authorities would be faced with potentially abortive costs in seeking but ultimately failing to introduce an Article 4 Direction. Although it is recognised that the approval of the Secretary of State is no longer required, a local authority would still need to be clear that any Article 4 that was introduced met legislative and policy requirements. A failure to do so could potentially lead to an application for judicial review. Such a risk would further deter local authorities from using an Article 4 Direction to address local issues, particularly as this approach is untested and untried. It is almost inevitable that early Directions would be subject to legal challenge and judicial review- again leading to cost, uncertainty, delay and risk, deterring action which is currently available and is being actively applied to safeguard the balance of communities in Nottingham.

The shortcomings of Article 4 Directions as a mechanism for allowing action to be taken to address local issues associated with HMOs, including the exercise of control over numbers, would act to undermine the viability of Nottingham City Council's drive to encourage purpose built accommodation, in collaboration with higher education institutions and other partners.

Instead of the current proposal, an approach that could be considered within the existing planning framework is the use of Local Development Orders in areas where there is no perceived problem with HMOs, to allow change of use from Class C3 to Class C4 without express planning permission. There are many areas around the country where control of HMOs is desirable and required- it is a more facilitative approach to allow LDO action to be taken in those areas where problems do not exist. It is not considered that the cost of a planning application for this purpose or the processing of such applications presents an unreasonable burden in the majority of areas.

Shoehorning the resolution of significantly detrimental issues into an inappropriate tool (i.e. Article 4 Directions), as opposed to facilitating a more considered and integrated review of all planning policy that would support a neighbourhood based approach taking into account issues that matter to people at a local level, is short sighted. Nottingham City Council is willing to engage in a proper dialogue about how this alternative approach could be taken forward, as opposed to the top-down imposition of an inappropriate and rigid mechanism that will exacerbate, rather than resolve the issue.

- **Do you think there will be unintended consequences as a result of the proposed changes? If so what will they be and how do you think they could be mitigated?**

The main unintended consequences of the proposed changes are considered to be an acceleration of and encouragement to develop HMOs, and thereby exacerbate the associated concentration problems in areas where twelve months' notice is given by local authorities in order to avoid compensation liability. A further consequence would be the development of HMO associated problems in locations just beyond the areas defined in Article 4 Directions.

The first of these problems could be overcome if the compensation liability was lifted for directions brought in with immediate effect, although there could still be some increased tendency to exercise permitted development rights in view of the potential future risk of them being removed without notice, if Article 4 Directions became regularly used for such a purpose.

- **Do you think there are any other changes which need to be made to make this approach work more effectively e.g. to HMO definition?**

To aid clarity, it would be helpful to fully consolidate the definition of a C4 HMO into planning legislation rather relying on the need to cross refer to the Housing Act 2004. However, it is not considered that this would significantly improve the effectiveness of the proposed approach.

- **Do you have any information on costs/benefits which would be relevant to impact assessment?**

Issues relating to costs and benefits are discussed in response to the first question above. As the C4 Use Class was only introduced in April, data relating to numbers of applications and costs incurred is very limited. The wider costs and benefits of the proposals in terms of the impact on the effective management of issues relating to HMOs resulting from the removal of automatic control over changes of use would be difficult to precisely quantify.

- **Do you think LPAs will choose to issue Article 4 directions with immediate effect or less than 12 months notice?**

As stated above, it is considered that local planning authorities will not choose to issue directions either with immediate effect or with less than 12 months' notice because of reasons previously cited, that relate mainly to liability for compensation payments and difficulties with providing evidence to meet policy requirements, which are even greater when issuing a direction with immediate effect.

- **How should we monitor the impact of these proposals and assess their success? What is the best review approach?**

The monitoring of the impact of these proposals would be very complex and involve measuring the future pattern of C4 HMO uses, effects of these uses on the surrounding localities, the numbers of Article 4 directions issued, the costs incurred in preparing and issuing them, the numbers of 'fee free' applications generated and the levels of compensation awarded. As there is no definitive source of information on the location of C4 HMOs, such as a register or licensing procedure, and such uses are not static, information on numbers would be difficult and expensive to collect.

- **Do you have any comments on the legislation as drafted?**

The legislation as drafted does not enable Article 4 Directions to be used at a local level to take effective action to address problems that can be associated with C4 HMOs. The main effect of the legislation would be to apply rules relating to Article 4 Directions that came into force in April in respect of some other prescribed forms of development to changes of use from C3 dwellings to C4 HMOs, to reflect the fact that this change would no longer be permitted development.

In conclusion, Nottingham City Council does not support the proposals in their current form and urges you to give full consideration to the comments raised in this letter.

Yours sincerely,

Councillor Alan Clark
Portfolio Holder for Neighbourhood Regeneration

Cc. Theresa Donohue, Department for Communities and Local Government
Susan Turner, Department for Communities and Local Government

APPENDIX - CORRESPONDENCE FROM GOVERNMENT OFFICE FOR THE EAST MIDLANDS TO NOTTINGHAM CITY COUNCIL IN RESPECT OF ARTICLE 4 DIRECTION CONTROL OF EXTENSIONS TO STUDENT HOUSEHOLDS

Mr Adrian Jones
Service Director
Planning and Transport
Nottingham City Council
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Smithy Row
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19 September 2005

Dear Mr. Jones

ARTICLE 4 DIRECTION IN AREAS OF STUDENT CONCENTRATION

Thank you for your letter dated 25 July 2005 to Melanie Alker, Director Planning at the Government Office, sent following your meeting with Melanie and Karin Staples, Head of Nottinghamshire Planning here in GOEM. Also, for enclosing a copy of your previous letter of 14 September 2004 and our reply, regarding the possibility of the City Council using an Article 4 Direction to remove permitted development rights with the aim of preventing an increase in student numbers within a defined area.

As discussed when you met Melanie and Karin, we appreciate that the Council are actively considering a variety of ways of tackling this issue including both the planning and housing routes. We understand that the Council are looking to use the new powers that local authorities have under the Housing Act 2004, which introduced licensing for Homes in Multiple Occupation which covers rented houses occupied by students during term time. Similarly, the Nottingham Housing Strategy, currently in draft, also has a role to play and you will recognise the need for it to be as comprehensive as possible on this issue. The draft discusses the issue of students and the need for balanced communities as part of the City's overall strategy to deliver 'Decent Neighbourhoods'. One of the strategy's objectives in this regard is to work with the Development Department in producing local planning guidance that restricts new HMO developments in areas with high student concentrations. We recognise that this is just one of a number of measures intended to address the challenging issue of studentification.

Of course, the issue has also been raised in connection with consultation on your Supplementary Planning Document (SPD) 'Building Balanced Communities' to which GOEM very recently replied. The SPD sets out the Council's approach to further student housing provision, in particular the provision of further purpose built student accommodation, and the approach to balanced communities in areas with large numbers of student households. We especially note that the intention to define a 'Student Housing

Restraint Area' (with the aim of restricting the development of further student accommodation within this area, whilst encouraging purpose built and managed accommodation elsewhere) is no longer being pursued through SPD.

However, you confirm that residents, Members and local MPs continue to be concerned about the effect of student concentrations on the 'host' communities. On that basis Members have asked you to write to us again to seek the views of GOEM and ODPM on the likelihood of an Article 4 Direction being approved which removes permitted development rights for extensions which provided additional habitable rooms. You explain that the aim of the Direction would be to prevent development which led to an increase in student numbers in areas where the community is already imbalanced due to a high proportion of student households. You confirm that such a Direction would operate where the number of student households comprised more than 25% of the total number of households. The plan you provided shows the wide extent of the area under consideration containing 5,768 households of which 2,385 households (c41%) were solely made up of students. You appreciate that such a Direction would be outside the normal purpose and scale of Article 4 Directions but confirm the strong feeling of Members that the adverse affects of large concentrations of students require exceptional action. Given that the preparation of a Direction of this scale will be a major task you seek further guidance and particularly ask whether we are able to forward any comments received from ODPM in relation to this matter. We have consulted ODPM colleagues who are most closely involved with policy for Article 4 Directions as well as those with wider responsibility for planning and housing policy.

The problem from the planning perspective which everyone recognises is that there are very limited powers in planning terms to do anything about student concentrations in existing residential areas because most of the accommodation that lends itself to the student population is not governed by a need for planning permission. Also, even if planning permission is necessary the applicant does not have to specify or disclose who is proposed to be housed in that property. As part of ODPM's scoping for what might go into a draft PPS3, which they undertake to publish for consultation in the Autumn, this is already recognised to be an issue with regard to policies that concern the management of established student areas. However, what might be possible in planning terms, which does not then have implications as regards restrictions on the ability of any group of individuals (be it students, nurses or any other "group") to choose where they wish to live, is almost certain to be limited.

Planning Policy Guidance Note 3, 'Housing', encourages local authorities to promote balanced communities, to include affordable housing in new developments, and to consider future housing demand for groups such as students when preparing their local development plans. In an area with many students this should clearly involve close liaison between the council and the various higher education institutions on future student numbers. When planning applications are decided by local planning authorities, they are assessed on land-use planning considerations such as visual appearance, noise and parking, in the light of relevant policies in the development plan for the area. Personal considerations, such as the occupation of future residents, and financial considerations, such as the effect on nearby property values, will generally be immaterial. Planning decisions based on matters extraneous to planning could be struck down in the courts. Similar principles should be observed when considering whether to withdraw a permitted development right.

We want to promote quality and choice in housing, balanced communities, and to ensure that everyone has the opportunity for a decent home. Students are entitled to choice as much as any other group, and we cannot force them to live in halls of residence even if

more were provided by the universities. Many will choose to live in the private rented sector. It is entirely up to universities how much accommodation they provide for their students, and it is acknowledged that it has largely fallen to the market to meet increased demand in recent years. We should also not overlook the role played by the not-for-profit sector which provides student housing in a number of cities.

Given your Council's close involvement, you will know that the outcome of the DfES funded research directed by Universities UK is to be published shortly. 'The engagement of students and higher education institutions with their communities: A guide to challenges and practices' will provide a useful set of inter-disciplinary examples and case studies for a difficult area that requires co-operation between local authorities, higher education institutions, private accommodation providers, local communities and students. No doubt you will wish to consider how these findings can contribute to tackling the issues that concern the Council.

A positive effort to provide attractive homes for students may work better than preventive measures. Although, ODPM understand that Oxford City Council experimented with special control powers for houses in multiple occupation in parts of the city, so as to restrict additional properties being let on that basis, something you may wish to explore directly with them. However, ODPM have no knowledge of the use of Article 4 Directions in this particular context. They suggest that any restriction on expansion of dwellings would be feasible only if a credible threat could be shown to exist, for example that over-intensification of buildings, or overcrowding, or excessive additional traffic, would have a significant adverse effect on the amenity of an area. Moreover, they also point out that all house extensions would have to be limited in those circumstances, not just ones that students might move into.

You previously requested the Government Office's view on the appropriateness of such an approach which it might be useful to set out again here for completeness. We would reiterate that under Article 4 your Council must be satisfied that it is expedient that the development "should not be carried out" without specific permission. Permitted development as set out in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) has been approved by Parliament, applies throughout England and Wales, and must not, therefore, be locally withdrawn by Local Planning Authorities without very good reason. LPAs have been advised in DOE Circular 9/95 - General Development Order Consolidation 1995 that permitted development should be withdrawn only in exceptional circumstances and that it will rarely be justifiable to withdraw permitted development rights unless there is a real and specific threat. By real and specific threat it is meant that there is reliable evidence to suggest that permitted development is likely to take place which could damage an interest of acknowledged importance and which, therefore, needs to be brought under planning control in the public interest.

We previously said that a Direction to prevent further extension of existing properties would be likely to fall under Part 1 of Schedule 2 of the GDPO, that being development within the curtilage of a dwellinghouse. In addition to being justifiable due to a real and specific threat such permitted development rights should not be withdrawn unless the dwelling or the locality is of particular quality. The area (previously defined as a 'Student Housing Restraint Area' in the draft SPD) to which the Article 4 Direction would presumably be applied would appear to be a wide area of land lying to the west, north and south of the city centre. The boundaries of land subject to a Direction should be drawn as tightly as possible, having regard to the circumstances of the case. Subject therefore to the exception of agriculture, Directions covering such wide areas of land will not normally be approved. There is, however, no preconceived notion about a maximum area which a Direction should cover.

You now seek the views of GOEM and ODPM about the likelihood of an Article 4 Direction being approved by the Secretary of State. We previously said we are unable to offer

definitive advice as to the likelihood of whether or not such a Direction would be approved. As before our comments are made without prejudice to the Secretary of State's consideration of any such Direction, which may subsequently be submitted for approval. We confirmed that past experience of Directions approved on behalf of the Secretary of State by this office have generally been on a small scale aimed at development which proposed a real and specific threat and which related to dwellings or localities of particular quality, rather than as you propose, where the aim of the Direction would be to prevent development in order to restrict the suitability of the properties as accommodation for students.

As we also previously said, ultimately it will be a matter for your Council to decide whether or not removal of permitted development rights as suggested could be justified in the terms outlined above. We assume that the Council would wish to obtain its own legal advice in this matter before progressing further. Were the Council to decide to pursue an Article 4 Direction, particularly appreciating your understandable wish to avoid abortive time and effort and in view of the exceptional nature and circumstances of this case, it would be especially helpful to provide GOEM with a draft of any intended Direction together with the fullest justification. On the basis of which we could consider providing an informal response to any draft proposals in which we would also involve ODPM. We hope that this might provide a helpful way forward in what is acknowledged to be a particularly difficult area.

Yours sincerely

Michael Smith