

CABINET

19 JANUARY 2011

HOUSES IN MULTIPLE OCCUPATION – STANMORE

REPORT OF ASSISTANT DIRECTOR (ACTIVE COMMUNITIES)

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RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

A number of issues relating to houses in multiple occupation (HMO) have been raised through the Stanmore community plan process. This report sets out the initial response to these issues and explores the potential of an Additional Mandatory Licensing Scheme. Such a scheme would have the support of the Town Forum who would like to see this covering the entire town area. The report concludes that an Additional Mandatory Licensing Scheme may well assist in ensuring that all HMO properties are of good quality and well managed. In order to proceed, the Council would need to undertake a full consultation process. In addition, further awareness-raising is required to encourage members of the public to report incidents of nuisance etc to the Council. This will enable public concerns to be supported by evidence.

RECOMMENDATIONS:

1. That the action being taken in respect of parking, community development and noise nuisance be noted.
2. That Cabinet indicates whether it wishes to undertake consultation in relation to an Additional Licensing Scheme for Houses in Multiple Occupation in the Stanmore neighbourhood.
3. If consultation is to be undertaken:-
 - a) that this project be prioritised and the 1Team secondment process be used to identify officer time required;
 - b) that a growth bid of £5,000 be considered as part of the budget process to cover the other consultation costs.

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1 Introduction

- 1.1 In July 2007 a small working group under the direction of the Stanmore Combined group started what would become a 3 year project to develop a community plan for Stanmore. The development of the plan involved a comprehensive consultation process which included:
- a) A snapshot survey to identify the key issues;
 - b) A major household survey that generated approximately 350 responses;
 - c) Targeted consultation with young people over a week at Kings School with 50 young people participating;
 - d) Two action planning events, one specifically around the issue of Houses in Multiple Occupation (HMO) that attracted more than 140 attendees;
- 1.2 The Stanmore Community Action Plan was published in June 2010 and includes a series of 46 individual actions. The action plan schedule which provides an update on progress with each action can be accessed via the Stanmore Combined website at http://www.stanmorecombined.org.uk/community_planning/.
- 1.3 That the HMO event attracted over 140 people demonstrated the depth of feeling around that particular issue. There is a perception amongst residents in the area that many of the problems in Stanmore are directly caused by the concentration of HMO accommodation within the neighbourhood. Some of the key concerns related to HMO accommodation are:
- a) Loss of accommodation suitable for families when houses become HMOs;
 - b) Pressure on space for parking from cars associated with HMO properties (exacerbated by commuters taking advantage of free parking availability);
 - c) Perceived increased incidence of noise and anti-social behaviour;

- d) General level of untidiness and litter associated with some HMO properties.
- 1.4 The work of the Community Planning group and the identification of Stanmore as a priority area within the Community Strategy have brought about a greater focus on the role Winchester City Council and the Winchester District Strategic Partnership might undertake to address these concerns. This initial report provides an update on ongoing actions, and discusses the feasibility and desirability of others. It also recommends that further work is undertaken to explore whether additional mandatory licensing could be helpful. In addition the Council's Commissioning Team will work with Council Teams and partner agencies to co-ordinate and resource a broader programme for Stanmore to be delivered over the next 3 years in line with the Winchester District Community Strategy.
- 2 What actions could be taken in response to HMO issues?
- 2.1 There are an estimated 302 HMOs in the Stanmore neighbourhood. The majority of HMOs are occupied by students and young professionals. HMOs provide a valuable housing supply for this section of the population. Student population in Winchester is forecast by the University to continue at current levels for the next 5-10 years. The University is developing new purpose-built accommodation which will divert some 900 students away from private sector renting. Of these 750 are likely to be University students, 100 Sparsholt College, and 50 NHS students.
- 2.2 In addressing residents' concerns the Council could consider: taking action in relation to parking, environmental and antisocial behaviour issues; restricting the future increase of numbers of HMOs in the Stanmore area; and doing more to encourage best practice in the management of HMOs. These options are discussed and evaluated in turn below with an update on progress where action is already happening.
- 3 Parking Issues
- 3.1 Action is already being planned to tackle issues around parking, whether these are caused by multiple car owners in HMOs or indeed commuters using free roadside parking. The Head of Access and Infrastructure is intending to carry out informal consultation with residents of lower Stanmore early in 2011. This will probably be in the form of a letter and questionnaire/reply to establish whether there is sufficient support for the Council to pursue the introduction of additional waiting/parking restrictions and whether residents would want to be included in a permit parking scheme. A number of possible changes to the residents parking scheme are being explored.
- 4 Community Development
- 4.1 As a result of the community plan in Stanmore, some interesting initiatives are starting to emerge. One is a project to encourage volunteers particularly to help take forward specific actions in the community plan. The project targets

students living at Stanmore with a view to engaging them in positive high profile activities which will both help the community and foster better relationships. Actions include:

- The production of a regular community newsletter.
- Development of the Stanmore Combined website to increase access to online information and services.
- New communication channels to ensure the views of young people are heard and taken into account.
- Fostering more positive relationships between residents, students and landlords through the development of for example 'Welcome Packs'.
- Support for a 'greening campaign' for Stanmore
- Development of a programme of local sport and recreational activities (including 'taster days'). This action has already seen a football coaching programme run from the start of the School summer holidays through to the October half term and has identified a student volunteer who will continue to support the project working closely with the staff at the Carroll Centre and in return achieve a football coaching qualification.

5 Noise Nuisance

- 5.1 The community plan consultation highlighted concerns that HMO properties are the source of noise nuisance. Officers note that these concerns are not matched by reported complaints. This may be because complaints made out of hours cannot be followed up immediately. Misunderstanding about this can lead to disillusionment and a failure to report future instances of nuisance. Unfortunately, if instances are not reported there will not be corresponding action from Environmental Health Officers to tackle the problem. There also seems to be a level of public confusion about the 101 reporting line and how it works in relation to Council services.
- 5.2 It is proposed to undertake further public awareness-raising to emphasise the importance of reporting noise nuisance whenever it occurs, and to assure residents that this will result in action. The role of other services (such as Accredited Community Support Officers and Police Officers) in providing witness reports upon which the Council can act has also been explored and a more joined-up approach will be piloted from December 2010 to March 2011.
- 5.3 When a noise complaint is received about an HMO let to students, a letter is sent by either University of Winchester or the City Council's Environmental Protection Team, depending on who has received the original complaint. The University is very proactive in promoting good relationships between students and the wider community. The Council's neighbourhood wardens also carry out house visits to addresses that are reported to be connected to 'student

noise'. Following a third letter sent by the University to a household, the students are called in to meet with staff at the University. Where there is a persistent problem the Community Safety Team works with the landlord of the property. As these cases are noise-based, the case files are held by the Council's Environmental Protection Team and include records of neighbourhood warden visits.

6 Influencing Future Numbers of HMOs at Stanmore

- 6.1 The Council could move to control the creation of further HMOs in the Stanmore area. One option to achieve this arises from planning legislation.
- 6.2 On 6 April 2010, the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 came into force, which introduced a new "Use Class" for HMOs containing between three and six unrelated people (the 'C4' Use Class). The effect of this was for the first time to require planning consent for the conversion of family homes into 'small' HMOs. Such conversions had not previously required planning consent. The rationale behind the introduction of this legislation was to help councils to control the expansion of numbers of small HMOs within their districts. The legislative changes were not applied retrospectively, meaning that there was no need for a landlord to apply for planning permission if a property was in use as an HMO before 6 April 2010.
- 6.3 On 17 June 2010, the new Housing Minister announced changes to the planning arrangements described above. The Coalition Government believed that the requirement to seek planning consent for small HMOs was over-bureaucratic and unnecessary except in a small number of areas. Under these changes, the definition of the C4 Use Class has been retained, but permitted development rights have been extended so that changes of use between Use Classes C3 and C4 will not require planning permission. The legislation (the Town & Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010)) came into force on 1 October 2010.
- 6.4 In areas where there is a need to control HMO development, local authorities are able to use an "Article 4 Direction" to remove these permitted development rights and require planning applications for such changes of use. There are compensation implications if such planning applications are refused, although this can be mitigated entirely by giving twelve months' notice of the introduction of the Direction.
- 6.5 Officers have considered the use of this option in relation to Stanmore and there are a number of reasons why it is not recommended at this time. A very strong case would be needed to justify the removal of permitted development rights and it is considered that the case has not yet been made. Student numbers are not likely to increase and the pressure for more HMOs for student housing at Stanmore may have peaked. There would be justifiable opposition from landlords and other stakeholders. It is considered that other courses of action should be followed in the first instance and their impact evaluated. In the meantime, it is proposed to monitor the percentage of

homes in the area which are HMOs, the management of the HMOs and their impact on the community. The removal of permitted development rights may be justified in the longer term if other actions fail to have the desired effect and this option should be reserved for potential use in future.

7 Improving the Quality and Management of HMOs

7.1 Officers have undertaken some research to ascertain whether further use of licensing might help to ensure that private landlords operate best practice in the provision and management of HMOs in the Stanmore neighbourhood.

7.2 The Housing Act 2004 changed the definition of an HMO to include:

- Dwellings occupied by three or more unrelated people sharing facilities
- Buildings comprising of non self-contained flats
- Houses converted into self-contained flats that do not meet the requirements of the 1991 Building Regulations and where more than one third of the flats are let on short term tenancies.

7.3 Part 2 of the Act introduced two types of HMO licensing:

- a) Mandatory licensing; and
- b) Additional licensing

7.4 Mandatory Licensing: Licensing is mandatory for larger HMOs of 3 storeys or more and occupied by 5 or more tenants forming two or more households. It is a legal requirement for the owner or manager of such a property to declare it to the Council in order for it to be licensed. It is an offence to operate a licensable HMO without a licence and conviction carries a maximum fine of £20,000. Residential Property Tribunals (RPTs) are also empowered to require a landlord to pay a tenant up to one year's rent as compensation if a licensable HMO has been let without a licence. Once the Council has received an application, no offence is being committed whilst the Council is processing the application, provided the required fee has been paid.

7.5 If the Council is satisfied that the landlord or manager of the property is a 'Fit and Proper Person', is competent and has the resources and systems in place to properly manage the HMO, then a licence can be issued. In most instances, a licence will run for a maximum of 5 years.

7.6 The Council is able to place conditions within the licence relating to occupancy levels, prevention of occupation of unsuitable parts of a property, their proper management, improvement works, and provision of safety certificates for essential services, and can even require that a landlord undertakes a training course on managing HMOs in accordance with good practice. Licence conditions may include timescales for works to be carried out to make HMOs suitable for occupation. Should a landlord be refused a

licence, or feel that any conditions attached to a licence are unreasonable, they may appeal to a Residential Property Tribunal.

- 7.7 Practice at Winchester City Council is to inspect HMOs before the issue of a licence in order to determine that they are safe and healthy for tenants to live in, although a licence can be issued before a property has been inspected. If deficiencies are present at a property that may cause a category 1 or 2 hazard under the Housing Health and Safety Rating System (HHSRS), the Council has the ability to take enforcement action to require necessary remedial works are undertaken by the service of an Improvement Notice. In extreme cases, the Council may serve a Prohibition Notice, thereby prohibiting the use of, or part of, an HMO for human habitation if the accommodation is not suitable.
- 7.8 The Act stipulates that a council may make a charge to process a licence application, as the previous Government wanted licensing to be self funding. The current fee charged by Winchester City Council is £854.54p and covers the 5 year duration of the licence.
- 7.9 If a council does not believe that a landlord is fit to hold a licence, it may require that another, more competent, person is appointed as the licence holder. In such cases, if an owner does not have the necessary skills and competency, they could appoint a professional managing agent on their behalf to be the licence holder. Where a council refuses a licence and the landlord does not propose an alternative satisfactory option, then the council must issue a Management Order and take over the management of the property until a competent and suitable licence holder can be appointed. Any landlord found to be operating a licensed HMO in breach of licence conditions is liable on conviction to a fine of up to £5000.

Additional Mandatory Licensing:

- 7.10 Section 56 of the Act provides the Council with a discretionary power to introduce additional licensing for other categories of HMOs in all, or part, of its Area. This would bring into the licensing regime those HMOs deemed to be lower risk and below the trigger point for mandatory licensing. In most instances, these will be 2 storey properties. If introduced at Stanmore, this would cover the majority of those HMOs located within the lower and upper Stanmore areas.
- 7.11 Additional licensing schemes are primarily aimed at areas where a significant proportion of the HMOs are being managed ineffectively. Such additional licensing schemes cannot operate for more than five years. At the end of the five year period, the council could make a new designation if it wished a scheme to continue. However, the aim would be that after 5 years, any significant management problems in a particular neighbourhood would have been resolved.
- 7.12 Before an additional mandatory licensing scheme is introduced, the Act specifies certain criteria and processes. These are:

- a) That a significant proportion of HMOs are being managed sufficiently ineffectively so as to give rise, or likely to give rise, to one or more particular problems for those occupying the HMOs or for members of the public.
- b) That the Council has regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the proposed designation area.
- c) That the Council consults with persons that may be affected by the designation and considers any representations made.
- d) That the Council has considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question.
- e) That the Council considers that making the designation will significantly assist them to deal with the problem or problems.
- f) That the Council considers that making the decision will significantly assist them to deal with the problem or problems.
- g) That the Council has considered displacement and housing market effects.

7.13 In identifying properties that may be being managed sufficiently ineffectively and having a detrimental affect on an area, the Department of Communities and Local Government (CLG) document "*Approval steps for additional and selective licensing designations in England*" gives examples of such properties, which include:

- Those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located;
- Those whose internal condition, such as poor amenities, overcrowding etc, adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues;
- Those where there is a significant and persistent problem of anti social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate the problems;
- Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health or safety of residents and / or impacting on the wider community.

- 7.14 Government guidance stipulates that any exercise of this power is consistent with the Council's overall housing strategy and should seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others.
- 7.15 In considering whether an Additional Licensing designation will significantly assist the Council to deal with problems within a selected area, CLG guidance makes reference to voluntary measures such as accreditation. The Council's Private Sector Housing team has been operating a voluntary HMO accreditation scheme in conjunction with Winchester University for the past eight years which has been a great success. The scheme has no planned end date.
- 7.16 Under the scheme, all properties which landlords advertise on the University's intranet site have to first have been inspected and accredited by the Council. This is to ensure they meet a satisfactory standard in respect of fire safety, gas and electrical safety, security and decorative condition and repair etc. A fee is payable for a property to be accredited (currently set at £120) and inspected and standards are laid out in an Accreditation booklet for both landlords and tenants to adhere to. A property is accredited for a three year period.
- 7.17 Currently, 235 HMO properties are accredited by the Council, the vast majority of which are shared student houses located in the Stanmore area. It is estimated that there could be up to another 100 HMOs in the Stanmore area which are managed directly by their owners or letting agents and are not accredited. Although the accreditation scheme is voluntary, it helps the Council to ensure that accredited properties are of a satisfactory standard for students to live in, and that the Council is fully aware of who the owner or manager responsible for an accredited property is, should a complaint arise.

8 The Case for an Additional Licensing Scheme

- 8.1 The primary difference between the existing accreditation scheme and the introduction of an Additional HMO licensing scheme is that the Additional licensing scheme would place a legal requirement on the owners of all (with the exception of certain types of HMO as defined in the Act) non-mandatory licensable HMOs to declare their properties to the Council for them to be licensed.
- 8.2 Officers have considered the CLG criteria (Para 8.13) in the context of evidence about Stanmore's HMOs:
- a) In respect of external conditions, eg untidy gardens etc., this is evident and is of concern to local residents and to Councillors.
 - b) The internal conditions of HMOs are unknown unless the HMO is accredited or large enough to come under the mandatory licensing scheme. There is concern amongst Councillors that HMOs outside

these schemes are not adequately managed and that poor amenities may exist. These concerns will need to be evidenced if the Council decides to move towards an Additional licensing scheme.

- c) In terms of anti-social behaviour, complaints about student HMOs mainly relate to noise nuisance rather than other forms of anti-social behaviour and would be managed by the Environmental Protection Team with input from the Council's neighbourhood wardens (see Section 5 above). The Council's Acceptable Behaviour Co-ordinator has not case-managed any student cases (or indeed other cases relating to HMOs in Stanmore) in the past year.
- d) As with noise nuisance, general perception and depth of feeling within the community are not matched by numbers of actual complaints to the Council regarding poor and ineffective management of HMOs in Stanmore. However, Councillors have reported that they do receive concerns and issues arising from HMOs. It may also be that residents of HMOs do not feel empowered to complain, feel there is no point, or do not know their rights as tenants.

9 The View of the Town Forum

- 9.1 The Town Forum considered these issues at its meeting in November 2010. Members were keen to see the concerns raised by residents about HMO's addressed. They resolved that the Town Forum wished Cabinet to investigate and progress the suggested licensing of Houses in Multiple Occupation throughout the Town area.

10 Seeking Consent to introduce Additional Licensing

- 10.1 Should the Council wish to proceed to consultation on a future Additional licensing scheme the following procedure would need to be followed. During the consultation phase the Council would be required to give a detailed explanation of the proposed designation, explaining the reasons for the designation and how it is likely to tackle specific problems and what the potential benefits will be.
- 10.2 The Minister for Housing and Planning introduced a 'General Consent' on 1 April 2010 declaring that a local authority could designate an area of their district as subject to Additional licensing on condition that it has first undertaken a full consultation on their licensing proposals. Such a consultation must be for a minimum of ten weeks and should include consultation with local people, including tenants, landlords (and, where appropriate, their managing agents) and other members of the community who live or operate businesses or provide services within the proposed designation area. It should also include local residents and those who operate businesses or provide services in the surrounding area *outside* of the proposed designation who will be affected. The consultation should be widely publicised and disseminated through various channels of communication. All

those affected by the designation should be given adequate time to give their views, and these should all be considered and responded to.

- 10.3 Once completed, the results of the consultation should be published and made available to the local community.

11 Resource Implications - Charging

- 11.1 In the same manner that a local authority can set a fee for Mandatory licensing, the Council would have the ability to set a fee for Additional licensing. It is anticipated that this would be in the region of between £150 to £400 depending on whether a property was already known about and had previously been inspected by the Private Sector Housing Team. The fee would not be an annual fee, but would cover the five year period that it is anticipated a property would be licensed. It is anticipated that the scheme would not result in additional financial burden to the Council but would largely pay for itself. However, the set up costs will not be able to be reclaimed through the fee-charging mechanism.

12 Resource Implications – Consultation Costs

- 12.1 Initial investigations with other local authorities who have consulted upon and implemented Additional Licensing Schemes (ALS) indicate that they have employed a full time qualified officer to lead on the project. Additional support was provided for the consultation exercise from Communication and Legal sections within the authorities. It should be noted that a licensing scheme must be introduced with care and consideration on the best evidence and a manner that complies with the law in order to avoid challenge through Judicial Review.
- 12.2 It is anticipated that the officer time required to carry out the consultation will be found through the 1Team secondment process if this is considered a priority. Additional consultation costs are estimated to be £5000 and this will need to be identified through the budget process.

13 An Evidenced-Based Approach

- 13.1 In preparation for a consultation process, officers would review existing evidence in respect of negative impacts on the community caused by a concentration of HMOs. The advantage of an Additional Licensing Scheme is that it would cover those HMO properties about which the Council currently has little information. Some evidence is available in the form of public reports of nuisance etc and action taken but it is clear that actual numbers of reported incidence do not match the depth of feeling within the community about these issues. Further interrogation of available data plus awareness-raising to encourage more reporting will inform the case for an Additional Licensing Scheme.

14 Conclusion

- 14.1 This report has set out a response to the issues around HMOs arising through the Stanmore community planning process. The report has outlined some actions already taking place, and the intention to co-ordinate a broader programme of work in line with the revised Community Strategy. The report has indicated that the use of planning law to restrict numbers of HMOs in the future is not recommended by officers at this time. However there are potential benefits to the introduction of an Additional Licensing Scheme, subject to first undertaking a full consultation process.
- 14.2 Members are asked to consider whether they wish to proceed to consultation in the next financial year, and whether they wish the consultation to cover Stanmore only, or the wider town area.

OTHER CONSIDERATIONS:

15 RELEVANCE TO SUSTAINABLE COMMUNITY STRATEGY

- 15.1 This report is in keeping with the revised Community Strategy which prioritises the Stanmore neighbourhood as an area of shared focus for the Winchester District Strategic Partnership. Resolving issues raised through the Stanmore community plan would assist in delivering both *active communities* and *high quality environment* outcomes.

16 RESOURCE IMPLICATIONS:

- 16.1 As detailed in 12.1, once a licensing scheme is in place the cost of the issuing of a licence can be recouped. There are one-off costs in respect of the consultation, including officer time. It is anticipated that officer time can be sourced via the 1Team secondment process if this initiative is given priority. Other costs associated with the consultation are estimated at £5000 to cover printing, holding events, booking rooms etc. This amount would need to be identified via the budget setting process for 2011/12.

17 RISK MANAGEMENT ISSUES

- 17.1 Detailed risk management in relation to an Additional Licensing Scheme will be drawn out in future reports as appropriate.

BACKGROUND DOCUMENTS:

The Stanmore Community Plan can be accessed via the Stanmore Combined website at http://www.stanmorecombined.org.uk/community_planning/.

APPENDICES:

None