

Briefing Note

February 2010

Houses in Multiple-occupation (HMOs)

What is an HMO?

The definition of HMO is contained in the Housing Act 2004. It has been much extended over previous versions so as to make it much more explicit, but it now runs to several pages.

The definition broadly includes the following:

- Houses & flats divided into bedsits (individual lettings with some sharing of amenities). These are the traditional type of HMO but are less common than they used to be. We encounter few new bedsit type HMOs in Cherwell.
- Shared houses & flats with 3 or more unrelated occupants. The 2004 definition deliberately set out to capture this use, which was previously something of a grey area. Legislation sets out which relationships are relevant.
- Houses converted into self-contained flats which were not converted to the standards of the 1991 Building Regulations and which are more than 1/3 tenanted.

The following are excluded from the definition and are not HMOs:

- Purpose built flats
- Post 1991 conversions carried out to Building Regulation standard.
- Premises under the control of RSLs, Fire & Police Authorities, specified educational establishments (a long list of universities and the like), and some religious communities.
- Premises occupied by their owner with any family members and up to 2 other people (eg lodgers).

What enforcement powers exist under housing legislation?

HMOs as houses:

- HMOs are 'residential premises' under the Housing Act 2004 in the same way as all other houses and flats. The Housing Health & Safety Rating System (HHSRS) is the principle means of dealing with defects and shortcomings in all residential premises. It provides a method of identifying and assessing hazards. Where appropriate, hazards are put right using the enforcement provisions in Part I of the Act. Enforcement can take the form of Improvement Notices, Prohibition Orders, Hazard Awareness Notices and Emergency Enforcements, as appropriate. The Council's *HHSRS Policy 2008* sets out how decisions are made.

Since the enforcement regime is risk based it does not rely upon prescribed standards. In particular, since the introduction of the 2004 Act, there is now no raft of set amenity and fire protection standards which apply simply because premises fall within the HMO definition. Some HMOs may require additional facilities or increased levels of fire protection, but many do not. Many shared houses require no more provision than single-family homes of the same scale.

Enforcement powers which relate specifically to HMOs:

- All HMOs are subject to management regulations which impose particular duties and responsibilities on their landlords/managers. In particular, these

regulations make them responsible for upkeep and cleaning of shared facilities and common areas, the disposal of refuse and the maintenance of services – effectively the issues that can cause particular problems when responsibilities are unclear or are disputed. Failure to comply with the regulations is an offence.

- The Council has the power to limit occupation in HMOs according to the floor-space available, by means of Overcrowding Notices. Applicable space standards have been adopted by the Council as part of its adopted *HMO Standards 2008*.
- Some HMOs require a licence, but only those of 3 or more storeys which have 5 or more occupants. HMOs comprising self-contained flats are not subject to licensing. Processing an application requires the Council to consider the suitability of the applicant, any manager and the management arrangements. Certain (limited) conditions must be included in all licences (eg duty to produce gas safety certificates, and confirm suitability of electrical appliance and furniture), but (subject to regulations) the detailed provision of suitable facilities and most other matters are determined by the Council. The Council's adopted amenity standards for licensed HMOs are contained in its *HMO Standards 2008*. The matter of fire safety is usually dealt with separately using the HHSRS process.

Provided the Council is satisfied as to the suitability of those involved and the property is either suitable or can be made suitable by means of conditions, a licence must be issued. Its planning status is not relevant¹. Licensing is essentially a means of improving the living conditions for occupants in higher risk premises. It is an offence to operate a qualifying HMO without a licence.

- Additional licensing: It is possible to make other types of HMO subject to licensing in all or in parts of the district, but any such 'designation' must be confirmed by the Secretary of State. It would be necessary to demonstrate that a significant proportion of the HMOs to be included in the designation were being managed so ineffectively that they were causing particular problems and that licensing, as part of a strategic and coordinated approach, would contribute to a resolution. (*It is not currently the view of officers that we could make a qualifying case for any part of the district to be designated.*)
- (*NB Selective licensing: It is also possible for houses other than HMOs to be made subject to licensing in some special circumstances, but this power is intended to address the problems of low housing demand experienced in the older parts of some industrial cities. It again requires approval of the Secretary of State and is subject to particular criteria being met.*)

Other points to note:

- With the exception of those HMOs which require a licence, there is no requirement under housing legislation for HMO landlords to notify the Council that they are operating an HMO. As a consequence, it is inevitable that many shared houses are not known to us. We do however encourage landlords to consult with us in order that we can help them achieve appropriate standards. We are investigating the possibility of introducing an Accreditation Scheme²

¹ This position confirmed by the Council's solicitor.

² This is one of the actions identified in the Private Sector Housing Strategy.

which we intend will provide incentives for landlords to work more closely with us.

- Government has recently advised that it intends to introduce a new Use Class for HMOs³ which will mean that using a family home as a shared-house HMO will require planning permission. The stated aim of this change is to enable local planning authorities to 'restore community balance'. We understand that existing HMOs are exempt.
- Consultation is also underway on possible changes to the Discretionary Licensing provisions in the Housing Act 2004 (see above).

HMOs in Cherwell District:

Data for the district:

- We currently have records for 228 HMOs in the district and have noted a further 45 possible HMOs⁴.
- 75 HMOs have been inspected or re-inspected in the last 12 months.
- 54 are currently licensed. (We are not aware of any others currently requiring a licence, but this is kept under review.)
- Of 207 service requests received to the end of January, 32 related to HMOs.

Data for Grimsbury:

- We know of 45 current HMOs in Grimsbury and a further 8 possible HMOs.
- 45 out of the total 53 are in the conservation area (18 in Middleton Road & 18 in West Street).
- 15 have been inspected in the last 12 months.
- 13 HMOs in Grimsbury are licensed. 7 of these are in Middleton Road and 3 in West Street.
- 5 of 32 service requests relating to HMOs concerned premises in Grimsbury.

Working with HMOs in Grimsbury has formed a significant part of the Private Sector Team's work over many years. We are familiar with most of the premises. The great majority of known HMOs have received attention and are broadly compliant.

³ With effect from 1 April 2010, guidance to follow.

⁴ The status of premises changes as a result of letting and re-letting. Many of the Possible HMOs have previously been inspected and addressed as HMOs but have ceased to be so and are kept under review until future use is established.