

**Housing (Scotland) Act 2006
Procedure for Disposal of Applications for Licences for Houses in
Multiple Occupation – Concept of Overprovision**

Report by Director, Resources

1 Purpose

To appraise the Committee of developments in relation to the request for guidance on the feasibility of introducing an Overprovision Policy as regards Houses in Multiple Occupation (HMOs).

2 Background – (a) Previous consideration

On 8 January 2013, the Committee agreed to continue consideration of the attached report on the concept of overprovision in HMOs.

On 13 November 2012, the Committee had noted *inter alia*, that there was likely to be an increase in the number of HMOs as a result of welfare reform in that the option of shared accommodation was likely to become more and more common as a result of cuts in benefit and whilst this would take time to percolate through, it was an issue that was sure to feature. The Committee asked for more information.

The reason for the decision arose from the consideration of an application for an HMO licence for 54 Main Street Gorebridge where objections had been submitted on the basis of there being an overprovision of HMOs of such facilities in the area (which erroneously included reference to properties which were not HMOs but were used as temporary accommodation for the homeless).

Census information is now being released. This indicates a reduced rate of household formation in Midlothian than the Scottish Average - that will impact on housing provision overall when the current Housing Needs and Demand Analysis is concluded.

(b) Research

Consideration was given to making contact with the Members of the Scottish HMO Officers' Network (SHMONG). However, on reflection, it was thought that perhaps this was a piece of work that with benefit could be carried out by Officials in the Scottish Government (SG) in consultation with a view to providing updated guidance to all Local Authorities.

Scottish Government Officials were approached for advice and advised that it is for each local authority to determine their own local strategy on the issue of overprovision ie where a L A wants to use the power available they should develop, and consult on, an explicit overprovision policy - this would provide a firm basis on which to make decisions. It is most likely to be used where there is considerable demand for HMOs, for example in University areas. There is no mention of a definitive level of provision that is considered to be excessive and it is thought that that is probably understandable given the wide variety of circumstances faced by each local authority.

In terms of the rationale behind this, it is understood that one of the drivers was a concern from COSLA / LAs about overprovision, particularly around student flats, especially in the Scottish University cities.

There is no great tradition of HMO ownership in Midlothian. There are about forty such premises. Whilst there are three Student campuses, two are situated outwith the urban areas and the other is situated in the neighbouring local authority area and as such there is no discernible impact from an HMO point of view. The problems that have been encountered so far are few and relate for the better part to the perceived detrimental effect on the neighbouring properties / areas that any homeless placements may have; and, in the main, that issue can be regulated effectively through conditions and the exercise of powers of the Housing Authorities.

As can be seen in the previous report, other Local Authorities have experienced difficulties as respects the need for additional guidance (see **Appendix 2 thereof**).

Glasgow Council were to consider a report about it.

Highland Licensing Committee agreed that that “on the basis of the advice from our Housing and Property Services that there was an increasing need for all types of HMO accommodation across Highland as contributing to the supply of affordable housing, there was currently no evidential basis for adoption of a policy under which to refuse HMO licence applications on grounds of overprovision under section 131A of the Housing (Scotland) Act 2006, but that this position should be reviewed on a five-yearly basis”; and “ that in light of the proposals to limit concentrations of HMOs in Inverness City Centre and elsewhere in Highland by application of the revised Interim Supplementary Guidance (following consultation and adoption) in the determination of planning applications, a co-ordinated approach be adopted whereby consideration of HMO licence applications for proposals which require, and do not obtain, planning permission as a result of application of the revised ISG will be refused under section 129A of the Act”.

In Aberdeen, a study was carried out possibly by consultants which did not generate a significant response and arising from which it was agreed:-

- (i) to agree that no policy on HMO overprovision is to be introduced following analysis of the current HMO provision in the City and the responses to the consultation;
- (ii) to instruct the Officials to continue to monitor policy and legal developments in HMO overprovision across Scotland and report back to Committee as appropriate if there are developments which require the Council's position on HMO overprovision to be reviewed;
- (iii) to agree that a review of the position of overprovision should be formally undertaken in 2016 if this has not been required earlier by recommendation (ii) above;
- (iv) to note that any HMO application that is the subject of a representation would be considered by Committee who would then decide whether to grant a HMO license;
- (v) to request officers to monitor the HMO provision in part of the city and report back in 12 months; and
- (vi) to request officers to determine the scale of un-registered houses available to let and report back in twelve months.

Ultimately, in Edinburgh, the interim conclusion has been reached that it would be unwise and unsafe to determine a policy on Overprovision based on the current guidance. Issues, including the difficulty in selecting who ought to be given licences if a maximum quota were imposed; the effect on the protections enjoyed by tenants; resource implications in the way of added appeals; and difficulty of enforcement, combine to place doubt of the viability of such a policy.

(c) Parallel legislation

As mentioned in the previous report, guidance is provided by Liquor Licensing case law, in *Tesco v Glasgow* on 15 October 2012, the gist being that as regards that that kind of Overprovision the policy had to be linked to the context of the legislation and based on reason including any local knowledge; and the facts on which the decision was based being disclosed.

Probably more importantly, is the notion that a policy should be in place in advance of any decision to refuse an application on that ground.

The concept is a fairly new one – formerly it might have been called a blanket ban which was considered inappropriate and all applications ought to be considered on their own merits.

(d) Appeals

Any decision may be appealed by summary application to the Sheriff. An appeal may be made only by a person on whom notice of the decision requires to be served.

An appeal is not competent unless the person making it has followed every procedure made available for stating a case to the local authority in relation to the decision being appealed that it would be reasonable to have expected the person to follow.

An appeal must be made within 28 days of the person receiving notice of the decision. But the Sheriff may on cause shown hear an appeal made after the deadline.

(e) Planning Policy

In view of the overlap with Planning and the fact that Planning Guidance has been issued by the Scottish Government, Planning Officers were asked to advise if they have considered a Planning policy in this respect; and if not, to consider whether one is merited.

The advice from the Planners is as follows:-

There is currently no planning policy in Midlothian on Houses in Multiple Occupation (HMOs) although the Local Housing Strategy has a notional “target” to increase the number from just over 40 licensed HMOs at present to around 70. This increase in numbers is not considered to generate a requirement for a specific MLDP policy on this subject. However, this could be kept under review for reconsideration in the first MLDP review.”

There are no references to HMOs in the documents that have been prepared to support to support the Main Issues Report.

HMOs issues were raised during the consultation on the Council’s Main Issues Report for the new Midlothian Local Development Plan – both in terms of formal submissions made to the Council and the matter being raised with planning officers at a consultation event in Gorebridge. Public Consultation on the Development Plan of which the HMO policy is part, ended on 31 August 2013. The Feedback is currently under consideration. The Council as Planning Authority will need to consider the responses received and the above later this year, including reports in September and November and possibly at a Members’ seminar on the submissions received. The Proposed Plan, the next stage in the process, is expected to be published in spring 2014. The new Local Development Plan is expected to be adopted in 2015.

3 Report Implications

3.1 Resource

There are no resource implications arising from this report apart that is if the Committee wish to commission a study.

3.2 Risk

Any risk relates to the ability of the Council to defend any appeal where overprovision policy is given as a reason for refusal.

3.3 Single Midlothian Plan and Business Transformation Themes addressed in this report:

- ☒ **Community safety**
- ☒ **Adult health, care and housing**
- ☐ **Getting it right for every Midlothian child**
- ☐ **Improving opportunities in Midlothian**
- ☐ **Sustainable growth**
- ☐ **Business transformation and Best Value**
- ☐ **None of the above**

3.4 Impact on Performance and Outcomes

There is no impact on these.

3.5 Adopting a Preventative Approach

The position is monitored and action can be taken as necessary.

3.6 Involving Communities and Other Stakeholders

There has been no external consultation. Consultation could take place, whether in-house or via consultants, involving licence – holders and others to determine their view in this respect.

3.7 Ensuring Equalities

Such an examination would be designed to ensure equality of opportunity.

3.8 Supporting Sustainable Development

The availability of HMOs promotes this.

3.9 IT Issues

There are no IT issues.

4 Conclusions

Before the Council, as Licensing Authority, were to agree a policy on overprovision, there ought to be consultation beforehand.

It is thought that most of the problems which are encountered from a Licensing perspective, can be treated by conditions and application of legislative controls. The Planners are consulted as regards new applications for HMO licences. If Planning Permission for change of use is required, the application can be refused until that is clear.

It may be best to leave any policy until later when the position may be clearer. Meantime, all applications ought to be considered on their merits.

5 Recommendations

The Committee is recommended to consider the terms of the report.

18 September 2013

Contact Person:	R G Atack	Tel No: 0131 271 3161
Background Papers:	File CG 10. (RGA)	