

REPORT TO: CABINET

DATE: 27 FEBRUARY 2020

TITLE: TOWN WIDE HMO ARTICLE 4 DIRECTION

PORTFOLIO HOLDER: COUNCILLOR DANNY PURTON, PORTFOLIO HOLDER FOR ENVIRONMENT

LEAD OFFICER: ANDREW BRAMIDGE, HEAD OF ENVIRONMENT AND PLANNING (01279) 446410

This is a Key Decision
It is on the Forward Plan as Decision Number I0011085
Call-in Procedures may apply
This decision will affect all Wards.

RECOMMENDED that:

- A** Covenants restricting the use of properties to single family dwellings be enforced, where applicable, with any variation to this being agreed by the Head of Environment and Planning, in consultation with Portfolio Holder for the Environment.
- B** Cabinet approves the making of a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 across the whole District to remove permitted development rights from properties for conversion to Houses in Multiple Occupation.
- C** Cabinet agrees that the final decision on the implementation of the Article 4 Direction will be taken by Cabinet following the completion of the 12 month notification period.

REASON FOR DECISION

- A** The last five years has seen a significant increase in the number of Houses in Multiple Occupation (HMO) in Harlow. At the end of 2019 there were 319 licensed HMOs in Harlow compared to approximately 140 in 2015. Given that virtually all HMOs were originally constructed as single family dwellings, it can be extrapolated that there has been a consequent reduction in this type of accommodation across the town.
- B** Additionally, there has been an increase in the number of complaints concerning HMO properties and wider concerns regarding the social and economic impacts of the growth in HMOs. However, it also needs to be recognised that HMOs are an important part of the housing mix and for some people there are few other

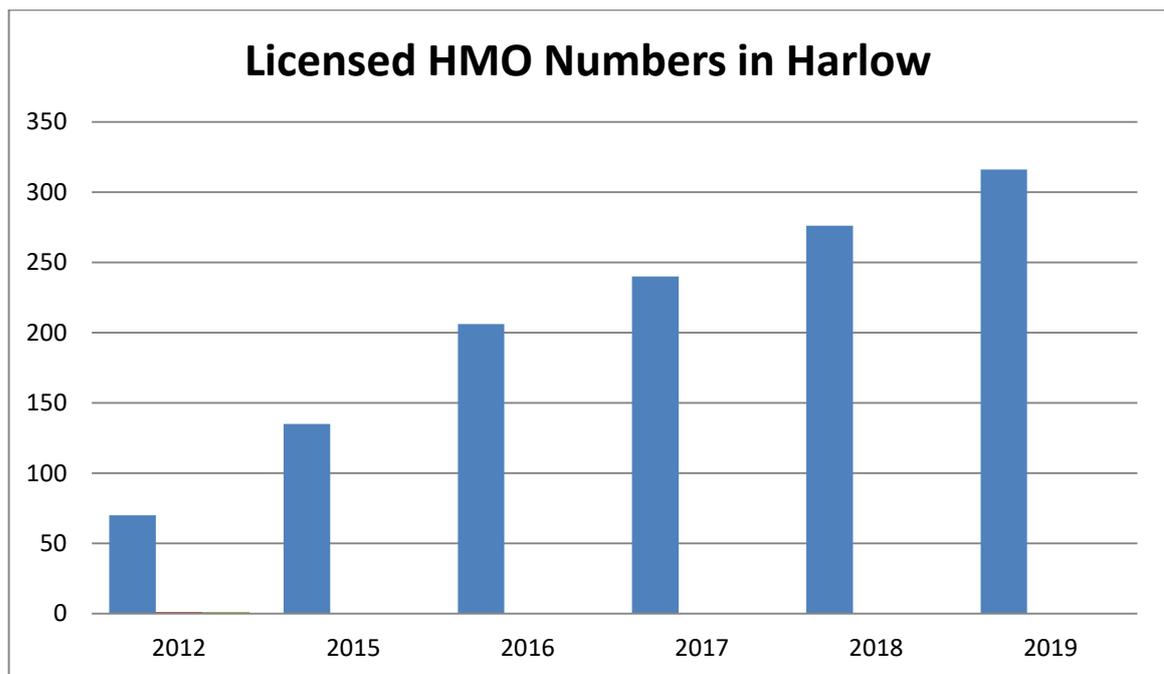
options. This is a complex area and therefore, any measures to tackle the spread of HMOs should be seen to be proportionate to the issue.

- C The measures proposed in this report are felt to be a considered approach to the issue and will restrict the growth of new HMOs by giving the Council greater control. This follows a recommendation from the Cabinet Overview Working Group in 2019 that a report be brought to Cabinet recommending the implementation of a town-wide Article 4 Direction.

BACKGROUND

1. There is no doubt that there has been a significant increase in the number of HMOs in Harlow over recent years as shown on the table below. At the end of 2019 there were 318 licensed HMOs in Harlow (with others going through the licensing process) and by comparison, there are 211 in Stevenage and only 42 in Basildon.

Table 1 – Licensed HMO Numbers in Harlow



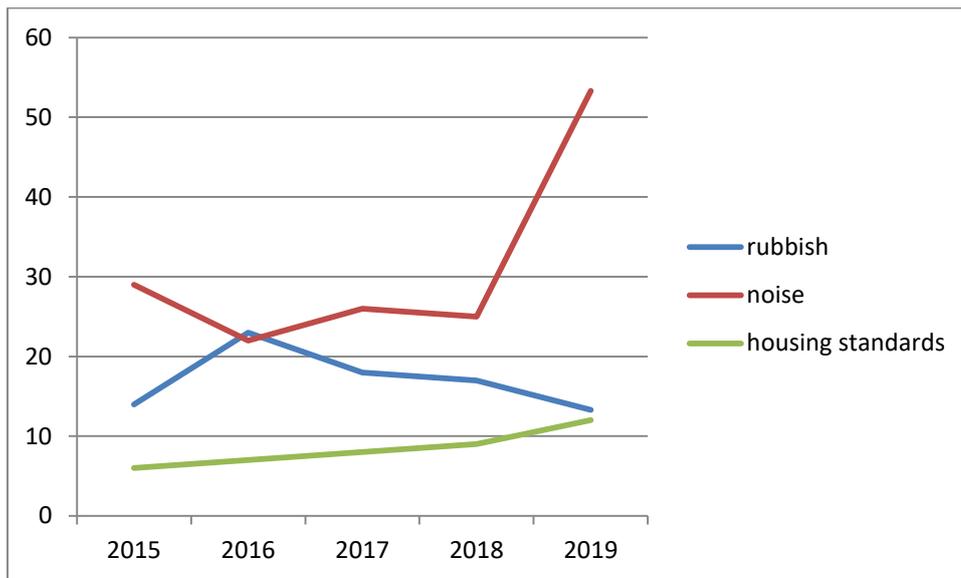
2. The Environmental Health Team has looked at the level of complaints in relation to HMOs over the past five years. The 2019 data is for three quarters and has been projected on current trends to give a forecast for the end of the year. The table below shows the number of complaints about HMO properties broken down by the type of complaint.

Table 2 – Complaints about HMO properties

	Rubbish	Noise	Housing Standards
2015	14	29	6
2016	23	22	7
2017	18	26	8
2018	17	25	9
2019	13	53	12

3. The next table presents this in a graph format and highlights in particular the steep rise in complaints in relation to noise issues. It should be noted that the number of HMOs has increased during this period and so some rise in noise complaints may be expected, but it would appear that the rise in noise complaints is running ahead of the growth in HMO numbers.

Table 3 – Graph of Complaints about HMO properties



4. It is widely acknowledged that most HMOs are well managed. However, in a relatively small number of cases, poorly run HMOs can provide significant problems for neighbours as well as the tenants of the HMO property. The issue to be addressed therefore is how to create an environment in which well-managed HMOs can exist whilst the Council has sufficient powers to be able to manage growth and tackle inappropriate conversions.
5. This report sets out a strategy to tackle this through a combination of covenant enforcement, licensing and additional planning powers via a potential Article 4 Direction.

ISSUES/PROPOSALS

Covenant Control

6. The development of many HMOs in Harlow can be controlled through the enforcement of covenants. Properties that were built in Harlow by the Development Corporation or by the Council contain a covenant which restricts their use to a single family dwelling. The covenant also prevents their use for business or trade purposes as well as preventing the development of gardens. The Council has recently taken legal advice from a barrister specialising in this area of law to seek advice on the enforceability of the covenants.
7. In summary, this advice has concluded that the Council is able to enforce covenants on former Right to Buy properties, but that it is unlikely to be able to do so on properties that were built for private sale, or otherwise sold, by the Development Corporation, unless the Council has a direct property interest (e.g. ownership of an adjoining property).
8. For many years, the Council has not taken a proactive stance on covenant enforcement due to resource constraints. However, from 2020/21 additional resources will be coming into the Planning and Environmental Health teams in the form of Enforcement and Private Sector Housing functions respectively. Therefore, from April 2020 there will be additional resource available to assess new applications for covenant release and also to review the position of existing HMOs that may be in breach of covenant restrictions.
9. In the last year the Planning and Legal teams in the Council have developed a checklist to assess whether or not covenants should be released or varied – on a case by case basis. This has now been verified through external legal advice and will now be utilised on all future covenant applications. The release or variation of covenants is entirely at the Council's discretion, acting reasonably, and this will provide some measure of control for the Council to exercise. It is proposed however that no covenant should be permanently removed but, if it is felt to be appropriate, a covenant could be temporarily lifted e.g. for the period of an HMO licence.

Licensing

10. It is also possible to regulate HMOs through the licensing process which we already do through the mandatory and additional licensing schemes. All large HMOs are required to secure a mandatory licence, which is designed to ensure that HMOs meet minimum amenity standards, have a suitable fire safety system, that they meet minimum room sizes and that they are also managed by a 'fit and proper' person.
11. Since 2015, small HMOs in Harlow have also been required to comply with these standards through an Additional Licensing Scheme. This has now been subsumed by an extension of mandatory licensing such that with a very small number of exceptions at the margin, all HMOs covered by the additional scheme will require a licence indefinitely.

12. The Council's Environmental Health team is increasing its staffing resources to include a new post focusing on private sector housing. When appointed (expected early summer 2020), this will give the Council more resource to monitor licensed properties, ensure effective management and hopefully to reduce anti-social behaviour that impact upon other residents.

Article 4 Direction

13. All large HMOs (those housing six or more people) are required to seek planning consent prior to conversion. Small HMOs (those housing fewer than six people) can benefit from Permitted Development Rights which enables conversions to take place without the requirement to obtain planning permission. An Article 4 Direction, when implemented, removes the permitted development rights from small HMOs, thus requiring all property owners seeking conversion to HMO use to seek full planning permission.
14. At present, the Council has few powers within the current Adopted Replacement Local Plan to prevent HMO conversion, even where a planning application is made. However the emerging Local Plan, which it is hoped to adopt in summer 2020, contains a specific new policy relating to HMOs.
15. This new policy states that:

The creation or conversion of a dwelling to a House in Multiple Occupation (HMO) must meet the following criteria:

- a) The number of HMOs would not exceed one out of a row of five units;
 - b) It is supported by a design rationale based on an understanding and analysis of local context and character taking into consideration the Adopted Harlow Design Guide Supplementary Planning Document (SPD);
 - c) The development makes adequate provision for refuse storage and collection;
 - d) Parking is provided at a level of one space per bedroom, plus one secure covered cycle space per bedroom, or set at the current adopted parking standards; and
 - e) Effective measures are proposed to minimise the effects of noise and disturbance; and
16. This new policy will have a significant impact upon the ability of the Council to restrict future HMO conversion for large HMOs at the point at which the Local Plan is adopted later this year. Small HMOs would not be bound by this policy since they are able to take advantage of Permitted Development Rights. However, an Article 4 Direction would remove these rights and require all applicants to be bound by the new planning policy.

17. Any property owner affected by the loss of Permitted Development Rights seeking to convert to HMO use would be able to claim compensation from the Council for loss of earnings related to the removal of these rights unless the Council provides a 12 month notice. Therefore, it is proposed that a non-immediate Article 4 Direction is enacted, following the statutory consultation period, but that it does not then come into force for a further 12 months. This will mean that whilst further HMO conversions can take place during that 12 months, subject to licensing approval and the covenant issues above, it will avoid the potential for large compensation claims being made against the Council.
18. It is proposed that the Article 4 Direction is effective across the whole district, rather than focussed on specific areas of the town. External legal advice commissioned by the Council has stated that in a small geographic district such as Harlow this would be an appropriate, and indeed logical, course of action to prevent any issue simply being displaced from areas covered by a direction to other parts of the district.
19. During the 12 month period identified in paragraph 17, a range of actions will be put in place:
 - a) Further evidence gathering as to the social and amenity impact of HMOs across the town.
 - b) Additional resources placed into the monitoring of HMOs to improve their management.
 - c) Monitoring the use of increased covenant control during 2020/21 to assess the impact of this as a tool.

Next Steps

20. Following adoption of the resolution to make a town wide Article 4 Direction in relation to HMO use, a 21 day consultation will be undertaken in line with statutory procedures. This will be launched in March 2020 and will specify that it is not intended to come into force until April 2021.
21. A further report will then be brought to Cabinet in March 2021 to confirm the order taking into account the consultation responses and the actions outlined in paragraph 19. If Cabinet then agree to confirm the order it will come into effect in April 2021.
22. As with all Article 4 Directions, the Secretary of State has the power to intervene after the granting of the Order to instruct the Council to cancel the Order. The process of detailed evidence gathering over the next 12 months will be a significant factor in whether or not the Secretary of State decides to intervene or not.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As set out in the report.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

None specific.

Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

The approach recommended supports the Council's broader strategy in raising standards in the private rented sector by both recognising the growing role of the private rented sector in "tackling housing need" as well as enhancing the requirement to enforce poor standards where appropriate.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

As contained within the report.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

The position relating to the enforcement of covenants is set out within the report. Variation or enforcement of covenants should be made on a case by case basis.

Author: Simon Hill, Head of Governance

Appendices

None.

Background Papers

None.

Glossary of terms/abbreviations used

HMO – Houses in Multiple Occupation