

Consultation Response

SPP3 – Planning for Housing

From the Shelter policy library

April 2008

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Shelter

Introduction

We welcome the opportunity to respond to the consultation on Scottish Planning Policy 3: Planning For Housing (SPP3). This Consultation comes at a time when the Government is considering the direction of its housing policy in light of responses to the discussion document Firm Foundations. Shelter's comments on the proposals for SPP3 are made in the context of our response to Firm Foundations which can be found at <http://www.shelter.org.uk/firmfoundations>. We have answered questions 1, 5 and 6 on the proposals for HMOs, and question 3 on assessing housing need. In addition, we have made general comments on the scale and delivery of affordable housing through the planning system, as discussed in the Consultative Draft.

Summary of Key points

Guidance on restricting the concentration of HMOs

- Shelter is by no means convinced that there is a sound case for promoting the use of planning controls over HMO accommodation. We call for careful consideration of the impact of existing planning restrictions on the availability of affordable housing and existing HMO licensing enforcement before revised guidance is published.
- As long as promoting the guidance in Circular 4/2004 to SPP3 does not indicate an increase in status, we have no objections as a matter of process to doing so. However, we would like to see changes to the wording of draft SPP3 to remove the assumption that local authorities should apply planning control over HMOs in a particular geographic area, or demonstrate why control is not needed in that area.
- Guidance should be amended to emphasise that a high standard of proof is required to show that a concentration of HMO accommodation in a certain area is having negative impacts on a community, and that these impacts are not more appropriately tackled through HMO licensing, landlord registration or anti-social behaviour powers.
- Revised guidance should also be amended to emphasise to local authorities the necessity of monitoring the impact of any planning policy to restrict the numbers of HMOs in an area. Monitoring should cover the availability of affordable accommodation, compliance with licensing requirements among existing HMOs, and the standards of HMOs that continue to operate in an area subject to planning restriction.

Assessing housing need and demand

- The Consultative Draft of SPP3 underlines the principle of functional housing market areas being used as the basis for assessing housing need across all tenures and strategic cross-regional cooperation. The assumption that housing needs which have traditionally been met in social housing can be met across wider housing markets (defined by search patterns in the owner occupied sector) is questionable. There is no convincing evidence to support this.
- Much more research needs to be undertaken at national and local level to identify how the needs of households waiting for social rented accommodation can be met, and where new social rented housing should be developed to meet these needs.

Scale and delivery of new affordable housing

- Shelter welcomes the Scottish Government's ambition to build more homes. However, we question an assumption that increasing building across the board will increase the proportion of affordable housing that is built. It is not clear to what extent simply increasing overall supply will lead to a reduction in house prices.
- While there is a good case for ensuring that more houses are built across all tenures, the Scottish Government priority should be to ensure that a minimum of 30,000 affordable homes for rent are built over the next three years. The statutory commitment that all homeless people should be entitled to a home by 2012 adds extra urgency to the case for additional affordable homes.
- Changes to the planning system to encourage a renewed focus on development are timely. Shelter welcomes the elevation of quotas for affordable housing in new developments, contained in Planning Advice Note 74, into Scottish Planning Policy.

Response

Question 1. Do you think that planning guidance on HMOs should be provided as an annex to SPP3, which replaces the existing circular 4/2004?

We are by no means convinced that there is a sound case for promoting the use of planning controls over HMO accommodation. In our answer to question 5 below, we set out why, in principle, restricting the numbers of HMOs through planning policy is not the right approach. In our answer to question 6 below we set out some practical points about the way that licensing and planning control may not reinforce one another positively.

The existing Circular 4/2004 enables local authorities to make planning restrictions on the concentration of HMOs under certain circumstances. Local authorities such as Edinburgh, Dundee and Glasgow have already done so. However, there has been no evaluation to date of the impact of these planning controls on the establishment of new HMOs. There has also been no assessment of whether planning restrictions have mitigated the apparent problems in areas where there are a high number of HMOs, or crucially of any displacement effects. We noted from discussion at the working group organised by the Scottish Government, that in Glasgow the only evidence cited to demonstrate the effectiveness of the policy was that there had been no appeals and that there were few submissions at local plan stage. From our discussions with the City of Edinburgh Council we have established that there has been no evaluation of their planning policy for HMOs, and none is anticipated. Shelter calls for careful consideration of the impact of existing planning restrictions on the availability of affordable housing, before revised Guidance is published.

We have been assured through conversation with the Scottish Government that no additional weight is given to the Guidance by annexing it to an SPP3 as opposed to leaving it as a circular. If this is the case, we have no objection as a matter of process to the Guidance being annexed to SPP3. However, in its current form, the draft SPP3 infers that planning restrictions *should* be exercised over concentrations of HMOs:

'Where such a policy does not already exist, and where it is considered appropriate, local authorities should develop policies relating to the maximum proportion of HMOs that should exist in any defined area' (paragraph 24 of Annex B).

The Draft SPP3 also requires the local authority to give reasons for deciding that a policy is not needed:

'Where a local authority decides that such a policy is not necessary, it should make clear the reasons for that decision' (paragraph 26 of Annex B).

We think this wording is potentially misleading and unnecessary and would like to see changes to remove the implication that local authorities should apply planning control over HMOs in a particular geographic area, or demonstrate why control is not needed in that area. It is misleading to suggest that every local authority should consider having a policy on the proportion of HMOs that are acceptable. Concentrations of HMOs only exist in a small number of specific areas within a few local authorities in Scotland, and to suggest that every local authority should make a policy on concentration of HMOs or explain the lack of one is unnecessary.

Question 3. Do you agree that it is desirable to achieve a more robust and consistent approach to the assessment of housing need and demand? Does the approach set out in chapter two provide an appropriate mechanism for this?

The Consultation on SPP3 refers to the Scottish Housing Need and Market Assessment guidance that should be used by local authorities to assess housing need and demand. This guidance underlines the principle of functional housing market areas being used as the basis for assessing housing need and strategic cross-regional cooperation. While we support the principle of cross regional planning and cooperation, it is important that it is firmly based on good quality assessments of *local* need, and that housing is developed where it will meet locally identified need. Basing development plans and housing needs assessments on whole local authority, or even cross regional, areas must give an accurate picture of *where* housing should be built, particularly housing for people on lower incomes.

Taking a functional housing market area as equivalent to a geographical search area for everyone who is in housing need in that area is misleading. It may be the case that people who are looking for market housing might search over a wide area, but this should not be taken as the benchmark for people looking for different types of housing. In particular, people most in need of council or housing association housing, who, by reason of income, access to private transport, social networks, illness and disability, or caring responsibilities are likely to have much more restricted search patterns for housing. There is a strong hypothesis that households whose needs are to be met by social housing are much more limited in the distances they can travel, and we need to have a much better idea of what search patterns for different types of housing are. Otherwise we risk a situation where, for example, housing needs are assessed in the Lothian housing market area, and high demand in Musselburgh is catered for by building houses in Broxburn. Such a situation might see housing being built in low demand areas where it does not meet any identified need. Much more research needs to be undertaken at national and local level identify how the needs of

households waiting for social rented accommodation can be met, and where new social rented housing should be developed to meet these needs.

The Scottish Housing Need and Demand Assessment Guidance referred to in the consultative draft of SPP3 refers only briefly to local authorities looking at submarket areas to assess where it might be appropriate for types of households to live. The rationale for these submarket investigations is based on potentially differing house prices across the functional housing market area. There is no mention of factors other than housing costs that may determine the search patterns of a household.

By following the Scottish Housing Need and Demand Assessment Guidance and planning for need on a cross-regional basis, without a clear sense of locally where the houses need to be built, we are in danger of failing to meet housing need and exacerbating the problems people face in finding homes where they need to live.

The assumption that housing needs which have traditionally been met by social housing can be met across wider housing markets (which themselves are defined by search patterns in the owner occupied sector) is questionable. There is no convincing evidence to support this. The Scottish Government needs to get a better understanding of actual search patterns of people on lower incomes or who are otherwise more marginal, before it pins too much hope on supra-local authority areas being able to cancel out surpluses and deficits.

Question 5. Do you agree that local authorities should set policies to control the proportion of HMO accommodation in a given unit, where this is necessary? How should maximum proportions be decided?

Shelter does not think that the arguments presented to control the proportion of HMOs in a given area through planning policies are convincing or sound. We would like to see more detailed evidence presented to justify this policy and to identify the impact it would have on housing need and regulation of HMOs through the licensing regime.

Well managed and well regulated HMO accommodation plays a vital role in meeting housing need in areas where there is a significant pressure on housing stock. As the draft SPP3 identifies, HMO accommodation caters for a wide range of people in diverse economic and age groups including students, migrant workers and young professionals. The rise in number of HMOs, particularly in city centres, is a symptom of increased demand for affordable housing in a supply-restricted market. Where property prices are escalating and new development is limited, flat sharing represents an efficient use of existing housing stock to meet increasing demand. For many people entering the job market at a low level, their only option is to share.

Shelter would not support a policy to essentially restrict the availability of affordable housing that meets the needs of certain groups.

Further guidance should not be implemented without a thorough investigation into the impact on the availability of HMO accommodation to meet housing need in areas where quotas or planning controls have already been imposed. This investigation should ascertain whether HMOs have been displaced to other areas, whether they have been discouraged, or as we discuss further below, whether planning control is in fact leading to an increase in unlicensed 'undercover' HMOs.

The guidance should be more explicit in requiring very clear evidence that a *concentration* of HMOs is creating problems for communities, before implementing any planning control. A local authority should be able to demonstrate that the problems identified are ones in which there is a legitimate planning interest. Local Authorities have existing powers, under landlord registration, the HMO licensing regime and anti-social behaviour legislation, to intervene when poor management of an HMO impacts the well-being of the community. For example through 'neighbour nuisance', clash of lifestyles, badly maintained accommodation or accommodation unsuitable for the use that is made of it. Planning controls should not be used to plug the gap caused by lack of proper enforcement of HMO licensing or powers to tackle antisocial behaviour. Planning is itself undergoing significant changes in Scotland, and during this period of transition we should not be loading another enforcement requirement onto the planning system because of lack of enforcement of existing powers in licensing.

Once you discount as proper planning concerns the impact of the behaviour of tenants or landlord, or the maintenance of the property, it is hard to see what the planning interest is in HMOs. However, there may be two possible scenarios where planning has a role:

- Firstly, if an evidenced case can be made for a concentration of HMOs having a serious impact on the community. This could be demonstrated by looking, for example, at the level of car ownership and availability of parking, whether local shops are struggling and at the relationship between school rolls and HMO occupation. It should be shown that there has not just been a change, but a quantifiable negative impact that is directly due to the concentration of HMOs in a community. It might also be possible to demonstrate through reference to census data or small area statistics, that a concentration of HMOs has caused a negative impact on the diversity of a community and that this is in some way undermining the community. However, we should caution that community campaigners who are opposed to HMOs in an area often state that they undermine mixed and diverse communities without evidence to support the assertion. We would contend that *limiting* the number of HMOs in an area would have an adverse

impact on diversity within a community, and we would like to see evidence that shows how HMOs contribute to mixed communities.

- The second scenario is to be able to demonstrate in principle that having accommodation shared by 3, 4, 5 or more unrelated people has an impact disproportionate to having that accommodation shared by a family of the same number. This would require an understanding of the differing impact of families as compared to unrelated people, on services or facilities within the community.

We should be clear that it is not enough in this analysis to merely show that there has been change in a community due to concentrations of HMOs, but that this change has had a detrimental impact. We should not be designing a planning system that regards change as a bad thing. Communities evolve over time for a number of reasons, and a decline in certain groups within an area (for example, families in tenement flats) cannot simply be attributed to the rise in HMO accommodation. A number of factors and changes in aspirations may be involved in transforming communities over a period of time.

Question 6. How do you think the planning system and HMO licensing can work together more effectively?

We have a number of practical concerns about how planning quotas and requirements for planning permission for HMO accommodation may impact on the regime to licence HMOs. These concerns do not just relate to the redrafted advice in SPP3, but also to existing planning policies to restrict the concentration of HMOs. Shelter believes that there should be investigation into the relationship between planning restrictions and licensing of HMOs in local authorities where restrictions exist, before guidance is reissued in SPP3.

As discussed in our response to Question 5, planners we have spoken to say it is by no means straightforward to establish the basis on which planning permission should be required for an HMO. The requirement for planning permission can only be justified if a change of use can be demonstrated. A change of use cannot be demonstrated purely on the basis of the number of people in a property. In order to determine a change of use planners must show that the HMO has an impact, for example on services or traffic. As the draft SPP3 sets out, unlike for houses, it is within the discretion of local authorities to decide when occupation of a flat as an HMO requires planning permission. For licensing purposes, a property is considered an HMO if it is occupied by three or more unrelated people. However, for planning purposes, there is no reason why occupation by three unrelated people should constitute a change of use. This leads to the situation where planning policy may define HMOs in one way and licensing another.

Practically, this has implications for HMO landlords and tenants alike, which may lead to confusion. Shelter would like to see clearer guidance on how a local authority should determine whether use of a flat as an HMO constitutes development, and the implications of different judgements on the relationship between licensing and planning. For example, whether all licensed flats would require planning permission in a defined area, or whether only larger HMO accommodation would require planning permission. The guidance should recommend that a local authority monitor how their planning policy in relation to HMOs impacts on the size, and rental levels of HMOs in an area.

The policy as set out in the draft SPP3 does not address the underlying cause of high demand for shared accommodation which can cause a concentration of HMOs. It may be assumed that a policy to restrict the availability of HMO accommodation will lead to a situation where those landlords with planning permission to operate have a monopoly and so can charge higher rent levels. It may have a further unintended consequence of lowering standards, by encouraging landlords to further subdivide to meet demand in the context of artificially restricted supply.

HMO licensing has been mandatory across Scotland since 2000. Prior to this, only seven local authorities operated a discretionary system for licensing HMOs of 5 or more unrelated people. The Housing (Scotland) Act 2006 brought HMO licensing into primary legislation and the Government are anticipating consulting on regulations to enact the new legislation during 2008. Shelter, along with other housing and landlord bodies, strongly supports the operation of a licensing regime for HMOs. The licensing regime in Scotland recognises that HMOs require more rigorous standards than other types of private rented accommodation. It was set up to ensure high standards of physical accommodation and good management practice. As such, we agree with the consultative draft of SPP3, that the licensing regime is the most effective way of dealing with the range of problems that can be associated with shared accommodation. We urge the Government to give full consideration to how planning guidance, while not directly linked to licensing, may interact with the licensing regime. We also urge the Government to consider whether it is timely to be introducing new planning guidance for HMOs shortly before the new licensing system is to be implemented in 2008/9.

Shelter has serious concerns that planning quotas may in fact be counter productive in the drive to licence and regulate HMOs to the benefit of tenants and the community more widely. It is possible that a requirement to get planning permission may act as an incentive to evade licensing, especially amongst landlords who do not seek to ensure high standards. Whether this is due to the cost and trouble involved in seeking planning permission, or due to a perception (or policy) that planning permission would be refused. Evasion of licensing impacts disproportionately on

tenants and communities at the lower end of the rental market. We have concerns in particular that Glasgow has a substantial problem of unlicensed HMOs despite rigorous planning rules. Control of HMOs needs to be based on engagement as well as enforcement. Shelter argues that in advance of revising HMO guidance within SPP3, there should be a thorough review of whether existing quotas have had an impact on the evasion of licenses.

Scale and delivery of affordable houses through the planning system.

Shelter welcomes the Scottish Government's ambition to build more homes. However, we question an assumption that increasing building across the board will increase the proportion of affordable housing that is built through the 'trickle down effect'. It is not clear to what extent simply increasing overall supply will lead to a reduction in house prices. The limited evidence in the Scottish Government's Housing Market Review (2007) suggests that a 50 per cent rise in supply would improve affordability by 6 per cent. That is, the order of magnitude of supply is far greater than the order of magnitude of change in price to income ratios. It is vital that this ambition leads to a firm target for new *affordable rented homes*, which so far has not been set by the Government.

In February 2007, Shelter Scotland along with a coalition of other organisations (Scottish Council for Single Homeless, Scottish Churches Housing Action and the Chartered Institute of Housing in Scotland) submitted a detailed case for building 30,000 affordable homes in Scotland over the next three years¹. This estimate was also backed by the Scottish Federation of Housing Associations. In discussion around the budget, the Scottish Government confirmed that it aims to build at least 21,500 affordable homes over the spending review period, equivalent to the target in the past spending review period. This falls well short of what is needed and the budget allocation casts doubt on this being achievable.

While there is a good case for ensuring that more houses are built across all tenures, the Scottish Government priority should be to ensure that a minimum of 30,000 affordable rented homes are built over the next three years. The statutory commitment that all homeless people should be entitled to a home by 2012 adds extra urgency to the case for additional affordable homes. The programme we set out could help house newly-eligible homeless people, without any further reduction in lets to people on house waiting lists. We have serious concerns that a building programme which falls short of this amount will continue to add to the pressure on waiting lists and see more people spending longer in temporary accommodation

¹ Shelter Scotland, The Comprehensive Spending Review in Scotland (February 2007) can be found at: <http://scotland.shelter.org.uk/files/docs/26110/Comprehensive%20spending%20review%202007.pdf>

waiting for a permanent home We would welcome a policy direction that is focussed on increasing the supply of new affordable rented homes.

Changes to the planning system to encourage a renewed focus on development are timely. Shelter welcomes the elevation of quotas for affordable housing in new developments, contained in Planning Advice Note 74, into Scottish Planning Policy. This should ensure more consistency in ensuring affordable housing quotas are considered a central element of any new development. Although recent research carried out by Newhaven for the CIH in Scotland found a number of shortcomings with affordable housing policies, they are likely to remain the best way to achieve an increase in the number of houses delivered, as long as the obstacles to their operation are addressed.

A key obstacle will be addressed through better integration of the different approaches taken by planning and housing departments. Getting them to work together is of key importance in ensuring an efficient system. Within planning functions, it is important to invest in both capacity and skills. Capacity is an issue so that strategic planning can be kept up to date and on top of market trends. New skills are also vital. The future points in the direction of a more engaged planning function, equally at home with negotiation as it is with the consistent application of rules. Joint working between housing and planning departments could be encouraged through joint planning and housing policy and practice guidance.