



Consultation Response

Houses in multiple occupation and possible planning responses

August 2009

KEY POINTS

- **The NLA strongly advocates the use of active engagement and management strategies by local authorities, based on existing powers, to deal with local community housing issues.**
- **The need for shared housing looks likely to increase. This increase is likely to mainly be in the young professional part of the market and amongst internal economic migration.**
- **The NLA does not believe that the current planning framework is a barrier to the effective management of HMOs by local planning authorities (LPAs). We believe that changes in planning law that would enable LPAs to restrict the availability of shared housing and HMOs could potentially put them at odds with national guidance.**
- **Displacing groups by reducing their access to housing will have significant knock-on effects for the wider community. While local authorities are under pressure to be seen to remove HMOs from particular areas, the primary issue of housing need is not addressed within the consultation.**
- **The NLA fears that there will be numerous unintended consequences that could fall out of any adoption of the proposals in option two and three of the consultation. The Government will not be able to easily control the use of planning legislation by local planning authorities to restrict their local housing provision. And authorities themselves will have difficulties managing the effect on housing supply and geographical demographics that could present further challenges to communities.**

ABOUT US

The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords. With over 17,000 members from around the United Kingdom and over 90 local authority associates, it provides a comprehensive range of benefits and services to its members and strives to raise standards in rented accommodation.

The NLA seeks to safeguard landlords' legitimate interests by making their collective voice heard by local and central government and the media. The NLA seeks a fair legislative and regulatory environment for the private-rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities towards their tenants.

INTRODUCTION

1. The National Landlords Association (NLA) welcomes this opportunity to respond to the Government's consultation on Houses in Multiple Occupation and possible planning responses. With around 43 per cent of our landlord members defining themselves as landlords with Houses in Multiple Occupation (HMOs)¹ and our UK-wide membership which includes local authority associate members, we believe that we are able to provide valuable insight into this aspect of the private-rented sector.
2. Our response to this consultation begins with general remarks around the current supply, demand and characteristics of shared housing/HMO; the current debate over "studentification" as a national issue requiring national policy; and the danger of unintended effects from changes in planning law before dealing with the individual consultation questions in turn.
3. This response draws from our experience working with local authorities across the UK in their local private-rented sector markets, including Southampton and Newcastle. It brings together the views of our landlord members and from wider industry and stakeholder discussions, including the British Property Federation and the National Union of Students.
4. Throughout this response we refer to 'HMOs' when describing housing that comes under the current Housing Act 2004 or planning law definitions. Where households which do not come under these definitions but our nonetheless made up of more multiple households are referred to, we use the term 'shared housing'.

HMOs and shared housing

5. The trends in future UK housing demographics and in the future growth of Higher Education, along with the current state of housing finance and supply of affordable housing, point to a greater need for shared housing/HMO-type housing in many parts of the country. The flexibility and affordability that HMO and shared housing provide are critical for many who either cannot afford or do not want the liabilities involved in owning their own home.
6. The Government-commissioned review of the private-rented sector published last year identified a clear growth in the number of young professionals renting instead of turning to home ownership. 20 to 29 year olds now account for 79 per cent of all renters.² While accurate statistics do not exist in this area, it is likely that the majority of this is shared housing (whether or not the housing comes within the Housing Act 2004 definition of HMOs or the current planning definition of HMOs).

¹ 43 per cent of landlords responding to a survey of the NLA Survey Panel said that they were HMO landlords, May 2008.

² Julie Rugg and David Rhodes (2008), "The Private Rented Sector: its contribution and potential", p.16.

7. In addition to young professionals, migrants and students make up important shared housing markets in England. For obvious economic reasons and for flexibility, shared housing is an important source of housing for these groups. However, demand is not static. Recent research suggests that emigration out of the UK by economic migrants is increasing³ and current projections for student numbers point to the majority of future student growth over the next couple of decades being amongst post-graduates and part-time undergraduates.⁴
8. The overwhelming characteristic between these groups is that they are necessarily transient. These households are not intended to 'grow roots' or stay in the same home for a generation. HMOs and shared housing are popular amongst these socio-economic groups precisely because they are fluid housing options.

Not a problem house, but a problem household

9. Like any other tenancy, rights and responsibilities lie both on the landlord and on the tenant. Like any other household, those in shared housing are required to behave in a socially acceptable way just the as non-HMO residents. Where reality does not match up to these expectations, both the landlord and the local authority have powers that can be used to tackle unacceptable behaviour.
10. Those powers require local residents to identify particular cases of unacceptable behaviour so that it can be dealt with. Landlords can neither continually monitor the behaviour of their tenants, nor do anything that may constitute harassment. Too often local residents fall into fallacy that it is the house itself rather than the household that can cause an issue. They build up a 'general feeling' about areas of particularly dense shared housing, without looking to see particular problems dealt with. This aggregation of issues, particular grievances and 'general feelings' about a community can quickly make residents feel that a 'tipping point' has been reached.
11. This problem is compounded where residents are not made aware of any specific action taken by a landlord or local authority against a particular household and so are ignorant of any work being done to tackle issues important to them.
12. Where local authorities have come together with other community stakeholders, including local landlords, to tackle particular problems or issues, then there have been successes.⁵ However these initiatives do require active engagement by local authorities.

³ Finch et al, 'Shall We Stay or Shall We Go? Re-migration trends among Britain's immigrants', IPPR, 2009

⁴ 'The future size and shape of the higher education sector in the UK: demographic projections', Universities UK research.

⁵ ECOTECH (2008), "Evidence Gathering – Houses in Multiple Occupation and possible planning responses", CLG. Although the Government's ECOTECH research focuses on student and migrant sections of the population, it does identify a number of effective local level initiatives which show stakeholders coming together.

‘Studentification’ isn’t a national issue

13. Ministers will have received the largest amount of lobbying from anti-HMOs and shared housing groups in student towns and areas with high levels of economic migrants. Typically it is in these areas that community feeling against HMO and shared housing is largest.
14. While the issues are important, and we do not doubt the seriousness nor the depth of feeling surrounding them, we are worried that the Government is willing to risk the unintended effects of disproportionate action instead of encouraging local communities to take targeted action. Certainly national Government policy should not support efforts to remove certain students or migrants from local areas purely because they are students or migrants.
15. As Julie Rugg and David Rhodes highlighted in their review, only 59 wards in England have student densities where a student Household Reference Person (HRP) comprised of ten per cent or more of all HRP’s in all tenures. Moreover there is no reason why it should be presumed that all 59 face the same uniform range or severity of ‘issues’ that has generated such ill-feeling towards HMO and shared housing tenants. With only a tiny minority of wards in England affected, the case for such wide-spread action diminishes.

Unintended effects of changes in planning law

16. The NLA does not support the use of planning law to manipulate the supply of new HMO housing. The approach proposed by the Government to manage high concentrations of HMO and shared accommodation through the adaption of planning regulations crucially ignores the fact that such changes would not address issues based on the existing supply of HMO/shared housing. It risks the unintended effects to housing supply for key segments of the housing market (young professionals, UK-based and broader economic migrants, for instance).
17. It is precisely the breadth and scope of those unintended consequences that makes the Government’s proposed options to change planning law unnecessarily risky. Many local economies depend on student expenditure. A move to more purpose-built student accommodation would mean more areas suffering a larger exodus of students during holiday periods. Simultaneously, a ‘student-only’ area would have drastic effects for community relations, crime, amenities, etc.
18. Many coastal areas rely on seasonal and flexible workforces who require equally flexible and affordable housing. Limiting access to shared housing could have a major effect on the ability of those businesses to access a suitable workforce and maintain a viable business.
19. Displacing groups by reducing their access to housing will have significant knock-on effects for the wider community. While local authorities are under pressure to be seen to remove HMOs from particular areas, the primary issue of housing need is not addressed within the consultation.

20. The NLA strongly believes that the Government should encourage local authorities to use non-legislative methods and their existing powers to tackle the underlying problems facing communities. Rather than being seen as a 'status quo' solution, the Government should recognise the need to spread best practice, community engagement and innovation.

Consultation questions

Q1. Do you experience problems/effects which you attribute to high concentrations of HMOs?

21. The NLA represents over 17,000 landlords across the UK. According to research undertaken among our membership 43 per cent of our landlord members define themselves as HMO landlords⁶ operating HMOs defined as 'any property occupied by three or more unrelated tenants'.
22. From the viewpoint of our members, the attribution of local social issues (such as anti-social behaviour, noise nuisance) to a prevalence of HMO or shared housing in a given area mistakes the conduct of residents with the type of housing supplied in the area. The availability of parking spaces is also mentioned as a key issue for HMO areas, yet this is an issue affected by local authorities ensuring adequate provision of parking spaces in an area.
23. Friction between local residents and HMO tenants is frequently founded on perceptions of how HMO tenants behave, whether they are students (in areas of so-called 'studentification') or economic migrants in certain coastal towns with large workforces dependant on a strongly seasonal economy. These issues are broader than the type of housing used by the particular social groups.

Q2. Do you consider the current planning framework to be a barrier to effective management of HMOs by local planning authorities?

24. The NLA does not believe that the current planning framework is a barrier to the effective management of HMOs by local planning authorities (LPAs). We believe that changes in planning law that would enable LPAs to restrict the availability of shared housing and HMOs could potentially put them at odds with national guidance. The Government's Planning Policy Statements directs LPAs to: "...plan for a mix of housing on the basis of the different types of households that are likely to require housing..."⁷.

Q3. Could promotion of best practice measures as opposed to changes in the planning framework sufficiently deal with the problems associated with high concentrations of HMOs with student occupants?

⁶ Ibid.

⁷ Communities and Local Government (2006), "Planning Policy Statement 3 (PPS3): Housing".

25. The NLA strongly advocates the use of active engagement and management strategies by local authorities, based on existing powers, to deal with local community housing issues. Local communities are ill served by providing LPAs with blanket planning powers, the use of which could be influenced by elected representatives with dual and sometimes conflicting tensions in respect to planning decisions. As the recent Killian Pretty Review into the planning process put it: “The tension between these roles has grown with the rising opposition to development...”⁸.
26. The research conducted by ECOTECH for the Department for Communities and Local Government (CLG) to gather evidence around the issue of HMOs⁹ identified a number of areas where local initiatives had been used to deal with specific problems. Many of these initiatives brought together a broad range of local stakeholders and developed channels of communication between different groups of residents providing opportunities for longer term engagement.
27. Critically, the ECOTECH report identified that: “These initiatives have been successful although it was argued that to be most effective they require the targeting of resources year round and not just at peak times of the year.”¹⁰ The need for long term strategies and resource planning should not be seen an argument for what some could characterise as ‘quick fix’ changes to planning laws with scant evidence that they would either be ‘quick’ (see question 8 below) nor cheap (see question 10 below).

Q4. If planning legislation is seen as a barrier to the effective management of HMOs in an area how should planning legislation be amended – along the lines of option 2 (introduce a definition along the lines of the Housing Act 2004) or option 3?

28. The NLA strongly believes changing planning legislation will not aid the management of HMOs or shared housing in any area, irrespective of the options presented by the Government in this consultation.
29. Moreover, the Government should look at the experience in Northern Ireland which sought to use planning law to manage HMO housing.¹¹ It is not clear whether the changes made in Northern Ireland have been effective in achieving any of their intended aims.
30. Interestingly, while in Northern Ireland they still believe that “...planning is a long-term solution...”, the ECOTECH report did identify that it could only ever be part of the solution – whatever the situation: “...in the short to medium-term stakeholders have an important role to play in tackling the problems [associated with high concentrations of HMO type properties]”¹²

⁸ Killian Pretty Review (2008), “Planning applications: A faster and more responsive system”, CLG.

⁹ *ibid.*

¹⁰ *Ibid.*, p.36.

¹¹ Details of which can be found in section 3.2.1 of the aforementioned ECOTECH report.

¹² *Ibid.*

31. Clearly whatever changes are made to planning law, it is active non-legislative engagement with residents and the wider local community that is essential.

Q5. Do practitioners have a preference for one approach listed as part of option 2 over the other?

32. The NLA does not believe that either approach listed in the proposed option two of the consultation would aid the Government in providing LPAs with effective tools to manage the number of HMOs in particular areas.
33. Significantly, changing the definition of HMOs in planning legislation along the lines of the first approach (changing the threshold within the current planning HMO definition) could deliver a two-tiered HMO system in local areas. The NLA is concerned this would simply be seen as a council 'cash-cow' since a sizable number of non-licensable HMOs or shared homes would be caught within the planning system and incur planning permission costs, however, local authorities would not necessarily be engaging with them in any meaningful way in relation to management and quality standards.

Q6. What effect would a change to the Use Classes Order as described in option 2 have on those local planning authorities that do not encounter problems with high concentrations of HMOs?

34. If the proposed option two is implemented the difficulty for LPAs will be two-fold. The first issue will be an increased tension in the dual roles of elected representatives in respect of planning responsibilities. As previously highlighted, the Killian Pretty Review identified councillors' tensions rise because of their dual roles as representative for their constituents and, for those that sit on the Planning Committee, their role in making planning decisions.¹³
35. Given intensive lobbying from small but vocal parties in opposition to HMO housing and student residents in particular areas, local elected representatives could potentially face increasing pressure to use planning law to restrict particular housing associated with particular social groups. As the ECOTECH points out: "...if changes are made to planning legislation as is current being lobbied for, this will have resource and policy implications for a number of local authorities who wish to encourage HMOs."¹⁴
36. Secondly, option two within the consultation will have a disproportionate effect on those LPAs where the concentration of HMO properties or so-called 'studentification' is not an issue. As the Rugg and Rhodes review of the private-rented sector identified in relation to 'studentification': only 59 wards in England have student densities where a student Household Reference Person (HRP) comprised of ten per cent or more of all HRP's in all tenures. This means that out of the

¹³ Ibid.

¹⁴ Ibid., p39.

8,000 wards in England only 0.7 per cent could potentially be affected by issues relating to a concentration of students.¹⁵

37. The Review concluded that this kind of issue "...can evidently be felt very acutely at street by street or neighbourhood level, but is clearly not a widespread issue." Thereby changing planning law in this case would be an "...extreme response given the limited nature of the problem."¹⁶ Although issues surround HMO housing are limited to student dense areas, it is clear that the increase in the number of shared homes that would come within the planning regime because of the proposed change in planning law will place an increased burden on LPA resources.
38. The Government has previously supported moves to improve the approach of the planning system for minor applications, reducing and simplifying the process where necessary. The current proposal would then have the perverse effect of contradicting the Government's overall stated aim for national planning policy.

Q7. Would a change to the Use Class Order as described in option 2 or 3 have an impact on the homeless and other vulnerable groups?

39. As previously highlighted, shared housing and HMOs do play a significant role in providing affordable and flexible housing for a broad group of individuals who would otherwise have limited access to housing. The Northern Ireland experience shows particularly that it is very difficult to predict the actual effects of a change in planning law over the long term.
40. Certainly the need for planning permission, as well as its cost, will deter some landlords from providing housing that might come within the regime. The effect of this will reduce housing stock. In turn the reduction in stock would affect local housing markets both reducing choice and raising rents. The ability for local planning authorities to restrict the supply of shared house would negatively affect vulnerable groups along with the many other groups who rely on shared housing and HMOs.

Q8. Would a change to the Use Classes Order as described in option 2 or 3 have any unintended consequences, for example an impact on small scale care homes or children's homes, which are currently classed a C3 dwelling houses?

41. The NLA fears that there will be numerous unintended consequences that could fall out of any adoption of the proposals in option two and three of the consultation. The Government will not be able to easily control the use of planning legislation by local planning authorities to restrict their local housing provision. And authorities themselves will have difficulties managing the effect on housing supply and geographical demographics that could present further challenges to communities.

¹⁵ Julie Rugg and David Rhodes (2008), "The Private Rented Sector: its contribution and potential", p.99-100.

¹⁶ Ibid.

42. In terms of housing supply, the need for planning permission would negatively affect the supply of housing in areas of demand. The ability of landlords to sell properties that come under HMO planning law will be negatively affected since the market is smaller and more niche with less buyers. The assumption that some have made, that rejected HMO applications will result in more family homes, depends on wider factors such the current community make up and access to mortgage finance. Since the proposals are not retrospective, the presumption rests on families wanting to rent or buy in predominately student-based or migrant workers-based areas.
43. Additionally, HMO definition changes outlined in option two and three would require many more shared homes to come within the planning regime. This will affect LPAs resources needs potentially overwhelming planning departments. The ability to manage increased service demands will put unnecessary pressures on planning departments - especially in areas where (as previously mentioned) there are no real HMO-based issues.
44. Where migrants or students are effectively restricted from living in areas we can see significant knock on effects for local economies and especially small businesses. Many retail businesses in student cities rely on student custom. Using planning law to restrict the ability of students to live in particular areas will disadvantage local businesses in that area and could force them to relocate or close.

Q9. Would a change to the Use Classes Order as described in option 2 or 3 impact unfairly – directly or indirectly – on any equality strands?

45. While it would be wrong to associate HMO housing overwhelmingly with any one particular group of individuals, this consultation and the ECOTECH research into HMOs recognise the particular association of HMO housing with both students and migrants.
46. The tensions within areas with large student or migrant populations lead the NLA to fear that, if given the proposed powers, LPAs would be open to additional lobbying pressure from lobbies looking to exclude these particular groups from living in certain areas. There is a discriminatory factor to be considered and it is not one that the Government can predict.
47. The current system does not enable planning law to be used to discriminate against particular groups. We believe that this should be a clear principle within all aspects of planning law. The notion of harm used by planning officers in residential planning accommodation does not focus on who the end resident is. Changing the planning law in the way proposed could indirectly introduce such a focus on who the potential resident of a property might be. This could result local planning authorities decisions being judicially reviewed to prove whether or not they were discriminatory against particular groups.

Q10. Would a change to the Use Classes Order reduce the supply of HMO accommodation in your area?

48. The NLA believes that introducing additional planning requirements and increasing the scope of planning law to include more shared housing will reduce local shared housing/ HMO provision. The addition burdens and negative impact on potential resale would disincentivise landlords from investing in additional HMO housing. Any increase in demand would therefore negatively affect affordability.

Q11. If amendments are made to the Use Classes Order, should a property that had obtained planning permission for use as an HMO require planning permission to revert back to a C3 dwelling house?

49. Fundamentally, the requirement for planning permission to change a property to/back from being an HMO would create a disproportional regulatory burden on landlords. Given the small scale nature of the planning requests, such a requirement would not provide additional benefit to communities or local planning authorities.
50. The increased volume in planning applications would require all local planning authorities to allocate additional resources to meet this demand. The NLA believes that retrograde planning permission would be unnecessary, over burdensome and could potentially increase further the additional volume of planning applications to local planning authorities.
51. Any changed planning regime introduced by Government should enable homes which received planning permission under a new planning HMO definition to revert back to its previous use without a further planning application.

Q12. Would a change to the Use Classes Order as described in option three place a new burden on local planning authorities?

52. There seems to be widespread concern about the proposals outlined in option three of the consultation. The NLA, following discussions with planning officers, landlords and local authorities, strongly believes that the adoption of this policy by Government would be an admission of failure in terms of realising the goals stated within the consultation.
53. For local planning authorities the principle worry would be the risk of challenges for compensation by owners of HMOs in areas covered by an Article 4 direction. Given that the impact assessment for option three contained within the consultation does not include any projection of any potential compensation costs, it is impossible whether any fears are unfounded.
54. In addition the time and resources required for the necessary consultation and application to the Secretary of State for an Article 4 direction are significant. We believe, given the likely process, that the whole application could take in excess of a year to complete. Given that permission by the Secretary of State would be by no means automatic, we believe that many

local planning authorities would consider applying for an Article 4 direction as overly risky. In these situations local authorities would necessarily need to fall back to finding more effective ways of using their existing powers (as noted above) to tackle any HMO-related community issues.

55. For landlords and communities, this particular option would only cause increased confusion. The length of time required for consultation and the need for local planning authorities to define particular areas to be covered by any Article 4 direction would only create confused expectations among local communities, especially since the effects of any Article 4 direction are less than clear.

56. Furthermore, as the consultation states, this particular approach would result in all HMOs becoming permitted development. The effect of not requiring planning permission for HMOs of any size would be a substantial policy change which could place additional burdens on both local planning authorities and local communities.

Q13. Under option 3, would the removal of the current requirement for HMOs to seek planning permission pose a problem for practitioners in managing land use impacts in their area?

57. We believe that the deviation from the current planning requirements would have serious unforeseeable impacts for communities.

Q14. Should the compensation provisions included in Section 189 of the Planning Act 2008 be applied to change of use between C3 dwelling house and an HMO if option 3 were to be implemented?

58. Given the numerous issues with the Government proposed option three (see above), we believe that the Government should discount this option. It would be inappropriate to limit the compensation available to homeowners looking to change the use of their property in lieu of a wider decision to limit a particular type of housing provision in an area. Given that opinion, we do not see any merit in changing the compensation provisions in the Planning Act 2008.

Q15. How important would the risk of compensation be in the decision to use Article 4 direction under option 3?

59. This question does not directly affect the NLA. However we believe that many local planning authorities will consider the risk of compensation to be an important aspect to their decision making.

Q16. Would the extra certainty of greater control bring benefits that outweigh the burdens placed by the need to process more planning applications?

60. It is important to realise that many of the issues that have been raised in this consultation are issues of behaviour and tenancy management. The ability of local planning authorities to restrict or reject future provision of shared housing in areas across the England does not tackle the

underlying issues identified in the consultation. The danger is that these problems migrate to other areas or that the different issues will emerge from the necessary changes in housing provision.

61. The need for shared housing looks likely to increase. This increase is likely to mainly be in the young professional part of the market and amongst internal economic migration. If the current proposals are born out of the impression that student numbers will increase as they have been over the last decade then they are mistaken. Projections for student numbers over the next couple of decades show only a slight increase of 2.2% (with the majority of that increase being part-time undergraduate and post-graduate students).¹⁷
62. The NLA believes that local planning authorities should be wary of adopting powers that would encourage short-term approaches to housing. Our experience is that once a market is restricted then it is very difficult to encourage further growth in that market. We believe that option two and three proposed in the consultation would have the effect of displacing particular social groups and community issues. The effects of such a displacement are unpredictable and could potentially create additional issues and burdens for local planning authorities looking to manage the impact of their land use.
63. Furthermore, the impact on local economies and interlinked local communities could see local authorities having to adopt a range of non-planning related interventions as well as managing the changes in planning law. In addition, the potential exists for options two and three to affect the ability for property owners to resell their properties since the designation of a property as there will be an impact on the pool of potential buyers willing to buy a property designated as an HMO.
64. For these reason we believe that option one remains the most viable and effective option for the realisation of the consultation's goals and urge the Government to implement this 'non status-quo' approach.

¹⁷ 'The future size and shape of the higher education sector in the UK: demographic projections', Universities UK research.